

# Public Utility/Uniform Treatment Considerations

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## Subjects to be discussed during this session

- 15 C.F.R. 400.42 – Operation of Zone Project as Public Utility
- 15 C.F.R. 400.43 – Uniform Treatment to be provided by Grantee to all parties desiring to participate within Grantee's Zone Project
- 15 C.F.R. 400.45 – Complaints filed with FTZB by zone participant regarding Grantee's breach of obligations under 400.42 or 400.43
- 15 C.F.R. 400.62 – Fines and Penalties



## Initial Thoughts

- These sections of the new FTZB Regulations are 4 of the most contentious in the Regulations.
- These 4 sections received a large number of comments from the public and the FTZB made numerous changes to the proposed Regulations based upon these comments.
- These 4 sections all have as their foundation language contained in the Foreign-Trade Zones Act of 1934
- Sections 400.42 and 400.43 have delayed compliance dates.  
**They do not become effective until March 1, 2014.**



## § 400.42 Operation as public utility

- Pursuant to 19 U.S.C. 81n which is Section 14 of the FTZA, each zone **shall be operated as a public utility**, and **all rates and charges** for all services or privileges within the zone **shall be fair and reasonable**.
- A fee may be imposed by Grantee on zone participants to recover costs **incurred by or on behalf of Grantee** for the performance of the Grantee function. Such fees must be **directly related to the service provided by Grantee** (for which the fee recovers some or all costs incurred) to the zone.



## § 400.43 Uniform treatment

- Pursuant 19 U.S.C. 81n which is Section 14 of the FTZA, a Grantee shall afford to all who may apply to make use of or participate in the zone **uniform treatment under like conditions.**
- **Treatment** of zone participants within a zone (including fees) **shall not vary depending** on whether a zone participant **has procured any zone-related product or service** or engaged a particular supplier to provide any such product or service.
- **Any agreement** or contract related to one or more Grantee function(s) and involving a zone participant (agreements with property owners or operators) **must be in writing.**



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## § 400.45 Complaints related to public utility and uniform treatment

- Grantees (and persons undertaking zone-related functions on behalf of Grantees) shall not enter into or enforce provisions of agreements with zone participants that would require zone participants to disclose to other parties, including the Grantee (or person undertaking a zone-related function(s) on behalf of Grantee), any confidential communication with the Board under this section.
- Zone participant **showing good cause may object** to any rate or charge related to the zone **on the basis that it is not fair and reasonable** by submitting to the Executive Secretary a complaint in writing with supporting information.



## § 400.45 Complaints related to public utility and uniform treatment

- Executive Secretary shall review complaint and issue a report and decision, which shall be final unless appealed to the Board within 30 days.
- The **primary factor** considered in reviewing fairness and reasonableness is the **cost of the specific services rendered**. Where those costs incorporate charges to the Grantee by one or more parties undertaking functions on behalf of Grantee, the FTZB may consider the costs incurred by those parties (using best estimates, as necessary).
- The FTZB will also give consideration to any extra costs incurred relative to non-zone operations, including return on investment and reasonable out-of-pocket expenses.



## § 400.62 Fines and Penalties

- Failure by a Grantee or a person undertaking one or more zone-related functions on behalf of Grantee to comply with the uniform treatment requirement constitutes a violation, with each day of continued violation constituting a separate offense subject to a fine of not more than 1,000 dollars.
- The party subject to the fine could be the zone operator, Grantee, or a person undertaking one or more zone-related functions on behalf of the Grantee.



## § 400.62 Fines and Penalties

- Violations of the FTZ Act or the Board's regulations including the section pertaining to uniform treatment may also result in the Executive Secretary's suspending the processing of any requests to the Board and staff relating to the zone in question.
- In certain circumstances, the Board or the Assistant Secretary for Import Administration could instruct CBP to suspend the activated status of all or part of a zone.

