

Foreign-Trade Zones Board, Comm.

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(2) A grant of authority approved under this part includes authority for the grantee to permit the erection of buildings necessary to carry out the approved zone (subject to concurrence of CBP for an activated area of a zone).

(3) Approvals from the grantee (or other party acting on behalf of the grantee, where applicable) and CBP, pursuant to 19 CFR part 146, are required prior to the activation of any portion of an approved zone.

(4) Authority for a zone or a subzone shall lapse unless the zone (in case of subzones, the subzone facility) is activated, pursuant to 19 CFR part 146, and in operation not later than five years from the authorization of the zone or subzone, subject to the provisions of Board Order 849 (61 FR 53305, October 11, 1996).

(5) Zone grantees, operators, and users (and persons undertaking zone-related functions on behalf of grantees, where applicable) shall permit federal government officials acting in an official capacity to have access to the zone and records during normal business hours and under other reasonable circumstances.

(6) Activity involving production is subject to the specific provisions in § 400.14.

(7) A grant of authority may not be sold, conveyed, transferred, set over, or assigned (FTZ Act, section 17; 19 U.S.C. 81q).

(8) Private ownership of zone land and facilities is permitted, provided the zone grantee retains the control necessary to implement the approved zone. Such permission shall not constitute a vested right to zone designation, nor interfere with the Board's regulation of the grantee or the permittee, nor interfere with or complicate the revocation of the grant by the Board. Should title to land or facilities be transferred after a grant of authority is issued, the zone grantee must retain, by agreement with the new owner, a level of control which allows the grantee to carry out its responsibilities as grantee. The sale of zone-designated land/facility for more than its fair market value without zone designation could, depending on the circumstances, be subject to the

prohibitions set forth in section 17 of the Act (19 U.S.C. 81q).

(b) *Board authority to restrict or prohibit activity.* Pursuant to section 15(c) of the Act (19 U.S.C. 81o(c)), the Board has authority to "order the exclusion from [a] zone of any goods or process of treatment that in its judgment is detrimental to the public interest, health, or safety." In approvals of proposed production authority pursuant to § 400.14(a), the Board may adopt restrictions to protect the public interest, health, or safety. When evaluating production activity, either as proposed in an application or as part of a review of an operation, the Board shall determine whether the activity is in the public interest by reviewing it in relation to the evaluation criteria contained in § 400.27.

(c) *Additional conditions, prohibitions and restrictions.* Other conditions/requirements, prohibitions and restrictions under Federal, State or local law may apply to authorized zones and subzones.

§ 400.14 Production—requirement for prior authorization; restrictions.

(a) *In general.* Production activity in zones shall not be conducted without prior authorization from the Board. To obtain authorization, the notification process provided for in §§ 400.22 and 400.37 shall be used. If Board review of a notification under § 400.37 results in a determination that further review is warranted for all or part of the notified activity, the application process pursuant to §§ 400.23, 400.31–400.32, 400.34 and 400.36 shall apply to the activity.

(b) *Scope of authority.* Production activity that may be conducted in a particular zone operation is limited to the specific foreign-status materials and components and specific finished products described in notifications and applications that have been authorized pursuant to paragraph (a) of this section, including any applicable prohibitions or restrictions. A determination may be requested pursuant to paragraph (d) of this section as to whether particular activity falls within the

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scope of authorized activity. Unauthorized activity could be subject to penalties pursuant to the customs regulations on foreign-trade zones (19 CFR part 146).

(c) *Information about authorized production activity.* The Board shall make available via its Web site information regarding the materials, components, and finished products associated with individual production operations authorized under these and previous regulations, as derived from applications and notifications submitted to the Board.

(d) *Scope determinations.* Determinations may be made by the Executive Secretary as to whether changes in activity are within the scope of the production activity already authorized under this part. When warranted, the procedures of §§ 400.32 and 400.34 shall be followed.

(e) *Restrictions on items subject to anti-dumping and countervailing duty actions—(1) Board policy.* Zone procedures shall not be used to circumvent anti-dumping duty (AD) and countervailing duty (CVD) actions under 19 CFR part 351.

(2) *Admission of items subject to AD/CVD actions.* Items subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, shall be placed in privileged foreign status (19 CFR 146.41) upon admission to a zone or subzone. Upon entry for consumption, such items shall be subject to duties under AD/CVD orders or to suspension of liquidation, as appropriate, under 19 CFR part 351.

§ 400.15 Production equipment.

(a) *In general.* Pursuant to section 81c(e) of the FTZ Act, merchandise that is admitted into a foreign-trade zone for use within such zone as production equipment or as parts for such equipment, shall not be subject to duty until such merchandise is completely assembled, installed, tested, and used in the production for which it was admitted. Payment of duty may be deferred until such equipment goes into use as production equipment as part of zone production activity, at which time the equipment shall be entered

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for consumption as completed equipment.

(b) *Definition of production equipment.* Eligibility for this section is limited to equipment and parts of equipment destined for use in zone production activity as defined in § 400.2(o) of this part. Ineligible for treatment as production equipment under this section are general materials (that are used in the installation of production equipment or in the assembly of equipment) and materials used in the construction or modification of the plant that houses the production equipment.

(c) *Equipment not destined for zone activity.* Production equipment or parts that are not destined for use in zone production activity shall be treated as normal merchandise eligible for standard zone-related benefits (*i.e.*, benefits not subject to the requirements of § 400.14(a)), provided the equipment is entered for consumption or exported prior to its use.

§ 400.16 Exemption from state and local *ad valorem* taxation of tangible personal property.

Tangible personal property imported from outside the United States and held in a zone for the purpose of storage, sale, exhibition, repackaging, assembly, distribution, sorting, grading, cleaning, mixing, display, manufacturing, or processing, and tangible personal property produced in the United States and held in a zone for exportation, either in its original form or as altered by any of the above processes, shall be exempt from state and local *ad valorem* taxation.

Subpart C—Applications To Establish and Modify Authority

§ 400.21 Application to establish a zone.

(a) *In general.* An application for a grant of authority to establish a zone (including pursuant to the ASF procedures adopted by the Board; see 74 FR 1170, Jan. 12, 2009, 74 FR 3987, Jan. 22, 2009, and 75 FR 71069, Nov. 22, 2010) shall consist of an application letter and detailed contents to meet the requirements of this part.

(b) *Application format.* Applications pursuant to this part shall comply with