

Port of Seattle Foreign-Trade Zone Tariff No. 9 - Effective 2014-02-01.

FOREIGN-TRADE ZONE TARIFF NO. 9 and FOREIGN-TRADE ZONE SCHEDULE

(Cancels and replaces Foreign-Trade Zone Tariff No. 8)

ITEM 1 **TITLE PAGE**

NOTICE

The electronic form of the Foreign-Trade Zone Tariff will govern in the event of any conflict with any paper form of the Foreign-Trade Zone Tariff. If you have printed an older version of this tariff, you need to print this version in its entirety.

**Naming:' Rates, Charges, Rules and Regulations applying at
Foreign-Trade Zone No. 5**

**Operating Under Grant of Authority of the Government of the
United States to the Port of Seattle Commission (Grantee)**

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2014-1-16 Port of Seattle Foreign-Trade Zone Tariff No. 9 - Effective _____.

ITEM TWO
TABLE OF CONTENTS

SECTION ONE: APPLICATION OF RATES

SECTION TWO: GENERAL RULES AND REGULATIONS

SECTION THREE: AUDITING AND RATE APPLICATIONS

SECTION FOUR: DEFINITIONS

2014-1-16 Port of Seattle Foreign-Trade Zone Tariff No. 9 - Effective _____.

SECTION ONE, APPLICATION OF RATES

ITEM 1000

APPLICATION OF RATES

Rates, rules, and regulations published in this tariff will apply at Foreign-Trade Zone No. 5, Port of Seattle, Seattle, Washington.

ITEM 1005

USE. DEEMED ACCEPTANCE

The use of the Zone shall be deemed complete acceptance of this tariff and the terms and conditions named herein.

SECTION TWO, GENERAL RULES AND REGULATIONS

ITEM 2115 **COMPLIANCE WITH LAWS**

User shall comply with all applicable federal, state and local laws and regulations.

ITEM 2135 **INSURANCE**

The Port shall not be responsible for insuring merchandise in the Zone.

ITEM 2145 **LIABILITY OF OTHERS**

If and when other companies are permitted to perform services at the Zone, they shall be held responsible for loss, damage, or theft by themselves or persons in their employ and liable for the injury of persons in their employ, except to the extent that any such injury results from negligent acts or omissions of the Port, its employees, or agents.

ITEM 2160 **PUBLIC INTEREST, HEALTH, OR SAFETY**

No operation or process or treatment will be permitted in the Zone that, in the sole judgment of the Port, is detrimental to the public interest, health, or safety.

ITEM 2185 **ZONE REGULATIONS**

General rules and regulations in this section governing procedure within Foreign-Trade Zone No. 5 are issued in conformity with and supplementary to the Board's regulations and such of the United States laws and regulations relating to ports of entry as are applicable to Foreign-Trade Zone operations.

ITEM 2205 **OPERATIONAL MANAGEMENT PROCEDURES/FOREIGN-TRADE ZONE SITE** **OPERATIONS MANUAL**

User shall establish and agrees to comply with standards of operation and management which conform to the requirements of the Board and Customs, and all applicable laws of the State of Washington and local jurisdictions. ZSO shall require all persons, firms, and corporations admitted by it to the Zone Site to conform to such standards. ZSO shall prepare and file with Customs a Foreign-Trade Zone Operations Manual.

ITEM 2210

SCOPE OF AUTHORITY

Foreign-Trade Zone No. 5 is authorized by Foreign-Trade Zone Board Order Nos. 19, 31, 48, 63, 111, and 432 to undertake warehousing and distribution activities only. All production and manufacturing (including kitting) activity that results in a substantial transformation of the product and a change in the imported material's classification under the Harmonized Tariff Schedule of the United States must be authorized by the Board. ZSO shall promptly notify the Port of any activity requiring Board notice and authorization.

ITEM 2215

SUNSET PERIODS

Any company within a magnet site should be aware that the magnet site will sunset if no portion of that site has been activated within five years. A usage-driven site will sunset if there is no actual zone admission and activity within three years of approval.

ITEM 2220

HANDLING MERCHANDISE

ZSO will be responsible for the receipt and verification of all merchandise admitted to the Zone Site on the proper forms prescribed by Customs and for handling of all merchandise within the Zone Site. ZSO will perform all these functions according to all Customs Regulations. ZSO further agrees not to allow removal of any merchandise located within the Zone Site without prior approval from Customs under the applicable laws, rules and regulations of Customs.

ITEM 2225

RIGHT OF ENTRY

Representatives of the Port, the Board, Customs and other authorized U.S. Government officers, shall have the right to enter the Zone Site during normal business hours for the authorized and lawful purpose of examining the Zone Site; conferring with ZSO, its agents, invitees, and employees; 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 Site and as required by this Agreement and Customs Regulations.

ITEM 2230

FURTHER INSTRUMENTS AND ACTIONS

The Port and ZSO shall deliver such further instruments and take such further action as may be reasonably requested by the other in order to carry out the provisions and purposes of ZSO's operations within the Zone. Without limiting the Port's rights as provided herein, the Port is not obligated to, and does not intend to, monitor the day-to-day activity of the Zone Site. The

appearance of the Port's name on any forms associated with Zone Site operations are not intended to represent that the Port has any knowledge, actual or constructive, of the quantity, character, status designation, identification, or time of admission, transfer or release of goods into or from the Zone Site, and that any information contained on any forms associated with Zone Site operations are the representations solely of ZSO and not of the Port.

ITEM 2235
COMMUNICATION

In order to maintain knowledge of operations, ZSO shall first inform the Port of any substantive written or oral communication with Customs or the Board with respect to Zone Site activity. All written submissions to the Board with respect to ZSO's activity must be made by the Port.

ITEM 2240
ANNUAL REPORTS

ZSO shall submit to the Port no later March 31st after the end of each calendar year an Annual Report containing all data, narratives, photographs, signatures and certifications required by the Board for such report. ZSO will file the Annual Report using the Board's electronic filing system, if available. If the electronic filing system is not available, ZSO will submit the Annual Report in a timely fashion in any other way approved by the Board.

ITEM 2245
AUDITS, INSPECTIONS AND REQUESTS FOR INFORMATION

ZSO shall promptly notify the Port of any oral or written request for information, inspection, spot check, or audit of any kind from Customs or the 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 the Port.

ITEM 2250
RECORD DEFICIENCIES

In the event that any audit, inspection, or examination by Customs, the Board, or the Port discloses that books, records or operational procedures of ZSO are not in conformance with the requirements of Customs Regulations or other federal, state or local laws or regulations, ZSO will undertake immediate correction of the documents or procedures once it becomes aware of the deficiency. In the event that ZSO anticipates that such correction will take more than five (5) working days, ZSO shall submit a plan of performance to the Port for the correction of such deficiency which shall be approved by the Port and, if necessary, by the Board and Customs, and shall proceed with all due diligence to correct the deficiency as described in the approved plan.

ITEM 2255
RECORD RETENTION

2014-1-16 Port of Seattle Foreign-Trade Zone Tariff No. 9 - Effective _____.

All financial and accounting records of ZSO concerning zone operations shall be retained for five (5) years after the merchandise covered by such records is removed from the Zone Site, and all such records shall be available for inspection and audit by any appropriate government agency and by the Port during normal business hours.

ITEM 2260

ADVERTISING

The Port may advertise that ZSO's operations are within Foreign-Trade Zone No. 5. Such advertising shall always seek to preserve a favorable image.

ITEM 2265

ANNUAL FEE FOR USAGE DRIVEN AND MAGNET SITES

ZSO will reimburse the Port for the reasonable value of actual services rendered by the Port and reasonable out-of-pocket expenses, an initial annual fee of **\$5,000.00** per year, payable on the date of activation, and on each annual anniversary date until ZSO notifies the Port it has ceased foreign-trade zone activity at the Site. The Port, in its sole discretion, may amend this fee in the future.

ITEM 2270

CUSTOMS BOND EXPENSE

ZSO shall secure in its name and pay the full cost of any bond required by Customs for operation of the Zone Site. A copy of the Foreign-Trade Zone Operator's bond shall be provided to the Port for its records.

ITEM 2275

DEFAULT AND TERMINATION

ZSO expressly agrees to abide by all the rules, regulations, charges and rates set forth in this foreign-trade zone tariff, and that any violation of the foreign-trade zone tariff shall be deemed a default under ZSO's agreement with the Port. If ZSO defaults in the performance of any of its obligations or breach any terms of its agreement with the Port or the terms of this tariff, and such default is not remedied to the sole satisfaction of the Port within thirty (30) days after notice of such default, then the Port may terminate this Agreement upon written notice to ZSO.

ITEM 2280

INDEMNIFICATION

ZSO shall hold harmless, indemnify and defend the Port, its respective officers, agents and employees (the "Indemnified Parties") from any and all losses, damages, costs, expenses, liabilities, obligations, fines, penalties, actions, judgments, suits, and causes of action, claims, demands and proceedings of any kind or description ("Claims") and all costs and expenses of any kind or nature, including, without limitation, all reasonable attorneys' fees, disbursements, court costs and any other costs of litigation related thereto arising out of, resulting from or directly or indirectly connected to ZSO's operation of the Zone Site or the performance by ZSO

of this Agreement, including, but not limited to Claims arising out of, resulting from or directly or indirectly connected to negligence, intentional misconduct, breach of contract, violation of Customs Regulations or other applicable federal, state, or local laws or regulations or other violation of or by ZSO, its employees or its agents. The Port will provide ZSO with notice in writing of any facts or situations arising out of Zone Site use that give rise to a claim by the Port for indemnification. In case any action shall be brought against the Indemnified Parties, or any of them, arising out of Zone Site usage, the Indemnified Party or Parties shall promptly notify ZSO in writing, and ZSO shall assume the defense, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement with the consent of the Indemnified Party or Parties, which consent shall not be unreasonably withheld or delayed. An Indemnified Party shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party unless the employment of such counsel has been specifically authorized by ZSO, or unless the representation of both ZSO and the Indemnified Party would represent a conflict of interest. ZSO shall not be liable for any settlement effectuated without its consent, but if any such action is settled with the consent of ZSO, or if there be a final judgment for the plaintiff in any such action, ZSO agrees to indemnify and does hereby hold harmless the Indemnified Parties from and against any and all loss or liability by reason of such settlement or judgment. The provisions of this section shall survive the termination or cancellation of the ZSO's agreement with the Port

ITEM 2285
INSURANCE

ZSO further agrees at its expense to place with an insurance company and keep in effect during the life of any agreement with the Port to operate a Zone Site insurance covering comprehensive general liability for the Zone Site in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage per occurrence. ZSO shall provide to the Port a Certificate of Insurance or other proof of such insurance satisfactory to the Port or a letter indicating a program of self insurance and its limits and availability of funds sufficient to meet the claims.

ITEM 2290
NO ASSIGNMENT

ZSO shall not transfer in any way its status as a zone site operator without the Port's prior written approval.

ITEM 2295
TERMINATION BY ZSO

ZSO shall have the right, at any time, to terminate without cause its Zone Site agreement with the Port and all rights and obligations upon sixty (60) days prior written notice. ZSO shall immediately provide all records and reports for the Port, the Board, and Customs required to complete any report required under Board or Customs rules and regulations.

ITEM 2300

TERMINATION BY THE PORT

The Port may terminate its participation in foreign-trade zone or subzone activities for any reason. ZSO shall have no claim against the Port by reason of such termination.

ITEM 2305

WITHDRAWAL OF GRANT

If the foreign-trade zone grant to the Port is revoked or canceled with or without the fault of the Port, ZSO's agreement with the Port shall terminate and ZSO shall have no claim against the Port by reason of such revocation or cancellation, and ZSO shall have no further interest in the subject matter of its Port agreement.

ITEM 2310

TERMINATION BY THE PORT OR ZSO

If, at any time after three (3) years from the effective date of a ZSO/Port agreement for Zone Site operation, the zone site has not been activated and no plan to commence such activity is submitted to the Port within thirty (30) days after receipt of written notice of intent to terminate, the ZSO/Port agreement may be terminated by either party giving written notice of such termination to the other party. Upon such termination, the rights and obligations hereunder of ZSO shall terminate, except in regard to the obligations of ZSO to take action or abstain from taking action after the termination.

ITEM 2315

SURVIVAL OF OBLIGATIONS

ZSO, upon termination or expiration of this Agreement for any reason whatsoever, 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 Port agreement, and ZSO will, upon termination or expiration of its Port agreement for any reason whatsoever, completely perform and fulfill any and all of its obligations or duties which arose or accrued during the term of its Port agreement, including the immediate preparation and filing of all necessary reports with the Board and Customs. ZSO's indemnity obligations, bond obligations, and record and record retention obligations shall survive termination or expiration of its Port agreement.

ITEM 2320

ZONE SITE ACTIVATION/DEACTIVATION/VOLUNTARY SUSPENSION

In the event ZSO chooses not to activate the Zone Site or to deactivate the Zone Site, ZSO's Port Agreement will remain in effect, but ZSO will not have to pay the annual fee to the Port during the period the Zone Site is not activated. In the event ZSO chooses to deactivate the Zone Site, ZSO shall provide sixty (60) days prior written notice to the Port. Deactivation will be

2014-1-16 Port of Seattle Foreign-Trade Zone Tariff No. 9 - Effective _____.

deemed to occur on the effective date so fixed by Customs. In the event the ZSO chooses to voluntarily suspend activity within the zone when no foreign non-duty paid merchandise passes through the facility, ZSO shall notify the Port, and the Port agreement will remain in effect. During a period of voluntary suspension, the Zone Site will remain activated. ZSO may reduce its Zone Site Operator's Bond to the minimum amount permitted by Customs. ZSO may recommence activity at its own discretion by notifying the Port. At such time as the ZSO chooses, it may reactivate or no longer voluntarily suspend the Zone Site and resume payment of the applicable fees, including a pro rata share of the annual fee for the remaining portion of the first year of the restoration of activity. ZSO shall furnish the Port with a copy of any deactivation, reactivation, suspension, or restoration of activity letters provided to Customs.

ITEM 2325

APPLICABLE LAW/VENUE

Any agreement between ZSO and the Port shall be governed by and construed in accordance with the Foreign-Trade Zones Act, regulations adopted by the Board and Customs and all amendments thereto, and the applicable laws of the State of Washington, without regard to principles of conflicts of laws. Any legal action or proceeding brought or instituted with respect to any dispute or disagreement arising hereunder or with respect to any breach of the terms and provisions hereof shall be finally settled in the courts of the State of Washington with venue in King County Superior Court.

SECTION THREE. AUDITING AND RATE APPLICATIONS

ITEM 3515
APPLICATION FOR NEW SUBZONES AND ZONE
OPERATIONS

(A) ESTABLISHING A SUBZONE

When there is a request from a corporation, partnership or individual to establish a Subzone (Special-Purpose Zone) and the Port approves, the following fees will apply:

Application Fee \$5,000.00
Subzone Annual Fee\$15,000.00

(B) ESTABLISHING A USAGE-DRIVEN OR MAGNET SITE

When there is a request from a corporation, partnership or individual to the Port requesting FTZ status off Port property (other than a subzone), and the Port approves, the following conditions and fees will apply:

Application Fee (magnet and usage-driven sites).....\$5,000.00
Annual Fee (usage-driven).\$5,000.00
Annual Fee (magnet)\$5,000.00

Note: The annual fee is due on the anniversary of the activation of the operator's site.

SECTION FOUR, DEFINITIONS

"Board" is the Foreign-Trade Zone Board

"Customs" is United States Customs and Border Protection

"Magnet Site" is an FTZ site intended to attract multiple potential foreign-trade zone users

"Port" is the Port of Seattle, the grantee of Foreign-Trade Zone No. 5.

"Usage-Driven Site" is a site designated to meet a specific user's present need for foreign-trade zone designation; usage-driven sites cannot be used by another entity.

"User" is any person, partnership, corporation or other entity storing, manipulating, manufacturing, destroying or exhibiting goods or otherwise engaging in foreign-trade zone activity through an agreement with the Port.

"Zone" is Foreign-Trade Zone No. 5, Seattle, Washington, operated by the Port of Seattle, and all sites where foreign-trade zone activity is occurring under an agreement with the Port.

"ZSO" is Zone Site Operator

"Zone Site" is the location within Foreign-Trade Zone No. 5 approved by the Board for foreign-trade zone activity.

"Zone Site Operator" is an organization, corporation, partnership, or person that operates under the terms of an agreement with the Port to conduct foreign-trade zone activity.