



EDWARD A. DIANA

COUNTY EXECUTIVE

May 26, 2011

Andrew McGilvray
Executive Secretary
Foreign-Trade Zones Board
International Trade Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW, Room 2111
Washington D.C. 20230

Re: Foreign-Trade Zone Board Proposed Rule
75 Federal Register 82340-82362, December 30, 2010
Docket # ITA-2010-0012, RIN 0625-AA8A

Dear Mr. McGilvray:

As the Director for FTZ 37, I submit the following comments in response to the Foreign-Trade Zones Board Proposed Rule published in the Federal Register on December 30, 2010. In preparing these comments, we have taken into consideration our own experiences in administering FTZ 37 and the changing realities of international trade, global competition and their effect on economic activity in our region.

Given the crucial effect that the proposed FTZ regulations will have on a company's decision to seek to improve its global competitiveness through participation in the FTZ Board, FTZ 37 fully supports any reorganization or wording clarifications suggested by the NAFTAZ to improve readability, clarity and reduce ambiguities subject to interpretation that can occur as regulations age. We also support efforts to streamline approval processes whenever possible.

Beyond the support of the prime directives outlined by the NAFTAZ as a framework for suggested changes to the proposed regulations, Orange County also has the following comments on specific provisions within the proposed regulations that can impact its zone project and the ease of its administration and oversight of the zone project:

- Orange County does not agree with proposed Section 400.43 (e) which seeks to limit a zone grantee's access to professional advice by the most qualified zone practitioners or service providers. The oversight of a zone project is often a very minor portion of a public entity's ongoing efforts to promote economic activity within a region. There is frequent turnover in the personnel



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responsible for the oversight of a zone project and having access to a FTZ professional with extensive knowledge of the FTZ Program often provides the only experience and continuity within a zone project. To limit a grantee's options for access to this type of support, particularly in this time of limited budgets and downsizing, would be detrimental to a grantee's oversight of its zone project. Instead, Orange County believes that the grantee should be able to retain any one it sees fit in an advisory role under a separate contract for services. In the event that they themselves are contracted with a potential zone applicant to prepare the application itself should be required to disclose the potential conflict of interest and recuse themselves from any role in the decision making process related to the Grantee sponsorship of the project.

- We support the additional language offered by the NAFTAZ heightening the standard for those submitting comments or requests for review of approved zone sites and activity to be equal to the standard required of the applicant or approved zone participant. It is important that those filing comments, particularly those of a negative nature, be an affected party who can provide evidence of information that is 'probative and substantial value' that demonstrates a direct impact on the submitting party. This would avoid the consequence of an otherwise well prepared and complete application being held up by unrelated comments by those who object to either the very existence of the FTZ Program or otherwise have an unrelated issue with the applicant/zone operator.
- Orange County agrees with the requirement that an FTZ Project's rates and charges be fair and reasonable and based on the costs incurred by the grantee in the administration of the zone project.
- The FTZB proposed regulations have dedicated a new section 400.45 to the requirements for a grantee's zone schedule. The zone schedule should be prepared by the zone grantee and should document the grantee's established processes and procedures including a summary of the contractual provisions contained in its operator's and if required, property owner's agreement. An actual copy of the agreement should not be required to be submitted as part of the zone schedule.
- While we do not oppose the imposition of penalties on those who violate their obligation to be in compliance with the FTZ Act and



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FTZ Board (FTZB) regulations, it is important that those obligations and the consequences of failing to comply are clearly identified. If the obligations and parties responsible are not clearly defined but instead are open ended and nondescript, grantees and operators may opt out of participation in this valuable and vital program rather than risk making a mistake and incurring monetary penalties.

We would also like to see a requirement be added that if the FTZ Board initiates the process of imposing a penalty on an operator within a zone project, that the grantee of that zone project also be copied on any correspondence to that effect.

We appreciate this opportunity to provide these comments on the Foreign-Trade Zone Board's proposed regulations and hope that these comments will be viewed as constructive as it is in the best interest of all of us involved in the FTZ Program to have workable, transparent regulations that fulfill the intent of the Program – 'to expedite and encourage foreign commerce'

Very truly yours,

James O'Donnell
FTZ Director

cc: Edward A. Diana
Laura Wong-Pan