

## **IMPORTANT INFORMATION ABOUT ZONE SCHEDULES**

This zone schedule is being made available pursuant to 15 CFR 400.44(e), which states: “The Board shall make copies of zone schedules available on its Web site.”

Availability of this zone schedule on the FTZ Board’s website does not imply that the FTZ Board has approved any rate/charge, policy or other content of this zone schedule. In particular, while the FTZ Board staff intends to conduct spot checks over time, zone schedules are not reviewed for compliance with the public utility requirement (19 U.S.C. 81n, 15 CFR 400.42) prior to making the zone schedules available via the Board’s website.

Pursuant to 15 CFR 400.44(b)(4), a grantee may not assess any specific rate or charge for which the amount – or formula for calculating the amount – does not appear in the zone schedule that the grantee has submitted to the FTZ Board.

Complaints about a grantee’s compliance with statutory and regulatory requirements related to public utility and uniform treatment – including rate or charge amounts/formulas, a grantee assessing a rate or charge amount/formula that does not appear in its zone schedule, and a grantee not affording uniform treatment under like conditions – may be presented to the FTZ Board under 15 CFR 400.45 (which also allows for complaints to be made on a confidential basis, if necessary).

Questions or concerns may be addressed to the FTZ Board staff at (202) 482-2862 or [ftz@trade.gov](mailto:ftz@trade.gov).

***ZONE SCHEDULE***

***FOREIGN-TRADE ZONE NO. 165***

***ZONE GRANTEE***

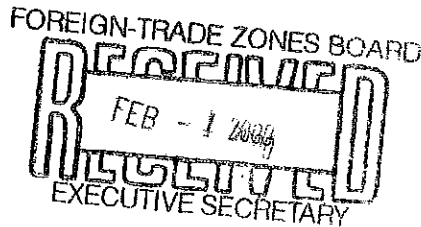
***CITY OF  
MIDLAND, TEXAS***

***FOREIGN-TRADE ZONE #165  
MIDLAND INTERNATIONAL AIRPORT  
P.O. BOX 60305  
MIDLAND, TEXAS 79711***

***Mr. Carroll Thomas, Administrator  
Original Schedule: May 23, 1996  
Phone (915) 560-2200***

## ZONE SCHEDULE

FOREIGN-TRADE ZONE #165  
MIDLAND INTERNATIONAL AIRPORT  
MIDLAND, TEXAS 79711



The purpose of this manual is to serve as an introduction to the Midland International Airport policies as related to foreign-trade zone operations and to provide a schedule for related services. The information contained herein and the schedule for services will be reviewed periodically and changes will be made in accordance with the recognized need for such changes.

As the grantee of Foreign-Trade Zone No. 165, the City of Midland, Texas serves as the party responsible for area foreign-trade zone administration. Zone operators, operating under this authority, are responsible and liable for compliance and the integrity of operations within their zone site. As the local administrative zone entity, Midland International Airport is responsible for review and approval of proposed changes in zone sites or new zone activity.

### ZONE CONTACT PERSON

MR. Carroll Thomas, Administrator  
Foreign-Trade Zone No. 165  
Midland International Airport  
P. O. Box 60305  
Midland, Texas 79711  
Phone (915) 560-2200  
FAX (915) 560-2237

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## ZONE SCHEDULE

### FOREIGN-TRADE ZONE #165 MIDLAND INTERNATIONAL AIRPORT

#### TITLE: 1 INTRODUCTION, SITE DESCRIPTION, AND GRANT OF AUTHORITY

1.1 Purpose - The purpose of this Schedule is to set forth internal rules, regulations and general administrative procedures including rates and charges of Foreign-Trade Zone #165. Portions of this Schedule are taken directly from the Foreign-Trade Zones Act, the Foreign-Trade Zones Board Regulations, the U.S. Customs Regulations and, the U. S. Customs Foreign-Trade Zone Manual. This schedule is not intended to interpret or represent FTZ requirements other than those implemented by the City of Midland, Texas as grantee.

1.2 Introduction - Foreign-Trade Zones (zones) are restricted-access sites in or adjacent to a Customs port of entry, which are licensed by the Foreign-Trade Zones Board, an executive secretariat of the U.S. Department of Commerce, and operated under the supervision of the U.S. Customs Service. The objective and public policy of Zones is the creation and maintenance of employment through the encouragement of operations in the United States which, for tariff reasons, might otherwise have been conducted abroad.

Foreign and domestic merchandise may be moved into zones for operations not otherwise prohibited by law involving storage, exhibition, assembly, manufacture or other processing. The usual formal Customs entry procedure and payment of duties is not required on the foreign merchandise unless and until it enters Customs territory for domestic consumption, in which case the

importer ordinarily has a choice of paying duties either on the original foreign material or on the finished product. Quota restrictions do not normally apply to foreign goods stored in zones, but the Board can limit or deny zone use in specific cases on public interest grounds. Domestic goods moved into a zone for export may be considered exported upon admittance to the zone for purposes of excise tax rebates and drawback. Goods in a zone for a bona fide Customs reason are exempt from state and local taxes.

The first phase of Foreign-Trade Zone #165, Site #2 is operated as part of a general purpose facility. Activity within this zone site consists, generally, of simple storage and distribution functions, with occasional manipulation to accomplish repacking, sorting, labeling, etc.

1.3 Grant of Authority - Pursuant to a grant issued by the Foreign-Trade Zones Board, the City of Midland, Texas was granted the privilege to establish, operate, and maintain a Foreign-Trade Zone to serve the communities in West Texas under the provisions of the Foreign-Trade Zones Act (19 U.S.C. 81a-81u).

1.4 Foreign-Trade Zone #165 Site #2 Description  
See Exhibits A and B

The site consists of 39 acres within the Midland Industrial Park. It is bordered by Commerce Drive and Market Street. It is owned and operated by the Midland Industrial Foundation, a non profit corporation.

1.5 Method of Operation - Foreign-Trade Zone #165 permits multiple operators, so long as there is only one operator for a given zone site, and the site of one operator is not contiguous to the site of another operator. Abutting zone sites shall be treated as noncontiguous if (1) they are separated by a barrier with no gates or other openings between the sites, and (2) the operators of the sites receive and deliver merchandise directly without it passing through the activated area of any other zone site.

- 1.6 Administration of Zone Project - The grantee's role shall be limited to general oversight responsibility to ensure that the reasonable needs of the business community are served by Foreign-Trade Zone #165. Operation of zone sites shall be delegated to the operator(s) who will assume responsibility for compliance with all regulations of the U.S. Customs Service, the Foreign-Trade Zones Board and other relevant government agencies. Inquires regarding the administration of FTZ #165 may be referred to:

FOREIGN-TRADE ZONE #165  
MIDLAND INTERNATIONAL AIRPORT  
P.O. BOX 60305  
MIDLAND, TEXAS 79711

Mr. Carroll Thomas, Administrator  
Phone (915) 560-2200



TITLE: 2 LAWS, REGULATIONS, AND GENERAL INFORMATION CONCERNING ZONES

- 2.1 Foreign-Trade Zones Act - The principal statute governing foreign-trade zones is the Foreign-Trade Zones Act of 1934, as amended, (FTZA), which has been codified in the United States Code as Title 19, Sections 81a through 81u, inclusive. The FTZA generally covers how and where zones are established, how they are administered, and what may and may not be done in them. The FTZA is administered through two sets of regulations, the Foreign-Trade Zones Board Regulations (15 Code of Federal Regulation (CFR) Part 400) and the U.S. Customs Service Regulations (19 CFR Part 146).
- 2.2 Foreign-Trade Zones Board - The Foreign-Trade Zones Board (henceforth identified as "the Board" in this Schedule) is responsible for the establishment, maintenance, and administration of foreign-trade zones under the FTZA. The Board consists of the U.S. Secretary of Commerce, the Secretary of the Treasury and the Secretary of the Army.
- 2.3 Foreign-Trade Zones Board Regulations - The Foreign-Trade Zones Board Regulations (15 CFR part 400) provide regulations and procedures on how zones are established and modified; how they are managed and administered by zone grantees and operators; and how the Foreign-Trade Zones Board conducts business.
- 2.4 U.S. Customs Service - The U.S. Customs Service carries out most of the duties and responsibilities of the Secretary of the Treasury under the FTZA, however, the Customs Service does not represent the Secretary of the Treasury in any matter pertaining to zones which is of a policy making nature for which authority has not been delegated to the Commissioner of Customs; or within the authority of another agency of the Department of the Treasury, such as the Bureau of Alcohol, Tobacco, and Firearms or the Internal Revenue Service. 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 there is no evasion of U.S. laws and regulations governing the merchandise. In addition to the duties as an officer of the U.S. Customs Service, the Port Director is in charge of the Foreign-Trade Zone as the resident representative of the Foreign-Trade Zones Board and conducts general oversight of the zone's activities.

- 2.5 Customs Laws and Regulations - The Secretary of the Treasury has authority to promulgate rules and regulations for zones concerning revenue protection. This authority has been implemented through Customs Regulations (19 CFR Part 146). Thus, although Customs laws are not usually applicable in zones, Customs Regulations, through specific provisions in the FTZA, are applicable in zones. Zones shall be operated, maintained, and administered by the grantee and/or operator under the regulations of the Customs Service for the protection of the revenue, and any other law, regulation, or instruction the Customs Service is required or authorized to enforce.
- 2.6 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.
- 2.7 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.
- 2.8 Grantee Zone Schedules - A foreign-trade zone shall be operated, maintained, and administered by the grantee under, among other regulations, the regulations fixed by the grantee and approved by the Foreign-Trade Zones Board. The zone rules and regulations, usually referred to as the zone schedule, is available for viewing upon request. The zone schedule shall contain a section listing rates and charges for zones and subzones with information sufficient for the Board or the Executive Secretary to determine whether the rates or charges are reasonable based on other operations in the port of entry area, and whether there is uniform treatment under like circumstances among zone users.
- 2.9 Application of Foreign-Trade Zone No.165 Tariff - The rules, regulations, and rates and charges of the zone schedule shall apply to Foreign-Trade Zone No. 165, its subzones and annexes unless otherwise provided for.

Users are subject to specific rules, rates, and charges of zone site operators. All rates and charges for services or privileges within the zone shall be fair and reasonable, and the operator shall afford to all who may apply for use of the zone and its facilities and appurtenances uniform treatment under like conditions, subject to such treaties or commercial conventions as are now in force or may thereafter be made from time to time by the United States government with foreign governments.

2.10 Grantee, Operator, and User Duties - The Foreign-Trade Zones Board does not own or operate any zones. Rather, it provides grants to applicants to establish, operate, and maintain zones. The Midland International Airport as grantee, shall execute a contract with another party or parties for the operational management of the zone sites. Various tenants may lease space and construct buildings in the zone and physically run their operations in the buildings, while others may pay the zone operator a fee for handling their merchandise and performing related services.

(a) Grantee - A grantee is a public or private corporation to which the privilege of establishing, operating, or maintaining a foreign-trade zone has been given. The City of Midland's role as grantee shall be limited to its general oversight responsibility to ensure that the reasonable needs of the business community are served by Foreign-Trade Zone #165.

(b) Operator - An operator is a corporation, partnership, or person that operates a zone site or subzone under the terms of an agreement with the zone grantee. The City of Midland, Texas, as grantee, delegates the responsibility for operation of zone sites to the operator(s) who will assume responsibility for compliance with all regulations of the U.S. Customs Service, the Foreign-Trade Zones Board and other relevant government agencies.

(c) Zone User - A zone user is a corporation, partnership, or person that uses a zone or subzone for storage, handling, processing, or manufacturing merchandise in zone status, under an agreement with an operator. Usually, the zone user is the party which requests a Customs permit to admit, process,

or remove zone status merchandise. In subzones, the operator and user are usually the same party. A fee is normally assessed by the Grantee to Subzone and General Purpose Zone Site operators to cover administrative cost related to zone operations. General Purpose Zone Site users pay the operator for services such as rent on facilities, administrative, handling and similar services. They may be permitted by the grantee to construct their own buildings or structures in which they conduct their own business.

- 2.11 All Persons Entering Zone Bound by Regulations - All persons entering a zone for any reason whatsoever shall be bound by the regulations promulgated by the Board, the U. S. Customs Service, the grantee and operator of the Zone.

TITLE: 3 ZONE OPERATIONS

- 3.1 Operations in Zones - Foreign and domestic merchandise of every description, (except such as is prohibited by law), may generally, without being subject to the customs laws of the United States, except as otherwise provided in the Act and the Regulations made thereunder, be brought into a zone and may be stored, sold (except for retail sales), exhibited, broken up, repacked, assembled, distributed, graded, cleaned, mixed with foreign or domestic merchandise or otherwise manipulated, and may be exported, destroyed, or otherwise sent into Customs territory of the United States therefrom in the original package or otherwise.
- 3.2 Exclusion from Zone of Goods or Process of Treatment - When it shall be reported to the Board that any goods or process of treatment is detrimental to the public interest, health, or safety, the Board shall cause such investigation to be made as it may deem necessary. The Board may order the exclusion from the zone of any goods or process of treatment that in its judgement is detrimental to the public interest, health, or safety.
- 3.3 Retail Trade - Retail trade is prohibited in zones, except that sales or other commercial activity involving domestic, duty-paid, and duty-free goods may be conducted within an activated zone project under permits issued by the zone grantee and approved by the Board, with further exception that no permits shall be necessary for sales involving domestic, duty-paid or duty-free food and non-alcoholic beverage products sold within the zone or subzone for consumption on premises by persons working therein. The Port Director will determine whether an activity is retail trade, subject to review by the Board when the zone grantee requests such a review with a good cause.
- 3.4 Marking - All merchandise handled in the zone, before entry to Customs territory, must be marked in accordance with Customs regulations as to the country of origin and in accordance with all other Government regulations. No merchandise will be permitted to leave the zone for any purpose that carries any false or misleading label or mark. When repacked or labeled in the zone, the goods should, when possible, be marked to indicate the fact.
- 3.5 Trucking and Lighterage - Customs requires that carriage of imported merchandise, for which duty has

not yet been paid, only be accomplished by certain bonded carriers. Treasury Decision 94-81 (59 Federal Register 51492) amends the Customs Regulations to allow bonded carriers to transport merchandise within port limits without having to obtain a cartman's license and allows the operators of foreign-trade zones to transport merchandise from within the district to their respective facilities under their Foreign-Trade Zone Operators Bond.

3.6 Zone Status of Merchandise - "Zone Status" means the legal status of merchandise which has been admitted to the foreign-trade zone, thereby becoming subject to the provisions of the FTZA. The Customs Regulations (CR) has established four kinds of zone status under the FTZA which determine how the merchandise will be handled in the zone and treated upon its transfer to Customs territory. The choice of which kind of zone status is applicable to merchandise is, to a large extent, at the option of the applicant for admission or the owner of the 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. Explanation of the several status follows:

- (a) Domestic Status Merchandise - No application or permit is required for the admission, manipulation, manufacture, exhibition, destruction, or transfer to Customs territory of domestic status merchandise, including packing and repair materials, except when it is mixed or combined with merchandise in another zone status, or upon order of the Commissioner of Customs. 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 previously imported and entered free of duty and tax, may be taken into the zone, placed under the supervision of Customs and brought back to Customs territory free of quota, duty, or tax.
- (b) Privileged Foreign Status - Status may be chosen at the time of filing the

application for admission of the merchandise into the zone or at any time thereafter before the merchandise has been manipulated or manufactured in such a manner which would affect a change in tariff classification. Each applicant shall submit with the application an invoice showing the claimed rate of duty and Harmonized Tariff Schedule (HTS) number applicable to the merchandise. The merchandise shall 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 form the application for privileged foreign status. The effect of these provisions is to "freeze" the rate of duty and tariff classification. Freezing the rate of duty and tariff classification does not, however, freeze the quota status of merchandise in the case of an absolute quota. Classification status 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. Following the granting of P.F. status, the status of goods may not be reverted to its previous status.

- (c) Non-Privileged Foreign Status - Merchandise in this status is subject to tariff classification in accordance with its character, condition, and quantity as constructively transferred to Customs territory at the time of entry or entry/entry summary is filed with Customs. The importer chooses to have the merchandise treated, for tariff purposes, in its condition as it is transferred to Customs territory and entered for consumption. Merchandise may be transferred to Customs territory for warehousing, exportation, vessel or aircraft supply use, or transfer to another zone or port. Status may be changed to Privileged Foreign Status if it has not already been manufactured or manipulated so as to change its tariff classification.
- (d) Zone Restricted Status - Status may be requested at any time the merchandise is

located in the zone, even after it has been manufactured, but cannot be abandoned once granted, except by order of the Foreign-Trade Zones Board. Articles which have been taken into the zone from Customs territory for the purpose of exportation, destruction, or storage, shall be considered to be exported for the purposes of any Customs law.

All pertinent Customs requirements relating to an actual exportation shall be as though the admission of the merchandise into the zone constituted a lading on an exporting carrier at the port of final exit from the U.S. Certain merchandise, such as merchandise transferred from a bonded warehouse or merchandise rejected by a Federal agency from entry into the U.S., may require zone restricted status.

- 3.7 Application for Admittance and/or Status Designation - Written concurrence of the operator is required on applications for permission to admit zone merchandise and request for status designation. The applicant for admission shall select a zone status for merchandise. Application shall be made on Customs Form 214.
- 3.8 Application for Permission to Manipulate, Manufacture, Exhibit, Temporarily Remove, or Destroy Merchandise in the Zone - Approval by the grantee and the Board or the Commerce Department's Assistant Secretary for Import Administration is required prior to the commencement of any manufacturing, and of similar changes in processing activity which involves foreign articles subject to quantitative import controls (quotas) or results in articles subject to a lower (actual or effective) duty rate (inverted tariff) than any of their foreign components. No merchandise, other than domestic status merchandise for which no permit is required, will be manipulated, manufactured, exhibited, temporarily removed, or destroyed in a zone in any manner or for any purpose except under Customs permit. A permit will be required for the exhibition, manufacture, or manipulation of domestic status merchandise, when it is required by the Commissioner of Customs, or when it is to be exhibited, manufactured, or manipulated with



merchandise of another zone status. Application shall be made on Customs Form 216.

"Manufacturing" means any manufacture or manipulation that results in a change of the rate of duty or of the admissibility of the product into U.S. commerce, consistent with the definition adopted by the Executive Secretary, Foreign-Trade Zones Board.

3.9 Abandonment, Bankruptcy, and Absconding -

- (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 may not dispose of the merchandise without first obtaining legal authority.
- (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.

3.10 Recordkeeping and Reporting Responsibilities - All records pertaining to zone merchandise shall be maintained for five (5) years after the merchandise is removed from the zone. 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 shall be kept for five (5) years after the date of entry of the merchandise. The operator must maintain an inventory and recordkeeping system which meets U.S. Customs requirements and may authorize a zone user to maintain its individual inventory control and recordkeeping system. However, the operator remains liable for compliance to U.S. Customs under its bond, for supervision, defects in, or failures of a system.

- 3.11 Employees and Persons Entering and Leaving Zone - Employees and other persons entering or leaving the zone shall pass through the designated entrances and exits. Employees and other persons shall be subject to such examination upon entering and leaving the zone as the Port Director of Customs, grantee or operator may deem necessary for the protection of the revenue.
- 3.12 Identification of Employees within Zone - All persons on duty within, and in connection with the operation of, the zone, with the exception of Federal employees and uniformed employees of the zone operator shall be required while within the zone to carry identification or wear appropriate identification badges to be provided by the operator or individual users of the zone.
- 3.13 Residence Within a Zone - No person shall be allowed to reside within a zone except Federal, State, or local officers or agents whose resident presence is deemed necessary by the Board.

**TITLE: 4 ACTIVATION, ALTERATION, AND OTHER CHANGES TO ZONE SITES**

4.1 Zone Site Activation - Activation means approval by the Port Director of U.S. Customs for operations, admission and handling of merchandise in zone status. The Grantee must concur in the Activation Application to U.S. Customs.

(a) Initiation of Procedure - A zone operator shall make written application to the Port Director to obtain approval of activation of the zone or zone site. The area to be activated may be all or any portion of the zone approved by the Board. The application must include a description of all the zone sites covered by the application, any operation to be conducted therein, and a statement of the general character of the merchandise to be admitted. The 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 and inlets.
- (2) 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 to meet the requirements; and
- (3) the written concurrence of Midland International Airport, as grantee, when the operator applies for activation, in the requested zone activation.

(b) Review of Application - As a condition of approval of the application, the Port Director may order an inquiry by a Customs officer into the qualifications, character, and experience of an operator and their principal officers (background investigation); and the security, suitability, and fitness of the facility to receive merchandise in

zone status (security survey).

(c) Foreign-Trade Zone Operator Bond - A Foreign-Trade Zone Operators Bond shall be required in the amount set by the Port Director, but will not be less than \$50,000. The bond may cover all zones of the same operator in the United States. Any related operations by the zone operator of a cartman, private carrier, container freight station, or bonded warehouse may not be incorporated in the FTZ bond, but rather must be covered under a separate custodial bond.

4.2 Deactivation of Zone Site - "Deactivation" means voluntary discontinuation of the activated status of an entire zone or subzone site by the operator. An operator, with the concurrence of the 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. All merchandise in zone status must be removed from the zone site at the risk and expense of the operator, unless 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.

4.3 Zone Site 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. A zone or zone site may be reactivated through the same application procedure that was used for deactivation, if a sufficient Foreign-Trade Zone Operators Bond is on file.

4.4 Zone Site Alterations - "Alteration" means a change in the boundaries of an activated zone or subzone without expanding the physical dimensions; 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. The terms also include discontinuance of activated status of part of the zone site and resumption of activated status of a previously deactivated area, but with different boundaries. The crux of alteration is

that the boundary of the activated area is new or changed, so that it must be checked by Customs through its security survey.

(a) Application Procedure - An operator, with the concurrence of the grantee, shall make written application to the Port Director for approval of an alteration of an activated area, including an alteration resulting from a zone boundary modification. The Port Director shall review the security, suitability, and fitness of the area and shall reply to the applicant.

(b) 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 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 application is required, but rather only a security survey, approval of an application for alteration can be expected to be approved or denied in about 2 or 3 weeks after application.

4.5 Expansion or Boundary Modification - "Expansion" means an increase in the physical dimensions or scope of the zone project. The grantee may apply to the Board for authority to expand or otherwise modify the zone project. The Executive Secretary, in consultation with the Port Director, will then determine whether the proposed modification involves a major change in the zone plan or is minor. In making this determination the Executive Secretary will consider the extent to which the proposed modification would substantially modify the plan originally approved by the Board; or expand the physical dimensions of the approved zone area as related to the scope of operations envisioned in the original plan. If the change is viewed as a major modification or expansion, the application must include the requirements of an application for initial zone authority, including a public comment period. The Board estimates approval of a major modification to take nine

months. A minor modification can be considered by the Board in approximately a month.

4.6 Location Requirements - FTZ #165 is serviced by a "User Fee" Customs Inspector funded by Midland International Airport. The Board usually considers a location "adjacent" to a port of entry if it is within 60 statute miles of the outer limits of a port, or within 90 minutes driving time from the supervising Customs office. However, zones have been approved at more distant locations.

4.7 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. A subzone may be authorized by the Board if the proposed operation cannot be physically or economically conducted within a general purpose zone. Whenever the term "zone" or "FTZ" is used in this Schedule, it should be understood to include subzones, unless the context indicates otherwise. The grantee shall submit an application to establish a subzone as part of a proposed or existing zone. The application shall include:

- (1) A summary as to the reasons for the subzone and an explanation of its anticipated economic effects;
- (2) Identity of the subzone user and its corporate affiliation;
- (3) Description of the proposed activity:
  - (i) Products;
  - (ii) Material and Components;
  - (iii) Sourcing plans (domestic/foreign);
  - (iv) Tariff rates and other import requirements or restrictions;
  - (v) Information to assist the Board in making a determination.
  - (vi) Benefits to subzone user;
  - (vii) Information required in 15 CFR Sec. 400.24(d)(4)(vii);
  - (viii) Information as to whether alternative procedures have been considered as a means of obtaining the benefit sought;
  - (ix) Information on the industry involved and extent of international competition;
  - (x) Economic impact of the operation on the area;

- (4) Reason operation cannot be conducted within the general-purpose zone;
- (5) Statement as to environmental impact; and
- (6) Any additional information requested by the Board or the Executive Secretary in order to conduct the review. The Executive Secretary may issue guidelines as to the kind of detailed information needed for various types of subzone cases.

4.8 New Zone Operator - The grantee 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 and a copy of the procedures manual. The Port Director may order an inquiry into the qualifications, character, and experience of the operator and its principals officers. A bond 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.

TITLE: 5 SUPERVISION OF FOREIGN-TRADE ZONES

- 5.1 Customs Supervision - The Port Director (or the regional commissioner, in the case of regulatory audits) may detail or assign a Customs officer to supervise any transaction or procedure at the foreign-trade zone. Customs supervision may be exercised through audits of records, quantity counts of merchandise in inventory, spot checks of selected transactions or procedures, or reviews of recordkeeping, security, or storage conditions.
- 5.2 Physical Supervision - The zone operator supervises all manipulations, destruction, exhibition, physical and procedural security, and conditions of storage in the zone as required by law and regulations. 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.
- 5.3 Guard Service - The zone operator is authorized and may provide guards or contract for guard service to safeguard the merchandise and ensure the security of the zone. This authorization does not limit the authority of the Port Director to assign Customs guards to protect the revenue. However, because of the time and expense to Customs of physical supervision, supervision is usually conducted through the audit-inspection method.
- 5.4 Audits - The zone operator exercises physical supervision of zones, while Customs exercises general supervision through the audit-inspection program. An audit is a systematic and thorough check of the operator's (and sometimes a user's) inventory and financial records against zone lot files and against the actual quantity of merchandise in the zone. Audits are much more intense and of longer duration than 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 that reason, they may request access to closed as well as open files.



- 5.5 Spot Checks - Most Customs checks are carried out through audits and surveys by regulatory auditors. However, Port Directors are still authorized to carry out zone spot checks at their discretion. A 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 purpose of spot checks is to determine whether the operator and users are in compliance with applicable laws, regulations, and Customs procedures.
- 5.6 Annual Reconciliations - Annual reconciliations shall be performed within 90 days after the end of the operator's fiscal year. Within 10 working days after the annual reconciliation report has been prepared, certification is provided to U.S. Customs indicating any shortages and/or overages. The Annual Reconciliation Report does not need to be furnished to U.S. Customs unless requested, but must be retained by the Operator for U.S. Customs' spot check and audit purposes.
- 5.7 Annual Internal Review - The operator shall perform an Annual Internal Review of the inventory control and recordkeeping systems under its supervision and shall report to the Port Director of Customs any deficiency discovered and corrective action taken to ensure that the system meets the requirements of the Customs Regulations.
- 5.8 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 FTZR are being met. Zone operator and users 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. All persons entering a zone are bound by the FTZR.

TITLE: 6 FOREIGN-TRADE ZONES BOARD AND GRANTEE FEES

6.1 Foreign-Trade Zones Board Application Fees

Additional General Purpose Zones . . . . .	\$ 3200.00
Major Modification to Zone Project . . . . .	\$ 1600.00
Special Purpose Subzones	
Non-Manufacturing/Processing or less than	
3 Products . . . . .	\$ 4000.00
Manufacturing/Processing 3 or more Products . . . . .	\$ 6500.00

6.2 Grantee Administrative Fees

Zone Activation . . . . .	\$ 100.00
Zone Deactivation . . . . .	\$ 100.00
Zone Re-Activation . . . . .	\$ 100.00
Zone Site Alteration . . . . .	\$ 150.00
Boundary Modifications and Special Purpose Subzones	\$ 1500.00
Annual Fee Per Zone Site	
General Purpose Zone On-Airport . . . . .	\$1000.00
General Purpose Zone Off-Airport . . . . .	\$5000.00
Subzone . . . . .	\$2500.00

NOTE: The foregoing rates serve as a general guide, the grantee reserves the right to adjust or make exception to the fees in order to fulfill its economic development objectives and to serve public interest.

6.3 Airport Building Rates Midland International Airport air cargo or warehouse sites are available, contact the business manager for details.

TITLE: 7 GENERAL PURPOSE ZONE SITE TARIFF

- 7.0 Zone Operator and Site Description - The zone operator is Tomcat USA, Inc., located at 2160 Commerce St., Midland, Texas 79703. The activated area is within Site 2 which is located within the Midland Industrial Park, bordered by Commerce Drive and Market Street. The activated area within the zone site is within a modern warehouse/office facility in which Tomcat USA is the sole occupant.
- 7.1 Zone Operator Fee Structure - Initially it is intent of the zone operator to limit zone operations to provide for the use of Tomcat USA. Therefore a fee structure has not been established for other zone users. At such time as other areas within Site 2 are developed and available for occupancy, a fee structure will be established that is comparable to area fees for similar warehouse and storage services.

**TITLE: 8 GLOSSARY OF TERMS**

**Activation.** Approval by the grantee and Port Director for operations and for the admission and handling of merchandise in zone status.

**Admission.** Physical arrival of goods in the foreign-trade zone with the approval of the zone operator and U. S. Customs. The word "admission" is to be used instead of "entry" of goods in a zone to avoid confusion with Customs entry processes under Parts 141-144 of the Customs Regulations.

**Admit.** To bring merchandise into a zone with zone status.

**Alteration.** 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.

**Alternative Inventory Control System (AICS).** A former system of inventory control, manual or automated, based on records maintained by a zone operator, or individual zone user, rather than by Customs. Many of the AICS principles are incorporated into the current Customs Regulations for zone inventory control.

**Attributive Basis.** Method of accounting for merchandise where direct identification of the goods with the shipment as admitted to the zone has been lost. An attributive method attributes a gain or loss in inventory according to generally accepted accounting principles, such as First In-First Out (FIFO) or Foreign-First (FOFI).

**Audit-Inspection Procedures.** These procedures provide the framework for Customs to reduce on-site supervision of zones and for zone operators/users to increase zone operating flexibility through the audit-inspection method of supervising zones. These procedures require use of a Zone Lot Number system or a Unique Identifier Number system. The systems may be manual, computerized, or a combination of both.

**Bulk.** In trade, a product, or a mass (of a product) which is not packaged, bundled, bottled, or otherwise packed, so that it is designated a bulk or bulk merchandise.

**Control Number.** The number used on zone admissions and transfer forms to identify all merchandise and commodities.

**Constructive Transfer.** A legal fiction which permits acceptance of a Customs entry for merchandise in a zone before its physical transfer to the Customs territory. Constructive transfer is deemed to have occurred when Customs receives an entry in proper form. If the entry is not accepted, the merchandise will be deemed constructively transferred back to the zone in its previous zone status.

**Corporation.** A public corporation or a private corporation, as defined below and in the Foreign-Trade Zones Act.

**Corporation, Private.** Any corporation (other than a public corporation) which is organized for the purpose of establishing, operating, and maintaining a foreign-trade zone and which is chartered under a special act of the State within which it is to operate such zone. "Non-profit" private corporations are those organized and chartered for a public purpose that involves port or economic development and includes that of establishing zones.

**Corporation, Public.** A State, political subdivision thereof; a municipality, a public agency of a State, political subdivision thereof, or municipality, or a corporate municipal instrumentality of one or more States.

**Customs Guards.** Section 4 of the Foreign-Trade Zones Act calls for the assignment of Customs guards to a zone. In practice, no zones have Customs guards. Instead, the zone operator furnishes the necessary security along with a bond to cover the duties on any goods found short in the zone.

**Customs Territory.** 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, minus any areas within the boundaries of foreign-trade zones.

**Deactivation.** Voluntary discontinuation of the activation of an entire zone or subzone by the grantee or operator. Discontinuance of the activated status of only a part of a zone site is an alteration.

**Default.** An act or omission that will result in a claim for duties, taxes, charges, or liquidated damages under the FTZ Operator's Bond.

**District Director.** The District Director of Customs in whose district the zone is located. District offices of U.S. Customs have been abolished; all former district offices are now port offices.

**District Engineer.** The engineer of the Department of the Army (Army Corps of Engineers) in whose district the zone is located.

**Domestic (D).** Merchandise produced in the U.S., not exported therefrom, and on which all internal revenue taxes, if applicable, have been paid; and, imported merchandise properly released from Customs' custody on which all applicable duties and taxes have been paid.

**Examiner.** An employee of the Foreign-Trade Zones Board, an expert, officer, engineer, or any other person who is designated by the Board to conduct an investigation concerning the establishment, operation, maintenance, or administration of a zone.

**Exhibition.** The showing of merchandise within a zone, usually to prospective buyers. This may require Customs supervision whenever it involves packing, unpacking, repacking, assembly, or reconditioning of the goods for showing.

**First In-First Out (FIFO).** An accounting method based on an assumption regarding the flow of goods that older stock is disposed of first, in accordance with good merchandising policy. This method requires that the merchandise be fungible without regard to the source, e.g., foreign or domestic. Use of the method in foreign-trade zones requires a perpetual inventory system which identifies the merchandise by a unique identifier number (UIN) which distinguishes the goods from all other goods.

**Foreign-First (FOFI).** An accounting method based on an assumption regarding the flow of goods that foreign status merchandise is disposed of first i.e., if 100 domestic units and 100 foreign units are commingled in a zone, the first 100 units which are subsequently withdrawn therefrom would be identified as the foreign units. This method requires that the merchandise be fungible and identified by a unique identifier number (UIN) system. Permission to use FOFI must first be obtained from Customs and its acceptability will be determined on a case-by-case basis.

**Foreign-Trade Zone.** An isolated, enclosed, restricted access area, operated as a public utility, in or adjacent to a port of entry, furnished with facilities for lading, unloading, handling, storing, manipulating, manufacturing, and exhibiting goods, and for reshipping them by land, water, or air. Any foreign and domestic merchandise, except such as is prohibited by law or such as the Board may order to be excluded as detrimental to the public interest, health, or safety may be brought into a zone without being

subject to the Customs laws of the United States governing the entry of goods or the payment of duty thereon; and such merchandise permitted in a zone may be stored, exhibited, manufactured, mixed or manipulated in any manner, except as provided in the act and other applicable laws or regulations. The merchandise may be exported, destroyed, or sent into Customs territory from the zone, in the original package or otherwise. It is subject to customs duties if sent into Customs territory, but not if reshipped to foreign points.

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

**Foreign-Trade Zones Board.** The Board which is established to carry out the provisions of this Foreign-Trade Zones Act. The Board consists of the Secretary of Commerce who is chairman and executive officer of the Board, the Secretary of the Treasury, and the Secretary of the Army.

**Grantee.** A public or private corporation to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted by the Foreign-Trade Zones Board.

**In-Transit Merchandise.** The term "in-transit merchandise" includes all foreign merchandise transported into and out of the United States, whether in and out of the same port or across the country to another port, with or without transshipment, warehousing, breaking bulk, or change in mode of transportation, which originated in one foreign country and is destined at the time of the original shipment to another foreign country. Its distinctive feature is that it is being transported, from one foreign country through the United States to another foreign country, under a through bill of lading or other documentation for a completed journey. The term is particularly applied to foreign merchandise shipped in transit through a Foreign-Trade Zone.

**Lease.** The document of agreement entered into between the Grantee, Operator and/or User/Client for assignment of space within the Foreign-Trade Zone No. 165.

**Manipulation.** Processing wherein merchandise is packed, unpacked, repacked, cleaned, sorted, graded, or otherwise changed in condition, but not manufactured. The definition is taken from Section 562 of the Tariff Act. The precise distinction between manipulation and manufacture is subject to interpretation and enjoys a long history of case law.

**Manufacture.** Generally, the production of articles for use

from raw or prepared materials by substantially transforming such materials into new forms, or with new qualities, properties or combinations, whether by hand labor or machine. The U.S. Customs Service determines what constitutes manufacture on a case-by-case basis, and distinguishes manufacture from other operations such as manipulation, processing, production and blending. The Foreign-Trade Zones Board has defined manufacture as any process which results in a change in Customs classification of the merchandise, and, therefore, requiring prior clearance from the Board pursuant to the manufacturing condition in foreign-trade zone grants.

**Merchandise.** Merchandise includes goods, wares, and chattels of every description, except prohibited merchandise, building materials, production equipment and supplies for use in operation of a zone.

**Merchandise, Conditionally Admissible.** Merchandise which may be imported into the U.S. under certain conditions. Merchandise which is subject to permits or licenses, or which must be reconditioned to bring it into compliance with the laws administered by various Federal agencies.

**Merchandise, Domestic.** Merchandise which has been produced in the United States and not exported therefrom, or previously imported into the Customs territory of the United States and properly released from Customs custody with payment of all applicable duties and taxes.

**Merchandise, Foreign.** Imported merchandise which has not been properly released from Customs custody into the Customs territory of the United States.

**Merchandise, Fungible.** Merchandise which for commercial purposes is identical and interchangeable in all situations. Originally applied to liquids or free-flowing substances which arrived in-bulk, unpacked condition, the concept is now applied in zones, for inventory control purposes, to shipments of goods which arrive packed, but are unpacked and placed together in storage or manufacturing locations, so that identification with the shipment as admitted to the zone is lost. Concept is subject to wide use in manufacturing environments where it is infeasible to store goods in their original lots awaiting manufacture.

**Merchandise, Mixed Status.** Foreign Merchandise which has been combined with Domestic Merchandise in the zone is sometimes referred to as Mixed Status Merchandise.

**Merchandise/Operations, Prohibited.** Merchandise, the importation of which is prohibited by law on grounds of



public policy or morals, or any merchandise which is excluded from a zone by order of the Foreign-Trade Zones Board. Books urging treason or insurrection against the U.S., obscene pictures, and lottery tickets are examples of Prohibited Merchandise. Also, certain operations involving the following merchandise are prohibited: Tobacco, cigars, cigarettes, and cigarette papers and tubes (26 U.S.C. 5701-5706); Firearms (26 U.S.C. 4181-4181/5811); Distilled spirits, alcohol, wine and beer (26 U.S.C. 5001-5008, 5010); Sugar (26 U.S.C. 4501-4503); Watch movements (19 U.S. C. 1367-1368); and retail sales in a zone (19 U.S.C. 810 & CR 146.14).

**Merchandise/Operations, Restricted.** 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. Also, the Foreign-Trade Zones Board and U.S. Customs Service have restricted certain operations involving the following products: steel, textiles, television tubes, sugar. Operations involving orange juice may be restricted. The restrictions may vary on a case-by-case basis.

**Nonprivileged Foreign Status.** Foreign merchandise or non-tax-paid domestic merchandise upon which the duty and applicable taxes will be determined at the time the merchandise enters the Customs territory of the United States from the zone for consumption.

**Operator.** A corporation, partnership, or person that operates a zone or subzone under the terms of an agreement with the zone grantee. A grantee may act as its own operator.

**Operator's Bond.** All zone operators must submit to Customs a bond to assure compliance with U. S. Customs regulations. The bond shall be submitted on Customs Form (CF) 301. The bond provisions are set forth at 19 CFR 113.73. A failure to comply with the regulations may be deemed a "default" by Customs and result in the assessment of liquidated damages under the bond.

**Person of Record.** The person, firm, or corporation having the legal right to make the application, in whose name the application to admit merchandise into the zone is filed.

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

**Quantity.** Means the numerical count of the units composing a shipment of commodity.

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

**Regional Commissioner.** The Regional Commissioner of Customs for the Customs Region in which the zone is located.

**Resident Representative.** The role of the Port Director of Customs as the on-site representative of the Foreign-Trade Zones Board in its dealings with any foreign-trade zone.

**Retail Trade.** Generally, sales or offers to sell goods or services to individuals for personal use.

**State.** Any State, the District of Columbia, and Puerto Rico.

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

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

**Ton.** Means weight ton of 2,000 pounds, unless otherwise indicated.

**Transfer.** 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.

**Transshipment Merchandise.** Foreign merchandise which enters and leaves the United States through the same port, being transferred from one vessel to another directly or by way of a Foreign-Trade Zone or Customs bonded warehouse.

**Unique Identifier Number (UIN).** This inventory method controls merchandise in a zone by cumulative identification, 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) or Foreign First (FOFI) basis pursuant to generally accepted accounting

principles.

**Unit or Quantity.** Means the numerical customary grouping of a commodity as a unit to indicate the medium or method of measure.

**User.** A person or firm using a zone for storage, handling or processing of merchandise. The operator may authorize a user to maintain its own individual inventory control and recordkeeping systems and procedures manual; however, the operator will remain responsible to Customs and liable under its bond for supervision, defects in, or failures of the systems unless the user posts its own FTZ Operator's Bond and becomes an operator.

**Vessel/Aircraft Supply.** The supply of goods or equipment free of duties and taxes under Section 309 of the Tariff Act, to eligible vessels or aircraft for use while actually engaged in foreign trade, or in transit to Alaska, Hawaii, Puerto Rico, or any U.S. possession. Sometimes confused with exportation, which involves removal from the geographic territory of the United States and entry into a foreign country.

**Warehouse.** A covered and enclosed structure, affording weather protection, used primarily for short or long term storage of merchandise, and often containing business offices. In a Foreign-Trade Zone it also is used for manipulation, manufacture, and exhibition of merchandise.

**Weight.** Means the gross weight of the merchandise including container, except as noted to the contrary.

**Zone Lot Number.** A collection of merchandise maintained under an inventory control method based on specific identification of merchandise admitted to a zone by lot and lot number.

**Zone Project.** All of the zone and subzone sites under a single grantee, normally in a single port of entry.

**Zone Restricted Status.** Merchandise admitted to a zone for the sole purpose of exportation or destruction. Merchandise with zone restricted status may not enter Customs territory for consumption except when approved by the Foreign-Trade Zones Board.

**Zone Site.** The physical location of a zone or subzone.

**Zone Status.** The status of merchandise admitted to a Foreign-Trade Zone i.e. domestic (D), non-privileged foreign (NPF), privileged foreign (PF).