



INTERNATIONAL
TRADE
ADMINISTRATION

U.S. Foreign-Trade Zones Board

Zone Schedules and Public Utility



Grantee's "Zone Schedule"

- Simplified requirements in 2012 regulations: grantee's rules/policies plus fees charged by (or for) grantee.
- Regulations only require operator's info. and fees (for zone-specific services) in zone schedule if operator has agreement with grantee to offer services to the public.
- Zone schedule must be freely available at offices of grantee and any operator contracted to serve public. FTZ Board to put zone schedules on its website.



FTZ Act: “Public Utility” in Context

- Under FTZ Act, zone grantee generally has a monopoly in its region on access to the federal privilege of use of FTZ procedures. For that reason, Congress attached specific requirements to grantee’s privilege.
- FTZ Act requires each zone “be operated as a public utility, and all rates and charges for all services or privileges... shall be fair and reasonable” and that the “grantee shall afford to all who may apply for the use of the zone... uniform treatment under like conditions”



Public Utility provisions of new regulations

- 2012 regulations developed through extensive public comment process, provide more complete guidance.
- “Public utility” and “zone schedule” provisions have a compliance date of 2/28/2014.
- Zones may impose cost recovery-based fees – directly related to services provided – that include reasonable return on investment. No tying fees to users’ benefits.
- In response to comments: Zone users cannot be forced to use/buy a particular provider’s products or services.



How can a grantee gauge if its fees are consistent with Public Utility provisions?

If grantee undertakes most grantee functions internally:

- Estimate total cost of staff time, overhead, and other relevant expenses associated with grantee function.
- Determine if there is any “reasonable return on investment” to add to ordinary costs/expenses.
- Adopt reasonable and uniform method to allocate the total of costs/expenses and return on investment over the range of users paying fees.



- Preamble for Sec. 400.42 gives some examples of methods (presented by grantees in comments on the proposed regulations) to allocate costs over users:
 - an operator's square footage of activated FTZ space
 - the value of the operator's merchandise admitted to the zone in a given year
 - whether the operator qualifies as a small business under Small Business Administration (SBA) criteria
 - whether the operator is in an industry sector targeted for attraction based on community economic development plans



- Remember that a grantee does not need to recover all (or any) of its costs. Grantee can subsidize zone.
- Otherwise, total fees collected, on average, should be in sync with total costs + reasonable return on investment.
- Costs and user population may evolve, but a grantee generally should not need to revise fees annually.
- Grantee should be ready to reexamine fees if there is a major shift in costs and/or user population over time.
- FTZ Act's public utility requirement means zone cannot serve as profit center for grantee.



If grantee outsources most grantee functions:

- Same considerations apply regarding:
 - total costs/expenses and reasonable return on investment
 - how to allocate over categories of users
 - frequency of reevaluating fees



- For fees that incorporate costs for outsourced functions, Sec. 400.45 of regs (“Complaints related to public utility and uniform treatment”) states:

Where those costs incorporate charges to the grantee by one or more parties undertaking functions on behalf of the grantee, the Board may consider the costs incurred by those parties (using best estimates, as necessary).



- Preamble for Sec. 400.45 states:

We have instead incorporated language enabling the Board, where applicable, to examine if a fee a party charges to a grantee for undertaking a function on the grantee's behalf (passed on by the grantee to zone participants through the grantee's fees) represents a form of monopoly rent-seeking that would be inconsistent with the statutory public utility requirement.



Complaints (Public Utility, Unif. Treatment)

- Parties may complain to Board about pot. inconsistency with public utility requirements.
- Complaints may be confidential if necessary. Grantee may not compel user to disclose such complaints.
- In response to comments: Confidential complaints will not serve as (direct) basis for penalties.
- Preamble makes clear that FTZ Board has never been “rate making” agency. Regulatory provisions provide key clarification, and allow enforcement as needed.