

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.

ZONE SCHEDULE

RULES, REGULATIONS, RATES, AND CHARGES APPLYING AT:

FOREIGN-TRADE ZONE NO. 197

DOÑA COUNTY, NEW MEXICO

Operating under granted authority by the Foreign-Trade Zones Board, Washington, D.C., to the Board of County Commissioners of Doña Ana County.

THIS ZONE SCHEDULE IS THE PROPERTY OF THE BOARD OF COUNTY COMMISSIONERS OF DOÑA ANA COUNTY. THIS ZONE SCHEDULE OR ANY PORTION THEREOF MAY NOT BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPY, RECORDING, OR ANY INFORMATION STORAGE OR RETRIEVAL SYSTEM, WITHOUT THE EXPRESS WRITTEN PERMISSION OF THE BOARD OF COUNTY COMMISSIONERS OF DOÑA ANA COUNTY

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Board of County Commissioners of Doña Ana County
Miller & Company P.C.

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ZONE GRANTEE

ZONE SCHEDULE

GRANTEE:

Board of County Commissioners of Doña Ana County

GENERAL OFFICES

Grantee Office:

Board of County Commissioners of Doña Ana County (Doña Ana County)
845 North Motel Boulevard
Las Cruces, New Mexico 88007

Ms. Janine Divyak, AICP
575-525-6130
575-525-6131 (FAX)
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DESCRIPTION OF FOREIGN-TRADE ZONE NO. 197

Pursuant to a Grant issued by the Foreign-Trade Zones Board, Washington D.C., as Board Order No. 665 on November 26, 1993, the Board of County Commissioners of Doña Ana County, under provisions of the Foreign-Trade Zones Act (19 U.S.C. 81a-81u), Foreign-Trade Zone No. 197, has issued the following Zone Schedule on rules, regulations, rates and charges. The Board of County Commissioners of Doña Ana County received approval of an Alternative Site Framework Application, by the Foreign-Trade Zones Board on June 30, 2014 as FTZ Board Order No. 1942.

Foreign-Trade Zone No. 197, which is operated as a public utility under Foreign-Trade Zones Board Regulations, has offices located at 845 North Motel Boulevard, Las Cruces, New Mexico 88007. The zone has adequate access to electric power, water, waste disposal, communications, and access to all modes of transportation. The buildings are equipped to provide private lease storage, manipulation, manufacturing, and office space.

The zone has been expanded pursuant to Board Order No. 1536.

The Zone consists of the following sites:

Site Number	Site Name and Address	Acreage
1	Santa Teresa Business Center. 2700 Airport Road Santa Teresa, New Mexico (Doña Ana County)	489
2	West Mesa Industrial Park 350 Alliance Drive Las Cruces, New Mexico (Doña Ana County)	206
3	Santa Teresa Bi-National Park 401 Avenida Ascension Las Cruces, New Mexico (Doña Ana County)	304
4	Santa Teresa Airport Industrial Park 8016 Airport Road Santa Teresa, New Mexico (Doña Ana County)	200
5	Santa Teresa Logistics Park 4751 Avenida Creel Santa Teresa, New Mexico (Doña Ana County)	208

DESCRIPTION OF FOREIGN-TRADE ZONE NO. 197

Copies of this Zone Schedule are on file with the Foreign-Trade Zones Board, Washington, D.C. and U.S. Customs Port Director in Santa Teresa, New Mexico, and are available at the general offices of Foreign-Trade Zone No. 197 upon request at a price of \$5.00 per copy. There is no charge for an electronic version of the Zone Schedule.

More detailed guidance on U.S. Customs issues may be found in U.S. Customs FTZ Manual. A copy is maintained for review by the Foreign-Trade Zone Grantee.

Communications should be addressed to:

Grantee Office:

Board of County Commissioners of Doña Ana County (Doña Ana County)
845 North Motel Boulevard
Las Cruces, New Mexico 88007

Attn: Ms. Janine Divyak, AICP
575-525-6130
575-525-6131 (FAX)
janined@donanacounty.org

INTERNAL RULES/REGULATIONS AND POLICIES FOR THE ZONE

SECTION I - DEFINITION OF TERMS

Act—The Foreign-Trade Zones Act of June 18, 1934 (48 Stat. 998 - 1003; 19 U.S.C. 81a-81u), as amended by Public Law 397, 73rd Congress, approved June 18, 1950. (15 C.F.R. § 400.2(a)).

Admission Suspense Account—Merchandise received without complete U.S. Customs documentation or which is unacceptable to the inventory control and recordkeeping system will be recorded in a suspense account or record until documentation is complete or the system is capable of accepting the information. (19 C.F.R. § 146.22(c)). See Section I - Definition of Terms, Temporary Deposit.

Alteration—A change in the boundaries of a Foreign-Trade Zones Board approved and designated Zone or Subzone; designation of a separate Site of an already-activated Zone or Subzone with the same Zone Operator at the same port; or the relocation within a Foreign-Trade Zones Board approved and designated area of an already-activated Site with the same Zone Operator. The Operator must make a written application to the local Port Director of U.S. Customs for approval of an alteration of an activated area, as it must be checked by Customs through its security survey to ensure the security suitability and fitness of the area for receipt of merchandise in zone status.

Alternative Site Framework (ASF) - Athree-part application that transforms a general-purpose zone by creating a service area (Doña Ana County) where a “usage-driven” site can be established in thirty (30) days or a traditional “magnet” industrial park site can be established in six (6) to ten (10) months if certain criteria are met.

Antidumping/Countervailing Duty—FTZ Board Regulations require that any merchandise admitted to a zone that is subject to an AD/CVD Order must be placed in privileged foreign status. (15 C.F.R. § 400.14(e)(1)).

Applicant of Record—The person, firm or corporation in whose name the application to admit merchandise into the zone (CBPF 214) is made, recognized by U.S. Customs as having the legal right to make the application. Evidence of this right of the applicant is the same as would be required to establish the right to apply for release of the merchandise from U.S. Customs with the right to make entry. (19 C.F.R. § 146.32(b)(2)).

Board— Is the Foreign-Trade Zones Board created by the Act to carry out the provisions thereof. The Foreign-Trade Zones Board shall consist of the Secretary of the Department of Commerce, who shall be the chair, and the Secretary of the Treasury. (15 C.F.R. § 400.2(d)).

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 as bulk or bulk merchandise.

SECTION I - DEFINITION OF TERMS

Conditionally Admissible Merchandise—Merchandise that may be admitted to the zone or be imported into the U.S. under certain conditions. Merchandise subject to antidumping and countervailing duty, subject to Foreign-Trade Zones Board Grant Restrictions, or merchandise transferred from a bonded warehouse, are examples of conditionally admissible merchandise for admission to the zone. Merchandise which is subject to permits or licenses (i.e. FDA controlled merchandise, certain firearms, motor vehicles, etc.), or merchandise which may be reconditioned to bring it into compliance with the laws administered by various federal agencies are examples of conditionally admissible merchandise for import. See Sections 6.3, 6.7(g), and 11.5, U.S. Customs FTZ Manual.

Container—A container is a shipping device--a non-self-propelled, rigid, non-disposable, returnable, cargo-carrying device with or without wheels, enclosed or otherwise and includes any container, trailer, chassis platform, specially constructed skid, pallets, mount, or combination thereof, and which is designed to be transported integrally as one unit directly and mechanically between vessels and piers so as to eliminate intermediate rehandling and/or storage of cargo.

Customs and Border Protection Form 214—Application and permit to admit merchandise into a Foreign-Trade Zone and/or designation of zone status.

Customs and Border Protection Form 214A—Application for Foreign-Trade Zone Admission and/or Status Designation. This form is the pink or salmon colored statistical copy of the CBPF 214 utilized for Bureau of Census reporting purposes. Electronic filing may be made to Census with filing the e-214. If the admission is not filed electronically, the CBPF 214A is required to be submitted to U.S. Customs.

Customs and Border Protection Form 216—Application and permit for the manipulation, manufacture, exhibition, temporary removal or destruction of merchandise within a Foreign-Trade Zone.

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

Domestic Merchandise—Domestic sourced or foreign sourced previously duty paid merchandise. See Status of Merchandise herein.

Foreign Merchandise—Imported merchandise that has not been properly released from U.S. Customs custody in the Customs territory of the United States. See Status of Merchandise herein.

Fungible Merchandise—Merchandise that for commercial purposes is identical and interchangeable in all situations.

SECTION I - DEFINITION OF TERMS

Grantee—The Grantee of Foreign-Trade Zone No. 197 is the Board of County Commissioners of Doña Ana County, an organization to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted by the Foreign-Trade Zone Board.

Harmonized Tariff Schedule of the U.S. (HTSUS) Number—The ten-digit number used to identify all imported and exported merchandise. The complete text is available from the U.S. International Trade Commission on its website.

Interim Production Approval- Existing zone site and subzone may secure interim production approval with Customs concurrence and approval by the Foreign-Trade Zones Board. This does not require the entire four (4) months that a normal Production Notification Application requires. However, the Customs letter must indicate that the Operator is activated or could be activated soon.

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.

Inventory Records—

A. Zone Lot Number (ZLN)—A number assigned to the unit or units of goods (zone lot) for which a separate record and account is to be kept by the Zone Operator or Zone User. The merchandise must be physically segregated and marked by lot at all times. (19 C.F.R. 146.37(a)(1) and (d)).

B. Unique Identifier Number (UIN)—Numbers, letters, or combination of both (alphanumeric) that identifies merchandise admitted to a zone. It is fungible material typically identified by a part number, model number, style number, SKU, etc. This number may be used for control and accounting of the goods. FIFO (First In, First Out) and FOFI (Foreign First) inventory relief methods have been authorized by the U.S. Customs. (19 C.F.R. 146.37(a)(2) and (d)). Generally, a FIFO system is used for UIN activity.

Lease—The document of agreement entered into between the owner or lessor of the property and the lessee for use of space within the Foreign-Trade Zone.

Magnet Site-Sites intended to attract multiple potential FTZ operators/users.

SECTION I - DEFINITION OF TERMS

Manipulation—Breaking up, repacking, assembling, distributing, sorting, grading, cleaning, mixing with foreign or domestic merchandise, or other processing which does not constitute manufacturing.

Manufacturing— This is the old term used by the Foreign-Trade Zones Board for activity involving the substantial transformation of a foreign article resulting in a new and different article having a different name, character, use, and HTS classification. It is now referred to as production. Authority for such activity in a zone must be secured from the Foreign-Trade Zones Board and authorized on a CBPF 216 by the U.S. Customs.

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 may not be considered "merchandise.")

North American Free Trade Agreement (NAFTA) Duty Deferral Program—The NAFTA Duty Deferral Program is currently in effect for trade between the United States and Canada/Mexico. Under this Program, all foreign sourced, non-NAFTA-qualified merchandise used in manufacturing and production in a foreign-trade zone, whether or not the finished product is NAFTA-qualified, when exported to Canada/Mexico must be the subject of a special NAFTA "08" code Customs entry and be subject to U.S. Customs duties, applicable antidumping/countervailing duties, and merchandise processing fees.

OFIS- The Online FTZ Information System that includes information on each zone. It can be accessed through the FTZ Board web site. All annual reports are now filed electronically through OFIS.

Open or Yard Storage—The keeping of merchandise on open space within the fenced-in area of the Foreign-Trade Zone where merchandise not requiring weather protection may be stored.

Operating Agreement—The agreement between the Zone Operator and the Zone User, or the Zone Grantee and the Zone Operator describing rights, responsibilities, and financial considerations.

Port Director, U.S. Customs—The Port Director of U.S. Customs located in Santa Teresa, New Mexico, or his/her representative.

Production- Traditional manufacturing activity and "kitting" activity where the new HTSUS classification applies to the finished product. The Foreign-Trade Zones Board uses this term to cover both manufacturing and processing activity.

Prohibited Merchandise—Merchandise, the importation of which is prohibited by law on grounds of public policy or morals, or any merchandise that is excluded from a zone by order of the Foreign-Trade Zones Board. Books urging treason or insurrection

SECTION I - DEFINITION OF TERMS

against the U.S., obscene pictures, and lottery tickets are examples of prohibited merchandise. Also, certain types of 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. 4181-4182/5811); 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); Bicycle parts were prohibited for a limited time period (19 U.S.C. 81b(c)) until December 31, 1992; and retail sales in a zone (19 U.S.C. 81 (o)(d) & CR 146.14).

Quantity—The numerical count of the units composing a shipment of merchandise.

Quota—A set limit of a given item that may be imported during a set period of time (normally one year). Tariff rate quota only limits the quantity that may be imported at the lower rate; imports above the quota quantity would be at a higher rate of duty.

Re-Exports or Reshipments—Merchandise from one foreign country initially destined to the United States that, after being unladen, stored, and/or manipulated or manufactured in this country, is transported under a new bill of lading or other new documentation to another foreign country. Generally, it includes all merchandise of foreign origin which has not been so manipulated or manufactured as to be deemed a product of the United States, and which has not been released from Customs custody into Customs territory.

Regulations—All operations within the foreign-trade zone are subject to the Foreign-Trade Zones Board Regulations, 15 C.F.R. Part 400; and U.S. Customs Regulations, 19 C.F.R. Part 146. Imports and exports may also be governed by the Regulations or Guidelines of other Federal Agencies. All products to be admitted to a foreign-trade zone must be reviewed for potential compliance issues.

Restricted Merchandise/Operations—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 have restricted certain operations in the past involving the following products: steel, apparel/textiles, television tubes, auto parts, milk, and sugar, orange juice, printers ink, alcohol/gasohol, oil refining, tires, chain saws, silicon metals, and golf carts. The restrictions may vary on a case-by-case basis.

Sequential Number—The control number or the zone admission number on the CBPF 214 in block #6. The Zone Operator sets the number structure. It is not the zone lot number or the UIN.

Service Area -The area including Doña Ana County, where usage-driven or magnet sites can be established under ASF rules.

SECTION I - DEFINITION OF TERMS

Status of Merchandise–

A. Domestic Merchandise–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. (19 C.F.R. § 146.43).

B. Nonprivileged Foreign Merchandise–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. (19 C.F.R. § 146.42).

C. Privileged Foreign Merchandise–Foreign merchandise or non-tax-paid domestic merchandise upon which the duty and applicable taxes have been determined at the time this status is approved. The determined duty rate and taxes are not subject to future fluctuation. If merchandise is subject to antidumping or countervailing duties, and therefore placed in Privileged Foreign status, the merchandise will be entered under the HTSUS rate of duty in effect at the time of admission to the zone; however, the estimated AD/CVD rates are those in effect at the time of withdrawal from the zone. Merchandise subject to antidumping or countervailing duties, that must be placed in privileged foreign status pursuant to Section 400.14(e)(2), Foreign-Trade Zones Board Regulations, may be exported duty free except to North American Free Trade Agreement countries. Once established, Privileged Foreign status cannot be changed. If merchandise has already been admitted to a zone with Nonprivileged Foreign status, Privileged Foreign status may be obtained by filing a CBPF 214 and related documents. Application for this status, however, must be filed prior to manipulation or manufacture in the zone. (19 C.F.R. § 146.41).

D. Zone-Restricted Merchandise–Merchandise admitted to a zone for the sole purpose of exportation or destruction. Merchandise with Zone-Restricted Status may not enter U.S. Customs territory for consumption except when approved by the Foreign-Trade Zones Board. No manufacturing or processing may occur with merchandise that is in Zone Restricted Status. Drawback may be filed immediately upon merchandise admission. (19 C.F.R. § 146.44).

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. Foreign merchandise may be admitted to the area without the payment of U.S. Customs duties and taxes or the imposition of U.S. quotas; domestic merchandise is allowed in the area. No U.S. Customs duties, taxes, or quotas apply if the merchandise is exported;

SECTION I - DEFINITION OF TERMS

U.S. Customs duties, taxes and quotas are applicable if the merchandise is imported into U.S. Customs territory either on the basis of the imported materials or the finished product depending on the zone status designation. For new subzones if a company wishes to have production authority it must request approval of a Production Notification Application which can require four (4) months unless U.S. Customs will support an interim approval. A usage-driven site may also be called a subzone if requested during the Application process.

Sunset Provision—Magnet sites have a rolling five (5) year sunset provision during which at least a portion of the magnet site must be activated, while a usage-driven site must demonstrate actual zone activity within three (3) years or lose zone status.

Temporary Deposit—Merchandise admitted to a foreign-trade zone under 146.35, C.R. when information or documentation is insufficient in order to complete the CBPF 214. The documentation and time period restraints under this provision are avoided if the Admission Suspense Account procedures in 146.22(c), C.R. are followed. See Section I - Definition of Terms, Admission Suspense Account.

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. The term is particularly applied to such merchandise transferred through a Foreign-Trade Zone.

Unit of Quantity—The customary grouping of a commodity as a unit to indicate the medium or method of measure.

United States—The fifty States, the District of Columbia, and Puerto Rico that constitute the Customs territory of the U.S. The term "United States" includes all territories and possessions of the United States, except the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, and the Island of Guam, which are not considered part of U.S. Customs territory.

Usage-Driven Site -Sites designated to meet a specific operator/user's present need for FTZ designation; usage-driven sites cannot be used by another entity.

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—The gross weight of the merchandise including all containers, except as noted to the contrary.

SECTION I - DEFINITION OF TERMS

Zone Admission Number—The control number or sequential number on the CBPF 214 in block #6. The Zone Operator sets the number structure.

Zone Operator—The foreign-trade zone may be managed by the Grantee, a firm that oversees one or multiple zone users, or each firm may be its own foreign-trade Zone Operator. For the purposes of this Schedule, the term Zone Operator shall apply to both general-purpose zones and subzones. The zone or subzone may be an organization, corporation, partnership, or person that operates under the terms of an agreement with the Zone Grantee. There may also be multiple Zone Operators operating under the terms of agreement with the Zone Grantee.

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

Zone Year—Each Zone Operator may choose its own zone year. December 31 is the year-end for Foreign-Trade Zones Board Annual Report purposes.

SECTION II - OVERVIEW OF FOREIGN-TRADE ZONES

Foreign-trade zones (zones) are restricted-access sites in or near ports of entry, which are licensed by the Foreign-Trade Zones Board and operated under the supervision of U.S. Customs (see, 19 C.F.R. Part 146). Authority for establishing these facilities is granted to qualified corporations. Applications submitted to the Foreign-Trade Zones Board for grants of authority must show the need for zone services and a workable plan that includes suitable facilities and financing.

Zones are operated under public utility principles. Zone Grantees usually contract with private firms to operate facilities and provide services to zone users. Zones have as their public policy objective the creation and maintenance of employment through the encouragement of operations in the United States that, for Customs reasons, might otherwise have been carried on abroad. The objective is furthered particularly when zones assist exporters and re-exporters, and usually when goods arrive from abroad in an unfinished condition for processing here rather than overseas.

Foreign and domestic merchandise may be moved into zones for operations not otherwise prohibited by law involving storage, exhibition, assembly, production 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 the finished product. Quota restrictions do not normally apply to foreign goods stored in zones, but the Foreign-Trade Zones 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 entering the zone for purposes of excise tax rebates and drawback. "Subzones" are a special-purpose type of ancillary zone authorized by the Foreign-Trade Zones Board, through grantees of public zones, for operations by individual firms that cannot be accommodated within an existing zone when it can be demonstrated that the activity will result in a significant public benefit and is in the public interest. Foreign merchandise and domestic merchandise for export in a zone are exempt from state and local ad valorem taxes. (15 C.F.R. § 400.1(c)).

More detailed information is contained in the Foreign-Trade Zones Act - 19 U.S.C. 81a-u; Foreign-Trade Zones Board Regulations - 15 C.F.R. Part 400; and U.S. Customs Regulations - 19 C.F.R. Part 146.

SECTION III - APPLICATION OF RULES, REGULATIONS AND RATES

Section III.0 – Application and Interpretation of Foreign-Trade Zone No. 197, Zone Schedule

The rules, regulations and rates of this Zone Schedule shall apply at Foreign-Trade Zone No. 197, its subzones, magnet sites, usage-driven sites, and annexes unless otherwise provided for. The Zone Grantee/Operator, shall be the sole judge to interpret and determine the applicability of any of the rates, regulations or services provided for in this Zone Schedule. However, any matter involving interpretation or action by U.S. Customs or other agency of the U.S. Government will be determined by the Port Director of Customs, with the concurrence of the Foreign-Trade Zones Board. Where applicable, the Foreign-Trade Zones Board and U.S. Customs Regulations shall prevail should any conflict arise with this schedule.

Section III.1 – Regulations - Foreign-Trade Zones Board

Foreign-Trade Zone No. 197 is regulated by the Foreign-Trade Zones Board, Washington, D.C., special regulations as defined in the U.S. Code of Federal Regulations, Title 15, Chapter IV, Part 400-Regulations of the Foreign-Trade Zones Board.

Section III.2 – Regulations - U.S. Customs and Border Protection

Foreign-Trade Zone No. 197 is subject to special U.S. Customs regulations as defined in U.S. Code of Federal Regulations, Title 19, Chapter I, Part 146-Foreign-Trade Zones.

Section III.3 – Public Utility Standards

Pursuant to Foreign-Trade Zones Board Regulation, the zone must be operated as a public utility. All rates and charges for all services or privileges within the zone shall be fair and reasonable, and the Zone Grantee and Zone Operator(s) shall afford to all who may apply for the 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 hereafter be made from time to time by the United States with foreign governments regardless of whether a zone participant has processed any zone related product or engaged a particular service provider. (15 C.F.R. § 400.42). The General-Purpose Zone contains buildings available for sale or lease, and open land suitable for construction, to ensure that the reasonable zone needs of the business community are being met. The buildings are equipped to provide storage, manipulation, manufacturing, and other office space for individual companies to act as their own Operator within their own facility. Additionally, there are buildings available, or land available for construction, that would accommodate a third party provider public warehouse building or buildings, making zone services available to those companies who did not wish to lease or purchase their own building, or physically handle their own

SECTION III - APPLICATION OF RULES, REGULATIONS AND RATES

merchandise while within the foreign-trade zone site. In this manner, the Grantee provides the community the opportunity for a wide range of firms to be accommodated under public utility principles.

Section III.4 - Uniform Treatment Standard

Any company that prepares an application to be filed with the Foreign-Trade Zones Board shall be sponsored by this Grantee organization unless that company is in a business that will harm other domestic companies, includes information in its application that is detrimental to the local community, or is not deemed to be in the general public interest.

Section III.5 – Property Ownership

As stated in a March 4, 2009 memorandum from Mr. Andrew McGilvray, Executive Secretary of the Foreign-Trade Zones Board. Zone status is a “privilege,” not a “right,” which is provided to Grantees only in the Foreign-Trade Zone Act. Property owners are not specifically included, and the Foreign-Trade Zones Board does not have the legal right to grant them the privilege of zone status.

SECTION IV - SECURITY PROCEDURES

Section IV.0–Background Investigation

In order to permit U.S. Customs to complete the activation request, a background investigation on the qualifications, character and experience of key employees and principal officers who will be involved in the operation of the zone must be completed. A list of each individual, including full names, addresses, social security numbers, and dates and places of birth or a completed CBPF 3078 must be submitted to U.S. Customs in Santa Teresa, New Mexico in order for them to perform this investigation. (19 C.F.R. §146.6(c)).

Section IV.1–Employees and Persons Entering and Leaving Activated Portion of Zone

Persons desiring admittance to the zone shall make application to the Zone Operator and shall be bound by the Foreign-Trade Zones Board and U.S. Customs Regulations and the rules of the Zone Operator. All persons having business in the zone will enter and leave at the prescribed pedestrian entrances and be subject to examination as deemed necessary for the protection of the Customs revenue.

Section IV.2–Identification of Employees Within Activated Portion of Zone

Every employee on duty within the zone and in connection with the operation of the zone shall be required while within the zone to wear appropriate identification badges to be provided by the Zone Operator of the zone or individual Users of the zone. Adequate security will be maintained for unissued badges. All persons having business within the zone, but not possessing appropriate zone-issued badges, passes, or other approval to enter the zone, shall apply for the appropriate approval and entry identification at the Zone Operator's office. A visitor's log will be maintained by the Zone Operator and will contain the date, name, firm, person to be visited, and pass number for each visitor permitted to enter the zone.

Section IV.3–Physical Facilities

All merchandise stored in the zone will be stored in a safe and sanitary manner. Aisles will be established in storage areas and may be changed from time-to-time. All entrances shall be left unblocked. Trash and waste shall be promptly removed from the zone. All local, state, and federal health laws shall be observed to ensure protection of public safety. (19 C.F.R. § 146.4 (f)).

SECTION V - OPERATION OF ZONE

Section V.0–Activation

Pursuant to regulations of the U.S. Customs, all or any portion of the zone approved by the Foreign-Trade Zones Board may be approved by the Zone Grantee and the Port Director of Customs for foreign-trade zone operations and for the admission, handling, and shipment for import or export of merchandise in zone status. All procedures of U.S. Customs shall be followed. (19 C.F.R. § 146.6).

Section V.1–Boundary Modification

The Zone Grantee may submit to the Foreign-Trade Zones Board an Application to modify the boundary of an existing zone or subzone or to add a new site under the ASF. The procedure is administrative at the Foreign-Trade Zones Board without a *Federal Register* notice. (15 C.F.R. § 400.24(c)). No fee is owed the Foreign-Trade Zones Board. The site may also be requested to be approved as a subzone.

Section V.2–Construction of Buildings and Facilities Within a Zone

The Zone Grantee may, with the approval of the Foreign-Trade Zones Board, permit other persons, firms, or corporations to erect buildings and other structures within the zone as will meet their particular requirements. The Foreign-Trade Zones Board statute and regulations contain certain requirements. All security related construction should be in accordance with U.S. Customs requirements and the building activated by U.S. Customs prior to use. As part of the activation process with U.S. Customs in Santa Teresa, a cargo-security survey or site visit will be conducted by U.S. Customs for each company that requests activation approval for its facility. For additional construction in a designated zone site, the Foreign-Trade Zones Board must be notified of all such construction in a general-purpose foreign-trade zone that was not approved in the original Application. Advanced notification is not necessary. Notification will occur with the Annual Report to the Board filed by the Board of County Commissioners of Doña Ana County. If production authority within a general-purpose zone is requested, notification will occur with a Production Notification Application approved by the Foreign-Trade Zones Board.

Section V.3–Deactivation

A Zone Operator may file a request with the Customs Port Director to deactivate all or a portion of an existing activated zone or subzone and shall cease to admit merchandise into the zone site in zone status. Final action and disposition of the merchandise must be made with the concurrence of the Customs Port Director.

SECTION V - OPERATION OF ZONE

Section V.4–Disposition of Merchandise in a Zone

In general, merchandise lawfully admitted to a zone may, in accordance with these and other regulations made under the provisions of the Act be sent into Customs territory of the United States, destroyed or exported. (19 C.F.R. § 146.71).

Section V.5–Exclusion from Zone of Goods or Process of Treatment/Grant Restrictions

When it shall be reported to the Foreign-Trade Zones Board that any goods or process of treatment is detrimental to the public interest, health, or safety, the Foreign-Trade Zones Board shall cause such investigation to be made, as it may deem necessary. No operation or process of treatment will be permitted in the zone that in the judgment of the Foreign-Trade Zones Board or the Zone Operator is detrimental to the public interest, health, or safety. (15 C.F.R. § 400.13(a)(8)(b)). Normally, the Foreign-Trade Zones Board issues a Grant Restriction by means of a Board Order governing such activity. Grant Restrictions are restrictions or conditions placed in a Grant or other approval by the Foreign-Trade Zones Board that may limit the zone status allowed, the kind of operation or the merchandise in a zone, the entry of merchandise into the commerce, the life of the Grant, or the amount of acreage allowed to be activated. See also the definition of Restricted Merchandise/Operations.

Section V.6–Forms, Procedures and Operations in a Zone

The merchandise and operations permitted in a zone, the disposition of merchandise in a zone, the zone status of the merchandise and special provisions applicable to each status, compliance with requirements of other Federal Agencies, the subsequent importation of merchandise, the exportation of merchandise from a zone, and other operations in a zone authorized by the Act are all controlled by U.S. Customs Forms or forms of other Federal Agencies.

Section V.7–Grant Sale/Conveyance, Transfer, Assignment, Etc.

The Foreign-Trade Zone Grant of Authority may not be sold, conveyed, transferred, set over, or assigned (FTZ Act, Section 17; 19 U.S.C. 81q). (15 C.F.R. § 400.13(a)(7)). Application may be made to the Foreign-Trade Zones Board to reissue a Grant under certain conditions.

Section V.8–Hours of Business and Service

The Zone Operator shall prescribe hours of business and service, for U.S. Customs purposes.

SECTION V - OPERATION OF ZONE

Section V.9–Independent Contractor Status

Zone Grantee, Zone Operator, and any future Zone User are not and shall not be considered as joint venturers, partners, or agents of each other, and none shall have the power to bind or obligate the other except as set forth in any written agreement. Zone Grantee, Zone Operator, and any future Zone User agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another except as set forth in any written agreement.

Section V.10–Lapse/Sunset Provision

The grant of authority for every general-purpose zone or subzone may lapse if it is not activated and in operation within five years of the initial Foreign-Trade Zones Board Order issued after November 7, 1991. Detailed provisions apply. If a portion of any zone site is not activated within five (5) years of the establishment of the zone site, Grantee has the right to transfer zone status to another parcel of land adjacent to the Customs Port of Entry. Contact the Zone Grantee for a complete explanation. (15 C.F.R. § 400.13(a)(4)). All zone operators in general-purpose zone sites are subject to sunset provisions. A usage-driven site operator secure activation approval and must demonstrate zone activity within three (3) years or lose zone status. If an operator is located in a magnet site, the operator or another operator in the magnet site must activate a portion of the magnet site within five (5) years. Failure to meet the sunset provisions will result in automatic deletion of zone status. The Board of County Commissioners of Doña Ana County as Grantee will not be held liable for any difficulties this may create for an operator.

Section V.11–Manipulation, Manufacture, Exhibition of Merchandise

In general, merchandise lawfully brought into a zone may, in accordance with these and other regulations made under the provisions of the Act, be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign and domestic merchandise, or otherwise manipulated or be manufactured.

(a) Permission for any manipulation, manufacture, destruction, or exhibition in a zone shall be obtained from the Port Director of Customs subject to such application and procedure prescribed by the Secretary of the Treasury for the protection of the revenue by means of a CBPF 216.

(b) For production (manufacturing/processing), a second request must be made in advance to the Foreign-Trade Zones Board for production operations. The Foreign-Trade Zones Board defines production as any change in HTS classification. The Foreign-Trade Zones Board must approve all production operations. This includes certain “kitting” operations where there may be a change in HTSUS classification. Any new production operation beyond the scope approved in the Grant of Authority must be

SECTION V - OPERATION OF ZONE

authorized by the Foreign-Trade Zones Board. See generally 15 C.F.R. 400.14(a). In a general-purpose zone, expedited action under Interim Production Notification authority can be secured. In existing general-purpose zone sites and subzones, Interim Production Notification authority may be secured in less than one hundred and twenty (120) days if U.S. Customs and Border Protection will provide a concurrence letter to the Foreign-Trade Zones Board.

(c) In the event of the denial of any application by the Port Director for any reason, the applicant, the Zone Grantee or the Zone Operator of the zone may appeal the adverse ruling. If any revenue protection considerations are involved in such an application, the Foreign-Trade Zones Board shall be guided by the determinations of the Secretary of the Treasury.

Section V.12—Merchandise Permitted in a Zone

Foreign and domestic merchandise of every description, except such as is prohibited by law, may without being subject to Customs laws of the United States, except as otherwise provided in the Foreign Trade Zones Act and the regulations made thereunder, be admitted into a zone.

(a) Merchandise that is specifically and absolutely prohibited by law shall not be admitted into a zone. Any merchandise so prohibited by law that is found within a zone shall be disposed of in the manner provided for in the laws and regulations applicable to such merchandise. A distinction is made between (1) merchandise which is specifically and absolutely prohibited by law on the grounds of policy or morals, such as immoral or subversive literature, obscene articles, or lottery matter, and (2) merchandise which is subject to conditional prohibition only, for example, articles which are subject to permits or licenses for the protection of economic or national security or which may be reconditioned to bring them into compliance with the laws administered by various Federal agencies. Port Directors of Customs are required to exclude the first class of articles and may not permit them to be admitted to a zone if they are aware of their prohibited status, except that the Port Director may permit the temporary deposit of any such merchandise in the zone pending final determination of its status. The transfer of articles of the second class to a zone is subject to any requirements of the Federal agency concerned. See 19 C.F.R. § 146.31(a) and (b).

(b) The application for the admission of merchandise into a zone shall be approved or disapproved by the Port Director of Customs as the representative of the Foreign-Trade Zones Board on a CBPF 214.

(c) For definitions of Prohibited and Restricted Merchandise, see Section I.

SECTION V - OPERATION OF ZONE

Section V.13–Retail Trade within Zone

No retail trade shall be conducted within a zone except under permits issued by the Foreign-Trade Zones Board. Duty paid and domestic merchandise may be sold in a foreign-trade zone under certain circumstances.

Section V.14–Scope of Authority

Foreign-Trade Zone No. 197 is authorized by Foreign-Trade Zone Board Order No. 665 and 1536 to undertake the activities set out therein. The Foreign-Trade Zones Board must authorize all production activity that results in a change in the imported material's Harmonized Tariff Schedule of the United States classification. This includes "kitting" operations where finished products are packaged together for sale. Any change in imported materials and finished products for such activity must also be authorized to only undertake those activities approved by the Foreign-Trade Zones Board. Zone Operator/User shall promptly notify the Zone Grantee of any activity requiring Foreign-Trade Zones Board notice and authorization.

Section V.15–Sponsor of New Zone or Subzone

The Zone Grantee may in its sole discretion decide to sponsor a new zone or subzone project and its Application to the Foreign-Trade Zones Board. In order to make its determination, the interested party must submit, in letter form to the Grantee, sufficient data in summary form as required in an Application to the Foreign-Trade Zones Board. (15 C.F.R. § 400.14(a), 400.22, 400.25, 400.37). If the Zone Grantee decides to sponsor the proposed project, the Application must be prepared at the cost of the applicant.

Section V.16–Status of Merchandise in a Zone

For the purposes of the Act and the regulations relating to this Section, all merchandise within a zone, except merchandise in transit through a zone as provided in U.S. Customs Regulations, and except merchandise temporarily transferred to a zone for manipulation under Customs supervision pursuant to Section 562, Tariff Act of 1930, as amended, shall be given a zone status on a CBPF 214 document. Any changes to the zone status must be made on a CBPF 214 and approved by the U.S. Customs. For definitions see Section I.

Section V.17–Subsequent Importation of Zone Merchandise

Articles produced in a zone and exported from there shall, on subsequent importation into the Customs territory of the United States, be subject to the import laws applicable to like articles produced in a foreign country, except that 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 of Section 3 of

SECTION V - OPERATION OF ZONE

the Act, as amended, may, on such importation, be entered as American goods returned. (19 C.F.R. § 146.67(e)). Contact the Zone Grantee for more detailed information on this topic.

Section V.18–Termination-Accrued Obligations/Survival

All Zone Operator/Users will specifically acknowledge and agree that, upon termination or expiration of tenancy in the foreign-trade zone for any reason whatsoever, Zone Operator/User shall not be released or relieved from fulfilling any and all of its obligations or duties which arose or accrued during the term of its zone usage. Zone Operator/Users will specifically represent and warrant to Zone Grantee that upon termination or expiration of its zone usage for any reason whatsoever, Zone Operator/User shall completely perform and fulfill any and all of its obligations or duties which arose or accrued during the term of its zone use including the immediate preparation and filing of all necessary reports with the Grantee and the U.S. Customs. Specifically, the Zone Operator/User's indemnity obligations, bond obligations, and record and record retention obligations shall survive the termination or expiration of any Agreement and/or zone activity for any such reason. Zone Grantee may require the tender of all such records for safekeeping.

Section V.19–Termination-Bankruptcy

The Foreign-Trade Zone activity or any rights hereunder shall not be subject to involuntary assignment, transfer or sale or to assignment, transfer or sale by operation of law in any manner whatsoever, and any such attempted involuntary assignment, transfer or sale shall be void and of no effect. Without limiting the generality of the foregoing, Zone Operator/User agrees that in the event any proceedings under the Bankruptcy Act or any amendment thereto be commenced by or against Zone Operator/User, and, if against Zone Operator/User, said proceedings shall not be dismissed before either an adjudication in bankruptcy or the confirmation of a composition, arrangement or plan of reorganization, or in the event Zone Operator/User be adjudged insolvent or make an assignment for the benefit of its creditors, or if a writ of attachment or execution be levied against any real or personal property owned or leased by Zone Operator/User within the Zone and be not released or satisfied within 15 days thereafter, or if a receiver be appointed in any proceedings or action to which Zone Operator/User is a party with authority to take possession or control of the business conducted thereon by Zone Operator/User and such receiver be not discharged within a period of 15 days after his appointment, any such event or any involuntary assignment may constitute a termination by the Zone Grantee of the use of the Zone without notice or any other action and also shall terminate all rights hereunder at the discretion of the Grantee organization.

SECTION V - OPERATION OF ZONE

Section V.20–Termination-Conviction/Abandonment

Foreign-Trade Zone usage may be terminated if Zone Operator/User shall be convicted under any law of a felony as defined by such law; if the Foreign-Trade Zones Board or U.S. Customs should suspend or terminate Zone Operator/User or the activated status of the zone; or if the Zone Operator/User shall voluntarily abandon, desert, or vacate the premises or discontinue its operations. Zone Operator/User shall immediately provide all records and reports for Zone Grantee, the Foreign-Trade Zones Board, and the U.S. Customs.

Section V.21–Use of Zone by Carriers

The loading or unloading areas of a zone are intended primarily for the use of vehicles unloading merchandise into the zone or loading merchandise from the zone, and their use for other purposes may be terminated by the Secretary of the Treasury if found to endanger the revenue, or by the Foreign-Trade Zones Board, Zone Grantee if found to interfere with the primary uses of the zone.

SECTION VI - GENERAL RULES AND REGULATIONS

Section VI.0–Agreements

All firms using the services of a Foreign-Trade Zone Operator must enter into an operating agreement with the Operator. All Foreign-Trade Zone or Subzone Operators must enter into an agreement with the Zone Grantee. If there is a conflict between the operating agreement and this Schedule, the agreement will prevail. Copies of the agreements are available from the Zone Grantee/Operator(s).

Section VI.1–Charges

A. Government Agencies--Charges made by government agencies are not included in this Zone Schedule and should be arranged by the Zone User or his agent with the government agency concerned.

B. When Payable--Zone charges are due and payable as they accrue.

Section VI.2–Communication, Audits, Inspections and Requests for Information

Zone Operator/User shall inform Zone Grantee of any substantive written or oral communication with the U.S. Customs, the Foreign-Trade Zones Board, and any other Federal Agency that involves the merchandise held in the zone with respect to zone activity. Zone Grantee must make all written submissions to the Foreign-Trade Zones Board with respect to Foreign-Trade Zone activity. The Zone Operator/User shall promptly notify Zone Grantee of any oral or written request for information, inspection, spot check, or audit of any kind from U.S. Customs or the Foreign-Trade Zones Board or other reports requested by any government agency and of any audit or investigation commenced by any government agency which directly concerns zone operations, and shall accompany such notification with copies of all letters, requests, reports and investigative documentation to Zone Grantee.

Section VI.3–Confidential Relationship

All foreign-trade zone documentation contains confidential business information that may not be copied or disclosed without the express written permission of the particular party in interest. All information shall be kept confidential except that which is required to be made public by the Foreign-Trade Zones Board or U.S. Customs. The Zone Operator is specifically required by 19 C.F.R. 146.4(d)(3) to maintain all transaction records confidential. This document contains trade secrets and commercial and financial information relating to the confidential business of private parties. The Trade Secrets Act (18 U.S.C. 1905) provides penalties for disclosure of such information.

SECTION VI - GENERAL RULES AND REGULATIONS

Section VI.4–Foreign-Trade Zone Usage

Where applicable, Zone Operator agrees to place the following language in all lease/purchase agreements involving its referenced zone property:

The Premises are within Foreign-Trade Zone No. 197. If a purchaser, lessee, or tenant wishes to utilize the foreign-trade zone, it must enter into an appropriate Agreement with the Foreign-Trade Zone Grantee or Zone Operator as appropriate.

Section VI. 5–Government Agencies

Zone Operator/User must comply with all lawful regulations of U.S. or New Mexico government agencies. Besides the U.S. Customs, many U.S. agencies have specific laws that apply to the import and export of merchandise. The Zone Operator/User and its Customs Broker, if applicable, are responsible for assuring compliance. See also Regulations definition in Section I.

Section VI.6–Governmental Licenses

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

Section VI.7–Insurance

All Zone Operators/Users shall secure and maintain throughout the term of their insurance with requirements and limits as required by the Zone Grantee. Zone Operators/Users must furnish certificates of insurance evidencing the required coverage ten (10) business days prior to the commencement of operations. As appropriate insurance shall include statutory workmen's compensation, automobile liability, and general liability.

If applicable, zone tenancy may be terminated if, at any time, a Zone Operator/User fails to maintain the required insurance for any period of time or fails to comply with any of the insurance requirements. Detailed insurance requirements may be secured from the Zone Grantee/ Operator. Insurance is carried by Zone Operator on its own property only and does not include insurance on the contents stored therein. Zone User is obligated to bring nothing within the zone which will cause the cancellation or forfeiture of the insurance or affect the premium rate thereof on the building or buildings of which the leased premises forms a part. Insurance on commodities or other property stored on the leased premises must be carried by and at the expense of Lessee or owner of the commodities or other properties. Merchandise stored,

SECTION VI - GENERAL RULES AND REGULATIONS

manipulated, or transferred within the zone is not insured by the Zone Operator, and the Zone Schedule rates do not include insurance on merchandise.

Section VI.8–Public Interest, Health and Safety

No operation or process of treatment will be permitted in the zone that, in the judgment of the Foreign-Trade Zones Board, Zone Grantee, or Zone Operator, is detrimental to the public interest, health and/or safety. Zone Operator reserves the right to refuse merchandise that would, in the opinion of the zone management, pose unusual or unacceptable problems or hazards to the zone. See also Restricted Merchandise/Operations in Section I.

Section VI.9–Regulations - General

All persons and merchandise of every description entering or leaving Foreign-Trade Zone No. 197 for any purpose whatsoever shall be bound by the lawful regulations of the Foreign-Trade Zones Board and by the Board Order issued thereunder, and U.S. Customs and actions of the Port Director of Customs.

Although zones are outside the Customs territory, most Federal laws apply in zones. The extent to which they apply or do not apply depends on their precise wording, their relationship to the Foreign-Trade Zones Act, and the interpretation thereof by the particular Federal Agency affected. State and local laws apply in zones except to the extent they are preempted or modified by Federal laws. The Foreign-Trade Zones Board and the Port Director of Customs cooperate with Federal, State, and local government authorities in the administration of their laws, regulations, and ordinances. The Zone Grantee, Zone Operator, and Zone Users shall allow such authorities access to the zone to carry out their duties. They are, however, subject to admission and departure requirements as noted herein.

Section VI.10–Regulations - Zone

The rules governing procedure within Foreign-Trade Zone No. 197 are issued in conformity with and supplementary to the Foreign-Trade Zones Board and U.S. Customs regulations and such other United States laws and regulations relating to the Port of Entry as are applicable to Foreign-Trade Zone Operations.

SECTION VII - SPECIAL RULES PERTAINING TO MERCHANDISE

Section VII.0—Abandonment, Arrearage, or Insolvency

If merchandise has been abandoned in the zone, 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 in public auction to recover a debt, the buyer will have title in the goods to dispose of them at his or her option. 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.

Section VII.1—Bureau of Census Reporting

Certain statistical information is necessary to be provided to the Bureau of the Census on all FTZ admission receipts. If provided to Customs, the CBPF 214A must be salmon or pink in color and be identified as "Statistical Copy". (19 C.F.R. § 146.32(a)). The current CBPF 214 to be utilized is available from the Operator. U.S. Customs is responsible for transmitting the CBPF 214As to Census. The Operator may provide this data to the Bureau of the Census with an e-214 filing or it may be provided to U.S. Customs by completion of the CBPF 214A. The Bureau of the Census must receive the reports no later than the tenth calendar day following the month the merchandise was admitted to the Zone.

Section VII.2—Customs Bond

A Customs and Border Protection Form 301, Activity Code 4, is utilized for the Foreign-Trade Zone Operator's Bond. Provisions are set forth at 19 C.F.R. § 113.73. Any companies that will act as a foreign-trade zone operator must secure a foreign-trade zone operator's bond in the name of their company.

Section VII.3—Customs Inspection of Merchandise While in Zone

The Zone Operator/User or his agent shall at all times be immediately available to make the merchandise subject to inspection required by U.S. Customs and shall have the sole responsibility of opening crates and packages, handling the merchandise and securing the crates and packages following the inspection. In the event that the Zone Operator/User or his agent is not immediately available for inspection, then the zone personnel shall be authorized to open such packages for U.S. Customs and shall not be liable for any loss or damage for any reason whatsoever to the goods of the consignee. The Zone Operator/User shall be charged for such services at rates established.

Section VII.4–Customs Permit

Merchandise will not be delivered to or through Customs territory unless the delivery order is accompanied by: a CBPF 3461/7501 (entry for consumption); a CBPF 7512 (entry for transportation, immediate exportation, or transportation and exportation); or appropriate alternate procedures.

Section VII.5–Grantee Knowledge

The Zone Grantee is not obligated to, and does not intend to, monitor the day-to-day activity of the Foreign-Trade Zone. The Zone Grantee shall have no knowledge, actual or constructive, of the quantity, character, status designation, identification, or time of admission, transfer, or release of goods into or from the Foreign-Trade Zone.

Section VII.6–Handling of Merchandise

Zone Operator/User will be responsible for the receipt and verification of all merchandise admitted to the Zone on the proper Customs Forms and for handling of all merchandise having activity being performed under the proper Customs Forms. Zone Operator/User will perform all these functions according to all Customs Regulations that apply to these activities. Zone Operator/User will not allow removal of any merchandise located within the Zone without prior approval from Customs under the applicable laws, rules and regulations of the U.S. Customs.

Section VII.7–Harbor Maintenance Fee--

The Water Resources Act of 1986 provides for a Harbor Maintenance Fee to be imposed for commercial use of Ports in the United States. All merchandise arriving at deepwater ports is subject to a fee of .125%. The Applicant for admission is liable for payment of the fee. The filing of the CBPF 349 quarterly is the responsibility of the Zone Operator/User or its Customs broker. The CBPF 350 is used for amendments or refunds.

Section VII.8–Hazardous/Objectionable Commodities

The zone will not be required to accept for storage any commodity that will affect the rate of insurance on other merchandise in storage. Products will not be stored except in locations or areas that are not restricted in the acceptance of any commodity for storage under the insurance rate established on contents stored therein. The Grantee reserves the right to not allow certain merchandise to be stored, processed, or manufactured in the zone.

Section VII.9–Indemnification

Zone Operator/User will protect, indemnify and hold harmless Zone Grantee and its respective Boards, officers and employees from and against any and all actions,

suits, proceedings, claims, demands (including attorneys' fees and costs), whether insured or not, arising out of, or incident to, Zone Operator/Users obligations and operations hereunder. Zone Grantee/Zone Operator may require a bond at any time Zone Grantee/Zone Operator deems it necessary to adequately protect the parties indemnified hereby.

Section VII.10–Insurance

The Grantee may require special insurance coverage in its Agreement with Operator.

Section VII.11–Marking

All merchandise handled in the zone, before entry to Customs territory, must be marked in accordance with U.S. Customs regulations as to the country-of-origin and in accordance with all other government regulations. No merchandise will be permitted by Customs to be transferred from the zone for any purpose that is not properly labeled or carries any false or misleading label or mark. A CBPF 216 must be filed and approved by U.S. Customs prior to any repacking and labeling that may occur in the zone.

Section VII.12–Merchandise Processing (User) Fee

The current Customs Merchandise Processing (User) Fee of 0.3464% ad valorem is applicable only to the value of foreign non-duty paid merchandise entered into the U.S. from a foreign-trade zone. In 1995, the North American Free Trade Agreement for Canadian NAFTA qualifying merchandise provides that the fee is zero, not .3464% as for all other imports. For Mexican NAFTA qualifying merchandise, the fee was eliminated June 30, 1999. It is collected on a Customs entry CBPF 7501. Merchandise that is exported, scrapped, etc. from the zone is not subject to the Merchandise Processing Fee. The fee has a minimum of \$25 and is capped at \$485 per entry.

Section VII.13–Permission to Manipulate, Manufacture, Exhibit, Repack or Destroy

Before merchandise may be manipulated, repacked, manufactured, exhibited, or destroyed within the zone, application on CBPF 216 must be presented to the Zone Operator for concurrence. The Zone Operator will then forward the application to U.S. Customs. On approval by the U.S. Customs, the contemplated activity will then be permitted. The Zone Operator maintains a schedule of charges.

Section VII.14–Record Deficiencies

In the event that any audit, inspection, or examination by the U.S. Customs, the Foreign-Trade Zones Board, Zone Grantee, or Zone Operator discloses that books, records or operational procedures of Zone Operator/User are not in conformance with the requirements of Federal, State and/or local law and the Operator's Agreement, the

U.S. Customs, the Foreign-Trade Zones Board, Zone Grantee or Zone Operator may order the immediate correction of the documents or procedures. In the event that it is anticipated that such correction will take in excess of five (5) working days, a plan of performance will be submitted by the responsible party(s) to the Zone Grantee or Zone Operator for the correction of such discrepancy which shall be approved if necessary, by the Foreign-Trade Zones Board and the U.S. Customs, and shall proceed with all due diligence to correct the deficiency as described in the approved plan.

Section VII.15–Record Retention

All financial and accounting records of Zone Operator/User concerning zone operations shall be retained for five (5) years after the act or occurrence recorded or after the merchandise covered by such records has been forwarded from the Zone, whichever is longer, and all such records shall be available for inspection and audit by any appropriate government agency and by Zone Grantee during normal business hours.

Section VII.16–Reports to Governmental Agencies

The Zone Operator may be required to submit periodic reports to the Grantee and the U.S. Customs, or may be required to perform other acts as the Zone Operator of the zone in compliance with governmental regulations. Zone Users are required to and shall cooperate with the Zone Operator in the creation and maintenance of procedures, systems, regulations, or programs, and provide information and statistics that the Zone Operator considers necessary to ensure compliance with governmental requirements. The Zone Grantee must file an Annual Report to the Foreign-Trade Zones Board by the last business day in March on all activity that occurred in the zone during the previous calendar year (January 1 through December 31). Each Zone or Subzone Operator and Zone User must cooperate in providing the necessary data (15 C.F.R. § 400.51(c)). This data must be provided to the Grantee by no later than February 15 each year. An Annual Reconciliation and Annual Internal Review is required of each Foreign-Trade Zone or Subzone Operator. (19 C.F.R. § 146.25, 146.26). A certification letter acknowledging the Annual Reconciliation and Annual Systems Review have been completed and must be forwarded to the Customs Port Director within ninety (90) days of the end of the Operator zone year.

Section VII.17–Right of Entry

Representatives of the Zone Grantee at Zone Grantee's request, Zone Operator, Zone User, the Foreign-Trade Zones Board, U.S. Customs and other authorized U.S. Government officers, shall have the right of access to enter the Zone for the authorized and lawful purpose of examining same, conferring with Zone Operator/User, its agents, invitees, and employees on such premises, inspecting and checking operations, supplies, equipment and merchandise, and determining whether the business is being conducted in accordance with the procedures established for the operation and management of the zone.

Section VII.18–Temporary Removal

Merchandise held in the zone may be temporarily removed from the zone for the limited purposes of repair, restoration, or any incidental operation which would not constitute a “manufacture or production” under drawback law, 19 U.S.C. 1313, and then returned to the zone. Application on a CBPF 216 must be presented to the Zone Operator and then to U.S. Customs for concurrence. See Customs Headquarters Ruling 214189 (August 31, 1982), Ruling 218458 (January 27, 1986), Customs Directive 3260-20 (August 4, 1986) and Section 9.2 of U.S. Customs FTZ Manual for a more detailed description of this limited provision.

Section VII.19–Trucking and Lighterage

Transfer of foreign merchandise from the first Port of arrival through Customs territory to the zone and from the zone to the port of export must be made by Customs bonded trucks, rail cars, airplanes, lighters or other carriers and subject to U.S. Customs regulations. Alternate procedures for transfer of merchandise under the Foreign-Trade Operators Bond (see 19 C.F.R. § 146.40(b)), not on bonded carriers, may be available with Customs approval.

SECTION VIII – CHARGES

Section VIII.0–Charges

Each General-Purpose Zone Operator that makes its facilities available to multiple zone user firms is responsible for preparing and submitting to the Grantee an Appendix which sets out the rules, rates and charges at the zone site. Each Zone Operator assumes responsibility for maintaining a complete and current Zone Schedule. Each Zone Operator will provide an Appendix of their charges to the Grantee and any changes and/or revisions to the Appendix upon implementation. Additionally, firms utilizing the General Purpose Zone may act as their own Zone Operator. No other charges will be levied other than those in Appendix A. Under these circumstances, the zone sites will operate under the Rules and Regulations and Grantee Rates and charges as set out herein.

Section VIII.1–Uniform Pricing

All customers having similar volume and circumstances will be afforded the same contractual terms.

Appendix A

GRANTEE CHARGES

APPLICATION, ACTIVATION, AND ANNUAL FEES--

(a) Foreign-Trade Zones Board Application Fees--Zone Applications submitted to the Foreign-Trade Zones Board must be accompanied with a check in the following amount, as required by 15 C.F.R. § 400.29:

- (1) Additional General-Purpose Zones (15 C.F.R. § 400.24 and 400.21 (a)(2)) \$3,200
- (2) Special-Purpose Subzones (15 C.F.R. § 400.25)
 - (i) Non-manufacturing/processing or less than three products..... \$4,000
 - (ii) Manufacturing/processing three or more products..... \$6,500
- (3) Expansions (15 C.F.R. § 400.26(b)) \$1,600

These fees are payable by the Zone Operator of the appropriate site as described in 1, 2, and 3 above. The Zone Grantee will not be liable for any such fees, nor shall they be liable for preparing the application, the applicant shall prepare the necessary paperwork for the application submittal with the Grantee’s approval. Note that there are no fees payable to the Foreign-Trade Zones Board for Usage-Driven Applications, Boundary Modifications or Production Notification Applications or Production Applications within a general-purpose zone or subzone; however, the Grantee charges an administrative review fee for assisting an applicant with a request for a boundary modification or expansion application, see (c)(2) below.

(b) U.S. Customs Activation and Annual Fee--These fees were suspended pursuant to the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203).

(c) The Zone Grantee charges each Zone Operator fees based upon services rendered. Fees may be adjusted from time to time by the Grantee by issuance of a correction to the Schedule.

(1) Annual Fee/Firms Acting as their own Operator – An administrative annual fee is charged by the Zone Grantee for each general-purpose zone/usage-driven site and special-purpose subzone. The fee amount is: \$3,000

Dates payable, etc. are specified in the Operations Agreement between the Zone Grantee and Zone Operator of the General-Purpose Zone/usage-driven site and/or Special Purpose Subzone.

(2) Application Fee - An administrative review fee of \$3,000 shall be assessed to the applications requesting production authority in the general-purpose zone, usage-driven or subzone sites in Zone No. 197. Before an application is submitted to the FTZ Board, the Grantee shall approve such request and require

the applicant to prepare the necessary paperwork as required by the FTZ Board for such requests.

- (3) Activation Fee—An initial activation fee of \$3,000 is charged by the Zone Grantee to each Zone Operator prior to commencing zone operations within the general-purpose zone. This fee shall be payable as reimbursement for administrative services provided by the Zone Grantee to assist the Zone Operator with the activation process with U.S. Customs and Border Protection. In the event an Operator activates a second site at a subsequent date a \$2,000 activation fee would be required as reimbursement for administrative services provided by the Zone Grantee to assist the Zone Operator with the activation process with U.S. Customs and Border Protection.