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May 4, 2011

Mr. Andrew McGilvray
Executive Secretary
Foreign-Trade Zones Board
Herbert Clark Hoover Building
14th Street and Constitution Avenue, NW
Washington, DC 20230

Re: Foreign-Trade Board Proposed Rule
75 *Federal Register* 82340-82362, December 30, 2010
Docket # ITA-2010-0012, RIN 0625-AA81

Dear Mr. McGilvray:

I am pleased to submit to you the comments of the National Association of Foreign-Trade Zones on the FTZB Proposed Rule published December 30, 2010.

We appreciate your full considerations of the attached document and thank you again for the extension of the comment period to May 26, 2011. Without the extra period of time it would not have been possible to bring together the views of our broad membership and present a consensus document to the FTZ Board.

Best regards,

A handwritten signature in black ink, which appears to read 'Willard M. Berry', is positioned above the typed name.

Willard M. Berry
President

PARTNERSHIP. PRIDE. PROSPERITY.

INTRODUCTION

The NAFTAZ, as the association most directly concerned with the establishment, operation and administration of the foreign-trade zones program, is pleased to provide these comprehensive comments on the FTZ Board's proposed rule. The NAFTAZ includes members in the public and private sector. As such, it is in a unique position to evaluate the regulations' attention to the fundamental purposes behind the FTZ program. The FTZ program, since its inception, has as its purpose to "expedite and encourage foreign commerce." S. Rep. 73-905 at 1 (1934). This has never been more vital to the economic progress of the United States than it is today and in the future. The NAFTAZ believes the FTZ program is the most flexible trade-related program in the U.S. government's tool box and that realizing its potential can add substantially to our national wealth, create and maintain employment and encourage investment in our country.

First and foremost, the FTZ program should encourage activity in the United States that could, for Customs reasons, otherwise be done in other countries. The 1991 regulations stated this point very clearly: "Zones have as their public policy objective the creation and maintenance of employment through the encouragement of operations in the United States which, for Customs reasons, might otherwise have been carried on abroad." 56 Fed. Reg. 50790 (October 8, 1991). The Association's comments apply this "prime directive" to each aspect of the Board's proposed procedures. The Association notes where changes are necessary or appropriate to carry out this vital mandate.

Second, FTZs can and should promote U.S. exports. The NAFTAZ notes that the Department of Commerce and CBP have endorsed this position as part of the National Export Initiative (NEI). Export promotion requires global competitiveness. Zones provide the opportunity for American manufacturers, distributors and retailers to improve global competitiveness and thereby increase exports. Americans need to be employed in our export manufacturing industries.

Third, to promote the prime directives of global competitiveness and exports, foreign trade zone procedures should be as transparent and straightforward as possible. The FTZ Board's regulations make significant strides in this area. The NAFTAZ suggests additional improvements in its comments. Advance review should be expedited as much as possible. While it is clear that some applications will raise objections, it is vital to balance those objections, keeping the Prime Directive firmly in mind. Uncertainties should be minimized for applicants and FTZ users for the same reasons. Advance approvals are necessary in most cases, because zone procedures require significant investments in equipment, workers and inventory systems. But these approvals should take the minimum amount of time possible, given the pace of change in the global economy.

Fourth, the administration of zones by public and private agencies requires them to be informed clearly of their obligations and penalties for violation of those obligations. The expansion of penalty authority creates disincentives to offering FTZ services by state and local economic development entities. An alternative approach is offered to this issue that balances the interests of all concerned. The Association looks forward to further discussions with the Board on this important issue.

This rulemaking will set the tone for the FTZ program as an economic competitiveness, job growth and export promotion tool for years to come. It is critically important that the regulations strike the proper balance of interests for all groups. The proposals of the NAFTAZ, reflected in these comments, are intended to further this process. The Association is eager to discuss any questions that the Board may have and to help make zones the most flexible, and available, choice for U.S. activity in the 21st Century.

DISCUSSION

The NAFTAZ fully supports and applauds the Board's goals of expediting export production, encouraging new U.S. production, and addressing the Act's requirement for Grantees to provide uniform treatment of zone users under public utility principles. In

that light, the membership of the association has provided herein its comments to advance these goals through the introduction of some significant modifications, and what we believe to be improvements, to the Board's Proposed Rule.

The NAFTAZ membership has spent a considerable amount of time since publication of the comprehensive Proposed Rule in the *Federal Register* analyzing every word and sentence of the document. The NAFTAZ presented a Webinar to its members to help them analyze and evaluate the proposed rules. A detailed multi-hour presentation occurred at the NAFTAZ February 2011 Washington meeting that had the largest attendance in the 39 year history of the Association. The Spring conference held in May 2011 in Houston will be devoted to the proposed rules and the Association's comments. The NAFTAZ formed four Task Forces of NAFTAZ members. One of the most active was the Grantee Task Force, because Grantees are at the front lines of economic development and attraction of investment. Significant technical and drafting input was received from a large number of Grantees through the Task Force. We also formed a specific Task Forces for FTZ Operators/Users and Service Providers so that a wide range of focused specific issues could be identified and analyzed, including impacts of the Proposed Rule and development of necessary and appropriate changes. A Regulations Task Force which compiled comments and suggestions from the Task Forces, Board of Directors, and other sources, and drafted the comments to produce the document the Association is submitting to the Board as the NAFTAZ comments. The Regulations Task Force had numerous conference calls and meetings. A two day 23 hour drafting meeting in Washington was attended by 18 members from all parts of the U.S. A second drafting session took place, followed by a review by the full Task Force, and final review and approval of these comments by the NAFTAZ Board of Directors. Numerous conference calls by the four Task Forces occurred to discuss issues and alternative means of achieving the goals of the Foreign-Trade Zones Board.

SUMMARY OF COMMENTS

Briefly the NAFTAZ proposed revisions:

- (1) Add twenty-one (21) and delete or revise five (5) FTZ Board definitions;
- (2) Add three entirely new sections dealing with the important issues of the CBP Port Directors as the Board's local Representatives, implementation of Export Promotion, and Federal Agency Uniform Procedures on FTZ Compliance;
- (3) Incorporate specifically into the Regulations the Board's comprehensive Alternative Site Framework (ASF);
- (4) Add a specific section and processes for expedited export production authority, including provision for a Board Order to authorize export production;
- (5) Address the need for expedited approval of new imported materials in U.S. production in proposed Secs. 400.14, 400.23, and 400.40 by suggesting an entirely new and significantly simplified process for approval of intermediate and finished goods, avoiding unnecessary complexity and delay for approval to use new inputs in manufacturing to produce intermediate and finished goods that could otherwise take place in other countries;
- (6) Modify Subpart C of the Proposed Rule on Applications to simplify the language and make the Regulations consistent with the current requirements on the FTZ Board's website.
- (7) Increase transparency by providing for the posting of information on intermediate and finished products, materials, and components used in the production of intermediate/finished products that have been the subject of Board restrictions, prohibitions, and withdrawals of Applications;
- (8) Propose an expedited schedule for processing of applications in Subpart D, as provided in the Proposed Rule, the processing time for Applications was reduced fifty (50) percent from the current standard;
- (9) Significantly changing Subpart E of the proposed Rules, achieving the Board's twin concerns of Grantee "equal treatment" and activity under "public utility"

principles in an entirely different, and the NAFTZ believes, more balanced and comprehensive manner.

- (10) Modify Subpart E at Secs. 400.51 and 400.54 to recognize the business necessity of not disclosing by company name statistical information in the FTZ Board Annual Report and suggest certain necessary changes to Annual Report filing and Notice of Hearings.
- (11) Modify Subpart G in an attempt to reduce the chilling effect the Board's proposed penalty provisions could have had on Grantees and Operators currently participating in the FTZ Program as well as potential Grantees and Operators considering engaging in the Program.

The NAFTZ has dedicated special attention in an attempt to insure consistent use of language, and terminology. We propose changing some sections significantly and eliminating others. We tried to eliminate duplicate wording in multiple sections, and attempts have been made to consolidate many of the sections. Finally, the NAFTZ has proposed new sections to (1) address the role of the CBP Port Directors as the designated local representatives of the Board, including a means to expedite CBP activation to implement the Board's expedited approvals for export production, etc.; (2) determine FTZ compliance with Participating Government Agencies (PGAs) and Other Government Agencies (OGAs) requirements; and (3) add a new specific export promotion process in concert with the Commerce Department's domestic and overseas export promotion efforts with a specific role in FTZ export promotion. The NAFTZ strongly believes the comprehensive and inclusive approach undertaken fairly represents the views of all stakeholder groups within the FTZ program and will encourage FTZ use as an instrument of U.S. competitiveness. The Association looks forward to working with the Foreign-Trade Zones Board to achieve our mutual objectives.

This rulemaking should be undertaken with specific reference to Executive Order No. 13563 signed by President Obama on January 18, 2011 ("Improving Regulation and Regulatory Review"). This Executive Order encourages Regulations to be drafted

considering a cost/benefit analysis, reducing the burden on small businesses, considering flexible approaches for new Regulations, and encouraging collaboration between government and industry. The NAFTAZ looks forward to meeting with the Board to discuss our suggested changes.

Detailed Comments on the Proposed Rule

Preamble:

We believe that the policy objectives of the FTZ program must be the starting point for developing Regulations. The preamble to the 1991 Regulations contains an important paragraph which articulates that purpose:

Zones have as their public policy objective the creation and maintenance of employment through the encouragement of operations in the United States which, for customs reasons, might otherwise have been carried on abroad. The objective is furthered particularly when zones assist exporters and re-exporters, and usually when goods arrive from abroad in an unfinished condition for processing here rather than overseas.

We urge that this public policy purpose be articulated in the preamble of the revised Regulations, any re-proposal and any Interim Regulation that may be adopted by the Board. For the reasons set out in the preamble, it is proposed to revise 15 CFR part 400 as follows:

PART 400--REGULATIONS OF THE FOREIGN-TRADE ZONES BOARD

Subpart A--Scope, Definitions and Authority

400.1 Scope.

400.2 Definitions.

400.3 Authority of the Board.

400.4 Authority and responsibilities of the Executive Secretary.

400.5 Authority to restrict or prohibit certain zone operations.

400.6 Board headquarters.

400.7 CBP Port Director as Board Representative.

400.8 Export Promotion

400.9 Federal Agency Uniform Procedures on FTZ Compliance.

Subpart B--Ability To Establish Zone; Limitations and Restrictions on Authority

Granted

400.11 Number and location of zones.

400.12 Eligible applicants.

400.13 General conditions, prohibitions and restrictions applicable to grants of authority.

400.14 Production--activity requiring approval or reporting; restrictions.

400.15 Production equipment.

400.16 Exemption from State and local ad valorem taxation of tangible personal property.

Subpart C--Applications To Establish and Modify Authority

400.21 Application for new general-purpose zone.

400.22 Application for subzone.

400.23 Application for production authority

400.24 Criteria for evaluation of production activity.

400.25 Application for expansion or other modification to Zone Project.

400.26 Criteria for evaluation of zone proposals or expansion or other modifications to Zone Projects.

400.27 Burden of proof.

400.28 Application fees.

Subpart D--Procedures for Application Evaluation and Reviews

400.31 General application provisions and pre-docketing review.

400.32 Procedure for docketing application and commencement of case review.

400.33 Examiner's review--case not involving production activity.

400.34 Examiner's review--case involving production activity.

400.35 Completion of case review.

400.36 Procedure for application for minor modification of Zone Project.

Subpart E--Operation of Zones and Administrative Requirements

400.40 Monitoring and reviews of zone operations and activity

400.41 Operation of zones; general.

400.42 Operation as public utility principles.

400.43 Uniform treatment.

400.44 Requirements for commencement of operations in a Zone Project.

400.45 Zone Schedule.

400.46 Complaints related to public utility and uniform treatment.

400.47 Grantee or administrator liability.

400.48 Retail trade.

400.49 Zone-restricted merchandise.

Subpart F--Records, Reports, Notice, Hearings and Information

400.51 Accounts, records and reports.

400.52 Notice and hearings.

400.53 Official record; public access.

400.54 Information.

Subpart G--Penalties, Prior Disclosure and Appeals to the Board

400.61 Revocation of grants of authority.

400.62 Fines, penalties and instructions to suspend activated status.

400.63 Voluntary disclosure.

400.64 Appeals to the Board of decisions of the Assistant Secretary for Import Administration and the Executive Secretary.

DISCUSSION - Sec. 400.1 Scope.

The Proposed Rule did not address the complexity of how FTZs interface with a wide variety of trade programs. Several sentences were added at 400.1 (c) to make it clear that while zones are not within the Customs territory, they are within the NAFTA/FTA territories and for certain agreements the STTP territory for purposes of production of qualifying products. U.S. zones may be used for storage purposes only for the direct shipment of goods from one Free Trade Agreement (FTA) country to another one or more FTA countries. Further, for the purposes of NAFTA, FTAs, GSP, and STTP, eligible goods for warehousing are “imported directly” into the U.S. when admitted to a U.S. FTZ in non-privileged foreign or privileged foreign status. For production activity such goods are considered “imported directly” when admitted to a U.S. FTZ in privileged foreign status.

Authority: Foreign-Trade Zones Act of June 18, 1934 (as amended by Pub. Law 397, 73rd Congress, 48 Stat. 998-1003 (19 U.S.C. 81a-81u)).

Subpart A--Scope, Definitions and Authority

Sec. 400.1 Scope.

- (a) This part sets forth the Regulations, including the Rules of practice and procedure, of the Foreign-Trade Zones Board with regard to foreign-trade zones (FTZs or zones) in the United States pursuant to the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a-81u). It includes the substantive and procedural Rules for the authorization of zones and the Regulation of zone activity. The purpose of zones as stated in the Act is to “expedite and encourage foreign commerce, and other purposes.” The Regulations provide the legal framework for accomplishing this purpose in the context of evolving U.S. economic and trade policy, and economic factors relating to international competition.

- (b) Part 146 of the Customs Regulations (19 CFR part 146) governs zone operations, including the admission of merchandise into zones, zone activity involving such merchandise, and the transfer of merchandise from zones.
- (c) To the extent “activated” under U.S. Customs and Border Protection (CBP) procedures in 19 CFR part 146, and only for the purposes specified in the Act (19 U.S.C. 81c), zones are treated for purposes of the tariff laws and customs entry procedures as being outside the customs territory of the United States. However, zones are within the North American Free Trade Agreement (NAFTA)/ Free Trade Agreements (FTAs) and certain Special Trade Treatment Program (STTP) territory in order to produce qualifying products. All goods admitted, held, and shipped from zones are under CBP custody and control. Therefore, merchandise temporarily stored in a U.S. foreign-trade zone may qualify under the direct shipment rules of third party trade agreements. For purposes of NAFTA, FTAs, GSP, and other Special Trade Preference Programs (STPPs) eligible goods for warehousing are “imported directly” into the U.S. when admitted to a U.S. FTZ in non-privileged foreign or privileged foreign status. For purposes of NAFTA, FTAs, GSP, and other STTPs eligible goods for production are “imported directly” into the U.S. when admitted to a U.S. FTZ in privileged foreign status. Under zone procedures, foreign and domestic merchandise may be admitted into zones for operations such as storage, exhibition, assembly, manufacture and processing, without being subject to formal customs entry procedures and payment of duties, unless and until the foreign merchandise enters customs territory for domestic consumption. At that time, the importer ordinarily has a choice of paying duties either at the rate applicable to the foreign material in its condition as admitted into a zone or to the emerging product. Quota restrictions do not normally apply to foreign goods in zones. The Board can deny or limit the use of zone procedures in specific cases on public interest grounds. Merchandise moved into zones for export (zone-restricted status) may be considered exported for purposes such as Federal excise tax rebates and customs drawback. Foreign merchandise (tangible personal property) admitted to a zone and domestic merchandise held in a zone for exportation are exempt from

certain State and local ad valorem taxes (19 U.S.C. 81o(e)). Articles admitted into zones for purposes not specified in the Act shall be subject to the tariff laws and regular entry procedures, including the payment of applicable duties, taxes, and fees.

DISCUSSION - Sec. 400.2 Definitions.

The NAFTAZ believes that a key improvement to the Proposed Rule would be to significantly modify and add definitions. Major concerns with this section include the lack of definitions for key terms, the broadness of definitions for certain terms, and the need to broaden the definition of certain terms. Key terms related to the Alternative Site Framework (ASF) and the Traditional Site Framework (TSF) have been added. The term “Agent” has been deleted because the Association believes it causes too much legal complexity. Alternatives that work better are included. A proposed definition for “inverted tariff” and “production” are included. While the new terminology of “production” replaces manufacturing, manipulation, etc. in the new Proposed Rule, it was not defined. The four zone statuses of merchandise have been added. A total of twenty (20) new terms have been added and five (5) deleted.

Sec. 400.2 Definitions.

- (a) Act means the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a-81u).
- (b) Activation means obtaining approval from CBP with the concurrence of the Grantee under 19 CFR part 146 to operate all or a portion of a designated zone site.
- (c) Administrator means a person (as defined in Sec. 400.2(u)) acting on behalf of or under agreement with the Grantee in matters related to management of the Zone Project.
- (d) Alternative Site Framework or ASF is a Grantee general-purpose zone site management strategy adopted by the Board in 2009 that assigns a specific service area to each participating Grantee. Under ASF, Grantees may designate general-purpose zone sites as needed through minor boundary modifications.

Under ASF, general-purpose zone sites are subject to time limits that automatically remove the FTZ designation (sunset) if no FTZ activity occurs within a specified period.

- (e) Board means the Foreign-Trade Zones Board, which consists of the Secretary of the Department of Commerce (chairman) and the Secretary of the Treasury, or their designated alternates.
- (f) Board Order means a final decision by the Board published in the *Federal Register*.
- (g) CBP means U.S. Customs and Border Protection.
- (h) Domestic Status merchandise means the growth, product or manufacture of the U.S. on which all internal revenue taxes, if applicable, have been paid; or previously imported merchandise on which duty and tax has been paid; or previously entered merchandise free of duty and tax.
- (i) Executive Secretary is the Executive Secretary of the Foreign-Trade Zones Board.
- (j) Foreign-trade zone (FTZ or zone) is a restricted-access site, including subzones, in or adjacent (as defined by Sec. 400.11(b)(2)) to a CBP port of entry, operated pursuant to public utility principles under the sponsorship of a Grantee authorized by the Board and under the supervision of CBP.
- (k) Free Trade Agreement (FTA) is any Free Trade Agreement entered into by the U.S.
- (l) General-purpose zones are designated to accommodate multiple companies involved in distribution or production activities.
- (m) Grant of authority is a Board Order that authorizes a Grantee to establish, operate and maintain a General-purpose zone or a Subzone, subject to limitations and conditions specified in this part and in 19 CFR part 146.
- (n) Grantee is the recipient of a federal grant of authority for a Zone Project. The Grantee is the local public interest representative and community sponsor of the Zone Project. The Grantee is the primary point of contact between the Board and the Zone Project.

- (o) Inverted Tariff means a change in customs classification of Non-privileged foreign merchandise through production resulting in a reduction of the duty rate. Inverted Tariffs must be authorized by Board Order.
- (p) Magnet Site under the ASF is a general-purpose zone site intended to attract multiple Users.
- (q) Modification: A major modification is a proposed change to the Zone Project that requires a Board Order; a minor modification is a proposed change to the Zone Project that does not require a Board Order.
- (r) NAFTA (see FTA) is the North American Free Trade Agreement
- (s) Non-privileged foreign (NPF) is the status of foreign merchandise that does not have the status of privileged foreign, zone restricted, or domestic. NPF status merchandise is classified in its condition at the time of customs entry.
- (t) Operator is a person that is responsible for day-to-day oversight activities within a general-purpose zone or subzone under the terms of an agreement with the Grantee, with the approval of CBP. Under 19 CFR part 146 the Operator is the party required to maintain a Foreign-Trade Zone Operator's Bond.
- (u) Person includes any individual, corporation, or entity.
- (v) Port Director is the director of CBP for the CBP jurisdictional area in which the zone is located.
- (w) Port of entry means a port of entry or a customs station in the United States, as defined by part 101 of the customs Regulations (19 CFR part 101), or a user fee airport authorized under 19 U.S.C. 58b and listed in part 122 of the Customs Regulations (19 CFR part 122).
- (x) Private corporation means any corporation, other than a public corporation, which is organized for the purpose of establishing a Zone Project and which is chartered for this purpose under a law of the State in which the zone is located.
- (y) Privileged foreign (PF) is the status of foreign merchandise that has not been manipulated or manufactured so as to effect a change in tariff classification at the time the status is elected. PF status is binding and cannot be abandoned even if changed in form by production. PF status merchandise is classified and appraised in its condition at the time the status is elected.

- (z) Production, as used in this part, means any activity which results in a change in the customs classification of foreign merchandise or any activity that involves a change in condition of foreign merchandise which impacts its eligibility for entry for consumption, regardless of whether U.S. customs entry actually is ultimately made on the article resulting from the production activity.
- (aa) Public corporation means a state, a political subdivision (including a municipality) or public agency thereof, or a corporate municipal instrumentality of one or more states.
- (bb) Service Area under ASF is a defined geographic area (typically a list of counties) that is adjacent to a CBP port of entry under Sec. 400.11(b)(2)(i). Under ASF, the Service Area defines the area in which general-purpose zone Magnet Sites may be added and Usage Driven Sites may be applied for under minor boundary modifications.
- (cc) Site (zone site) is one or more contiguous parcels of land designated as a foreign-trade zone.
- (dd) State includes any State of the United States, the District of Columbia, and Puerto Rico.
- (ee) Special Tariff Treatment Program (STTP) goods are goods eligible for special tariff treatment programs described in General Note 3(c) to the Harmonized Tariff Schedule of the United States (HTSUS), as amended from time to time.
- (ff) Subzone means a special-purpose zone with one or more sites established as an adjunct to a Zone Project for a specific company.
- (gg) Traditional Site Framework or TSF is a Grantee general-purpose zone site management strategy that focuses on attracting zone users to specific zone sites. Under TSF, additional general-purpose zone sites are typically designated through major boundary modifications while changes to existing zone sites are typically made through minor boundary modifications. Under TSF, zone sites are not subject to specific time limits unless restricted by Board Order.
- (hh) Usage-Driven Site under ASF is a general-purpose zone site designated to meet the needs of a prospective Operator. .
- (ii) Zone Participant is an Operator or User.

- (jj) Zone Project means a foreign-trade zone established under the provisions of the Act and these Regulations. Where used in this part, the term also includes subzones.
- (kk) Zone restricted (ZR) is the status of merchandise admitted into a zone for the sole purpose of exportation, destruction, or storage. Zone restricted status cannot be abandoned except by Board Order.
- (ll) User is a person utilizing the zone.

DISCUSSION - Sec. 400.3 Authority of the Board.

A modification was made to expand the Board's authority in the Proposed Rule. In addition a variety of small wording changes were added as clarification. The term "Zone Project" was added to be more comprehensive. Terminology was added to clarify the Board's authority and that decisions of the Board must be unanimous.

Sec. 400.3 Authority of the Board.

- (a) In general. In accordance with the Act and procedures of this part, the Board has authority to:
 - (1) Prescribe Rules and Regulations concerning zones;
 - (2) Issue grants of authority for Zone Projects;
 - (3) Approve modifications to a Zone Project;
 - (4) Approve production activity in zones;
 - (5) Issue determinations in proceedings under the Regulations in the form of a Board Order;
 - (6) Decide appeals in regard to certain decisions of the Commerce Department's Assistant Secretary for Import Administration or the Executive Secretary;
 - (7) Inspect the premises, operations and accounts of Grantees, Operators, and Users related to zone activity;
 - (8) Require Grantees and Operators to report on zone operations;
 - (9) Report annually to the Congress on zone operations;
 - (10) Restrict or prohibit zone operations;

- (11) Terminate reviews of applications under certain circumstances pursuant to Sec. 400.35(f);
 - (12) Authorize under certain circumstances the entry of Zone restricted merchandise into the customs territory under Sec. 400.49;
 - (13) Award lowest available duty rate including trade agreement preferences.
 - (14) Impose fines for violations of the Act and this part;
 - (15) Instruct CBP to suspend activated status pursuant to Sec. 400.62(i);
 - (16) Revoke grants of authority for cause; and,
 - (17) Determine, as appropriate, whether zone activity is or would be in the public interest or detrimental to the public interest.
- (b) In general, The Chairman of the Board. The Chairman of the Board (Secretary of the Department of Commerce) has the authority to:
- (1) Appoint the Executive Secretary of the Board;
 - (2) Call meetings of the Board, with reasonable notice given to each member; and,
 - (3) Submit to the Congress the Board's Annual Report as prepared by the Executive Secretary.
- (c) Alternates. Each member of the Board will designate an alternate with authority to act in an official capacity for that member.
- (d) In general, the Commerce Department's Assistant Secretary for Import Administration has the authority to:
- (1) Make determinations pursuant to Sec. 400.14(d);
 - (2) Terminate reviews of applications under certain circumstances pursuant to Sec. 400.35(d);
 - (3) Mitigate and assess fines pursuant to Sec. Sec. 400.62(f) and (g) and instruct CBP to suspend activated status pursuant to Sec. 400.62(i); and,
 - (4) Restrict the use of zone procedures under certain circumstances pursuant to Sec. Sec. 400.13(b) and 400.40(c).

DISCUSSION - Sec. 400.4 Authority and responsibilities of the Executive Secretary.

A modification was made to clarify the Executive Secretary's activities. Language was added to clarify and better describe the role of the Executive Secretary especially in the view of later proposed changes to the Regulations.

Sec. 400.4 Authority and responsibilities of the Executive Secretary.

The Executive Secretary has the following responsibilities and authority, which are to be exercised in a neutral manner:

- (a) Represent the Board in administrative, regulatory, operational, and public affairs matters;
- (b) Serve as director of the Commerce Department's Foreign-Trade Zones staff;
- (c) Execute and implement orders of the Board;
- (d) Arrange meetings and direct circulation of action documents for the Board;
- (e) Arrange with other sections of the Department of Commerce and other governmental agencies for studies and comments on zone issues and proposals;
- (f) Maintain custody of the seal, records, files and correspondence of the Board, with disposition subject to the Regulations of the Department of Commerce;
- (g) Issue notices on zone matters for publication in the *Federal Register*;
- (h) Direct processing of applications and reviews, including designation of examiners and scheduling of hearings, under various sections of this part;
- (i) Determine zone sponsorship questions as provided in Sec. 400.11 and Sec. 400.12;
- (j) Make recommendations in cases involving questions as to whether zone activity should be prohibited or restricted for public interest reasons, including reviews under Sec. 400.5;
- (k) Determine questions of scope under Sec. 400.14(f);
- (l) Determine whether additional information is needed for evaluation of applications and other requests for decisions under this part, as provided for in various sections of this part, including Sec. Sec. 400.21, 400.22, 400.23, and 400.25;

- (m) Issue instructions, guidelines, forms and related documents specifying time, place, manner and formats for applications as provided in Sec. 400.21(b);
- (n) Determine whether proposed modifications involve major changes under Sec. 400.25(a)(2);
- (o) Determine whether applications meet pre-docketing requirements under Sec. 400.31(b);
- (p) Terminate reviews of applications under certain circumstances pursuant to Sec. 400.35(d);
- (q) Authorize minor modifications to Zone Projects including temporary approvals pending Board Orders under Sec. 400.36;
- (r) Review and process production changes under Sec. 400.14;
- (s) Direct monitoring and reviews of zone operations and activity under Sec. 400.40;
- (t) Accept rate schedules and determine their compliance with Sec. 400.45(c);
- (u) Assess potential issues and make determinations pertaining to uniform treatment under Sec. 400.43;
- (v) Review and decide complaint cases under Sec. 400.46;
- (w) Make determinations and authorizations pertaining to retail trade under Sec. 400.48;
- (x) Authorize the entry of Zone restricted merchandise into the customs territory under Sec. 400.49;
- (y) Determine the format and deadlines for the Annual Reports of Grantees to the Board and direct preparation of an Annual Report to Congress from the Board under Sec. 400.51(d);
- (z) Make recommendations and determinations regarding violations and fines, and undertake procedures related to the suspension of activated status, as provided in Sec. 400.62; and,
- (aa) Designate an acting Executive Secretary.

DISCUSSION - Sec. 400.5 Authority to restrict or prohibit certain zone operations.

The order of the sections was reversed so that language first describes the proceeding or review and then, after a decision, restrictions or prohibitions.

Sec. 400.5 Authority to restrict or prohibit certain zone operations.

- (a) Initiation of review. The Board may conduct a proceeding, or the Executive Secretary a review, to consider a restriction or prohibition under paragraph (b) of this section either self-initiated, or in response to a complaint made to the Board by a person directly affected by the activity in question and showing good cause.
- (b) In general. After review, the Board may restrict or prohibit any admission of merchandise into a Zone Project or operation in a Zone Project when it determines that such activity is detrimental to the public interest, health or safety.

Sec. 400.6 Board headquarters.

The headquarters of the Board is located within the U.S. Department of Commerce (Herbert C. Hoover Building), 1401 Constitution Avenue, NW, Washington, DC 20230, within the office of the Foreign-Trade Zones staff.

DISCUSSION - Sec. 400.7 – CBP Port Director as Board Representative.

The NAFTAZ added a new provision to the Regulations, because there should be a separate specific provision detailing the role of the CBP Port Director as the designated local representative of the Board. The existing Regulations only contained one sentence in a section on another subject on this matter. This provision specifically manages the Board/CBP process, sets out timetables, and describes the process for prompt response when the Board, for public policy reasons, is expediting a zone approval and activation must occur promptly using a procedure now used informally in some Customs Ports.

Sec. 400.7 – CBP Port Director as Board Representative.

The Port Director of Customs, or his delegate, is the local representative of the Board charged with carrying out the policy and management requirements of the Act as determined by the Board. In order to effectuate same, the Port Director shall respond within fifteen (15) days of a request from the Board. In circumstances where the Board, for public policy reasons, is expediting the approval of an Application the Port Director

shall issue the necessary zone activation letter within thirty (30) days of the issuance of a Board Order. In those instances where the CBP background investigation of key zone site employees has not been completed, conditional zone activation should be authorized by CBP pending final approval in order to effectuate the Board's public policy goals.

DISCUSSION - Sec. 400.8 – Export Promotion.

The NAFTAZ believes that to carry out the Administration's goal of increasing exports, it is necessary to add a new "export promotion" effort tied to existing Commerce Department activity. A small organization within the U.S. Department of Commerce – the Office of Domestic Operations (ODO) and their U.S. Export Assistance Centers (USEAC) – are working to energize manufacturing and service exports through effective trade promotion programs. These USEACs have built close relationships across the country with small to medium sized business exporters to help them grow and expand into new markets. The U.S. Commercial Service (USCS) International Operations has offices in 77 countries; the domestic operation has U.S. Export Assistance Centers (USEACs) in 109 cities. State and local economic development organizations are often Grantees or work closely with Grantees. In order to significantly energize the Board's goals of export promotion, these organizations should by Regulation promote the U.S. foreign-trade zone program for exports

Sec. 400.8 – Export Promotion.

The U.S. Department of Commerce Office of Domestic Operations U.S. Export Assistance Centers in the U.S. and the U.S. Commercial Service International Operations shall be the designated representative of the Board responsible for global export promotion activities of U.S. foreign-trade zones. The Board and these two organizations shall carry out their respective responsibilities in a manner that prioritizes Federal export promotion objectives.

DISCUSSION - Sec. 400.9 – Federal Agency Uniform Procedures on FTZ

Compliance

Due to the growth in FTZ usage, FTZs need written guidance from Participating Government Agencies (PGA) and Other Government Agencies (OGA) to assure FTZ compliance. Documented compliance procedures have very rarely been produced by such PGAs and OGAs. This new provision will require, under the Foreign-Trade Zones Act, that written procedures be produced and maintained by applicable Federal Agencies.

Sec. 400.9 – Federal Agency Uniform Procedures on FTZ Compliance

Pursuant to Sections 81(i) and (j) of the Act, the Board will mandate Federal Agencies to prepare and keep updated written procedures relating to reporting of merchandise received, held, produced in and shipped from zones for entry into the Customs territory of the U.S. and export while maintaining the objectives of the FTZ program.

Subpart B-- Authority To Establish Zone; Limitations and Restrictions on Authority Granted

DISCUSSION - Sec. 400.11 Number and location of zones.

Small wording changes were made to clarify roles and responsibilities. To organize and expedite the process of determining the measurements required by Sec. 400.11(b)(2)(i), the Grantee/Zone Participant should be the responsible party.

Sec. 400.11 Number and location of zones.

- (a) Number of Zone Projects-port of entry entitlement.
 - (1) Provided that the other requirements of this part are met:
 - (i) Each port of entry is entitled to at least one Zone Project;
 - (ii) If a port of entry is located in more than one state, each of the states in which the port of entry is located is entitled to a Zone Project; and,

- (iii) If a port of entry is defined to include more than one city separated by a navigable waterway, each of the cities is entitled to a Zone Project.
 - (2) Applications pertaining to Zone Projects in addition to those approved under the entitlement provision of paragraph (a)(1) of this section may be approved by the Board if it determines that the existing project(s) will not adequately serve the convenience of commerce.
- (b) Location of zones-port of entry adjacency requirements.
- (1) The Act provides that the Board may approve “zones in or adjacent to ports of entry” (19 U.S.C. 81b).
 - (2) The “adjacency” requirement is satisfied if:
 - (i) A general-purpose zone site is located within 60 statute miles or 90 minutes' driving time (as measured by the Grantee/Zone Participant with concurrence of the Port Director) from the outer limits of a port of entry boundary as defined in 19 CFR part 101.
 - (ii) A subzone meets the following requirements relating to CBP supervision:
 - (A) Proper CBP oversight can be accomplished with physical and electronic means; and,
 - (B) All electronically produced records are maintained in a format compatible with the requirements of CBP for the duration of the record period; and,
 - (C) The Operator agrees to present merchandise for examination at a CBP site selected by CBP when requested, and further agrees to present all necessary documents directly to the CBP oversight office.

DISCUSSION - Sec. 400.12 Eligible applicants.

The only substantive suggestion is to change the word “consistent” to “inconsistent” in Section (a)(1) for clarity.

Sec. 400.12 Eligible applicants.

- (a) In general. Subject to the other provisions of this section, public or private corporations may apply for a grant of authority to establish a Zone Project. The Board will give preference to public corporations.
 - (1) Public corporations and private non-profit corporations. The eligibility of public corporations and private non-profit corporations to apply for a grant of authority shall be supported by enabling legislation of the legislature of the State in which the zone is to be located, indicating that the corporation, individually or as part of a class, is authorized to so apply. Any application must not be inconsistent with the charter or organizational papers of the applying entity.
 - (2) Private for-profit corporations. The eligibility of private for-profit corporations to apply for a grant of authority shall be supported by a special act of the State legislature naming the applicant corporation and by evidence indicating that the corporation is chartered for the purpose of establishing a zone.
- (b) Applicants for subzones-
 - (1) Eligibility. The following entities are eligible to apply for a grant of authority to establish a subzone:
 - (i) The Grantee of the closest Zone Project in the same state;
 - (ii) The Grantee of another Zone Project in the same state, which is a public corporation (or a non-public corporation if no such other public corporation exists), if the Board, or the Executive Secretary, finds that such sponsorship better serves the public interest; or,
 - (iii) A State agency specifically authorized to submit such an application by an act of the State legislature.
 - (2) Notification of closest Grantee. If an application is submitted under paragraph (b)(1)(ii) or (iii) of this section, the Executive Secretary will:
 - (i) Notify, in writing, the Grantee specified in paragraph (b)(1)(i) of this section, who may, within 30 days, object to such sponsorship, in

writing, with supporting information as to why the public interest would be better served by its acting as sponsor;

- (ii) Review such objections prior to docketing the application to determine whether the proposed sponsorship is in the public interest, taking into account:
 - (A) The complaining Grantee's structure and operation;
 - (B) The views of State and local public agencies; and,
 - (C) The views of the proposed subzone Operator;
- (iii) Notify the applicant and complainants in writing of the Executive Secretary's determination;
- (iv) If the Executive Secretary determines that the proposed sponsorship is in the public interest, docket the application (see Sec. 400.64 regarding appeals of decisions of the Executive Secretary).

DISCUSSION - Sec. 400.13 General conditions, prohibitions and restrictions applicable to grants of authority.

The NAFTZ suggests a number of specific changes below. We view this as one of the most significant sections of the Regulations. We have altered the structure for clarity and consolidated the FTZ lapse provisions. A sentence was added as the last sentence of (a) (4) to allow for the restoration of zone authority that has lapsed under this provision. With respect to the restriction or prohibition of activity a new “based on the facts and public record” provision was added at (b), as we believe that any restriction must be explicitly based on factual record. The public interest evaluation criteria reference has been expanded, consistent with the changes to the Regulations we have suggested and a new standard has been added that “it must be supported by evidence of significant and material detrimental impact upon a directly affected person.”

Finally a new section (d) Miscellaneous Activities was added to clarify circumstances that have caused considerable concerns at existing FTZs. From time to time third

parties should be allowed to undertake business activities within an activated zone that has no significant FTZ impact.

Sec. 400.13 General conditions, prohibitions and restrictions applicable to grants of authority.

- (a) In general. Grants of authority issued by the Board for the establishment of zones, including those already issued, are subject to the Act and this part and the following general conditions or limitations:
 - (1) The Grantee or Operator shall obtain all necessary permits from Federal, State and local authorities, and except as otherwise specified in the Act or this part, shall comply with the requirements of those authorities.
 - (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 Project.
 - (3) Approval from the Port Director with concurrence by the Grantee, pursuant to 19 CFR part 146, is required prior to the activation of any portion of an approved zone.
 - (4) A grant of authority for a general-purpose zone site shall lapse unless the Zone Project is activated, pursuant to 19 CFR part 146, and in operation not later than five years from the Board Order authorizing the general-purpose zone. In the case of subzones, the subzone grant of authority shall lapse unless the subzone is activated, pursuant to 19 CFR part 146, and in operation not later than five years from the Board Order authorizing the subzone. In case of lapse, upon submission of a new Application to restore zone designation for the same zone, the Board will expedite the Application review.
 - (5) Grantees, Operators, and Users shall permit Federal government officials acting in an official capacity to have access to the Zone Project and zone records during normal business hours and under other reasonable circumstances.

- (6) Activity involving production is subject to the specific provisions in Sec. 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 a zone site and facilities is permitted provided the Grantee retains the control necessary to oversee the approved zone site. 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 Grantee must retain, by agreement with the new owner, a level of control which allows the Grantee to carry out its responsibilities. The sale of a zone site or facility for more than its fair market value without zone status could, depending on the circumstances, be subject to the prohibitions set forth in section 17 of the Act.
- (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 restrict or prohibit zone activity “that in its judgment is detrimental to the public interest,” based on the facts and the public record. In approvals of applications for production authority as required by Sec. 400.14, the Board may adopt restrictions to protect the public interest, health, or safety. The Commerce Department's Assistant Secretary for Import Administration may similarly adopt restrictions in exercising authority under Sec. Sec. 400.14. 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 Secs. 400.24 and 400.37. In the case of production reviews of operations, any determination that the activity is not in the public interest must be supported by evidence of significant and material detrimental impact upon a directly affected person.

- (c) Additional conditions, prohibitions and restrictions. Other conditions/requirements, prohibitions and restrictions under Federal, State or local law may apply to zones.
- (d) Miscellaneous Activities. Operators are permitted to allow other persons to undertake business activities within the Operator's activated zone site, without physical segregation, under the Operator's responsibility.

DISCUSSION - Sec. 400.14 Production--activity requiring approval or reporting; restrictions.

NAFTZ Task Forces focused specific attention on necessary changes to this section to clearly and concisely achieve the Board's public policy goals. The NAFTZ is very much in favor of the Board's public policy goals of increasing exports by expediting the approval of export only production authority. However, it is essential that the Regulations contain a specific provision on this subject. It is included at (a)(1). The Association also believes that the Regulations should make it clear that submissions must conform to the application and docketing requirements of Secs. 400.21, 400.22, 400.23, 400.26(a), 400.31, and 400.32 and all production activity is authorized by a Board Order. In order to effectuate the public policy goals, the Regulations should make it clear that the Board will complete the docketing, review, and either approval or rejection within thirty (30) days of submission by the Applicant. Finally, the Executive Secretary will publish the Board Order in the Federal Register within fifteen (15) days of approval thereafter in order to provide certainty to all parties.

We believe that interim authority may be addressed in a less burdensome manner than in the Proposed Rule. Accordingly we have proposed significant changes to address the procedures, while still implementing the sound policies that the Board has consistently advocated. The wording of the scope of approved authority has been simplified to focus on intermediate or finished products. The sections on production changes and capacity increases have been deleted as unnecessary based upon other suggested changes to the Proposed Rule. New language is added at (d)(3) which is substantially similar to the current Regulations that provide a decision standard based

upon recent approvals by the Board. The quarterly retrospective reporting requirements in proposed (e)(1) as well as the basic structure in proposed Sec. 400.40 are deleted as they are no longer necessary under the suggested framework.

Sec. 400.14 Production--activity requiring approval or reporting; restrictions.

- (a) A Board Order is required in advance for all new production activity in activated zones which involves:
 - (1) Export Only Production. The Board shall expedite the approval of export only production authority except as provided in Sec. 400.14(a)(2). Submissions must be in writing and conform to the pertinent sections of the application requirements of Sec. Sec. 400.21, 400.22, and 400.23. The Board shall docket the application and approve within thirty (30) days of submission by the Grantee. The Executive Secretary shall publish the Board Order in the *Federal Register* within fifteen (15) days of such approval.
 - (2) Foreign merchandise that would be subject (if it were to enter U.S. customs territory) to an antidumping duty (AD) or countervailing duty (CVD) order or which would be otherwise subject to suspension of liquidation under AD/CVD procedures, to an order of the International Trade Commission pursuant to 19 U.S.C. 1337 (Section 337), or to a quantitative import control (quota).
 - (3) Inverted tariffs.
- (b) Interim Authority. The Executive Secretary may authorize on an interim basis, in response to a request from the Grantee, some or all of the activity applied for under Sec. 400.14(a)(2) and (3) to commence until the Board is able to complete action pursuant to Sec. 400.35. Interim authority may only be approved after the close of the period for public comment for the application in question based on a recommendation from the Board staff, approved within thirty (30) days upon close of the public comment period, which will take into account the factors in Sec. 400.24, relevant public comments, and other considerations. Any request

for interim authority must provide a public interest-based justification and a full explanation of the need for such interim authority, and must include both a reasonable projected timeframe for commencement of the proposed activity and written concurrence from the CBP port director that specifically addresses the applicant's projected timeframe. Interim authority, once approved, will remain at the discretion of the Executive Secretary until the Board has acted on a permanent basis and is subject to modification or rescission for cause during the interim period.

- (c) Scope of approved authority. The Board's approval of production authority for a particular operation includes all inputs used to make the intermediate or finished products approved by the Board pursuant to Sec. 400.23. If a Zone Participant is uncertain of whether activity falls within the scope of activity approved by the Board, the Zone Participant may request a scope determination pursuant to Sec. 400.14(e) and Sec. 400.23. Applications for production of new finished products, shall meet the requirements of Sec. 400.22 and shall be processed pursuant to Sec. Sec. 400.31-32 and 400.34-35 (or Sec. 400.14(d), where applicable). Production activity conducted without required authority from the Board could be subject to penalties pursuant to Sec. 400.62.
- (d) Delegation to the Executive Secretary. The Executive Secretary may make determinations in cases requiring production authority, based upon a review by the Board staff when:
 - (1) The Zone Participant demonstrates that the proposed production activity could otherwise be conducted under CBP bonded procedures;
 - (2) The sole zone benefit requiring advance approval from the Board is for scrap or waste resulting from the production activity; or,
 - (3) The proposed activity is the same, in terms of intermediate/finished products involved, to activity recently approved by the Board and similar in circumstances. The Board shall expedite the approval of the above referenced production authorities. Requests must be in writing. The Board shall docket and approve by Board Order within thirty (30) days of submission by the Grantee. The Executive Secretary shall publish the

Board Order in the *Federal Register* within fifteen (15) days of such approval.

- (e) Scope determinations. Determinations may be made by the Executive Secretary as to whether changes in activity are within the scope of related activity already approved for the facility involved under this part. When warranted, the procedures of Sec. Sec. 400.32 and 400.34 will be followed.
- (f) Restrictions on items subject to antidumping and countervailing duty actions.
 - (1) Board policy. Zone procedures shall not be used to circumvent antidumping 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. 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.
 - (3) The Board will authorize zone activity under the preceding paragraph for export production whenever it finds that U.S. competitiveness will be advanced and that similar activities are authorized in other countries.

DISCUSSION - Sec. 400.15 Production equipment.

This section should apply to both warehouse and manufacturing zone facilities and has provided the ability to conduct the same activity in zones that can be conducted in bonded warehouses. The definition of production equipment in (b) has been slightly changed to parallel the statutory provision and the intent of Senator Inouye the author. A new section 400.15(d) has been added to add a new FTZ opportunity. CBP Bonded Yard Warehouse procedures allow imported machinery to be stored and entered using the entireties provision that can change the duty rate of the machinery. Similar procedures that allow the combination of foreign and domestic machinery should be allowed in FTZ status. New paragraph (d) describes the circumstances

Sec. 400.15 Production equipment.

- (a) In general. Pursuant to Sec. 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 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 a zone. 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) Production equipment not destined for zone activity. Production equipment or parts that are not destined for use in zone activity shall be treated as normal merchandise eligible for standard zone-related benefits (i.e., benefits not subject to the requirements of Sec. 400.14(a), provided the equipment is entered for consumption or exported prior to its use.
- (d) Temporary FTZ for production equipment. The Board shall authorize the use of zone procedures for this purpose on a temporary non-permanent basis. An Application conforming to the provisions of Section 400.21 must be filed; however it may be submitted only with summary detail and the Board Order approval published on an expedited basis within thirty (30) days of submission. In order to effectuate same, the Port Director shall issue the necessary zone activation letter within thirty (30) days of the issuance of a Board Order. Once Customs entries are filed on all of the production equipment, the Board will be notified and the zone will be terminated.

DISCUSSION - Sec. 400.16 Exemption from state and local ad valorem taxation of tangible personal property.

The statute should not be narrowed by the Regulation. Either this section should be worded exactly the same as the statute or be deleted.

Sec. 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.(19 U.S.C. Sec. 81(o)(e))

Subpart C--Applications To Establish and Modify Authority

DISCUSSION - Sec. 400.21 Application for new general-purpose zone., Sec. 400.22 Application for subzone., and Sec. 400.23 Application for production authority.

Significant changes were made to Sections 400.21 through 400.23 to explicitly provide information on the ASF program, which is a critical component of modern and flexible FTZ policy. The text has been restructured so that there are separate and unique sections on general purpose zone applications, subzone applications, and production authority applications.

The Alternative Site Framework (ASF) program is one of the most important and significant changes to the ability of Grantees to accommodate potential users and to enable companies to use the FTZ program in a timely fashion. Many of the requirements of ASF applications are the same requirements under the Traditional Site Framework (TSF) for general-purpose zone and subzone applications -- such as inclusion of the applicable state enabling legislation, the Grantee charter, and the Grantee resolution.

There is no need to repeat these requirements in a new Regulatory section. Also, a TSF expansion application to add an industrial park includes the same information required to add an industrial park (Magnet Site) under the ASF. A Usage-Driven Site application under the ASF can be added with a boundary modification application which is similar to the TSF boundary modification. The ASF concepts of Service Area, Magnet Site, Usage-Driven Site and sunset provisions need to be addressed in the Regulations as these are the concepts unique to the ASF and are the ones most asked about by Grantees and companies. Including the general concepts will provide a higher level of certainty for those considering entering the ASF.

In addition the Proposed Rule has been restructured in order to separate Applications into three categories -- General Purpose Zone, subzone, and production activity. Finally, the detailed requirements for Applications in the Proposed Rule did not match the Board's requirements on its website. Significant changes were made to match the Regulations to the Board's website.

Sec. 400.21 Application for new general-purpose zone.

- (a) In general. An application for a grant of authority to establish a new general-purpose zone (pursuant to either the Traditional Site Framework or the Alternative Site Framework) shall consist of an application letter and contents to meet the requirements of this part.
- (b) Application format. Applications shall comply with any instructions, guidelines, and forms or related documents, as set out herein or as published in the *Federal Register* and made available on the Board's Internet site, as established by the Executive Secretary specific to the type of application in question.
- (c) Application letter. The application letter shall be dated within six (6) months of the submission of the application and signed by an officer of the corporation authorized in the resolution for the application (see Sec. 400.21(d)(1)(iii)). The application letter shall also describe:
 - (1) Type of corporation and legal authority to make application.

- (2) How the proposal is not inconsistent with the State enabling legislation and the grantee's charter;
 - (3) The type of authority requested from the Board;
 - (4) The proposed zone site(s) and facility(ies) to be included in the general-purpose zone;
 - (5) The general-purpose zone background;
 - (6) The relationship of the general-purpose zone to the community's and State's economic development plans;
 - (7) Plans for operating and financing general-purpose zone; and,
 - (8) Any additional pertinent information needed for a complete summary description of the proposal.
- (d) Detailed contents.
- (1) Legal Authority for the Application shall be documented with:
 - (i) A current copy of the State enabling legislation;
 - (ii) A copy of the relevant sections of the applicant's charter or organization papers; and,
 - (iii) A certified copy of a resolution of the governing body of the corporation specific to the application authorizing the official signing the application letter. The resolution must be dated within the past six (6) months.
 - (2) Site descriptions when applicable (including a table with site numbers when more than one site is involved) shall be documented with:
 - (i) A detailed description of the zone site, including size, location, and address (and legal description or its equivalent in instances where the Executive Secretary determines it is needed to supplement the maps in the application), as well as dimensions and types of existing and proposed structures, master planning, and timelines for construction of roads, utilities and planned buildings;
 - (ii) Where applicable, a summary description of the larger project of which the site is a part, including type, size, location and address;

- (iii) A statement as to whether the site is within or adjacent to a CBP port of entry;
 - (iv) A description of existing or proposed site qualifications, including appropriate land-use zoning and physical security;
 - (v) A description of current and planned activities associated with the site;
 - (vi) A summary description of transportation systems, facilities, and services, including connections from local and regional points of arrival to the zone (except usage driven site applications);
 - (vii) A statement regarding the environmental aspects of the proposal;
 - (viii) The estimated time schedules for construction and activation; and,
 - (ix) A statement as to the possibilities and plans for future expansion of the proposed zone site.
- (3) Operation and financing plans shall be documented with:
- (i) A statement as to site ownership (if not owned by the applicant or proposed operator, evidence as to their legal right to use the site);
 - (ii) A discussion of plans for operations at the proposed site(s);
 - (iii) A commitment to satisfy the requirements for CBP automated systems; and,
 - (iv) A summary of the plans for financing the project.
- (4) Economic Justification shall be documented with:
- (i) A statement of the community's overall economic and trade-related goals and strategies in relation to those of the region and State, including a reference to the plan or plans on which the goals are based and how they relate to the Zone Project;
 - (ii) An economic profile of the community including discussion of:
 - (A) Dominant sectors in terms of percentage of employment or income;
 - (B) Area strengths and weaknesses;
 - (C) Unemployment rates; and,
 - (D) Area foreign trade statistics;

- (iii) A statement as to the role, objective, and justification of the Zone Project and a discussion of the anticipated economic impact, direct and indirect, of the Zone Project, including references to public costs and benefits, employment, and U.S. international trade;
 - (iv) A separate justification for each proposed site;
 - (v) A statement as to the need for zone services in the community, with specific expressions of interest as applicable from proposed Users and letters of intent from those firms that are considered prime prospects for each specific proposed site; and,
 - (vi) A description of proposed production operations, if applicable, with the information required in Sec. 400.23.
- (5) Maps and Site Plans shall be documented with:
- (i) Local map showing the general location of the proposed site(s) with street level detail;
 - (ii) For any proposed site, a legible, detailed site plan of the general-purpose zone site showing zone boundaries in red, with acreage, and showing existing and proposed structures; and,
 - (iii) One or more maps showing the relationship between the zone sites.
- (e) Additional information. The Board or the Executive Secretary may require additional information needed to adequately evaluate proposals.
- (f) Amendment of application. The Board or the Executive Secretary may allow amendment of the application. Amendments which substantively alter the content of a request shall be subject to comment period requirements such as those of Sec. 400.32(c)(2) with a minimum comment period of thirty (30) days.
- (g) Format and number of copies. Unless the Executive Secretary alters the requirements of this paragraph through a *Federal Register* Notice, the Grantee shall submit an original (including original documents to meet the requirements of paragraphs (c) and (d)(1)(iii) of this section) and one copy of the application on 8 1/2" x 11" paper and one electronic copy.

- (h) Where to submit an application. Mailing address is: Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, D.C. 20230. Options for submission of electronic copies are described on the FTZ Board's Internet site.
- (i) Alternative Site Framework Applications. In addition to the general application requirements of this section, Alternative Site Framework Applications shall include the following:
 - (1) Definition of Service Area. A designated governmental authority within the Service Area (Such as a County) shall provide an authorizing letter to be included in the application or shall be notified under alternative procedures as set out by the Executive Secretary.
 - (2) Description of Magnet Sites.
 - (3) Description of Usage-Driven Sites.

Sec. 400.22 Application for subzone.

- (a) An application to establish a subzone shall be submitted in accordance with the requirements in Sec. 400.21, except that the focus of the information pursuant to Sec. 400.21(d)(4) (Economic Justification) shall be on the specific activity involved. The application shall include the following information and documentation:
 - (1) Identity of the User and its corporate affiliation;
 - (2) The reasons for the subzone and a detailed explanation of its anticipated economic benefits;
 - (3) A description of the proposed activity;
 - (4) For subzone applications involving requests for production authority, the information required in Sec. 400.23;
 - (5) Reason operation cannot be conducted within a general-purpose zone; and,
 - (6) Statement as to environmental impact and whether FTZ status or the use of FTZ procedures is a requirement or a precondition for the proposed activity or construction at the plant.

- (7) Description of problems, challenges or strengths facing the company and the U.S. industry.
- (8) Total employment company-wide and total employment at the proposed subzone including how the company's and plant's employment has changed in the last 5 years. Explain how FTZ-related savings will likely lead to increased or stabilized employment at the proposed subzone.
- (9) Whether the company has other facilities (in the U.S. or overseas) that conduct the same or similar activity including a list of the other locations as applicable.
- (10) How FTZ -related savings affect the company's purchasing patterns.
- (11) The current size of the facility(ies) and whether there any planned changes to the size of the facility?
- (12) Estimate of the company's current share of the U.S. market for the type of products the company wants to be imported or produced under FTZ procedures.
- (13) List of the major competitors in the U.S. market and their approximate U.S. market shares and to the extent available describe whether competitors produce in the U.S. or abroad. Describe the competitive factors and any other factors unique to the industry.
- (14) The share of the U.S. market that is imported for the type of products to be produced under FTZ procedures and how import share has changed in the past 5-10 years. Describe the approximate share of the world-wide market for the products to be imported or produced under FTZ procedures and list major competitors in the world market and their approximate world market shares.
- (15) How approval of the proposed FTZ activity affects domestic competitors and whether other U.S. facilities in their industry have sought access to zone procedures.
- (16) The percent of the proposed FTZ activity that is export-related.

- (17) The main internet address(es) for information about the company and product(s). If there are industry studies, list the titles and authors/publishers.
- (18) The total estimated annual FTZ-related savings associated with the proposed subzone activity described in the application. Provide the percentage breakdown for the total estimated FTZ savings into the following categories: Logistical/Paperwork; Exports; Duty Deferral; and Scrap/Waste. Provide any additional explanation or special features of the above savings that may be relevant to the review.
- (19) An estimated cost figure for operating the subzone each year.
- (20) Any applicable State or local tax for which collections will be affected by the proposed FTZ authority. Explain and give an estimated amount for projected annual FTZ-related savings of State and local taxes and attach correspondence from the affected parties (e.g., local school board) indicating their views on the impact of the proposed activity.
- (21) Assign each site of the proposed subzone an identifying number and provide a detailed description of the zone site, including size, location, and address (and legal description or its equivalent in instances where the Executive Secretary determines it is needed to supplement the maps in the application), as well as dimensions and types of existing and proposed structures with square footage of enclosed space;
- (22) Whether the proposed subzone is in or adjacent to a U.S. Customs and Border Protection port of entry as defined in Sec. 400.11(b)(2)(ii).
- (23) For the proposed subzone site(s), the local zoning and status of any applications for construction approvals. Describe any land use issues relating to the proposed site(s) and whether the use of FTZ procedures change the physical aspects of the plant or its operation.
- (24) A local/State map indicating the location of the subzone site(s) and for each site of the proposed subzone, a detailed street map.
- (25) For each subzone site, provide a detailed drawing/blueprint of the site showing zone boundaries in red with acreage.

- (26) A signed letter from the proposed Operator on its letterhead attesting to its right to use the property or a letter from the owner of the property concurring on the proposed FTZ designation.
- (27) The physical security measures of the subzone.
- (28) A statement that the Operator commits to work with Customs & Border Protection, as appropriate, to meet current and future CBP requirements for its automated systems.
- (29) A current copy of the State enabling legislation regarding FTZs and the sections of the grantee's charter (or organization papers) that are pertinent to FTZs should be included in an attachment called "Legal Authority for Application."
- (30) A certified copy of a resolution authorizing the grantee official to sign the application letter.

DISCUSSION - Sec. 400.23 Application for production authority.

The NAFTAZ believes that for clarity and transparency reasons it was necessary to add a new section solely on production activity that matches the Board's current filing data requirements on its website. The Proposed Rule had much of this language in several other sections and this section consolidates those sections for simplicity. It includes the new production application process identified in the description of Sec. 400.14 to focus on intermediate/finished products not detailed listings of materials/components used to produce such products. An entirely new process is described. In order to provide transparency and form the basis of required application identification to the Board, the Board will maintain a list of intermediate/finished products and materials and components used in the production of intermediate/finished products that have been the subject of Board restrictions, prohibitions, and withdrawals of Applications filed.

Sec. 400.23 Application for production authority.

- (a) In general. In addition to any general application requirements in this part, an application involving proposed production authority under Sec. 400.14(a) shall include:

- (1) A summary of the basis for the application and an explanation of its anticipated economic effects on the applicant and others;
- (2) Identity of the User and its corporate affiliation;
- (3) A description of the proposed activity, including:
 - (i) A general description of intermediate/finished products that will be the subject of inverted tariff benefits. The Board will maintain for public access on its website and upon request a listing of intermediate/finished products that have been the subject of Board restrictions, Board prohibitions, and withdrawals of Applications filed. The description will include the identity of any intermediate/finished products on the Board listing and other import requirements or restrictions, including whether the intermediate/finished products are subject to any antidumping or countervailing duty proceeding or a proceeding pursuant to 19 USC 1337 (Section 337);
 - (ii) A general description of materials/components. The Board will maintain for public access a listing of materials/components that have been the subject of Board restrictions, Board prohibitions, and withdrawals of Applications filed. The description will include the identity of any materials/components on the Board listing and other import requirements or restrictions, including whether the materials/components are subject to any antidumping or countervailing duty proceeding or a proceeding pursuant to 19 U.S.C. 1337 (Section 337);
 - (iii) A discussion of domestic materials as applicable and value added (as percentages of finished product value);
 - (iv) Projected shipments to domestic market and export market (percentages);
 - (v) Estimated total or range of savings to proposed User (broken down by category);

- (vi) Information on the industry involved and extent of international competition; and,
 - (vii) Economic impact of the operation on the area.
-
- (4) Any additional information requested
 - (4) Explain whether the company make these types of products in the U.S.
 - (5) For the articles you intend to produce, list the percentages (or percent ranges) by value of U.S. materials; foreign materials; and value added at the facility (labor, profit, overhead, etc.).

DISCUSSION - Sec. 400.24 Criteria for evaluation of production activity.

The NAFTAZ Task Forces believed that for clarity it is necessary to restructure and simplify the Board's Proposed Rule to align application evaluation criteria by subject matter. The proposed Sec. 400.26 contained both evaluation of production activity and subzone proposals. New Sec. 400.24 is only focused on evaluation of production activity. Four new additional criteria were added that NAFTAZ members believe are most important to be used by the Board i.e. that the same production activity can be conducted in foreign countries and the products can be imported into the U.S. with the same U.S. tariff impact without restraint, precedence of prior Board decisions and the net effect on the U.S. economy.

Sec. 400.24 Criteria for evaluation of production activity.

- (a) Production. The Board will apply the following criteria in determining whether to authorize proposed production activity. The Board's evaluation will take into account such factors as market conditions, price sensitivity, degree and nature of foreign competition, intra-industry and intra-firm trade, effect on exports and imports, ability to conduct proposed activity outside of the U.S. with the same U.S. tariff impact, precedence of prior Board decisions and net effect on U.S. employment and the U.S. economy:
 - (1) Threshold factors. It is the policy of the Board to authorize zone activity when it promotes U.S. competitiveness, is consistent with public policy,

and, in regard to activity involving foreign merchandise subject to quotas or inverted tariffs, when zone procedures are not the sole determining cause of imports. Thus, without undertaking a review of the economic factors enumerated in Sec. 400.24(a)(2), the Board shall deny or restrict authority for proposed or activity if it determines that:

- (i) The activity is inconsistent with U.S. trade and tariff law, or policy which has been formally adopted by the Executive branch;
 - (ii) Board approval of the activity under review would seriously prejudice U.S. tariff and trade negotiations or other initiatives; or,
 - (iii) The activity involves items subject to quantitative import controls or inverted tariffs, and the use of zone procedures would be the direct and sole cause of imports that, but for such procedures, would not likely otherwise have occurred, taking into account imports both as individual items and as components of imported products.
- (2) Economic factors. After its review of threshold factors, if there is a basis for further consideration, the Board shall consider the following factors in determining the net economic effect of the proposed activity:
- (i) Overall employment impact;
 - (ii) Exports and re-exports;
 - (iii) Retention or creation of value-added activity;
 - (iv) Extent of value-added activity;
 - (v) Overall effect on import levels of relevant products;
 - (vi) Extent and nature of foreign competition in relevant products;
 - (vii) Impact on related domestic industry, taking into account market conditions; and
 - (viii) Other relevant information relating to the public interest and net economic impact considerations, including technology transfers and investment effects.
- (3) The public benefit(s) that would result from the production activity, taking into account the factors in paragraphs (a)(1) and (a)(2) of this section.

DISCUSSION - Sec. 400.25 Application for expansion or other modification to Zone Project.

As noted in the previous explanations to new Sections 400.21-400.24, this section was significantly changed for clarity in order to have one section on expansions/modifications to Zone Projects substantially similar to Sec. 400.23 in the Proposed Rule. References to *Federal Register* notices on the Alternative Site Framework program (ASF) were deleted as explanatory text was added in this provision and other sections on the ASF program. Further explanatory provisions were also added.

Sec. 400.25 Application for expansion or other modification to Zone Project.

- (a) In general.
 - (5) A Grantee may apply to the Board for authority to expand or otherwise modify its Zone Project (including pursuant to the Alternative Site Framework procedures adopted by the Board).
 - (6) The Executive Secretary, in consultation with the Port Director, will determine whether the proposed modification involves a major change in the zone plan and is thus subject to paragraph (b) of this section, or is minor and subject to paragraph (c) of this section. In making this determination the Executive Secretary will consider the extent to which the proposed modification would:
 - (i) Substantially modify the plan originally approved by the Board; or,
 - (ii) Expand the physical dimensions of the approved zone area as related to the scope of operations envisioned in the original plan.
- (b) Major modification to Zone Project. An application for a major modification to an approved Zone Project shall be submitted in accordance with the requirements of Sec. 400.21, except that the content submitted pursuant to Sec. 400.21(d)(4) (Economic Justification) shall relate specifically to the proposed change.
- (c) Minor modification to Zone Project. Other applications or requests under this subpart, including those for minor revisions of general-purpose zone boundaries

based on immediate need for zone use, applications for usage-driven sites under the Alternative Site Framework and of subzone boundaries where the scope of authorized production activity is not affected, shall be submitted in letter form with information and documentation necessary for analysis, as determined by the Executive Secretary, who shall determine whether the proposed change is a minor one subject to this paragraph (c) instead of paragraph (b) of this section (see, Sec. 400.36).

- (d) Applications for other revisions to grants of authority. Applications or requests for revisions to grants of authority, such as modification of a restriction or reissuance of a grant of authority, shall be submitted in letter form with information and documentation necessary for analysis, as determined by the Executive Secretary. If the change involves removal or significant modification of a restriction included by the Board in a grant of authority or reissuance of a grant of authority, the review procedures of Sec. Sec. 400.31-400.35 shall be followed, where relevant. If not, the procedure set forth in Sec. 400.36 shall generally apply (although the Executive Secretary may elect to follow the procedures of Sec. Sec. 400.31-400.35 when warranted).

DISCUSSION - Sec. 400.26 Criteria for evaluation of zone proposals or expansion or other modifications to Zone Projects.

What was previously section 400.24 in the Proposed Rule is restructured from several sections in the Proposed Rule and is now focused solely on zones and subzones not involving production. Production criteria is consolidated for both zones and subzones at Sec. 400.24. Language was modified to provide a simpler standard for one factor and the phrase “material impact” was added to reflect a necessary higher standard.

Sec. 400.26 Criteria for evaluation of zone proposals or expansion or other modifications to Zone Projects.

The Board will consider the following factors in determining whether to issue a grant of authority for a Zone Project:

- (a) The need for zone services, taking into account existing as well as projected international trade-related activities and employment impact;
- (b) The suitability of each proposed site and its facilities based on the plans presented for the site, including existing and planned buildings, zone-related activities, and the timeframe for development of the site;
- (c) The specific need and justification for each proposed site, taking into account existing sites and/or other proposed sites;
- (d) The extent of State and local government support, as indicated by the views of State and local public officials involved in economic development. Such officials shall avoid commitments that anticipate the outcome of Board decisions;
- (e) The views of persons likely to be materially impacted by proposed zone benefits; and,
- (f) If the proposal involves production activity, the criteria in Sec. 400.24 applies.

DISCUSSION - Sec. 400.27 Burden of proof.

For clarity the section was restructured into three sections so as to focus on specific subjects. One word was deleted on the basic standard as being more appropriate. Language was added that requires opponents to provide evidence of “probative and substantial value” including “direct impact.”

Sec. 400.27 Burden of proof.

- (a) In general. An applicant must demonstrate to the Board that the proposal meets the criteria delineated in these Regulations. Applicants seeking production-related authority shall submit evidence regarding the positive economic effect(s) and public benefit(s) that would result from the activity and may submit evidence and comments as to policy considerations.
- (b) Persons who oppose applications must demonstrate standing and submit evidence of negative effects. Commenters submitting evidence of negative effects should provide information that is probative and substantial in addressing the matter in issue including any evidence of direct impact.

- (c) Rebuttal. Applicants submitting responses to negative comments received during the public comment period or pursuant to Sec. 400.33(e)(1) or Sec. 400.34(a)(5)(iv)(A) should submit evidence that is probative and substantial in addressing the matter in issue.

DISCUSSION - Sec. 400.28 Application fees.

Small changes were made in wording and capitalization for clarity.

Sec. 400.28 Application fees.

- (a) In general. This section sets forth a uniform system of charges in the form of fees to recover some costs incurred by the Foreign-Trade Zones staff of the Department of Commerce in processing the applications listed in paragraph (b) of this section. The legal authority for the fees is 31 U.S.C. 9701, which provides for the collection of user fees by agencies of the Federal Government.
- (b) Uniform system of user fee charges. The following graduated fee schedule establishes fees for certain types of applications and requests for authority based on their average processing time. Applications combining requests for more than one type of approval are subject to the fee for each category.
 - (1) Additional general-purpose zones (Sec. 400.21; Sec. 400.11(a)(2))--
\$3,200
 - (2) Special-purpose subzones (Sec. 400.22):
 - (i) Not involving production activity or less than three products--\$4,000
 - (ii) Production activity with three or more products--\$6,500
 - (3) Expansions (Sec. 400.25(b))--\$1,600
- (c) Applications submitted to the Board shall include a currently dated check drawn on a national or State bank or trust company of the United States or Puerto Rico in the amount called for in paragraph (b) of this section. Uncertified checks must be acceptable for deposit by a Federal Reserve bank or branch.
- (d) Applicants shall make their checks payable to the U.S. Department of Commerce ITA. The checks will be deposited by ITA into the Treasury receipts account. If

applications are found deficient under Sec. 400.31(b), or withdrawn by applicants prior to formal docketing, refunds will be made.

Subpart D--Procedures for Application Evaluation and Reviews

DISCUSSION - Sec. 400.31 General application provisions and pre-docketing review.

NAFTZ members seek much quicker Board processing and action on Applications in response to market demands and competitive pressures. Based upon the major basic changes to the Board's Application process to focus solely on intermediate/finished products the Board's staff requirements should be reduced. Consistent with the stated intention in the Board's Proposed Rule to expedite Board actions, and because of the recommended change to the Application process, the NAFTZ has proposed much faster processing time for Applications. Necessary changes were made to the Pre-docketing review to clarify and expedite the process.

Sec. 400.31 General application provisions and pre-docketing review.

- (a) In general. Sections 400.31-400.36 outline the procedures followed in docketing and processing applications submitted under Sec. Sec. 400.21-400.23 and 400.25. In addition, these sections set forth the time schedules which will normally be applied in processing applications. The schedules will provide guidance to applicants with respect to the time frames for each of the procedural steps involved in the Board's review. Under these schedules, applications involving production activity would be processed within six (6) months, and those not involving such activity, within five (5) months. While the schedules set forth a standard time frame, the Board may determine that it requires additional time based on special circumstances, such as when the public comment period must be reopened pursuant to Sec. Sec. 400.33(e)(2) and 400.34(a)(5)(iv)(B).
- (b) Pre-docketing review. The Grantee shall submit a single complete copy of an application for pre-docketing review. (For a request relating to production in an already approved zone site, the request may be submitted by the Operator,

provided a copy of the request is furnished at the same time to the Grantee.) The Executive Secretary will determine whether the application satisfies the requirements of Sec. Sec. 400.12, 400.21, 400.22, 400.23, and other applicable provisions of this part such that the application is sufficient for docketing. Within thirty (30) days of the filing, the Executive Secretary shall notify the applicant of any deficiencies. Within the pre-docketing phase, an affected zone participant shall be contacted in writing regarding relevant application elements requiring additional information or clarification and initiating a thirty (30) day response period. Upon submission of the additional information, the Executive Secretary will have thirty (30) days to complete the review. If the applicant does not correct the deficiencies and submit a corrected pre-docketing application copy within thirty (30) days of written notification, the pre-docketing application (single copy) will be returned to the applicant.

DISCUSSION - Sec. 400.32 Procedures for docketing application and commencement of case review.

Revisions are made to the Proposed Rule for clarity purposes. Text wording of the title and descriptions have been enhanced. References to the “applicant” have the phrase “and affected Zone Participants” added to broaden the parties that should be involved in the process. Language was added as a more thorough statement as it is necessary to eliminate late filed comments.

Sec. 400.32 Procedures for docketing application and commencement of case review.

- (a) Once the pre-docketing copy of the application is determined to be sufficient, the Executive Secretary will notify the applicant within fifteen (15) days of acceptance so that the applicant may then submit the original and requisite number of copies (which shall be dated upon receipt at the headquarters of the Board) for docketing by the Board. For applications subject to Sec. 400.29, the original shall be accompanied with a check in accordance with that section.

- (b) After the procedures described in paragraph (a) of this section, the Executive Secretary shall within fifteen (15) days of receipt of the original and required number of copies of the application:
 - (1) Formally docket the application, thereby initiating the proceeding or review;
 - (2) Assign a case docket number in cases requiring a Board order; and,
 - (3) Notify the applicant of the formal docketing action.
- (c) After initiating a proceeding based on an application under Sec. Sec. 400.21-400.23, or Sec. 400.25(b), the Executive Secretary will:
 - (1) Designate an examiner to conduct a review and prepare a report with recommendations for the Board;
 - (2) Publish in the *Federal Register* a notice of the formal docketing of the application and initiation of the review which includes the name of the applicant, a description of the Zone Project, information as to any hearing scheduled at the outset, and an invitation for public comment. Normally, the comment period will close sixty (60) days after the date the notice appears, except that, if a hearing is held (see Sec. 400.52), the period will not close prior to fifteen (15) days after the date of the hearing. The closing date for general comment will ordinarily be followed by an additional fifteen (15)-day period for rebuttal comments by the applicant and Zone Participants. All submissions of evidence, factual information, and written arguments by parties other than the applicant must be made during the comment period and must meet the requirements outlined under Sec. 400.27. Comments will not be accepted for filing or consideration by the Examiner or the Board after the comment period deadline. A comment period may be opened or reopened for sufficient cause (for example, as a result of submission by the applicant of new factual information for which an opportunity for comment is warranted);
 - (3) Transmit or otherwise make available copies of the docketing and initiation notice and the application to the Commissioner of CBP and the Port Director, or a designee of either;

- (4) Arrange for hearings within sixty (60) days of the end of the initial comment period, as appropriate;
 - (5) Transmit the reports and recommendations of the examiner and of the Port Director to the Board for appropriate action; and,
 - (6) Notify the applicant and the affected Zone Participants in writing and publish notice in the *Federal Register* of the Board's determination.
- (d) CBP review. The Port Director, or a designee, in accordance with CBP Regulations and directives, shall submit a report to the Executive Secretary within fifteen (15) days of the conclusion of the public comment period described in paragraph (c)(2) of this section.

DISCUSSION - Sec. 400.33 Examiner's review--case not involving production activity.

Changes provide clarity by reducing time periods to match those changed in Sec. 400.31 and adding a new section providing the ability of an applicant to secure an extension.

Sec. 400.33 Examiner's review--case not involving production activity.

An examiner assigned to a case not involving production activity shall conduct a review taking into account the factors enumerated in Sec. 400.25 and other appropriate sections of this part, which shall include:

- (a) Conducting or participating in necessary hearings scheduled by the Executive Secretary;
- (b) Reviewing case records, including public comments;
- (c) Requesting information and evidence from parties of record;
- (d) Developing information and evidence necessary for evaluation and analysis of the application in accordance with the criteria of the Act and this part; and,
- (e) Developing recommendations to the Board (and submitting a report to the Executive Secretary), generally within sixty (60) days of the close of the period for public comment (see Sec. 400.32):

- (1) If the recommendations are unfavorable to the applicant, they shall be considered preliminary and the applicant and affected Zone Participants shall be notified in writing (via electronic transmission where appropriate) of the preliminary recommendations and the factors considered in their development. The applicant and affected Zone Participants shall be given thirty (30) days from the date of notification, subject to extensions upon request by applicant and affected Zone Participants, which shall not be unreasonably withheld, to respond to the recommendations and submit additional evidence pertinent to the factors considered in the development of the preliminary recommendations.
- (2) If the response contains new evidence on which there has not been an opportunity for public comment, the Executive Secretary will publish notice in the *Federal Register* after completion of the review of the response. The new material will be made available for public inspection and the *Federal Register* Notice will invite further public comment for a period of not less than thirty (30) days, with an additional fifteen (15)-day period for rebuttal comments.
- (3) If the bases for an examiner's recommendation(s) change based on new evidence, the procedures of Sec. Sec. 400.33(e)(1) and (2) shall be followed, where applicable.

DISCUSSION - Sec. 400.34 Examiner's review--case involving production activity.

This provision of the Proposed Rule involving production activity was carefully reviewed and modified by NAFTAZ Task Forces. Similar adjustments to Sec. 400.33 including time periods were made herein. Additional language was added to assure consistency with previous Board determinations and conduct of independent and objective industry research. A "net economic effect" standard, previously used by the Board, was inserted. To better manage the process, a new standard of "preventing competitive disadvantages between companies in the same industry" was added. Finally, all references to ongoing zone activity were moved and consolidated in Sec. 400.40.

Sec. 400.34 Examiner's review--case involving production activity.

- (a) The examiner shall conduct a review taking into account the factors enumerated in this section, and other appropriate sections of this part, which shall include:
- (1) Conducting or participating in hearings scheduled by the Executive Secretary;
 - (2) Reviewing case records, including public comments;
 - (3) Requesting information and evidence from the applicant and commenters;
 - (4) Developing information and evidence necessary for analysis of the threshold factors and the economic factors enumerated in Sec. 400.24; and,
 - (5) Conducting an analysis to include:
 - (i) An evaluation of policy considerations pursuant to Sec. 400.24(a)(1)(i), which takes into account consistency with previous determinations and;
 - (ii) An evaluation of the economic factors enumerated in Sec. Sec. 400.24(a)(1) and 400.24(a)(2) and 400.24(a)(3), which shall include an evaluation of the economic impact on domestic industry, considering both producers of like products and producers of components/materials used in the production activity;
 - (iii) Conducting appropriate independent and objective industry research when necessary; and
 - (iv) Developing recommendations to the Board (and submitting a report to the Executive Secretary), generally within seventy-five (75) days of the close of the period for public comment:
 - (A) If the recommendations are unfavorable to the applicant or affected Zone Participant, they shall be considered preliminary and the applicant or affected Zone Participant shall be notified in writing (via electronic transmission where appropriate) of the preliminary recommendations and the factors considered in their development. The applicant or

affected Zone Participant shall be given forty-five (45) days from the date of notification, subject to extensions upon request by applicant or affected Zone Participant, which shall not be unreasonably withheld, to respond to the recommendations and submit additional evidence pertinent to the factors considered in the development of the preliminary recommendations.

- (B) If the response contains new evidence on which there has not been an opportunity for public comment, the Executive Secretary will publish notice in the *Federal Register* after completion of the review of the response. The new evidence will be made available for public inspection and the *Federal Register* Notice will invite further public comment for a period of thirty (30) days, with an additional fifteen (15) day period for rebuttal comments by the applicant or affected Zone Participants, subject to extensions upon request by the applicant or affected Zone Participant, which shall not be unreasonably withheld.
- (C) If the bases for an examiner's recommendation(s) change based on new evidence, the procedures of Sec. Sec. 400.34(a)(5)(iv)(A) and (B) shall be followed, where applicable.

- (b) Methodology and evidence. The evaluation of any proposal for production authority shall include the following steps:
 - (1) The first phase (Sec. 400.24(a)(1)) involves consideration of threshold factors. If an examiner or reviewer makes a negative finding on any of the factors in Sec. 400.24(a)(1) in the course of a review, the applicant or affected Zone Participant shall be informed pursuant to Sec. 400.34(a)(5)(iv)(A). If the Board makes a negative determination regarding any of the factors in Sec. 400.24(a)(1), it shall deny or restrict authority for the proposed activity.

- (2) The second phase (Sec. 400.24(a)(2)) involves determination of the net economic effect by considering enumerated economic factors, taking into account their relative weight and significance under the circumstances. The net effect is arrived at by balancing the positive and negative factors and arriving at a net economic effect. Previous evaluations in similar cases will be considered with the objective of preventing competitive disadvantages between companies in the same industry resulting from Board decision.

DISCUSSION - Sec. 400.35 Completion of case review.

Because the NAFTAZ is most concerned about prompt completion of case reviews, a new paragraph was added on the timetable for CBP/DHS as they are an integral part of the process and were not included in the Proposed Rule. As in the previous text the phrase “and affected Zone Participant” was added to provide wider participation. Finally, an entirely new procedure should be included in these rare instances when the decision of the Board is not unanimous or there is an unfavorable decision. The NAFTAZ believes there should be a Board meeting on the subject as described herein.

Sec. 400.35 Completion of case review.

- (a) The Executive Secretary will circulate the examiner's report with recommendations to the Treasury Board member for its review and vote (by resolution).
- (b) CBP Headquarters/Department of Homeland Security shall provide any comments within thirty (30) days or their approval shall be evidenced by the local Port Director's concurrence letter.
- (c) The Treasury Board member will return its vote to the Executive Secretary within thirty (30) days, unless a formal meeting is scheduled (see, Sec. 400.3(b)(2)).
- (d) The Commerce Department will complete the decision process within fifteen (15) days of receiving the vote of the Treasury Board member. If the decision is favorable, a Board Order will be issued and the Executive Secretary will publish the Board Order in the *Federal Register*.

- (e) If the decision is not favorable or if the Board is unable to reach a unanimous decision, the Grantee and directly affected Zone Participants shall be notified and provided an opportunity for a meeting with the Board. The final decision of the Board will be issued and the Executive Secretary will publish the Board Order in the *Federal Register*.
- (f) The Board or the Commerce Department's Assistant Secretary for Import Administration may terminate review of an application with no further action if the applicant or affected Zone Participant has failed to provide in a timely manner information needed for evaluation of the application. Requests for extension of time to provide information from the applicant or affected Zone Participants to the Board staff shall not be unreasonably withheld. The Executive Secretary may terminate review of an application where the circumstances presented in the application are no longer applicable based on notification from an applicant or affected Zone Participant. The Board shall confirm the termination in writing to the applicant and affected Zone Participant.

DISCUSSION - Sec. 400.36 Procedure for application for minor modification of Zone Project.

Because the NAFTAZ is most concerned about prompt completion of case reviews, a timetable for action was inserted.

Sec. 400.36 Procedure for application for minor modification of Zone Project.

- (a) The Executive Secretary, with the concurrence of the Port Director (said concurrence to be provided within fifteen (15) days of a request from the Executive Secretary, if not provided at the time of application), will make a determination in cases under Sec. 400.25(c) involving minor changes to Zone Projects that do not require a Board Order, such as boundary modifications, including certain relocations, and will notify the applicant in writing of the decision within thirty (30) days of the determination that the application or request can be processed under Sec. 400.25(c).

DISCUSSION – Removed Original Section 400.37 – Procedure for notification and review of production changes

While the new concept of the Board in this provision to provide for all U.S. producers to quickly make changes to their FTZ project and notify the Board thereafter has great merit, after very detailed analysis and study, the NAFTAZ believes it would, in fact, place an enormous continuing management effort and expense on zone users at exactly the same time as staff and budgets have been reduced because of the continuing severe economic downturn. Additionally, the very significant volume of filings with the Board required initially, and on a quarterly basis, by producers would create an enormous new management requirement by the Board's staff at a time when the staff is not at full strength and is unlikely to achieve full strength anytime soon because of Congressional budget reductions. As a result, this new concept should not be adopted and the entire section should be deleted. The NAFTAZ believes the new focus primarily on intermediate and finished products, as provided for in suggested changes to Sec. 400.14 and 400.23, achieves the same result with more certainty and much less work for all parties.

Subpart E--Operation of Zones and Administrative Requirements

DISCUSSION - Sec. 400.40 Monitoring and reviews of zone operations and activity.

For certainty relating to the distinction between new proposed versus ongoing approved activity, the NAFTAZ moved this section from the Subpart on Applications to the Subpart on Operations. While rarely used, this provision should be carefully considered. Various language changes are suggested. In particular, the phrase "significant detriment to the public interest" was added to provide a higher standard for review. In the case of a negative determination related to activity, the language includes a new higher standard of "evidence of direct impact on a U.S. manufacturer." Additional language was added to make it clear that the decision must include evidence that supports a decision inconsistent with the original Examiner's Report. The Association deleted the ability of the Assistant Secretary for Import Administration to take this action,

as we believe something of this importance requires only Board action. Finally, an option is provided, because of the seriousness and very unusual nature of the circumstances for the ability of the affected Zone Participant to meet with the Board prior to a final decision similar to our proposal in Sec. 400.40 and 400.64.

Sec. 400.40 Monitoring and reviews of zone operations and activity.

- (a) Ongoing zone operation(s) and activity may be reviewed at any time to determine whether they are in compliance and conformity with the Act and Regulations, as well as the authority granted by the Board. Reviews involving production activity may also be conducted to determine whether there are changed circumstances that provide significant evidence of detriment to the public interest, taking into account the factors enumerated in Sec. 400.24. When threshold factors are the basis for a negative recommendation in a review of activity, the Grantee and directly affected Zone Participants shall be notified and given an opportunity to submit evidence pursuant to Sec. 400.34(a)(5)(iv)(A). The Board may prescribe special monitoring requirements in its decisions when appropriate.
- (b) Reviews may be initiated by the Board, the Commerce Department's Assistant Secretary for Import Administration, or the Executive Secretary; or, they may be undertaken in response to requests from parties directly affected by the activity in question showing good cause based on probative and substantial evidence. After initiation of a review, any affected party shall provide in a timely manner any information requested as part of the review. If a party fails to timely provide information requested as part of such a review, a presumption unfavorable to that party may be made.
- (c) Upon review, if a finding is made that zone activity is no longer in the public interest based on evidence on the record that would support a decision inconsistent with the original Examiner's Report, the Board may, by Board Order, prohibit or restrict the activity in question. A negative determination regarding activity must be supported on the record by evidence of negative direct impact on a U.S. manufacturer. Prior to issuance of such a Board Order, the

affected Zone Participant shall be afforded the opportunity to meet with the Board upon request.

DISCUSSION - Sec. 400.41 Operation of zones; general.

The NAFTAZ proposed to delete the sentence in the Regulation referencing the Port Director as an entirely new section was added at 400.8

Sec. 400.41 Operation of zones; general.

Zones shall be operated by or under the contractual oversight of Grantees, subject to the requirements of the FTZ Act and this part, as well as those of other Federal, State and local agencies having jurisdiction over the site and operation. Grantees and their Administrators shall ensure that the reasonable zone needs of the business community are served by their Zone Projects.

DISCUSSION - Sec. 400.42 Operation of zone under public utility principles.

The members of the Grantee Task Force strongly believe that significant changes must be made to Subpart E in order to keep the FTZ program workable. Of particular concern is the apparent significant new requirements for Grantees requiring more staffing and funding at a time when public agencies and non-profits are facing significant staffing and funding cutbacks. The Grantee Task Force believes that the significant changes in the Proposed Rule may force a number of Grantees to withdraw from the zones program as they do not have human resources or the financial ability to meet and maintain the new requirements. The NAFTAZ Grantee Task Force believes that the Board's concerns over the actions of a very small number of Grantees and parties providing services to these Grantees should not require such radical change but rather can be effectively dealt with under the transparency and enforcement provisions of the new Regulations. The NAFTAZ's suggested changes were developed by the Grantee Task Force and represent a different approach with the same desired outcome of the Board's Proposed Rule. The Task Force changes will achieve the same result as the Board's Proposed Rule but without requiring increased Grantee staffing and budgets. The term "agent" was deleted as it has too many legal implications. The term

“Administrator” was added. The phrase “public utility principles” was inserted in the title on Sec. 400.42 to make it clear that zones are not “public utilities.” Changes were made to allow Grantees to contract for fee collection and other purposes with public and private entities as these longstanding practices and public-private partnerships have been instrumental in the success of many Zone Projects. The alternative would be detrimental to the success of local economic development strategies and would be difficult and costly to change. The vast majority of situations throughout the country have never caused problems and any issues raised are successfully resolved to the satisfaction of all parties. The further changes to the text reflect the change in emphasis described.

Sec. 400.42 Operation of zone under public utility principles.

- (a) In general. Pursuant to Section 14 of the FTZ Act (19 U.S.C. 81n), each Zone Project shall be operated under public utility principles, in that all rates and charges for all services or privileges within the zone shall be fair and reasonable. Any rate or charge (fee) imposed on Zone Participants shall be based on costs incurred by the Grantee or its Administrator and shall be related to the services provided to Zone Participants. Rates or charges may incorporate a reasonable return on investment. Rates or charges may not be tied to the level of benefits derived by Zone Participants. Any rates, charges or penalties paid by Zone Participants related to Grantee or Administrator functions shall be included in the Zone Schedule and paid directly to the Grantee or its Administrator.
- (b) Delayed compliance date. Recognizing that some Grantees' existing business arrangements may not comply with the requirements detailed in this section, the effective date for compliance with the requirements of Sec. 400.42 shall be no later than two (2) years after the date of publication of the final Rule.

DISCUSSION - Sec. 400.43 Uniform treatment.

The Grantee Task Force supports the concept of “uniform treatment” as identified in the Proposed Rule, but extensively revised the proposal to achieve the same result in a more workable manner. A distinction is made between Zone Participants (Operators

and Users) and Property Owners to clarify that both should be treated uniformly under like conditions but that both do not have equal standing and liability under the FTZ program. The requirement to include standard contract provisions in Zone Schedules has been removed in favor of a requirement to make standard contract provisions available to the public and the Board upon request. Proposed language has been added to provide Grantee guidance on neutral criteria to be used in evaluating proposals from potential Zone Participants or property owners. A new section has been added on disclosure and recusal instead of preclusion of conflicts of interest. Language has been added to allow zone users to choose to be their own operators or to contract with third parties at the election of the zone user. Language has been added to ensure that Zone Participants are not forced to use or pay for the services of Administrators beyond reimbursement to the Grantee of expenses incurred for zone project administration requirements.

Sec. 400.43 Uniform treatment.

Pursuant to Section 14 of the FTZ Act (19 U.S.C. 81n), Grantees and their Administrators shall afford to all who may apply to make use of or participate in the Zone Project uniform treatment under like conditions.

- (a) Standard contractual provisions. Uniform treatment shall be ensured through the Grantee's or its Administrator's offer of standard contractual provisions in writing. Grantees and their Administrators, Zone Participants, and Property Owners have the right to make changes to standard contract terms as individual circumstances warrant. Contract terms should be specific to those provisions relevant to zone participation. The standard provisions must be available to the public and the Board upon request.
- (b) Neutral evaluation criteria. Each Grantee or its Administrator shall develop and maintain written guidelines on the public interest evaluation criteria used to decide on proposals from potential Zone Participants and Property Owners. Such evaluation criteria should be objective and public interest-based. Evaluation criteria may include but are not exclusive to considerations such as impact on employment and investment maintenance and creation, ability to increase foreign

trade, and consistency with public economic development and Zone Project plans. Uniform treatment does not require a Grantee to accept all proposals by prospective Zone Participants or Property Owners, but the bases for a Grantee's decision on a particular proposal must be consistent with the Grantee's evaluation criteria.

- (c) Justification for differing treatment. Given the requirement for uniform treatment under like conditions, for any instance of divergence from uniform treatment a Grantee or its Administrator must be able to provide, upon request by the Executive Secretary, the justification for any difference in treatment.
- (d) Conflicts of interest - disclosure and recusal. Any person under contract with the Grantee to provide zone related products/services must disclose in writing to the Grantee potential conflicts of interest. In the case of Administrators, where potential conflicts of interest exist, the Administrator will recuse itself from decision-making related to Grantee sponsorship. Potential and existing Users shall have the right to operate their own zone sites and contract with third party Operators and service providers at the election of the User subject to the requirements of 19 CFR part 146. Other than the uniform rates and charges assessed by the Grantee or its Administrator as reflected in the Zone Schedule, Users shall not be required to utilize or pay for zone related products or services that they do not elect to procure.
- (e) Requests for determinations. A Grantee or other affected party may request a determination by the Executive Secretary regarding the consistency of the Grantee's or its Administrator's guidelines under this section.
- (f) Mandatory disclosure. The Executive Secretary may require a Grantee to identify any person that has performed any zone-related Grantee functions in the Zone Project during a specified period of time.
- (g) Delayed compliance date. Recognizing that some Grantees' existing business arrangements may not comply with the requirements detailed in this section, the effective date for compliance with the requirements of Sec. 400.43 shall be no later than two (2) years after the date of publication of the final Rule.

DISCUSSION - Sec. 400.44 Requirements for commencement of operations in a Zone Project.

Minor wording changes were made in the Proposed Rule to reflect changes made elsewhere to the Subpart.

Sec. 400.44 Requirements for commencement of operations in a Zone Project.

The following actions are required before operations in a zone may commence:

- (a) The Grantee shall have a Zone Schedule on file with the Executive Secretary, as provided in Sec. 400.45.
- (b) Approval by the Port Director with concurrence by the Grantee, pursuant to 19 CFR part 146, is required prior to the activation of any portion of an approved Zone Project;
- (c) Prior to activation of a zone, the Operator shall obtain all necessary permits from Federal, State and local authorities, and except as otherwise specified in the Act or this part, shall comply with the requirements of those authorities.

DISCUSSION - Sec. 400.45 Zone Schedule.

Minor wording changes were made to the Proposed Rule to reflect changes made to the Subpart elsewhere.

Sec. 400.45 Zone Schedule.

- (a) In general. The Grantee shall submit to the Executive Secretary (in both paper and electronic copies) a Zone Schedule which sets forth the elements required in this section. No element of a Zone Schedule may be considered to be in effect until such submission has occurred.
- (b) Each Zone Schedule shall contain:
 - (1) A title page, with information to include:
 - (i) The name of the Grantee and its Administrator as applicable; and
 - (ii) The date of the current Zone Schedule.
 - (2) A table of contents;

- (3) One or more sections with internal Rules and Regulations and guidelines for the zone, including the standard contractual provisions offered to Zone Participants. Inclusion of the standard contractual provisions in the Zone Schedule may take the form of one or more provisions presented in one or more appendices of the Zone Schedule;
 - (4) All rates or charges assessed by or on behalf of the Grantee;
 - (5) Information regarding any Operator(s) contracted to offer services to the public within the general-purpose zone, including the Operator(s)'s standard rates or charges for all services offered; and,
 - (6) An appendix with definitions of any FTZ-related terms used in the Zone Schedule (as needed).
- (c) The Executive Secretary may review the Zone Schedule (or any amendment to the Zone Schedule) to determine whether it contains sufficient information for Zone Participants concerning the operation of the zone and the Grantee's rates and charges as provided in paragraphs (b)(3) and (b)(4) of this section. If the Executive Secretary determines that the Zone Schedule (or amendment) does not satisfy these requirements, the Executive Secretary will notify the Grantee. The Executive Secretary may also conduct a review under 400.46(b).
- (d) Amendments to the Zone Schedule shall be prepared and submitted in the manner described in paragraph (b) of this section, and listed in the concluding section of the Zone Schedule, with dates. The Grantee or its Administrator may not apply rates/charges or other provisions required for the Zone Schedule unless those specific fees or provisions are included in the most recent Zone Schedule submitted to the Board and made available to the public in compliance with paragraph (e) of this section.
- (e) Availability of Zone Schedule. A complete copy of the Zone Schedule shall be available for public inspection at the offices of the Grantee and its Administrator if applicable. The Board may make copies of Zone Schedules available via its own Internet site.
- (f) Delayed compliance date. Recognizing that some Grantees may need additional time to comply with the requirements detailed in this section, the effective date

for compliance with the requirements of Sec. 400.45 shall be no later than two (2) years after the date of publication of the final Rule.

DISCUSSION - Sec. 400.46 Complaints related to public utility and uniform treatment.

The Grantee Task Force revised this provision in order to provide clarity and transparency to the “complaint” process. Minor wording changes were made to reflect changes made to the Subpart elsewhere. New language is added to provide Grantees, Administrators, and Operators to be notified of any complaint and be provided the opportunity to respond. New language was added to provide the Board the ability to self-initiate reviews for cause as it was not in the Proposed Rule.

Sec. 400.46 Complaints related to public utility and uniform treatment.

- (a) In general. A current or prospective Zone Participant may submit to the Executive Secretary a complaint regarding conditions or treatment that the complaining party believes are inconsistent with the public utility principles and uniform treatment requirements of the FTZ Act and these Regulations. Complaints may be made on a confidential basis, if necessary, but Grantees and their Administrators and Operators as applicable will be notified of any complaints submitted against them and will have the opportunity to respond to such complaints. Persons that are the subject of such complaints must be provided with the information in the complaint in order to respond. Grantees shall not enter into or enforce contractual provisions with Zone Participants that would prevent Zone Participants from disclosing to the Board any information under this section.
- (b) Objections to rates and charges. A current or prospective Zone Participant showing good cause may object to any rate or charge related to the Zone Project on the basis that it is not fair and reasonable by submitting to the Executive Secretary a complaint in writing with supporting information. Additionally, the Board or the Executive Secretary may initiate a review for cause. Grantees, their Administrators and Operators as applicable will be notified of any complaints submitted against them or reviews and will have the opportunity to respond to

such complaints. Persons that are the subject of such complaints or reviews must be provided with the information in the complaint or review in order to respond. The Executive Secretary will review complaints, complete reviews and issue a report and decision, which will be final unless appealed to the Board within thirty (30) days. The factors considered in reviewing fairness and reasonableness will include:

- (1) The methodology supporting rates and charges for the specific services rendered by the Grantee, its Administrator or operator; and,
- (2) The market-rates and charges for like zone operations at similarly situated zones, taking into account any specific factors that may lead to differing underlying costs.

DISCUSSION - Sec. 400.47 Grantee or Administrator liability.

A very serious concern of the Grantee Task Force is the Grantee liability provision of the Proposed Rule that must be changed to avoid discouraging participation in the FTZ program. This provision was expanded to include “Administrators” and was revised to more clearly state the liability issues and concerns.

Sec. 400.47 Grantee or Administrator liability.

The Grantee’s and its Administrator’s role, as applicable, is to provide general oversight of the Zone Project to ensure that the reasonable needs of the business community are served by the Zone Project. A grant of authority will not be construed to make the Grantee or its Administrator liable for violations by Zone Participants. It is not in the public interest to discourage public entities from zone sponsorship because of concern about liability without fault. However, this section will not necessarily apply to a Grantee or its Administrator that undertakes detailed operational oversight of or direction to Zone Participants.

DISCUSSION - Sec. 400.48 Retail trade.

Language has been added to clarify that retail trade restrictions only apply to activated areas of foreign-trade zones. Language has been changed to place the sole responsibility for interpretation and permitting on retail trade matters under the Executive Secretary of the Board with notification to the local CBP Port Director.

Sec. 400.48 Retail trade.

- (a) In general. Retail trade is prohibited in activated areas of zones, except that sales or other commercial activity involving domestic, duty-paid, and duty-free goods may be conducted within an activated Zone Project under permits issued by the Board with concurrence of the Grantee, with the further exception that no permits shall be necessary for sales involving domestic, duty-paid or duty-free food and non-alcoholic beverage products sold within the general-purpose zone or subzone for consumption on premises by individuals working therein. Order fulfillment in any Zone Project environments does not constitute retail trade. The Executive Secretary will determine whether an activity is retail trade, subject to review by the Board when the Grantee or affected Zone Participant requests such a review.
- (b) Procedure. Requests for Board approval under this section shall be submitted in letter form, with supporting documentation, to the Executive Secretary, who is authorized to act for the Board in these cases, with notification to the Port Director.
- (c) Criteria. In evaluating requests under this section, the Executive Secretary will consider:
 - (1) Whether any public benefits would result from approval; and,
 - (2) The economic effect such activity would have on the retail trade outside the zone in the port of entry area.

DISCUSSION - Sec. 400.49 Zone-restricted merchandise.

Changes made in the language of the Proposed Rule, which are exactly the same as the 1991 regulations are necessary to provide clarity. The language was changed to be more accurate as the merchandise in question is always “admitted” to a zone and is never “returned” but is in fact “entered.”

Sec. 400.49 Zone-restricted merchandise.

- (a) In general. Merchandise which has been admitted in zone restricted status may be entered into the customs territory of the United States only when the Board determines that the entry would be in the public interest. Such entries are subject to the customs laws and the payment of applicable duties and excise taxes (19 U.S.C. 81c(a), 4th proviso).
- (b) Criteria. In making the determination described in paragraph (a) of this section, the Board will consider:
 - (1) The intent of the parties;
 - (2) Why the goods cannot be exported;
 - (3) The public benefit implications; and,
 - (4) The recommendation of the Port Director.
- (c) Procedure.
 - (1) A request for authority to return “zone-restricted” merchandise into U.S. customs territory shall be made to the Executive Secretary in letter form by the Grantee or Zone Participant(with copy to Grantee) with supporting information and documentation.
 - (2) The Executive Secretary will investigate the request and prepare a report for the Board.
 - (3) The Executive Secretary may act for the Board under this section with respect to requests that involve merchandise valued at 500,000 dollars or less and that are accompanied by a letter of concurrence from the Port Director.

Subpart F--Records, Reports, Notice, Hearings and Information

DISCUSSION - Sec. 400.51 Accounts, records and reports.

A wide variety of changes were suggested by the NAFTAZ to provide clarity and to meet the need for more company import/export data confidentiality because of new automation. The NAFTAZ's accountant members indicated that the reference to "generally accepted accounting principles" is not an appropriate standard and should be deleted. The time period for Annual Report filing in the Proposed Rule was changed as it was not the current 120 days. A new provision was added directing Grantees to file Reports timely even if a Zone Participant has not provided necessary information and noting same. Finally, language has been added reflecting the fact that the NAFTAZ believes that the data submitted by all Zone Participants should be "Business Proprietary" and that it should be treated as confidential in the same manner as CBP import records and Census export records. Service Company data on merchandise held in a bonded warehouse cannot be disclosed to the public -- the same level of confidentiality should be available for zones. With the Board's new Annual Report electronic submissions this becomes a larger issue. The Board's Annual Report should only provide aggregate data to Congress and the public, not company specific data. Additional Regulation text language may be necessary to effectively implement this necessary objective.

Sec. 400.51 Accounts, records and reports.

- (a) Zone accounts. Zone accounts shall be in compliance with the requirements of Federal, State or local agencies having jurisdiction over the site or operation.
- (b) Records and forms. Zone records and forms shall be prepared and maintained in accordance with the requirements of CBP and the Board, consistent with documents issued by the Board specific to the zone in question, and the Grantee shall retain copies of applications it submits to the Board in electronic or paper format.
- (c) Maps and drawings. Grantees or Operators, and Port Directors, shall keep current layout drawings of approved sites as described in Sec. 400.21(d)(5),

showing activated portions, and a file showing required approvals. The Grantee shall furnish necessary maps to the Port Director.

(d) Annual Reports.

(1) Each Grantee shall submit a complete and accurate Annual Report to the Board within one-hundred twenty (120) days after the end of the reporting period subject to extensions in writing by the Executive Secretary, which shall not be unreasonably withheld. The Annual Report must be filed in accordance with any instructions, guidelines, forms and related documents specifying place, manner and format(s) prescribed by the Executive Secretary, for use by the Executive Secretary in the preparation of the Board's Annual Report to the Congress. Each Operator shall submit to the Grantee or its Administrator a complete and accurate Annual Report, in accordance with any instructions, guidelines, forms and related documents specifying place, manner and format(s) prescribed by the Executive Secretary, in a timeframe that will enable the Grantee's timely submission of a complete and accurate Annual Report to the Board. In the event that the Grantee has not received all Annual Report information from the Zone Participants in a timely manner, the Grantee may submit its Annual Report on time and note the missing information. Annual Report data submitted by Zone Participants shall be deemed business proprietary other than information required to be published in the Annual Report to Congress.

(2) The Board shall submit an Annual Report to the Congress.

DISCUSSION - Sec. 400.52 Notice and hearings.

The NAFTAZ has made enhancements to this section defining with more specificity the parties who may request a hearing and the timing for the hearing process. Text changes were made for consistency and to reflect the reality of newspaper notices today. The standards were increased by the term "materially impacted." Language was added to require a decision on whether or not a Hearing would be necessary within 60 days and if so requiring a 7 day notice period for presenters.

Sec. 400.52 Notice and hearings.

- (a) In general. The Executive Secretary will publish notice in the *Federal Register* inviting public comment on applications docketed for Board action (see, Sec. 400.32), and with regard to other reviews or matters considered under this part when public comment is provided for herein. Applicants shall give appropriate notice of their proposals in local general-circulation newspapers. The Board, the Secretary, the Commerce Department's Assistant Secretary for Import Administration, or the Executive Secretary, as appropriate, may schedule and/or hold timely hearings during proceedings or reviews conducted under this part.
- (b) Requests for hearings.
 - (1) A directly affected party who may be materially impacted by the proposed zone activity and who shows good cause may request a hearing during an application proceeding.
 - (2) The request must be made within thirty (30) days of the beginning of the public comment period.
 - (3) A determination as to the need for the hearing will be made by the Commerce Department's Assistant Secretary for Import Administration within fifteen (15) days after the receipt of such a request.
 - (4) A determination as to the need for a hearing initiated by the Board must be made within sixty (60) days of the end of the initial public comment period.
- (c) Procedure for public hearings. The Board will publish notice in the *Federal Register* of the date, time and location of a hearing. All those requesting to present at the hearing shall have the opportunity, upon seven (7) days advance written notice to the Executive Secretary, who shall notify the Grantee and the affected Zone Participants immediately. Applicants and their witnesses shall appear first and last to present introductory and rebuttal comments. The presiding officer may adopt time limits for individual presentations.

DISCUSSION - Sec. 400.53 Official record; public access.

The standard for the protection of the public record should be higher by adding the word “confidential.”

Sec. 400.53 Official record; public access.

- (a) Content. The Executive Secretary will maintain at the location stated in Sec. 400.54(e) an official record of each proceeding within the Board's jurisdiction. The Executive Secretary will include in the official record all timely factual information, written argument, and other material developed by, presented to, or obtained by the Board in connection with the proceeding. The official record will contain material that is public, business proprietary, privileged, and classified. While there is no requirement that a verbatim record shall be kept of public hearings, the proceedings of such hearings shall ordinarily be recorded and transcribed when significant opposition is involved.
- (b) Opening and closing of official record. The official record opens on the date the Executive Secretary docketed an application or receives a request that satisfies the applicable requirements of this part and closes on the date of the final determination in the proceeding or review, as applicable.
- (c) Protection of the official record. Unless otherwise ordered in a particular case by the Executive Secretary, the official record will not be removed from the Department of Commerce. A certified copy of the record will be made available to any court before which any aspect of a proceeding is under review, with appropriate safeguards to prevent disclosure of confidential proprietary and privileged information.

DISCUSSION - Sec. 400.54 Information.

NAFTZ Task Forces are very concerned about confidentiality of company specific information. See “Discussion” at Sec. 400.51. Merchandise held in zones should have the same level of statistical confidentiality as merchandise held in bonded warehouses and such data by company name should not be disclosed to the public. Language was

added on Annual Report data being considered “business proprietary” as per the discussion and suggested changes in Sec. 400.51.

Sec. 400.54 Information.

- (a) Request for information. The Board may request submission of any information, including business proprietary information, and written argument necessary or appropriate to the proceeding.
- (b) Public information. Except as provided in paragraph (c) of this section, the Board will consider all information submitted in a proceeding to be public information. If the person submitting the information does not agree to its public disclosure or comply with Sec. 400.54(c) concerning business proprietary submissions, the Board will return the information and will not consider it in the proceeding. Information to meet the basic requirements of Sec. Sec. 400.21 through 400.25 and 400.36 is inherently public information to allow meaningful public evaluation pursuant to those sections and Sec. 400.32.
- (c) Business proprietary information. Annual Report data submitted by Zone Participants shall be deemed business proprietary other than information required to be published in the Annual Report to Congress. Persons submitting business proprietary information (except Annual Report data) and requesting protection from public disclosure shall mark the cover page “business proprietary,” as well as the top of each page on which such information appears. Any business proprietary document submitted for a proceeding other than pursuant to Sec. 400.45 and Sec. 400.51 shall contain brackets at the beginning and end of each specific piece of business proprietary information contained in the submission. Any such business proprietary submission shall also be accompanied by a public version that contains all of the document's contents except the information bracketed in the business proprietary version, with the cover page and the top of each additional page marked “public version.” Any data for which business proprietary treatment is claimed must be ranged or summarized in the public version. If a submitting party maintains that certain pieces of data are not susceptible to summarization or ranging, the public version

must provide a full explanation specific to each piece of data regarding why summarization or ranging is not feasible.

- (d) Disclosure of information. Disclosure of public information will be governed by 15 CFR part 4.
- (e) Availability of information. Public information in the official record will be available at the Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce Building, 1401 Constitution Avenue, N.W., Washington, DC 20230 and may also be available electronically over the internet via <http://www.trade.gov/ftz> (or a successor internet address).

Subpart G--Penalties, Prior Disclosure and Appeals to the Board

DISCUSSION - Sec. 400.61 Revocation of grants of authority.

Small text and section references were added to the revocation of grants language in the Proposed Rule. The phrase “in whole or in part” was added to the text of the Proposed Rule so as to reflect the reality of the circumstances.

Sec. 400.61 Revocation of grants of authority.

- (a) In general. As provided in this section, the Board can revoke in whole or in part a grant of authority for a zone whenever it determines that the Grantee or Operator, in the case of subzones the subzone Operator, has violated, repeatedly and willfully, the provisions of the Act.
- (b) Procedure. When the Board has reason to believe that the conditions for revocation, as described in paragraph (a) of this section, are met, the Board will:
 - (1) Notify the Grantee or Operator in question in writing stating the nature of the alleged violations, and provide the Grantee or Operator an opportunity to respond and request a hearing on the proposed revocation;
 - (2) Conduct a hearing, if requested or otherwise if appropriate;
 - (3) Make a determination on the record of the proceeding not earlier than four
 - (4) months after providing notice to the Grantee and Operator as applicable under paragraph (b)(1) of this section; and,

- (4) If the Board's determination is affirmative, publish notice of revocation of the grant of authority, in whole or in part, in the *Federal Register*.
- (c) As provided in section 18 of the Act (19 U.S.C. 81r(c)), the Grantee or Operator of the zone in question may appeal under Sec. 400.64 a Board Order revoking the grant of authority.

DISCUSSION - Sec. 400.62 Fines, penalties and instructions to suspend activated status.

The Grantee and Operator Task Forces believe that significant changes must be made to the fines and penalties provision in the Proposed Rule. The Task Forces spent a considerable amount of time on this provision as it represents a major change from the past. For Public Agency and not-for-profit Grantees, as well as Operators, that are all experiencing significant staff and budgetary reductions due to the state of the economy, new and significant fines and penalties represent a serious concern. These newly proposed fines and penalties will most likely have a chilling effect on new and prospective Grantees and Operators and dissuade Grantees and Operators from participating in the Zone Program. The NAFTAZ is suggesting significant changes to this provision to allay the concerns of these principals in the Zone program. The inflation adjustment provision has been deleted as it is not provided for in the statute nor does it really act as a deterrent to the commission of violations – the fines themselves should serve the intended purpose. A new sentence was added to make it clear that the filing and approval of a Voluntary Disclosure will either eliminate or reduce the penalty. Finally, additional wording changes are suggested to simplify and clarify the text.

Sec. 400.62 Fines, penalties and instructions to suspend activated status.

- (a) In general. This section authorizes fines for certain specific violations of the FTZ Act or the Board's Regulations. Each instance of those specific violations is subject to a fine of not more than 1,000 dollars, with each business day during which a violation continues constituting a separate offense subject to imposition of such a fine (FTZ Act, section 19; 19 U.S.C. 81s). This section also establishes the party subject to the fine which, depending on the type of violation, would be

the Operator, Grantee or its Administrator. 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. Violations of the FTZ Act or the Board's Regulations (including the sections pertaining to production activity and submission of Annual Reports), failure to pay fines or failure to comply with an order prohibiting or restricting activity may also result in the Executive Secretary suspending the processing of any requests to the Board and staff relating to the general-purpose zone site(s) or subzone in question. Suspensions of activated status and suspensions of the processing of requests will be targeted to the specific non-compliant operation(s). In cases where a Grantee, its Administrator, or Zone Participant voluntarily discloses a violation pursuant to Sec. 400.63, no penalty shall be assessed as long as the underlying violation has been rectified and there is no finding of fraud.

- (b) Violations involving production activity.
 - (1) Each intermediate/finished product for which the Operator failed to obtain the required advance approval pursuant to Sec. 400.14(a) constitutes a separate offense, with the Operator subject to a fine of not more than 1,000 dollars per business day, which includes any CBP fines, penalties or liquidated damages assessed for the same violation.
 - (2) Consistent with Sec. 400.47, in instances where a Grantee or its Administrator has undertaken complicit detailed operational involvement with an Operator engaged in production within a Zone Project, the Grantee or its Administrator may also be subject to a fine of not more than 1,000 dollars for each offense of the Operator that is subject to Sec. 400.62(b)(1), which shall include any fines, penalties, or liquidated damages issued by CBP if applicable for the same violation.
- (c) Violations involving requirement to submit Annual Report. Each business day during which a Grantee fails to submit an Annual Report pursuant to section 16 of the FTZ Act (19 U.S.C. 81p(b)) and Sec. 400.51(d)(1) of these Regulations constitutes a separate offense subject to a fine of not more than 1,000 dollars . Further, each business day during which an Operator fails to submit to the

Grantee the information required for the Grantee's timely submission of an Annual Report to the Board may constitute a separate offense subject to a fine of not more than 1,000 dollars. . Consistent with Sec. 400.47, in circumstances where the violation demonstrably results from an Operator's failure to submit a complete and accurate report to the Grantee, the responsible Operator would be the subject of any fine-assessment action by or on behalf of the Board and the Grantee would not be subject to the above-referenced fine-assessment action if the Grantee files an on-time report identifying any Operators that have not provided complete and timely information in response to timely requests by the Grantee.

- (d) Violations involving uniform treatment. Each business day during which a Grantee or its Administrator violates the provisions of Sec. 400.43 of these Regulations constitutes a separate offense for which the Grantee or its Administrator would be subject to a fine of not more than 1,000 dollars.
- (e) Procedures for determination of violations and imposition of fines. When the Board or the Executive Secretary has reason to believe that a violation of the FTZ Act, or any Regulation under the FTZ Act, has occurred and that the violation warrants the imposition of a fine (such as situations where a party has previously been notified of action required to comply with the FTZ Act or the Board's Regulations and has failed to take such action within a reasonable period of time), the following steps will be taken:
 - (1) The Executive Secretary will notify the party or parties responsible for the violation in writing stating the nature of the alleged violation, and providing the party(ies) a specified time period (no less than thirty (30) days, with consideration given to any requests for an extension, which shall not be unreasonably withheld) to respond in writing;
 - (2) The Executive Secretary will conduct a hearing, if requested or otherwise if appropriate;
 - (3) The Executive Secretary will make a recommendation on the record of the proceeding not earlier than fifteen (15) days after the deadline for the party(ies)' response under paragraph (e)(1) of this section. If the

recommendation is for an affirmative determination of a violation, the Executive Secretary will also recommend a level of fine to be imposed; and,

- (4) The Board will make a determination regarding the finding of a violation and imposition of a fine based on the Executive Secretary's recommendation under paragraph (e)(3) of this section. For related actions where the total sum of the recommended fine is no more than 10,000 dollars (50,000 dollars in the case of violations pursuant to paragraph (c) of this section), the Board delegates to the Assistant Secretary of Import Administration the authority to make a determination.
- (f) Mitigation.
- (1) In general. The Commerce Department's Assistant Secretary for Import Administration may approve the mitigation (reduction or elimination) of an imposed fine based on specific evidence presented by the affected party. Authority is delegated to the Executive Secretary to mitigate a fine where the total sum of fines imposed on a person for related actions does not exceed 10,000 dollars (50,000 dollars in the case of violations pursuant to paragraph (c) of this section). Evidence and argument pertaining to mitigating factors must be submitted within thirty (30) days of the issuance of an imposed fine (subject to extension for cause, which shall not be unreasonably withheld) as described in paragraph (e)(4) of this section).
 - (2) Mitigating factors. Factors to be taken into account in evaluation of potential mitigation include:
 - (i) The prior good record of a violator with regard to the type of violation(s) at issue;
 - (ii) A violator's inexperience in the type of zone activity at issue;
 - (iii) Violation due to the action of another party despite violator's adherence to the requirements of the FTZ Act and the Board's Regulations;
 - (iv) Immediate remedial action by the violator to avoid future violations;

- (v) A violator's cooperation with the Board in resolving the issue to the satisfaction of all parties;
 - (vi) A violation resulting from a clerical error or similar unintentional negligence;
 - (vii) The violation did not have any impact on the government's revenue collection;
 - (viii) Contributory Board error such as the violation resulting, at least in part, from the violator having relied on inaccurate advice provided by a Board staff member; and,
 - (ix) Other such factors as the Board, or the Assistant Secretary of Import Administration, deems appropriate to consider in the specific circumstances presented.
- (g) Assessment of imposed fines. After evaluation of submitted mitigating evidence and argument, where applicable, the Commerce Department's Assistant Secretary for Import Administration may assess a fine or cancel the imposed fine. Authority is delegated to the Executive Secretary to assess a fine where the total sum of the imposed fines for the related actions does not exceed 10,000 dollars (50,000 dollars in the case of violations pursuant to paragraph (c) of this section).
- (h) Time for payment. Full payment of an assessed fine must be made within thirty (30) days of the effective date of the assessment or within such longer period of time as may be specified. Payment shall be made in the manner specified by the Commerce Department's Assistant Secretary for Import Administration or the Executive Secretary.
- (i) Procedures for instruction to suspend activated status. When a fine assessed pursuant to Sec. Sec. 400.62(e) through (h) has not been paid within ninety (90) days of the specified time period, or there is a repeated and willful failure to comply with a prohibition or restriction on activity imposed by a Board Order or an order of the Commerce Department's Assistant Secretary for Import Administration pursuant to Sec. 400.14(e)(3), the Board or the Commerce Department's Assistant Secretary for Import Administration may instruct CBP to suspend the activated status of the zone operation(s) in question (or, if

appropriate, the suspension may be limited to a particular activity of an Operator, such as suspension of the privilege to admit merchandise), and the suspension may remain in place until the failure to pay a fine or to comply with an order's prohibition or restriction on activity has been remedied. In determining whether to instruct CBP to suspend the activated status of an Operation in the circumstances noted, the following steps shall be taken:

- (1) Notification of party(ies). The Executive Secretary will notify the responsible and affected party(ies) in writing stating the nature of the failure to timely pay a fine or to comply with a prohibition or restriction on activity imposed by a Board Order or an order of the Commerce Department's Assistant Secretary for Import Administration. If the Grantee is not one of the responsible parties notified, the Executive Secretary will also provide a copy of the notification to the Grantee. The responsible party(ies) will be provided a specified period (of not less than fifteen (15) business days) to respond in writing to the notification;
- (2) Hearing. If the notified responsible or affected party(ies) requests a hearing (or if a hearing is determined to be warranted by the Board, the Commerce Department's Assistant Secretary for Import Administration or the Executive Secretary), it will be held before the Executive Secretary within thirty (30) days following the party(ies)'s request for a hearing (or the determination by the Board, the Commerce Department's Assistant Secretary for Import Administration or the Executive Secretary). The party(ies) may be represented by counsel at the hearing, and any evidence and testimony of witnesses in the proceeding will be presented. A transcript of the hearing will be produced and a copy will be made available to the responsible and affected party(ies);
- (3) The Executive Secretary shall make a recommendation on the record of the proceeding not earlier than fifteen (15) days after the later of:
 - (i) The deadline for the party(ies)'s response under paragraph (i)(1) of this section; or,

- (ii) The date of a hearing held under paragraph (i)(2) of this section;
and,
- (4) The Board or the Commerce Department's Assistant Secretary for Import Administration shall make a determination regarding the recommendation on whether to instruct CBP to suspend activated status. If the determination is affirmative, the Executive Secretary shall convey the instruction to CBP with due consideration to allow for the transfer of any affected merchandise from the applicable zone site.
- (j) Enforcement of assessment. Upon any failure to pay an assessed fine, the Board may request the U.S. Department of Justice to recover the amount assessed in any appropriate district court of the United States or may commence any other lawful action.

DISCUSSION - Sec. 400.63 Voluntary disclosure.

The NAFTAZ is very pleased that a Prior Disclosure section is included in the Proposed Rule. However, the terminology should be changed so that it is not exactly the same as the CBP Prior Disclosure or the Census Voluntary Self Disclosure. Further, the NAFTAZ has added text at (a) and (c) similar to CBP standards for clarity. Finally, we changed the provision to eliminate the penalty if the Voluntary Disclosure is filed properly similar to CBP standards.

Sec. 400.63 Voluntary disclosure.

- (a) A party that may be subject to a fine pursuant to Sec. 400.62 may provide a written disclosure of a violation of the FTZ Act or the Board's Regulations to the Board prior to the commencement of an investigation by the Board of the violation. A voluntary disclosure is made if the person concerned discloses the circumstances of a violation of the FTZ Act or Board Regulations prior to or without knowledge of the commencement of an investigation by the Board. An investigation of a violation will be considered commenced only if the Executive Secretary has prepared a written report that has been filed with the Assistant Secretary for Import Administration. A person shall be accorded the full benefits

of a voluntary disclosure if the person provides information orally or in writing to the Board. In the case of an oral disclosure, the disclosing party shall confirm the disclosure by providing a written record (subject to confidentiality) within fifteen (15) days of the oral report.

- (b) The disclosure should describe the circumstances surrounding the violation including:
 - (1) The general-purpose zone site(s) or subzone(s) involved;
 - (2) The CBP port(s) of entry involved;
 - (3) The legal or regulatory provisions violated;
 - (4) The circumstances of the act(s) constituting the violation;
 - (5) The corrective measures undertaken to resolve the violation;
 - (6) Preventative measures adopted; and,
 - (7) Copies of sufficient documentation for the Board to identify the act(s) constituting the violation.
- (c) Perfection of voluntary disclosure. If the information in (b) is not fully available at the time of the initial disclosure, the disclosing party will provide additional information within thirty (30) days of the initial disclosure subject to extension in writing by the Executive Secretary, which shall not be unreasonably withheld.
- (d) Upon receipt of a written disclosure of a violation, the Executive Secretary will first determine the validity of the disclosure and provide written notice of the determination to the disclosing party within sixty (60) days of the perfection of the voluntary disclosure.
- (e) The disclosure should be addressed to the Executive Secretary at the address in 400.54(e). Disclosures may also be submitted via electronic transmission as long as an identical, original copy is also mailed within two (2) business days.
- (f) If a party submits a valid written voluntary disclosure, no fine or penalty shall be assessed as long as the underlying violation has been rectified and there is no finding of fraud.
- (g) If a party submits a valid written voluntary disclosure but either the underlying violation has not been rectified or there is a finding that the violation resulted from

fraud, the fine shall not exceed 50% of the maximum fine set forth in section 400.62.

- (h) A voluntary disclosure pursuant to this section shall only be applicable to those imposed under this section. Any issues involving a loss of revenue must be addressed through the CBP prior disclosure procedures established by 19 U.S.C. 1592(c)(4).

DISCUSSION - Sec. 400.64 Appeals to the Board of decisions of the Assistant Secretary for Import Administration and the Executive Secretary.

The Appeals process in the Proposed Rule requires further consideration and should provide specific guidance on judicial review. Language was added to require that the affected Grantee and Zone Participant be notified, that the Board will issue a report and that if the decision involves a zone operation standards of Sec. 400.40 apply. Finally, since the Proposed Rule contained no identification of an appropriate Court for judicial review the U.S. Court of International Trade (CIT) has been added. The NAFTAZ believes the CIT is far preferable and more technically skilled than any U.S. District Court to adjudicate matters handled by the Board.

Sec. 400.64 Appeals to the Board of decisions of the Assistant Secretary for Import Administration and the Executive Secretary.

- (a) In general. Decisions of the Commerce Department's Assistant Secretary for Import Administration and the Executive Secretary made pursuant to this part may be appealed to the Board by adversely affected parties showing good cause.
- (b) Procedures. Parties appealing a decision under paragraph (a) of this section shall submit a request for review to the Board in writing, stating the basis for the request, and attaching a copy of the decision in question, as well as supporting information and documentation. After a review and opportunity for affected Grantee and Zone Participant input, the Board will issue a report and notify the affected parties of its decision in writing. If the decision will negatively impact a zone operation, prior to issuing a final decision the procedures in Sec. 400.40 will

apply. Judicial review of Board decisions and Orders shall, pursuant to 28 U.S.C. Section 1581(i)(1)(4), be conducted before the U.S. Court of International Trade.