



February 9, 2011

Mr. Andrew McGilvray
Executive Secretary
Foreign-Trade Zone Board
U.S. Dept. of Commerce
1401 Constitution Ave NW
Room 211
Washington, D.C. 20230-0002

Dear Mr. McGilvray:

We appreciate the amount of staff time and thought that went into the new proposed FTZ Regulations. As Grantee Administrator for FTZ #176, I also applaud several specific changes that I think will help and clarify some vexing issues for the participants and our federal partners.

Everyone I've talked to is pleased that the time for responses has been extended and that the FTZ Board and staff are anxious for feedback and willing to collaborate.

It is in that spirit that I offer both general comments and a few specific concerns.

GENERAL COMMENTS

- Clarity of Language – In NAFTAZ discussion groups, there have been numerous differences of opinion about the meaning of words or phrases – the intent behind the language. If we can't understand and/or agree, how will the general public or business community?
- Document Size – Coupled with questions about language, nearly doubling the overall length virtually guarantees that there will be double the disputes from words not clearly defined, implications not clearly stated, etc. Those people who make their living on parsing sentences and obfuscation of language are drooling!
- Executive Order, Jan 18: "Improving Regulation & Regulatory Review" – The expanded document would seem to fly in the face of this recent business initiative of the White House. The President has repeatedly reinforced his determination to cost-justify red-tape, clarify language, measure and seek improvement with new rules. A key directive: agencies must "tailor regulations to impose the least burden on society..."
- Impact on Grantees, and thus potential operators/end users, large and small – These new regulations, in toto, will have a chilling effect on marketing and recruiting by Grantees. The result is a document filled with complexity, ambiguity, additional report requirements and punitive measures. This will be a tough sale to close and begs the point of the program: partnering with industry to grow the economy through the retention and creation of jobs!
- Overkill – We all know there are some difficult situations to adjudicate and personalities to manage. But it seems some of the increased length and regulatory teeth are in an attempt to address issues that could be counted – across the network – on one hand. Why use a sledgehammer when a fly swatter would work? Perhaps you could lay out specific egregious

violations (with the opportunity to file a dispute to such a ruling) and then empower the Board/staff to use mediation and then apply specific sanctions?

- Consistent “fair and reasonable” treatment – I applaud the effort to make us compliant. I would suggest that this same criteria should also be applied to the decisions of the FTZ Board and staff. The frequent changes in the ASF structure, protocols as well as different application of territorial standards in different parts of the country, require we ask for the same uniformity.
- Key stakeholder: private sector business – Given some of the language and new sections in the proposal, there has been consensus that the staff believes their primary constituency is the Grantees. I would respectfully disagree. In my opinion: the Grantee is merely the facilitator – the conduit – between the ultimate partners of the program: the federal government and the private sector beneficiaries. One awards special tax treatment to encourage the other to retain and create jobs here in the United States.

SPECIFIC QUESTIONS/CONCERNS

- Definitions – Some of the language that most needs clear definition is “agent”, “zone participant”, “production”, “capacity” and “fraudulent intent.” Two major curiosities for me: “convenience of commerce” and “public interest”. These raise the question of why one is used in one context but not another. Are they interchangeable? Why not define one and apply uniformly? Please do not leave room for confusion.
- Grantee Liability – Section 400.47 states that liability is limited for Grantees. But Section 400.62 obscures these limitations. The addition of “penalties” and lack of clarity on Grantee obligations under the regulations add to the general unease of Zone officials.
- “Net economic effect” – What happened to this language in 400.34?
- Termination of a review of an application – Section 400.35 cedes this new power to the Assistant Secretary or Executive Secretary. I don’t understand the reason for this section. Particularly the reference to the Board in the case of a non-unanimous decision.
- Uniform Treatment – Section 400.43 address contracts. There has been much discussion about agreements/contracts uniformity and the necessity to publish documents on line. This section also is very controversial for what appears to be a restriction of Grantee ability to work with specific service providers. Given the massive increase in complexity proposed, I think we all may need a “lifeline” in the form of a consultant.
- Zone Schedule – I currently publish my Schedule on our website. There is some legitimate concern, however, about the ultimate effect of this ‘sunshine law’ requirement. One key issue: will publication apply pressure on Grantees who are ‘out of step’ with their neighbors?

I can only imagine the volume of response you have – or will – receive on this posting to the Federal Register. I would be happy to discuss my concerns or thoughts in a phone call with you, Liz or other FTZ Board staff members. Thank you for listening.

Sincerely,



Marge Bevers, Administrator
FTZ #176