MILLER
& COMPANY P.C.

ATTORNEYS AT LAW

4929 MAIN STREET
KANSAS CITY, MO 64112
816.561.4999
FAX 816.561.5999
E-MAIL intllaw@millerco.com
WEB www.millerco.com

1875 I STREET N.W., 5th FLOOR
WASHINGTON, DC 20006

233 BROADWAY, SUITE 2702
NEW YORK, NEW YORK 10279

June 27, 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 Zones Board Proposed Rule
75 Federal Register 82340-82362, December 30, 2010
Docket # ITA-2010-0012, RIN 0625-AA81
Reply Comments

Dear Mr. McGilvray:

Please accept this rebuttal letter from Miller & Company, P.C. Our law firm principal and attorneys and legal assistants have a significant amount of experience over the last forty-one (41) years in the Foreign-Trade Zone program in providing services to Grantee Organizations, Zone Operators and Zone User firms, having assisted in the structuring of over 600 foreign-trade zone projects nationwide.

The National Association of Foreign-Trade Zones (NAFTZ) submitted very detailed comments and significant proposed revisions to the referenced Proposed Rule on May 4, 2011. Over one hundred additional comments were submitted by a wide range of organizations, the majority of which were Grantee sponsors of Foreign-Trade Zone (FTZ) projects nationwide. We strongly support the suggested changes by the NAFTZ. The NAFTZ is the association most directly concerned with the establishment, operation, and administration of the Foreign-Trade Zone Program. We are pleased to provide these comprehensive Reply Comments based upon the submissions received by the Foreign-Trade Zones Board (Board) on its referenced Proposed Rule.

The Proposed Rule represents a basic restructuring of the U.S. Foreign-Trade Zones Program implementing significant new complicated and management intensive requirements focused on three key elements: the approval process of new U.S. manufacturing, the oversight management by Grantee sponsors, and a significantly expanded fines and penalties structure. While Miller & Company P.C. fully supports and applauds the Board's goals of expediting export production, encouraging new U.S. production, and addressing the Act's requirements for Grantee's to provide uniform treatment of Zone Users under public utility principles, we believe

the structure of the Proposed Rule is the wrong approach at the wrong time. At a time when public agency Grantee sponsors and U.S. manufacturing firms have reduced business activity, employment, and budgets, it is not appropriate to impose many new FTZ management burdens, and very significantly increase and broaden potential fines and penalties. Our concern is that the perceived complexity of the Proposed Rule will cause Grantee sponsors and U.S. manufacturing firms to abandon U.S. zone activity and further reduce U.S. production activity. Only twenty (20) days after the Board published its Proposed Rule. President Obama, on January 18, 2011, issued Executive Order No. 13563 (copy attached as Exhibit A). The 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 focus of this Executive Order was to direct Federal Agencies to achieve their goals with the least burden on the affected parties. In the spirit of President Obama's Executive Order, the NAFTZ filed a comprehensive set of revisions to the Proposed Rule that we believe achieves the Board's goals in a much simpler, transparent, and balanced manner. Miller & Company P.C. also submitted a similar letter at that time.

We believe it is particularly important to note that other than a few very narrowly focused letters, which support certain portions of the Proposed Rule for a specific reason, there were no comments submitted that were generally opposed to the Foreign-Trade Zones Program. There were no comments filed that raised concerns about the current structure of roles and relationships in the program or that identified concerns regarding very specific types of imported merchandise that should not be utilized in foreign-trade zones. Since the early 1970s when the U.S. Foreign-Trade Zone Program began to grow rapidly, there have been a wide range of issues raised over the years by special interest groups specifically focused on particular merchandise. In 1970, there were only 10 general-purpose zones and 3 subzones; today there have been 276 zones and 675 subzones approved. In 1970 the total dollar value of foreign receipts was $104 million; today it is $430.6 billion. Finally, 1,401 people were employed in zones in 1970; today 330,000 people are employed in zones. We believe it is very noteworthy that the extraordinary growth of the Foreign-Trade Zone Program did not trigger any product specific letters of opposition being filed during this comment period. We interpret this lack of opposition as an indicator that the Board and its staff did its job under the statute's "public interest" criteria over the last forty (40) years in insuring that the Program grew, that the primary benefit of investment and jobs in the U.S. as opposed to another country occurred, and that the opposition that was raised was managed appropriately by the Board and its staff. There are few federal programs that can make that statement.

A second key factor in the analysis is the size and the scale of the Board and the economic condition of the firms operating within the Foreign-Trade Zones Program. It is extraordinary to conceive that a program that oversees activity representing $430.6 billion and 330,000 employees is governed by an exceedingly simple and short Federal Statute and a staff currently of 8 persons. In analyzing and considering the Proposed Rule, it is paramount to understand the small organization that exists and that necessary change should not overburden this staff. It is to be noted that the firms operating within zones in this very difficult economy have experienced a continuing significant decline in activity and, in turn, in employment. As a result, Foreign-Trade Zone User firms must do more with less. Any changes to Regulations

should take into consideration the very limited staffing of the Foreign-Trade Zones Board and the firms that operate thereunder.

Based upon the submissions, Miller & Company P.C. has chosen to reply to only a few key subject matters discussed:

1. **Production/Manufacturing**. For many years, the applications to the Board for production/manufacturing focused on the finished or intermediate products made in the Foreign-Trade Zone with a reference to key materials. Over the years, the Board staff evolved and enhanced the process with continuing questions and interest in the component materials utilized to manufacture products. Originally, these lists of materials were at a high level, but the process evolved to a full HTS level list of all parts to be used in manufacturing. As global manufacturing expanded and materials became sourced from multiple countries and vendors and production processes were structured to change rapidly, the complexity of this process became greater and greater. It is not uncommon for an application for large scale manufacturing currently to contain lists of over sixty (60) pages of six (6) digit HTS component materials that may or may not be used from time to time in particular manufacturing operations.

   The Proposed Board Regulations at Sections 400.14, 400.23, and 400.37 created an entirely new process for managing what has to be a very complicated structure of lists of component materials used to produce intermediate/finished products. In an attempt to simplify and expedite the process, the Proposed Rule structured an advanced approval process from the FTZ Board for any sourcing change, any historical or current imposition of anti-dumping and countervailing duty assessments, any change in duty rates, and any change in capacity of facilities approved. In order to manage the process effectively and begin with a baseline of information, the Proposed Rule required a one-time refiling of the entire Scope of FTZ production manufacturing authority nationwide for every single firm. Quarterly reporting, thereafter, would be necessary in order to maintain this process.

   We spent a considerable amount of time studying and working through the Proposed Rule. We appreciate that the Board staff genuinely believes that their proposal would expedite and simplify the process. We reached the conclusion that the Board proposed process would require an extraordinary amount of new management effort far above all current requirements. It was our view, that at this very difficult time in the economy for all U.S. manufacturers with compliance staffing definitely reduced, the additional requirements would not only be an enormous burden but might well force many FTZ user firms to stop using the FTZ program as they could not manage it appropriately. In the spirit of President Obama's Executive Order, we believe that the Proposed Rule must be comprehensively modified with respect to the advance approval and quarterly reporting provisions.

   Rather than just submit comments indicating that change must occur and that we object to the Proposed Rule as written, we spent many months discussing the proposed changes with our small, medium and large company clients, considering alternative options. While we supported the basic conceptual framework and public policy goals of

expediting Board activity, expediting exports, and addressing the need to implement quickly manufacturing changes, we proposed a fundamental shift back to the original structure of the Board with respect to its management oversight of zone manufacturing.

More specifically the revisions we proposed would require that information be forwarded to the Board at the time of application for any anti-dumping or countervailing duty materials and parts, Section 337 materials and parts and any materials and parts that have been the subject of previous Board restrictions or prohibitions. The list of Board restrictions and prohibitions imposed over the last forty (40) years is significant. The NAFTZ proposed new process would provide for the first time clear notice to applicants concerning particular materials, merchandise, and products that had been the subject of concerns expressed in the past and are likely to be the subject of Board restrictions and prohibitions in the future. Using this methodology should ensure that all parties are aware of the circumstances and address the issues directly. Using this methodology it would not be required that the Board initiate an action independent of the International Trade Commission and the U.S. Department of Commerce Import Administration with respect to merchandise involved with anti-dumping or countervailing duties. As a result the exact same controls can be instituted but the process is dramatically simpler and is focused solely on new activity that can be addressed by the Board or existing activity that interested parties believe should be addressed.

We believe that the NAFTZ restructured proposal, in particular in Sections 400.14, 400.23, and 400.40, achieve the exact same results that the Board intended but with a very significant decrease in the management effort both by FTZ User firms and the Board and its staff. By focusing on finished/intermediate products, many of the concerns identified by the Board as being addressed by its new Proposed Rule, are resolved in an entirely different manner. There is no need to focus at all on a sourcing change as the focus is on the finished/intermediate product not each individual part or material that may require rapid change because of the economics, technology, or "Acts of God" such as the recent major earthquake and tsunami in Japan. Sourcing changes that may occur on a daily, weekly, or monthly basis do not need to be addressed as that should not be the focus of the Board approval process. Likewise, changes in duty rates of individual parts are not a key subject of consideration. It is well understood that in most instances there will be changes of duty rates. Since the duty rate of the intermediate/finished product is exactly the same as if it were made in a foreign country, the rate should not matter as the product is made in the U.S. with many materials from the U.S. The Board's Proposed Rule clearly addresses capacity of production facilities. Upon research, review, and discussion, it was identified that in only one instance in the last forty (40) years has the Board had an issue with the capacity of a particular production facility. Under the circumstances, the extraordinary detail and complexity of capacity issues can be avoided by this new approach. Finally, with respect to anti-dumping and countervailing duty merchandise, the current methodology of placing all material in privileged foreign status addresses 99.99% of the issues. There has been only one recent product example where the Board took additional action to restrict manufacturing for export. Under the new Proposed Rule as drafted by the NAFTZ, the Board is not precluded from this action and may do so at any time. Not only is the protection for anti-dumping and countervailing

duty material inherent in the redrafted Regulations as we proposed, but the new section 400.40 the NAFTZ drafted addresses the ability at any time for an interested party to raise concerns about existing as well as new operations, providing the necessary safety valve for concerns that could be raised by affected parties.

In only four (4) submissions to the Board, the same exact issues was raised; i.e.: that advanced notice for anti-dumping and countervailing duty materials must be provided to the Board. The proposal as drafted by the NAFTZ would require all such material to be placed in privileged foreign status and provides that the Board, under Section 400.40, can at any time, stop or restrain the use of anti-dumping or countervailing duty materials. It is our view that the expressed concerns of a very few should not require a total and complete restructuring of the entire process of managing Foreign-Trade Zones. Such action would be to the detriment of all beneficiaries of the FTZ program, discourage overall FTZ use due to significant additional management and oversight burdens, discourage manufacturing in the U.S. for U.S. consumption as well as export, and overly burden the extraordinarily small Board staff.

2. **Uniform Treatment/Public Utility Principles.** The majority of the comments submitted objected to the proposed Foreign-Trade Zone Board Regulations and how they addressed both uniform treatment and public utility principles. It is noteworthy that not one comment was filed expressing a need for additional controls or specifically in support of the Board's proposed extensive new Regulations at Subpart E and in particular at Sections 400.42 and 400.43. Many Grantees believe that the significant new requirements for Grantees in Subpart E will require more staffing and funding at a time when public agencies and nonprofits are facing significant staffing and funding cutbacks. The primary concern is that the extensive changes would force Grantees to withdraw from the program. Many smaller public Grantee organizations expressed their concern that they would be at a significant disadvantage from larger public Grantee organizations that could afford an in-house FTZ manager. The limited use of outside assistance places smaller Grantee organizations on an even playing field with larger Grantee organizations with more staff. In preparing its extensive revisions to the Board's proposed Rule, an effort was made by the NAFTZ to provide a higher level of transparency and the exchange of full information with respect to any complaint about a Grantee sponsor. Besides the extensive changes identified, the changes also provide a new methodology for self-initiation of such reviews by the Foreign-Trade Zones Board without having to be advised or initiated by particular participants in a zone program. We believe that this broadened significantly the concerns and provides a better foundation for the future.

   Proposed Section 400.43 was extensively revised by the NAFTZ. A redlined copy is attached as Exhibit B. The very extensive changes were intended to achieve the same results sought by the Board in particular what the Grantee Sponsors believe is a more workable manner. Grantee Sponsors of zone programs do not want significant changes to the management structure of Foreign-Trade Zones as they believe that is what is in affect now generally works well. In particular circumstances, where there have been management issues, the Grantee Sponsors drafted new language to the Board Proposed Rule that achieves the same result but maintains some level of current stability. Some

zone participants (operators and users) and property owners are distinguished in the regulations to provide uniform treatment. The language is revised to make clear each party's role with respect to standing and liability under the Foreign-Trade Zones program. Uniformly Grantee Sponsors believe that including their standard contracts in the zone schedule was unwarranted but that the standard contract provisions should be made available to the public and the Board upon request. A key new section prepared by the NAFTZ was the Disclosure and Recusal provision with respect to conflicts of interest. Miller & Company P.C. supports this new provision. Representation can only occur if there is full disclosure to all parties of any potential conflicts of interest with the ability to recuse when appropriate. Clear language was added to make certain that there was not any mandated representation or expense that must occur in zone projects. Miller & Company P.C. believes that this process is far superior to the process suggested in the proposed Regulations that would not allow a wide-range of current relationships in the Foreign-Trade Zone industry to continue. Many smaller public Grantee organizations expressed their concern that they would be at a significant disadvantage from larger public Grantee organizations that could afford an in-house FTZ manager. The limited use of outside assistance places smaller Grantee organizations on an even playing field with larger Grantee organizations with more staff. The NAFTZ also suggested changes to the "public utility" section of the proposed Rule at Section 400.42. Necessary changes were made to maintain the current payment arrangements with new safeguards. A redlined copy is attached as Exhibit C. Under the circumstances, we believe that what is drafted and attached hereto provides a significant change from current practice implementing many new safeguards, but does not require an extensive new management effort or significant changes to many of the current business relationships.

3. **Fines and Penalties.** The majority of the comments submitted objected to the new shift in focus to develop a new very comprehensive set of fines and penalties. It is noteworthy that not one comment was filed specifically expressing a need for additional comprehensive fines and penalties and in support of the Board's proposed extensive new Section 400.62. Finally, Miller & Company P.C. believes it is appropriate to comment on the Grantee liability provision at Section 400.47, the Fines and Penalties provision of Proposed Section 400.62, and the Prior Disclosure provision at Section 400.63. We spent a considerable amount of time working with the NAFTZ, reviewing these provisions and suggesting major changes to the text. Attached as Exhibit D is a redlined copy of those changes. The Grantee liability provision was revised to be more clear and comprehensive as it is so critical for public agencies and nonprofits. The new and significant Fines and Penalties in proposed Section 400.62 raised very serious concerns. It was the belief of many Grantees that we have discussed this with that the Fines and Penalties Section needed to be changed as it would have had a "chilling effect" on new and existing zone projects. As written, Grantees, operators, users, and a wide range of other parties could all receive penalties or fines for the exact same infraction. Significant changes that were made by the NAFTZ, as the redlined copy notes, limits the situations where the issuance of a fine or penalty can occur. Miller & Company P.C. supports the inclusion of a voluntary disclosure provision with certain necessary changes as identified.

4. **Alternative Site Framework/Foreign-Trade Subzone.** We agree with a number of comments submitted that the Alternative Site Framework (ASF) be better defined in the final version of these Regulations. However, we do not agree with the comment made by the Dallas/Fort Worth International Airport Board, Foreign-Trade Zone No. 39 in which they proposed subzones be eliminated. Approximately 20% of the Grantees (56 of the 276 Foreign-Trade Zones) have adopted or are in the process of adopting the ASF. ASF remains optional for Grantee organizations. Where the Traditional Site Framework (TSF) remains the choice of an individual Grantee organization, a subzone will continue to play a vital role for U.S. communities and the creation and retention of jobs at those facilities for which subzone designation is requested. We therefore believe it is most premature to eliminate the term subzone. Even with regard to Zone projects under the ASF, the availability of subzone designation is critical as it is the last resort option for companies that are outside the 60-mile 90 minute driving time adjacency limitation set forth in current Section 400.21(b)(2), Foreign-Trade Zones Board Regulations. Another related concern is that subzone designation provides a company the ability to include multiple sites within a geographic area and operate them essentially as one entity for reporting purposes. This has also occurred for one FTZ operator with multiple site operations. On Friday, June 24, 2011, U.S. Customs and Border Protection Headquarters issued a memorandum that identifies unequal treatment of subzones and ASF usage-driven sites and general-purpose zone sites (Exhibit E). Based on input from companies that operate multiple zone sites it is vitally important that they be able to utilize one FIRMS Code for multiple sites under one subzone and multiple sites in an ASF Service Area or TSF general-purpose zone. These facilities should be allowed to utilize one e-214 for all sites within a subzone as well as Usage-Driven Sites within the same Service Area under the ASF or TSF general-purpose zone. These operations should also not be required to file a Permit to Transfer in order to move product from one site to another site, file separate e-214 per FIRMS Code, and file FTZ zone-to-zone transfers and receipts for such transfers. Anything to the contrary will not be in the spirit of President Obama's Executive Order No. 13563 of January 18, 2011, to federal agencies to adopt simple, transparent, and balanced procedures and will be a detriment to the President's effort to double the level of exports in the next five years.

We appreciate the opportunity to provide these comments on the Proposed Regulations. It is our view that these and other changes identified in the NAFTZ's extensive rewrite of the Proposed Regulations (Exhibit F) form a solid foundation for the future growth of the U.S. Foreign-Trade Zone program, based upon the standards of President Obama's Presidential Proclamation No. 13563. Due to the comprehensive nature of the suggested revisions, Miller & Company P.C. does not believe it is appropriate to issue interim or final regulations as a next step in the process unless it is on narrowly focused non-controversial issues.

We continue to believe that a strong U.S. Foreign-Trade Zone program is essential to sustain and enhance the U.S. investment and jobs created by the Foreign-Trade Zone program. We would be pleased to discuss the issues identified in this submission, as well as what had been provided previously.

Very truly yours,

Marshall V. Miller

JFE/CORR/00053569 (2042)

Federal Register
Vol. 76, No. 14
Friday, January 21, 2011

Presidential Documents

Title 3—

The President

Executive Order 13563 of January 18, 2011

Improving Regulation and Regulatory Review

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve regulation and regulatory review, it is hereby ordered as follows:

Section 1. *General Principles of Regulation.* (a) Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

(b) This order is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866 of September 30, 1993. As stated in that Executive Order and to the extent permitted by law, each agency must, among other things: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(c) In applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Sec. 2. *Public Participation.* (a) Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole.

(b) To promote that open exchange, each agency, consistent with Executive Order 12866 and other applicable legal requirements, shall endeavor to provide the public with an opportunity to participate in the regulatory process. To the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally

EXHIBIT A

be at least 60 days. To the extent feasible and permitted by law, each agency shall also provide, for both proposed and final rules, timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded. For proposed rules, such access shall include, to the extent feasible and permitted by law, an opportunity for public comment on all pertinent parts of the rulemaking docket, including relevant scientific and technical findings.

(c) Before issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected, including those who are likely to benefit from and those who are potentially subject to such rulemaking.

Sec. 3. *Integration and Innovation.* Some sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. Greater coordination across agencies could reduce these requirements, thus reducing costs and simplifying and harmonizing rules. In developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote such coordination, simplification, and harmonization. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation.

Sec. 4. *Flexible Approaches.* Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible.

Sec. 5. *Science.* Consistent with the President's Memorandum for the Heads of Executive Departments and Agencies, "Scientific Integrity" (March 9, 2009), and its implementing guidance, each agency shall ensure the objectivity of any scientific and technological information and processes used to support the agency's regulatory actions.

Sec. 6. *Retrospective Analyses of Existing Rules.* (a) To facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Such retrospective analyses, including supporting data, should be released online whenever possible.

(b) Within 120 days of the date of this order, each agency shall develop and submit to the Office of Information and Regulatory Affairs a preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

Sec. 7. *General Provisions.* (a) For purposes of this order, "agency" shall have the meaning set forth in section 3(b) of Executive Order 12866.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
January 18, 2011.

[FR Doc. 2011–1385
Filed 1–20–11; 8:45 am]
Billing code 3195–W1–P

NAFTZ's Redlined Changes to Section 400.43

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), ~~a grantee~~ Grantees and their Administrators shall afford to all who may apply to make use of or participate in the ~~zone project~~Zone Project uniform treatment under like conditions.

~~(a)~~ Standard contractual provisions. Uniform treatment shall be ensured through the ~~grantee's~~Grantee's or its Administrator's offer of standard contractual provisions ~~for agreements for zone participants.~~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 ~~proposed by the grantee~~ must be ~~included in~~available to the ~~grantee's zone schedule (see Sec. 400.45).~~

(a) ~~(b) Agreements to be made in writing directly with grantee. Any agreement or contract related to one or more grantee function(s) and involving a zone participant (e.g., agreements with property owners, agreements with zone operators) must be in writing between~~public and the ~~zone participant and the grantee~~Board upon request.

(b) ~~(c)~~ Neutral evaluation criteria. ~~Uniform treatment~~Each Grantee or its Administrator shall ~~be ensured in~~develop and maintain written ~~policies~~ guidelines on the ~~grantee's~~public interest evaluation ~~of~~criteria used to decide on proposals from potential ~~zone participants through the grantee's application of~~Zone Participants and Property Owners. Such evaluation criteria ~~that are neutral~~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~~Grantee to accept all proposals by ~~zone participants~~prospective Zone Participants or Property Owners, but the bases for a ~~grantee's~~Grantee's decision on a particular proposal must be consistent with the ~~grantee's~~Grantee's evaluation criteria.

(c) ~~(d)~~ Justification for differing treatment. Given the requirement for uniform treatment under like conditions, for any instance of divergence from uniform treatment a ~~grantee~~Grantee or its Administrator must be able to ~~document~~provide, upon request by the Executive Secretary, the ~~specific dissimilarity of conditions that justifies~~justification for any difference in treatment.

~~(e) Preclusion of conflicts of interest. To avoid non-uniform treatment of zone participants, this section seeks to preclude certain conflicts of interest in agents' performance of the following zone-related grantee functions: Reviewing, making recommendations regarding or concurring on proposals/requests by zone participants pertaining to FTZ authority or activation by CBP; any oversight of zone participants' operations within the zone project; or collecting/evaluating annual report data from zone participants. None of those zone-related grantee functions shall be undertaken by:~~

~~(1) A third party (or person on behalf of a third party) that currently engages in, or which has during the prior two years engaged in, offering/providing a zone-related product/service to or representing a zone participant in the grantee's zone project;~~

~~(2) Any person that stands to gain from a specific third party's offer/provision of a zone-related product/service to or representation of a zone participant in the zone project; or,~~

~~(3) Any person related, as defined in paragraph (f) of this section, to the third party/person identified in paragraphs (e)(1) and (2) of this section.~~

~~(f) Definition of related parties. For purposes of this section, persons that are related would include:~~

~~(1) Members of a family;~~

~~(2) Organizations that are wholly or majority-owned by members of the same family;~~

~~(3) An officer or director of an organization and that organization;~~

~~(4) Partners;~~

~~(5) Employers and their employees;~~

~~(6) An organization and any person directly or indirectly owning, controlling, or holding with power to vote, 20 percent or more of the outstanding voting stock or shares of that organization;~~

~~(7) Any person who controls any other person and that other person (the term control means the power, direct or indirect, whether or not exercised, through any means, to determine, direct, or decide important matters affecting an entity); or,~~

~~(8) Any two or more persons who directly control, are controlled by, or are under common control with, any person (see definition of control in paragraph (f)(7) of this section).~~

(d) ~~(g)~~ 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.

(d)(e) Requests for determinations. A grateeGrantee or other affected party may request a determination by the Executive Secretary regarding the consistency of the grantee's or other party's actual or potential provision or arrangement with the requirements ofGrantee's or its Administrator's guidelines under this section.

(e)(f) (h) Identification of agent.Mandatory disclosure. The Board, the Commerce Department's Assistant Secretary for Import Administration, or the Executive Secretary may require a zone granteeGrantee to identify any agentperson that has performed one or more of the any zone-related grateeGrantee functions cited in Sec. 400.43(e) in the zone projectthe Zone Project during a specified period of time.

(f)(g) (i) Delayed compliance date. Recognizing that some grantees'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 ruleRule.

NAFTZ's Redlined Changes to Section 400.42

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

EXHIBIT C

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 NAFTZ 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 NAFTZ'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 ~~as~~of zone under public utility principles.

(a) ~~(a)~~ In general. Pursuant to Section 14 of the FTZ Act (19 U.S.C. 81n), each ~~zone~~Zone Project shall be operated ~~as a~~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~~Zone Participants shall be based on costs incurred by the ~~grantee~~Grantee or its Administrator and shall be ~~directly~~ related to the ~~service~~services provided ~~by the grantee (for which the rate or charge recovers costs incurred)~~ to ~~the zone~~

~~participants.~~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. For any functions that a grantee contracts to third parties for which costs are passed on (wholly or in part) through charges to zone participants, costs must reflect going rates for the performance of such contracted functions.~~Zone Participants. Any rates, charges or penalties paid by ~~zone participants~~Zone Participants related to ~~grantee~~Grantee or Administrator functions shall be included in the Zone Schedule and paid directly to the ~~grantee (~~Grantee or~~, where applicable, to another public entity pursuant to a legal or contractual relationship with the grantee).~~ its Administrator.

(b) ~~(b)~~ Delayed compliance date. Recognizing that some ~~grantees'~~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~~Rule.

NAFTZ's Redlined Comments on Sections 400.47, 400.62, & 400.63

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 ~~ordinarily~~ be construed to make the ~~zone grantee automatically~~Grantee or its Administrator liable for violations by ~~zone participants because grantees generally provide for operators/users a framework of general authority within which individual parties may operate under the detailed supervision of CBP. In such circumstances, it would~~Zone Participants. It is not ~~be~~ in the public interest to discourage public entities from zone sponsorship because of concern about liability without fault. ~~Grantees should not be liable for the acts or violations of operators or users in which they share no fault.~~ However, this section will not necessarily apply to a ~~grantee~~Grantee or its Administrator that undertakes detailed operational oversight of or direction to ~~operators/users within its zone~~Zone Participants.

EXHIBIT D

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 NAFTZ 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) ~~(a)~~ In general. This section authorizes fines for certain specific violations of the FTZ Act or the Board's ~~regulations.~~Regulations. Each instance of those specific

violations is subject to a fine of not more than 1,000 dollars ~~(as adjusted for inflation pursuant to Sec. 400.62(k)),~~, 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 ~~zone operator, grantee or agent of the grantee.~~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 ~~or subzone~~. Violations of the FTZ Act or the Board's ~~regulations~~Regulations (including the sections pertaining to production activity and submission of ~~annual reports~~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 ~~generally~~ 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) ~~(b)~~ Violations involving production activity.

~~(1) For purposes of Sec. 400.62(b), each of the following constitutes a separate offense, with the operator subject to a fine of not more than 1,000 dollars (as adjusted for inflation pursuant to Sec. 400.62(k)) for each such separate offense:~~

~~(i)~~ Each intermediate/finished product ~~or foreign component or combination thereof~~ for which the ~~operator had~~Operator failed to obtain the required advance approval pursuant to Sec. 400.14(a) ~~or to submit notification pursuant to Sec. 400.14(e)(1);~~

~~(ii) Production involving any finished product, foreign component, or combination thereof authorized by the FTZ Board (or properly notified under Sec. 400.14(e)(1)) at a level exceeding the plant's capacity authorized by the Board (or properly notified under Sec. 400.14(e)(2)); and,~~

(1) ~~(iii) Each~~ constitutes a separate offense, with the Operator subject to a fine of not more than 1,000 dollars per business day ~~during,~~ which ~~an offense cited in Sec.~~ includes any CBP fines, penalties or liquidated damages assessed for the same violation.

~~400.62(b)(1)(i) or (ii) continues.~~

(2) ~~(2)~~ Consistent with Sec. 400.47, in instances where a ~~grantee~~Grantee or ~~agent of the grantee~~its Administrator has undertaken complicit detailed operational ~~oversight or direction of an operator~~involvement with an Operator engaged in production within a ~~zone project~~Zone Project, the ~~grantee~~Grantee or ~~agent~~its Administrator may also be subject to a fine of not more than 1,000 dollars ~~(as adjusted for inflation pursuant to Sec. 400.62(k))~~for each offense of the ~~operator~~Operator that is subject to Sec. ~~400.62(b)(1)(i), (ii) or (iii).~~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.~~Annual Report. Each business day during which a ~~grantee~~Grantee fails to submit ~~a complete and accurate annual report~~ 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~~Regulations constitutes a separate offense subject to a fine of not more than 1,000 dollars ~~(as adjusted for inflation pursuant to Sec. 400.62(k)).~~. Further, each business day during which ~~a zone operator~~an Operator fails to submit to the ~~zone's grantee~~Grantee the information required for the ~~grantee's~~Grantee's timely submission of ~~a complete and accurate annual report~~an Annual Report to the Board may constitute a separate offense subject to a fine of not more than 1,000 dollars ~~(as adjusted for inflation pursuant to Sec. 400.62(k)).~~. . Consistent with Sec. 400.47, in circumstances where the violation demonstrably results from ~~a zone operator's~~an Operator's failure to submit a complete and accurate report to the ~~zone grantee~~Grantee, the responsible ~~operator~~Operator would be the ~~focus~~subject of any fine-assessment action by or on behalf of the Board~~.~~

(c) ~~(d) Violations involving conflicts of interest. Each day during which an agent of~~ 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~~Grantee.

~~(e)~~(d) Violations involving uniform treatment. Each business day during which a Grantee or its Administrator violates the provisions of Sec. 400.43~~(e)~~ of these ~~regulations~~Regulations constitutes a separate offense for which the ~~agent~~Grantee or its Administrator would be subject to a fine of not more than 1,000 dollars ~~(as adjusted for inflation pursuant to Sec. 400.62(k)).~~.

~~(d)~~(e) ~~(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~~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~~Regulations and has failed to take such action within a reasonable period of time), the following steps will be taken:

(1) ~~(1)~~ The Executive Secretary will notify the party or parties responsible for the violation in writing stating the nature of the alleged violation, and ~~provide~~providing the party(ies) a specified time period (~~normally~~ 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) ~~(2)~~ The Executive Secretary will conduct a hearing, if requested or otherwise if appropriate;

(3) ~~(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)~~'s~~' 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) ~~(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 ~~fines~~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 ~~Executive~~Assistant Secretary of Import Administration the authority to make a determination.

(f) ~~(f)~~ Mitigation. ~~(1)~~

~~(5)~~(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 ~~party~~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). ~~Mitigating evidence~~Evidence and argument pertaining to mitigating factors must be submitted within thirty (30) days of the ~~determination~~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~~.~~).

~~(6)~~(2) ~~(2)~~ Mitigating factors. Factors to be taken into account in evaluation of potential mitigation include:

(i) ~~(i)~~ The prior good record of a violator ~~over the preceding five years~~ with regard to the type of violation(s) at issue;

(ii) ~~(ii)~~ A violator's inexperience in the type of ~~foreign-trade~~ zone activity at issue;

(iii) ~~(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~~Regulations;

(iv) ~~(iv)~~ Immediate remedial action by the violator to avoid future violations;

(v) ~~(v)~~ A violator's cooperation with the Board ~~(beyond~~in resolving the ~~degree~~issue to the satisfaction of ~~cooperation expected from a person under investigation for a violation) in ascertaining the facts establishing the violation~~all parties;

(vi) ~~(vi)~~ A violation resulting from a clerical error or similar unintentional negligence;

(vii) ~~(vii)~~ The violation did not have any impact on the government's revenue collection;

~~(vii)~~(viii) Contributory Board error such as the violation resulting, at least in ~~significant~~ part, from the violator having relied on inaccurate ~~written~~ advice provided by a Board staff member; and,

~~(viii)~~(ix) ~~(viii)~~ Other such factors as the Board, or the ~~Executive~~Assistant Secretary of Import Administration, deems appropriate to consider in the specific circumstances presented.

~~(e)~~(g) ~~(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 ~~an~~a fine or cancel the imposed fine ~~(in whole or in part).~~. 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).

~~(f)~~(h) ~~(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.

~~(g)~~(i) ~~(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. ~~Sec.~~ 400.14(e)(3~~) or 400.38(c~~), 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~~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 ~~a zone operation~~an Operation in the circumstances noted, the following steps shall be taken:

(1) ~~(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~~Grantee is not one of the responsible parties notified, the Executive Secretary will also provide a copy of the notification to the ~~grantee.~~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) ~~(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 ~~(or a member of the Board staff designated by the Executive Secretary) within 30~~ 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) ~~(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) ~~(i)~~ The deadline for the party(ies)'s response under paragraph (i)(1) of this section; or,

(ii) ~~(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.

~~(h)~~(j) ~~(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.

~~(i) (k) Adjustment for inflation. The maximum dollar value of a fine for a violation of the FTZ Act or the Board's regulations is subject to adjustment for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996.~~

DISCUSSION - Sec. 400.63 Voluntary disclosure.

The NAFTZ 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 NAFTZ 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 ~~Prior~~ Voluntary disclosure.

(a) ~~(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~~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) (b) The disclosure should fully describe the circumstances surrounding the violation including:

(1) (1) The general-purpose zone site(s) or subzone(s) involved;

(2) (2) The CBP port(s) of entry involved;

(3) (3) The legal or regulatory provisions violated;

(4) (4) The circumstances of the act(s) constituting the violation;

(5) (5) The corrective measures undertaken to resolve the violation;

(6) An assurance that the violation will not reoccur; and,

(6) (7) Preventative measures adopted; and,

(6)(7) Copies of sufficient documentation for the Board to identify the act(s) constituting the violation.

(c) (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.

(c)(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.

(d)(e) (d) 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) (e) If a party subject to a fine pursuant to Sec. 400.62 submits a valid written priorvoluntary disclosure, itno fine or penalty shall be assessed as long as the general policy of the Board (except in cases involving fraudulent intent) to reduce to a maximum of 1,000 dollars the total sum of potential fines for a

~~single~~underlying violation ~~or series~~has been rectified and there is no finding of ~~offenses stemming from~~fraud.

~~(e)~~(g) If a ~~continuing~~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) ~~(f)~~ A ~~prior~~voluntary disclosure pursuant to this section shall ~~not involve the loss of revenue and is~~ only be applicable to those ~~fines~~ imposed ~~pursuant to~~under this section. Any ~~prior disclosure~~issues involving a loss of revenue must be addressed through the CBP prior disclosure procedures established by 19 U.S.C. 1592(c)(4).

From: Graham, Steven R [mailto:steven.graham@associates.dhs.gov]
Sent: Friday, June 24, 2011 9:24 AM
To: Will Berry
Cc: SCHREFFLER, GARY R; ANNUNZIATO, VINCENT; WALLACE, MINDY J.; SCHREFFLER, MICHAEL K; O'CONNELL, MARIA L.; GRANT, SONJA R; ROSENTHAL, GARY; Lubel, Steven M
Subject: Explanations regarding FTZ Subzones with multiple physical locations and the use of FIRMS codes.

Dear Mr. Berry,

Thank you for your questions regarding CBP policy. With a desire to offer clarity, representatives from the Office of Field Operations and Office of International Trade have developed the following explanations regarding FTZ Subzones with multiple physical locations and the use of FIRMS codes. The three areas addressed are…

1. The issuance of a FIRMS code for each bonded facility located at an independent physical street address
2. The need to file separate e214 FTZ Admissions for each subzone location
3. The need to file a Permit to Transfer in order to move product from one bonded subzone site to another within the same subzone.

FIRMS codes
CBP issues FIRMS codes to all bonded facilities including FTZ sites. This is an indication that CBP has authorized customs-bonded activities in that location.

19 CFR 19.2, Application to Bond, reads in part *"A warehouse facility will be determined by street address, location, or both. For example, if a proprietor has two warehouses located at one street address and three warehouses located at three different street addresses the two located at one address would be considered as one warehouse facility and the three located at three different addresses would each be considered as separate warehouses facilities."*

CBP has determined that there is a sufficient supply of FIRMS codes to continue assigning a unique code to each individual bonded location. This policy in itself has no effect on the next two issues raised by NAFTZ.

Separate e214 FTZ Admissions for each FTZ site location
Many "familiar" practices that were allowed in an all-paper FTZ Admission environment can no longer exist in an electronic transaction environment. The electronic e214 enables CBP to maintain transaction information in tables and databases. One such high profile change is that each individual CBP-authorized FTZ site is issued not only a FIRMS code, but also an associated Zone ID for inclusion as part of the FTZ Admission number algorithm for admissions into that FTZ site.

Under FTZ Audit-Inspection procedures, CBP has no issue with continuing the practice of allowing a single FTZ admission (paper or electronic), or cumulative e214 admission, for admitting goods into a Subzone project. With the advance concurrence of the local CBP Port Director, this could entail the use of a single Zone ID and FIRMS code on the e214 admission, even though the Subzone has multiple subzone sites and intends to move FTZ product between those sites as part of their routine business process. Once merchandise has been

EXHIBIT E

properly admitted to the Subzone, CBP has no issue with the movement of product between the subzone sites as long as the following conditions are met:

- All FTZ activities are under a single FTZ Operator's bond
- All FTZ activities within the subzone sites are managed by a single Inventory Control Recordkeeping System (ICRS) as approved by CBP. As defined in the FTZ Manual, CBP understands that the ICRS may be a combination of electronic and hardcopy records.
- Upon demand by CBP, the FTZ Operator can account for the physical location and disposition of all merchandise under Admission within the Subzone sites using the ICRS[1].

Use of Permit to Transfer authorization

It is common for a Subzone to have multiple authorized Subzone Sites, and to move product from one site to another as part of their routine business operations. Under FTZ Audit-Inspection procedures, once merchandise has been properly admitted to the Subzone, CBP has no issue with the movement of product between the subzone sites without a Permit to Transfer as long as the following conditions are met:

- All FTZ activities are under a single FTZ Operator's bond
- All FTZ activities within the subzone sites are managed by a single Inventory Control Recordkeeping System (ICRS) as approved by CBP. As defined in the FTZ Manual, CBP understands that the ICRS may be a combination of electronic and hardcopy records.
- Upon demand by CBP, the FTZ Operator can account for the physical location and disposition of all merchandise under Admission within the Subzone site using the ICRS[1].

The above conditions apply to subzone projects *only*. There are at least two more multiple-location scenarios to be considered.

<u>Multiple locations with the same General Purpose Zone acreage set</u> – When a business entity has multiple bonded locations within a *single* General Purpose Zone acreage (acreage site as designated by the FTZ Board), and wishes to move product between the bonded locations, CBP has no issue with this movement without a Permit to Transfer as long as the following conditions are met:

- All FTZ activities within the involved GP sites are under a single FTZ Operator's bond
- All FTZ activities within the involved GP sites are managed by a single Inventory Control Recordkeeping System (ICRS) as approved by CBP. That is, in advance CBP has issued written approval for the multiple GP site locations to operate under a single ICRS. As defined in the FTZ Manual, CBP understands that the ICRS may be a combination of electronic and hardcopy records.
- Upon demand by CBP, the FTZ Operator can account for the physical location and disposition of all merchandise under Admission within the involved GP sites locations using the ICRS[1].

<u>Multiple General Purpose site locations in multiple General Purpose Zone acreage sets</u> – When a business entity has a GP site location in General Purpose Zone acreage #1 and a second GP site location in General Purpose Zone acreage #2 then a Permit to Transfer is required to move FTZ product between the two GP site locations. In order for the second GP site to take in the merchandise, a new admission will need to be filed. The difference between this scenario and the above scenarios is that without an admission there is no clear way to monitor levels of FTZ activity in individual General Purpose Zone acreage sets.

[1]In the case of petroleum and gas products, and some other bulk products, it is understood that such merchandise may be considered fungible and is commonly commingled in storage and bonded movement.

Steven R. Graham
International Trade Liaison, Trade Relations
Office of the Commissioner
U.S. Customs and Border Protection (CBP)
Office Ph: 202-325-4549
Steven.R.Graham@cbp.dhs.gov

National Association of Foreign-Trade Zones
1001 Connecticut Avenue NW Suite 350
Washington, DC 20036
202.331.1950

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,

Willard M. Berry
President

PARTNERSHIP. PRIDE. PROSPERITY.

EXHIBIT F

REDLINE VERSION

INTRODUCTION

The NAFTZ, 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 NAFTZ 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 NAFTZ 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 NAFTZ 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 NAFTZ 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 NAFTZ, 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 NAFTZ 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 NAFTZ 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 NAFTZ presented a Webinar to its members to help them analyze and evaluate the proposed rules. A detailed multi-hour presentation occurred at the NAFTZ 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 NAFTZ formed four Task Forces of NAFTZ 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 NAFTZ 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 NAFTZ 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 NAFTZ 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. competiveness. 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 NAFTZ 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.

Deleted: ¶

Deleted: and subzones

Deleted: state

Deleted: production or

Deleted: authority

Deleted: zone project

Deleted: 24

Deleted: zone projects

Deleted: 400.25 Criteria for evaluation of production and subzone proposals.¶ 400.26

Deleted: 27

Deleted: ¶

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.

Deleted: zone project

Deleted: 400.37 Procedure for notification and review of production changes.¶
400.38 Monitoring and reviews of zone operations and activity.¶

Deleted: ¶

Deleted: zone project

Deleted: schedule

Deleted: Prior

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.

Deleted: (a)

Deleted: regulations

Deleted: rules

Deleted: rules

Deleted: regulation

Deleted: regulations

(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

Deleted: (b)

Deleted: c

Deleted: regulations

Deleted: (c)

Deleted: ¶

Deleted: ,

Deleted: if used in production activity,

Deleted: federal

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.

Deleted: state

DISCUSSION - Sec. 400.2 Definitions.

The NAFTZ 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).

Deleted: (a)

(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.

Deleted: (b) Agent

(c) Administrator means a person (as defined in Sec. 400.2(μ)) acting on behalf of or under agreement with the Grantee in matters related to management of the Zone Project.

Deleted: h

Deleted: zone grantee

Deleted: zone-

Deleted: matters

(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.

Deleted: (c)

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.

Deleted: (d)

Deleted: (e)

Deleted: (f)

Deleted: corporation granted authority

Deleted: (g)

Deleted: document issued by the

Deleted: zone grantee

Deleted: project

Deleted: subzone

Deleted: The

Deleted: to establish a

(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.

Deleted: includes the authority to operate and the responsibility

Deleted: it.

Deleted: (h)

Deleted: enterprise

Deleted: (i)

Deleted: normally

Deleted: (j)

Deleted: regulations

Deleted: c

Deleted: regulations

Deleted: (k)

Deleted: zone project

Deleted: state

Deleted: (l)

(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.

Deleted: an article or in

Deleted: (m)

Deleted: (n)

Deleted: organized

Deleted: an entity, such as all or part of an industrial park or airport facility

Deleted: (o)

Deleted: state

Deleted: (p)

Deleted: zone project

Deleted: limited purpose

Deleted: (q) Zone

(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

(6) Department's Assistant Secretary for Import Administration or the

(6) 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;

Deleted: regulations.

Deleted: , unless the context indicates otherwise

Deleted: (r) Zone grantee is the corporate recipient of a grant of authority for a zone project. Where used in this part, the term "grantee" means "zone grantee" unless otherwise indicated.¶
(s) Zone operator is a person that operates within a zone or subzone under the terms of an agreement with the zone grantee, with the concurrence of the Port Director.¶
(t) Zone participant is a zone operator, zone user, property owner, or other person participating or seeking to participate in some manner in, or to make use of, the zone project.¶
(u) Zone project means the zone plan, including all of the zone and subzone sites that the Board authorizes a single grantee to establish.¶
(v) Zone site means a physical location of a zone or subzone.¶
(w) Zone user is a party using a zone under agreement with the zone grantee or a zone operator.¶

Deleted: (a)

Deleted: (1)

Deleted: rules

Deleted: regulations

Deleted: (2)

Deleted: zones and subzones, and approve

Deleted: the original zone project

Deleted: (3)

Deleted: and subzones as described in this part

Deleted: (4) Make determinations on matters requiring Board decisions under this part;

Deleted: (5)

Deleted: ¶
Department's

Deleted: ¶

Deleted: (6)

Deleted: zone grantees and operators

Deleted: (7)

Deleted: zone grantees

Deleted: (8)

Deleted: (9)

(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.

Deleted: (10)
Deleted: d
Deleted: (11)
Deleted: return
Deleted: "zone-
Deleted: " for entry
Deleted: (12)
Deleted: (13)
Deleted: (14)
Deleted: (15)
Deleted: (b) Authority of the
Deleted: (1)
Deleted: (2)
Deleted: (3)
Deleted: annual report
Deleted: (c)
Deleted: (d) Authority of the Assistant Secretary for Import Administration (Alternate Chairman). The
Deleted: (1)
Deleted: (2)
Deleted: (3)
Deleted: (4)
Deleted:
Deleted: 14(e
Deleted: 38
Deleted: (e) Determinations of
Deleted: <#> the Board. (1) The determination of the Board will be based on the unanimous vote of the members (or alternate members) of the Board.¶ <#> (2) All votes will be recorded.¶ (3) The Board will issue its determination in proceedings under the regulations in the form of a Board order.

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);

Deleted: (a)
Deleted: (b)
Deleted: (c)
Deleted: (d)
Deleted: (e)
Deleted: (f)
Deleted: regulations
Deleted: (g)
Deleted: *Federal Register*
Deleted: (h)
Deleted: (i)
Deleted: subzone
Deleted: (d);
Deleted: (j)
Deleted: (k)
Deleted: (l)
Deleted: 23
Deleted: (m)

(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.

Deleted: (n)
Deleted: 23
Deleted: (o)
Deleted: (p)
Deleted: (q)
Deleted: zone projects
Deleted: (r)
Deleted: 37
Deleted: (s)
Deleted: 38
Deleted: (t)
Deleted: sufficiency under
Deleted: e
Deleted: (u)
Deleted: and review
Deleted: (v)
Deleted: certain
Deleted: (w)
Deleted: under certain circumstances
Deleted: return
Deleted: "zone-
Deleted: " for entry
Deleted: (x)
Deleted: annual reports
Deleted: zone grantees
Deleted: annual report
Deleted: (y)
Deleted: certain
Deleted: certain
Deleted: (z)

(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.

Deleted: (a) In general. After review, the Board may restrict or prohibit any admission of merchandise into a zone project or any operation in a zone project when it determines that such activity is detrimental to the public interest, health or safety.¶
(b)

Deleted: a

Deleted: party

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 NAFTZ 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

Moved (insertion) [1]

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 NAFTZ 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.

Moved (insertion) [2]

Deleted: Ability

Deleted: and subzones

Deleted: ¶ (a)

Deleted: zone projects

Deleted: (1)

Deleted: (i)

Deleted: zone project

Deleted: (ii)

Deleted: zone project

Deleted: (iii)

Deleted: 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.

Deleted: (2)
Deleted: zone projects
Deleted: (b)
Deleted: and subzones
Deleted: (1)
Deleted: (2)
Deleted: (i)
Deleted: (ii)
Deleted: (A)
Deleted: (B)
Deleted: (C)
Deleted: grantee/operator

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;

Deleted: (a)
Deleted: zone project.
Deleted: (b)
Deleted: state
Deleted: also
Deleted: consistent
Deleted: (c)
Deleted: state
Deleted: (d)
Deleted: (1)
Deleted: (i)
Deleted: zone grantee
Deleted: zone project
Deleted: (ii)
Deleted: zone grantee
Deleted: zone
Deleted: (iii)
Deleted: state
Deleted: state
Deleted: (2)
Deleted: grantee.
Deleted: d
Deleted: (i)
Deleted: grantee
Deleted: d

(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).

Deleted: (ii)

Deleted: (A)

Deleted: zone's

Deleted: (B)

Deleted: (C)

Deleted: operator

Deleted: (iii)

Deleted: (iv)

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.

Deleted: (a)

Deleted: or subzones

Deleted: (1) Approvals from the grantee and the Port Director, pursuant to 19 CFR part 146, are required prior to the activation of any portion of an approved zone project.¶
(2) Prior to activation of a zone, the zone grantee

Deleted: operator

Deleted: federal, state

Deleted: (3)

Deleted: or a subzone

Deleted: zone project (in case of subzones, the subzone facility)

Deleted: order authorizing the zone or subzone.

Deleted: (4) 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 subject to concurrence of the Port Director.¶
(5) Zone grantees, operators

Deleted: users

Deleted: federal

Deleted: project and

Deleted: (6)

(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.

Deleted: (7)

Deleted: (8)

Deleted: land

Deleted: zone grantee

Deleted: implement

Deleted: project.

Deleted: grantee

Deleted: zone grantee

Deleted: grantee

Deleted: as grantee

Deleted: (b)

Deleted: ."

Deleted: the

Deleted: zone or subzone

Deleted: (a),

Deleted: (d) and (e).

Deleted: zone or subzone

Deleted: ongoing

Deleted: Sec. 400.25

Deleted: (c)

Deleted: the zone or subzone authorized by the grant of authority

(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

Deleted: (a) Activity requiring advance approval. Approval

Deleted: by the ¶
Board (or notification to the Board under the circumstances described in Sec. 400.37)

Deleted: is required

Deleted: or subzones

Moved (insertion) [3]

Deleted: (1) A foreign article for which the actual or effective duty rate for U.S. entries will be reduced through incorporation into a different product or article (inverted tariff);¶
(2) A foreign article

Deleted: ¶

Deleted: ;

Deleted: (3) Duty avoidance on scrap or waste resulting from the production activity (except for production activity that is for export only); or,¶
(4) For a production operation that had been the subject of prior Board consideration and approval (including delegated authority), a foreign article:¶
(i) For which there is a new (or increased) inverted tariff due to a new (or increased rate of) general or special duty relative to the circumstances in effect at the time of the Board's prior consideration of the foreign article's use in the production operation;¶
(ii) Which is subject (were it to enter U.S. customs territory) to an AD/CVD duty or suspension of liquidation under AD/CVD orde ...

Deleted: pursuant to

Moved up [1]: Sec.

Deleted: 400.51(d)(1).¶ ...

Moved up [2]: Sec.

Moved down [4]: 400.22 and shall be ...

Deleted: Activity

Moved down [5]: conducted without ...

Moved down [6]: The sole zone benefit ...

Deleted: 400.14(e)). If a grantee, operato ...

Deleted: request a scope determination ...

Deleted: ¶ ...

Deleted: ¶ ...

Deleted: applicant, to enable

Deleted: in question

Deleted: Executive Secretary

Deleted: 25, any

Deleted: received

Deleted: any

Deleted: relevant

Deleted: realistic

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.

Deleted: Assistant

Deleted: for Import Administration

Deleted: (e) Production changes and capacity increases.¶
(1) Production changes. Where advance approval is required under

Moved up [3]: Sec.

Moved down [8]: Sec.

Moved (insertion) [4]

Deleted: 400.14(a), an applicant requesting production authority from the Board (or with existing production authority from the Board) may also request authority to notify the Board on a quarterly retrospective basis of production changes involving new finished products or foreign components/inputs resulting in inverted tariff or scrap benefits. Foreign articles subject (were they to enter U.S. customs territory) to AD or CVD orders or which would be otherwise subject to suspension of liquidation under AD/CVD procedures, to an order of the International Trade Commission pursuant to Section 337, to any ongoing AD/CVD or Section 337 proceeding, or to quantitative import controls (quotas) are not eligible for the production change notification procedure. Sec. 400.37 delineates applicable criteria and procedures for requests for authority to utilize the production change notification provision and, where such authority has been approved, for subsequent notifications to the Board.¶
(2) Capacity increases. For a production operation approved by the FTZ Board, the operator shall notify the Board of any increases in production capacity (Sec. 400.22(a)(3)(vii)) relative to the capacity level approved by the Board (or for which notification was previously submitted to the Board pursuant to this paragraph) no later than the end of the calendar quarter during which the capacity increase becomes effective. The notification shall name the zone or subzone operation for which the notification is occurring and address the impact of the notified change(s) on the elements in Sec. Sec. 400.22(a)(3)(v), (vi) and (vii) relative to the most recent prior Board approval (or notification pursuant to this paragraph) for the production operation in question. The Executive Secretary shall establish any guideline or format necessary to implement this paragraph, and may request additional information as needed ...

Moved down [7]: Sec.

Deleted: 400.14(e)(1) and (2), including requiring that items be placed in privileged foreign status (19 CFR 146.41) upon admission to a zone or subzone. Any party so ordered ...

Deleted: 400.62(b). Such a prohibition or restriction on the use of zone procedures in regard to the production change or capacity increase may occur, depending on the circumstances, either after further review of th ...

Moved (insertion) [5]

Moved (insertion) [6]

(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.

Deleted: (g)

Deleted: (1)

Deleted: (2)

Deleted: ¶

Deleted: or subzone

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.

Deleted: (a)

Deleted: (b)

Deleted: zone production activity as defined in Sec. 400.2(l) of this part.

Deleted: (c)

Deleted: production

Deleted:)),

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))

Deleted:

Deleted: Foreign merchandise (tangible personal property) admitted to a zone and domestic merchandise held in a zone for exportation are exempt from state and local ad valorem taxation while such merchandise remains in the zone in zone status (19 U.S.C. 81o(e)). The exemption from such taxation is limited to tangible

Deleted: purposes stated in 19 U.S.C. 81o(e),

Deleted: stated in

Deleted: 81o(

Deleted:).

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;

Deleted: (a)

Deleted: project (including

Deleted: procedures adopted by the Board; see 74 FR 1170, Jan. 12, 2009, 74 FR 3987, Jan. 22, 2009, and 75 FR 71069-71070, Nov. 22, 2010

Deleted: (b)

Deleted: ***Federal Register***

Deleted: (c)

Deleted: currently

Deleted: (1)

Deleted: consistent

Deleted: state

Deleted: (2)

(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;

Deleted: (3)
Deleted: and
Deleted: larger project of which the
Deleted: is a part
Deleted: (4)
Deleted: project
Deleted: (5)
Deleted: project
Deleted: state's international trade-related goals
Deleted: objectives;
Deleted: (6) Any production authority requested, where applicable; and,¶ (7)
Deleted: (d)
Deleted: (1)
Deleted: (i)
Deleted: state
Deleted: described in
Moved down [9]: Sec.
Deleted: Sec. 400.12(b) and (c);¶ (ii)
Deleted: pertinent to foreign-trade zones
Deleted: (iii)
Deleted: recent
Deleted: (2)
Deleted: Descriptions
Deleted: designations
Deleted: (i)
Deleted: (ii)
Deleted: (iii)
Deleted: (including distance from the limits of the port of entry and, if the distance exceeds 60 miles, driving time from the limits of the port of entry);
Deleted: (iv)
Deleted: (with environmentally sensitive areas avoided)

(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;

Deleted: (v)

Deleted: (vi)

Deleted: ;

Deleted: (vii)

Deleted: (viii)

Deleted: (ix)

Deleted: (3)

Deleted: (i)

Deleted: (ii)

Deleted: (iii)

Deleted: (iv)

Deleted: (4)

Deleted: justification

Deleted: (i)

Deleted: state

Deleted: zone project

Deleted: (ii)

Deleted: (A)

Deleted: (B)

Deleted: (C)

Deleted: (D)

Deleted: (iii)

Deleted: and

Deleted: zone project

Deleted: zone project

Deleted: (iv)

Deleted: , including specific explanation addressing the degree to which each proposed site may be duplicative of types of facilities at other proposed or existing sites in the zone project

(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

(h) Constitution Avenue, NW., Washington, D.C. 20230. Options for submission of electronic copies are described on the FTZ Board's Internet site.

Deleted: (v)

Deleted: zone users

Deleted: (vi)

Deleted: 22

Deleted: (5)

Deleted: Blueprints

Deleted: (i) State and county maps

Deleted: in terms of the area's transportation network

Deleted: (ii) For any proposed site, a local community map showing in red the location of the site;¶
(iii)

Deleted: blueprint

Deleted: or subzone area

Deleted: dimensions

Deleted: (iv) For proposals involving existing zones, one

Deleted: existing

Deleted: and the proposed changes

Deleted: (e)

Deleted: (f)

Deleted: expand

Deleted: scope

Deleted: (g) Drafts. Applicants are encouraged to submit a draft application to the Executive Secretary for review. A draft application must be complete with the possible exception of the application letter and/or resolution from the grantee.¶
(h)

Deleted: ,

Deleted: \

Deleted: 2\"

Deleted: (216 x 279 mm)

Deleted: (i)

Deleted: ¶

Deleted: ¶

Deleted: DC

(i) Alternative Site Framework Applications. In addition to the general application requirements of this section, Alternative Site Framework Applications shall include the following:

(i) (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

(ii) alternative procedures as set out by

(iii)

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.

Moved down [10]: Sec.

Deleted: 400.22 Application for production or subzone authority.¶
(a) In general.

Deleted: any applicable

Deleted: Sec. 400.21, an application involving proposed production authority under Sec. 400.14(a)

Deleted: :¶
(1) A summary as to the reasons for

Deleted: and an explanation of its anticipated economic effects;¶
(2) Identity of the user and its corporate affiliation;¶
(3) A description of the proposed activity, including:¶
(i) Products;¶
(ii) Materials and components;¶
(iii) For each product or material/component, the tariff schedule category, tariff rate, other import requirements or restrictions, and whether the material/component is subject to any antidumping or countervailing duty proceeding, a proceeding pursuant to 19 U.S.C. 1337

Moved down [11]: Projected

Deleted: (vi) Estimated total or range of

Moved down [12]: Sec.

Deleted: Sec. 400.25(a)(1)(iii) and

Deleted: have been considered as a means

Moved down [13]: Information on t

Deleted: (xi)

Moved down [14]: Economic impac

Moved down [15]: Sec.

Deleted: (4) Information regarding any requ

Deleted: 400.37; and,¶

Deleted: in order to conduct the review.

Deleted: (b)

Moved (insertion) [10]

Deleted: as part of a proposed or existing

Deleted: and

Deleted: (1)

Deleted: A summary as to t

Deleted: effects

Deleted: (2) Identity of the subzone user

Deleted: , including the

Deleted: Information required in Sec. Sec.

Deleted: 22(a);

Deleted: (5)

Deleted: (6)

Deleted: .

(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 NAFTZ 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.

Deleted: expansion or other modification to zone project

Deleted: (a)

(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);

Deleted: (1)

Deleted: grantee may apply

Deleted: to the

Deleted: for authority to expand

Deleted: otherwise modify its zone project (including

Moved (insertion) [11]

(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 by the Board or the Executive Secretary in order to conduct the review.

(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 NAFTZ 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 NAFTZ 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

Deleted: the Alternative Site Framework procedures adopted

Deleted: the Board; see 74 FR 1170, Jan. 12, 2009, 74 FR 3987, Jan. 22, 2009, and 75 FR 71069-71070, Nov. 22, 2010).

Moved down [16]: 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.

Moved (insertion) [13]

Deleted: (2)

Moved (insertion) [14]

Moved down [17]: In making this determination the Executive Secretary will consider the extent to which the proposed modification would: by the Board or the Executive Secretary in order to conduct the review.

Deleted: zone proposals or expansion or other modifications to zone projects

Deleted: 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 in the port of entry area, taking into account existing as well as projected international trade-related activities and employment impact;¶

Deleted: (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;¶

Moved down [18]: The suitability of each proposed site and its facilities based on the plans presented for the site, including existing and planned buildings, zone-related activit ...

Moved down [19]: The specific need and justification for each proposed site, taking ...

Deleted: (d) The extent of state and local government support, as indicated by the compatibility of the zone project with the ...

Moved down [20]: Such officials shall avoid commitments that anticipate the outcome of Board decisions;¶

Deleted: Such officials shall avoid avoid commitments that anticipate the outcome of Board decisions;¶

Deleted: (e) The views of persons likely to be affected by proposed zone activity; and,¶ ...

Deleted: delineated in Sec. 400.25(a)

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 numerated 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

Deleted: (1)

Deleted: only

Deleted: 25

Deleted: ongoing

Deleted: (i)

Deleted: (ii)

Deleted: (iii)

Deleted: (2)

Deleted: (i)

Deleted: (ii)

Deleted: (iii)

Deleted: (iv)

Deleted: (v)

Deleted: (vi)

Deleted: (vii)

(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.

Deleted: (viii)

Deleted: (3)

Deleted: significant

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

(5) 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.

Moved (insertion) [7]

Deleted: (b) Subzones. In reviewing proposals for subzones, in addition to application of the factors delineated in Sec. 400.25(a) where production activity is involved, the Board will also consider:¶
(1) Whether the operation could be located in

Moved (insertion) [21]

Deleted: accommodated by the multi-purpose facilities of the zone project serving the area; and,¶
(2) The specific zone benefits sought and whether the proposed activity is in the public interest supported by evidence

Deleted: Sec. Sec. 400.22(b)(1) and (3).¶
(c) Contributory effect. In assessing the significance of the economic effect of the zone activity as part of the consideration of economic factors, and in consideration of whether there is a significant public benefit, the Board may consider the contributory effect zone savings have as an incremental part of cost effectiveness programs

Deleted: companies to improve their international competitiveness.

Moved (insertion) [16]

Moved (insertion) [17]

(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 phase “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.

Moved (insertion) [8]

Moved (insertion) [18]

Moved (insertion) [19]

Moved (insertion) [20]

Moved (insertion) [9]

Deleted: ¶ Sec. 400.26

Deleted: ¶

Deleted: (a)

Moved up [21]: In general.

Deleted: regulations.

Deleted: significant

(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) (i) Not involving production activity or less than three products--$4,000

(ii) (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

Deleted: (b) Responses to evidence of negative effects. Applicants making submissions in response to

Deleted: 27

Deleted: (a)

Deleted: (b)

Deleted: (1)

Deleted: (2)

Deleted: (b)):

Deleted: (3)

Deleted: 23

Deleted: (c)

Deleted: state

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.

Deleted: (d)

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

Deleted: (a)

Deleted: 1 year

Deleted: 10

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.

Deleted: (b)
Deleted: grantee
Deleted: s
Deleted: or subzone space
Deleted: operator
Deleted: grantee
Deleted: If the pre-docketing copy
Deleted: application is deficient
Deleted: will
Deleted: within 30 days of receipt of the pre-docketing copy, specifying the
Deleted: An
Deleted: may also
Deleted: .
Deleted: discarded

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

Deleted: (a)

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

Deleted: 27

Deleted: (b)

Deleted: (1)

Deleted: (2)

Deleted: (3)

Deleted: (c)

Deleted: ¶

Deleted: 22

Deleted: 23

Deleted: (1)

Deleted: (2)

Deleted: *Federal Register*

Deleted: zone project

Deleted: -

Deleted: .

Deleted: .

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.

Deleted: (3)

Deleted: (4)

Deleted: (5)

Deleted: (6)

Deleted: *Federal Register*

Deleted: (d)

Deleted: regulations

Deleted: will

Deleted: 45

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;

Deleted: 24

Deleted: (a)

Deleted: (b)

Deleted: (c)

(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.

Deleted: (d)

Deleted: (e)

Deleted: 120

Deleted: (1)

Moved down [22]: If the recommendations are unfavorable to the applicant, they shall be considered preliminary and the applicant shall be notified in writing (via electronic transmission where appropriate) of the preliminary recommendations and the factors considered in their development.

Deleted: in

Deleted: Public comment may be invited on preliminary recommendations when warranted.

Deleted: (2)

Deleted: *Federal Register*

Deleted: *Federal Register*

Deleted: notice

Deleted: -

Deleted: (3)

Deleted: (4) The CBP adviser shall be requested, when necessary, to provide further comments, which shall be submitted within 45 days after the request.¶

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 NAFTZ 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:

Deleted: (a)
Deleted: Sec. 400.25,
Deleted: (1)
Deleted: (2)
Deleted: (3)
Deleted: parties of record
Deleted: (4)
Deleted: 25
Deleted: (5)
Deleted: (i)
Deleted: Sec.
Deleted: 25
Deleted:)
Deleted: (ii);
Deleted: (ii)
Deleted: 25
Deleted:)(iii
Deleted: 25
Deleted: (iii)
Deleted: surveys
Deleted: (iv)
Deleted: 150

(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:

Moved (insertion) [22]

Deleted: (A) If the recommendations are unfavorable to the applicant, they shall be considered preliminary and the applicant shall be notified in writing (via electronic transmission where appropriate) of the preliminary recommendations and the factors considered in their development.

Deleted: in

Deleted: Public comment may be invited on preliminary recommendations when warranted.

Deleted: (B)

Deleted: *Federal Register*

Deleted: material

Deleted: *Federal Register*

Deleted: notice

Deleted: not less than

Deleted: -

Deleted: (C)

Deleted: ¶

Deleted: (b)

(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.

Deleted: (1)

Deleted: 25

Deleted: 25

Deleted: When threshold factors are the basis for a negative recommendation in a review of ongoing activity, the zone grantee and directly affected party shall be notified and given an opportunity to submit evidence pursuant to Sec. 400.34(a)(5)(iv)(A).

Deleted: determines in the

Deleted: 25

Deleted: or ongoing

Deleted: (2)

Deleted: process for

Deleted: 25

Deleted:)

Deleted: consideration

Deleted: .

DISCUSSION - Sec. 400.35 Completion of case review.

Because the NAFTZ 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 NAFTZ 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).

Deleted: (a)

(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.

Deleted: (b)

Deleted: requested

Deleted: (c)

Deleted: ,

Deleted: decision

Deleted: (d)

Deleted: opt to

Deleted: , or if the Board is unable to reach a unanimous decision regarding the disposition of the application.

Deleted: as a result of a material change, and will generally notify the applicant of the intent to terminate review and allow 30 days for a response prior to completion of any termination action.

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

Because the NAFTZ 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.

Deleted: 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).

Deleted: (a)

Deleted: ¶

Deleted: ,

Deleted: 23

Deleted: zone projects

Deleted: order

Deleted: 23

Deleted: (b) Evidence of concurrence from the Port Director and all other documentation required for the request or application shall be provided by the applicant to the Board as part of the applicant's submission of the request or application for minor modification.¶
Sec.

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 NAFTZ 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 NAFTZ 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

Moved (insertion) [23]

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 NAFTZ 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

Moved (insertion) [12]

Deleted: (a) Requests for authority to use notification procedure. Pursuant to Sec. 400.14(e)(1), an applicant for FTZ production authority (or a grantee or operator with existing FTZ production authority) may request authority from the Board to notify the Board of future production changes involving new finished products or foreign status components/inputs.¶
(1) Format for request for authority. A request for authority to use the notification procedure shall include a list of the tariff schedule headings (4-digit HTSUS) within which such notifications are projected to occur (separated into headings that relate to finished products and headings that relate to components), to which such notifications shall then be limited, and shall explain the relevance of each heading to current or projected activity and provide an economic justification for the request based on the elements in Sec. 400.22. The Executive Secretary shall establish any guidelines or format necessary to implement this section.¶
(2) Review and decision on request for authority. The review of a request submitted pursuant to Sec. 400.37(a) shall be conducted in accordance with the procedures delineated in Sec. Sec. 400.31-32 and 400.34-35. A Board approval of authority to use the production change notification provision may be subject to specific restrictions on a case-by-case basis, as warranted.¶
(b) Procedure for notification of production change.¶
(1) Deadline for notification. For any production change subject to this provision, the grantee or operator shall notify the Board no later than 45 days after the end of the calendar quarter during which the production change took place.¶
(2) Format for notification. The notification shall name the zone or subzone operation for which the notification is occurring and delineate new finished products or foreign components associated with the change, including tariff schedule numbers and duty rates, as well as provide information addressing the impact of the notified change(s) on the elements in Sec. Sec. 400.22(a)(3)(iv) and (vi) relative to prior approvals and notifications pursuant to Sec. 400.14(e)(1). The Executive Secretary may modify the requirements of this paragraph and shall establish any guideline or format necessary to implement this section.¶
(c) Review of notifications. Upon notification of a production change, the Executive Secretary will conduct a preliminary review of the chang ...

Deleted: (a)

Deleted: the public interest and in

Deleted: regulations

Deleted: raise questions as to whether the activity is detrimental

Deleted: 400.25.

Deleted: (b)

Deleted: .

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 NAFTZ 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

Deleted: conduct of the

Deleted: (c)

Deleted: (taking into account

Deleted: provisions of Sec. 400.25 where production activity is involved),

Deleted: or the Commerce Department's Assistant Secretary for Import Administration

Deleted: order the prohibition or restriction of

Deleted: Such prohibitions or restrictions may

Deleted: put in place after a preliminary review (e.g., prior

Deleted: potential steps

Deleted: as a public comment period) if circumstances warrant such action until further review can

Deleted: completed. The appropriateness of a delayed effective date will be considered.

Moved (insertion) [15]

Moved up [23]: Subpart E--Operation of Zones and Administrative Requirements

Deleted: Sec.

Deleted: zone grantees

Deleted: federal, state

Deleted: Zone grantees

Deleted: zone projects.

Deleted: The Port Director represents the Board with regard to the zone projects adjacent to the port of entry in question and is responsible for enforcement, including physical security and access requirements, as provided in 19 CFR part 146.

meet and maintain the new requirements. The NAFTZ 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 NAFTZ'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.

Deleted: as

Deleted: (a)

Deleted: zone

Deleted: as a

Deleted: zone participants

Deleted: grantee

Deleted: directly

Deleted: service

Deleted: by the grantee (for which the rate or charge recovers costs incurred)

Deleted: the zone participants.

Deleted: zone participants. For any functions that a grantee contracts to third parties for which costs are passed on (wholly or in part) through charges to zone participants, costs must reflect going rates for the performance of such contracted functions.

Deleted: zone participants

Deleted: grantee

Deleted: grantee (

Deleted: , where applicable, to another public entity pursuant to a legal or contractual relationship with the grantee).

(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.

Deleted: (b)

Deleted: grantees'

Deleted: 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

Deleted: a grantee

Deleted: zone project

Deleted: (a)

Deleted: grantee's

Deleted: for agreements for zone participants.

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.

Deleted: proposed by the grantee

Deleted: included in

Deleted: grantee's zone schedule (see Sec. 400.45).¶
(b) Agreements to be made in writing directly with grantee. Any agreement or contract related to one or more grantee function(s) and involving a zone participant (e.g., agreements with property owners, agreements with zone operators) must be in writing between

Deleted: zone participant and the grantee

Deleted: (c)

Deleted: Uniform treatment

Deleted: be ensured in

Deleted: policies

Deleted: grantee's

Deleted: of

Deleted: zone participants through the grantee's application of

Deleted: that are neutral

Deleted: grantee

Deleted: zone participants

Deleted: grantee's

Deleted: grantee's

Deleted: (d)

Deleted: grantee

Deleted: document

Deleted: specific dissimilarity of conditions that justifies

Deleted: (e) Preclusion of conflicts of interest. To avoid non-uniform treatment of zone participants, this section seeks to preclude certain conflicts of interest in agents' performance of the following zone-related grantee functions: Reviewing, making recommendations regarding or concurring on proposals/requests by zone participants pertaining to FTZ authority or activation by CBP; any oversight of zone participants' operations within the zone project; or collecting/evaluating annual report data from zone participants. None of those zone-related grantee functions shall be undertaken by:¶
(1) A third party (or person on behalf of a third party) that currently engages in, or which has during the prior two years engaged in, offering/providing a zone-related product/service to or representing a zone participant in the grantee's zone project;¶
(2) Any person that stands to gain from a specific third party's offer/provision of a zone-related product/service to or representation of a zone participant in the zone project; or,¶
(3) Any person related, as defined in paragraph (f) of this section, to the third ...

(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.

Deleted: grantee

Deleted: grantee's or other party's actual or potential provision or arrangement with the requirements of

Deleted: (h) Identification of agent.

Deleted: Board, the Commerce Department's Assistant Secretary for Import Administration, or the

Deleted: zone grantee

Deleted: agent

Deleted: one or more of the

Deleted: grantee

Deleted: cited

Deleted: Sec. 400.43(e) in the zone project

Deleted: (i)

Deleted: grantees'

Deleted: rule

Deleted: zone project

Deleted: (

Deleted:) Approvals from the grantee and

Deleted: are

Deleted: zone project

Deleted: (b)

Deleted: zone grantee or operator

Deleted: federal, state

Deleted: ;

Deleted: (c) The grantee shall submit the zone schedule to the Executive Secretary and to the Port Director, as provided in Sec. 400.45.¶

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

Deleted: schedule

Deleted: (a) …n general. The zone …

Deleted: (b) …ach zone schedule …

Deleted: (1)

Deleted: (i) …he name of the zon …

Deleted: (ii) …he date of the origi …

Deleted: (iii) The name of the preparer;¶ (2)

Deleted: (3) …ne or more sections w …

Deleted: (4) …ll rates or charges …

Deleted: (5) …nformation regarding …

Deleted: (6) …n appendix with …

Deleted: (c) …he Executive Secretary …

Deleted: (d) …mendments to the zone …

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

Deleted: zone schedule

Deleted: zone schedule

Deleted: (e)

Deleted: zone schedule.

Deleted: zone schedule

Deleted: freely

Deleted: zone grantee and any operator offering FTZ services to the user community. For any such grantee

Deleted: or

Deleted: operator that maintains a site on the internet, the current complete zone schedule shall also be made available via that internet site.

Deleted: zone schedules

Deleted: The zone grantee shall send a copy to the Port Director, who may submit comments to the Executive Secretary.

Deleted: (f)

Deleted: grantees

Deleted: rule

Deleted: (a)

Deleted: zone participant

Deleted: regulations.

Deleted: .

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.

Deleted: for agreements or contracts with zone participants

Deleted: require zone participants to disclose to other parties, including the grantee, any confidential communication with

Deleted: (b)

Deleted: zone participant

Deleted: zone project

Deleted: the complaint

Deleted: days. The Board or the Executive Secretary may otherwise initiate a review for cause.

Deleted: (1) The actual costs of

Deleted: zone grantee

Deleted: , taking into account any extra costs incurred relative to non-zone operations and including return on investment, and reasonable out-of-pocket expenses

Deleted: (2)

Deleted: going

Deleted: (including based on other like operations

Deleted: other

Deleted:).

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

Deleted:

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:

Deleted: ordinarily

Deleted: zone grantee automatically

Deleted: zone participants because grantees generally provide for operators/users a framework of general authority within which individual parties may operate under the detailed supervision of CBP. In such circumstances, it would

Deleted: be

Deleted: Grantees should not be liable for the acts or violations of operators or users in which they share no fault.

Deleted: grantee

Deleted: operators/users within its zone

Deleted: (a)

Deleted: zone project

Deleted: zone grantee and approved by

Deleted: Board

Deleted: zone grantee

Deleted: with a good cause

Deleted: (b)

Deleted: subject to the concurrence of

Deleted: (c)

Deleted: and the Port Director

(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

Deleted: (1)

Deleted: (2)

Deleted: (a)

Deleted: been given export status by CBP officials ("

Deleted: -

Deleted: merchandise"--19 CFR 146.44)

Deleted: returned to

Deleted: return

Deleted: returns

Deleted: (b)

Deleted: ¶

Deleted: (1)

Deleted: (2)

Deleted: (3)

Deleted: involved in allowing their return

Deleted: (4)

Deleted: (c)

Deleted: (1)

Deleted: zone grantee

Deleted: operator

Deleted: the grantee) of the zone in which the merchandise is located,

Deleted: (2)

Deleted: (3)

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 NAFTZ to provide clarity and to meet the need for more company import/export data confidentiality because of new automation. The NAFTZ'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 NAFTZ 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

Deleted: (a)

Deleted: maintained in accordance with generally accepted accounting principles, and

Deleted: (b)

Deleted: zone 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.

Deleted: (c)
Deleted: Zone grantees
Deleted: operators
Deleted: zone grantee
Deleted: (d)
Deleted: reports. (1)
Deleted: zone grantee
Deleted: annual report
Deleted: 90
Deleted: of
Deleted: ,
Deleted: annual report
Deleted: zone operator
Deleted: grantee
Deleted: annual report
Deleted: grantee's timely submission of a complete and accurate annual report to the Board
Deleted: (2)
Deleted: annual report

DISCUSSION - Sec. 400.52 Notice and hearings.

The NAFTZ 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.

Deleted: (a)

Deleted: ***Federal Register***

Deleted: necessary.

Deleted: allowing at least 30 days for submission of comments regarding the proposal in question.

Deleted: any

Deleted: whenever necessary or appropriate

Deleted: (b)

Deleted: (1)

Deleted: showing

Deleted: a

Deleted: or review

Deleted: (2)

Deleted: period for

Deleted: (see Sec. 400.32) and must be accompanied by information establishing the need for the hearing and the basis for the requesting party's interest in the matter.

Deleted: (3)

Deleted: (c)

(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.

Deleted: ***Federal Register***

Deleted: participants

Deleted: to make a presentation.

Deleted: ordinarily

Deleted: .

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.

Deleted: (a)

(b) Opening and closing of official record. The official record opens on the date the Executive Secretary dockets 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.

Deleted: (b)

(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

Deleted: (c)

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

Deleted: or

Deleted: (a)

Deleted: (b)

Deleted: , and if

Deleted: 23

Deleted: 37

Deleted: (c)

Deleted: 46

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.

Deleted: (d)

Deleted: (e)

Deleted: NW

Deleted: (a)

Deleted: or subzone

Deleted: zone grantee

Deleted: ,

Deleted: operator

(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.

Deleted: (b)

Deleted: (1)

Deleted: grantee of the zone

Deleted: subzone operator

Deleted: grantee

Deleted: subzone operator

Deleted: (2)

Deleted: (3)

Deleted: zone grantee

Deleted: (4)

Deleted: ***Federal Register***

Deleted: (c)

Deleted: grantee

Deleted: or subzone

Deleted: an order of the

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 NAFTZ 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

Deleted: (a)

Deleted: regulations.

Deleted: (as adjusted for inflation pursuant to Sec. 400.62(k)),

Deleted: zone operator, grantee or agent of the grantee.

Deleted: or subzone

Deleted: regulations

Deleted: annual reports

Deleted: generally

Deleted: (b)

Deleted: (1) For purposes of Sec. 400.62(b), each of the following constitutes a separate offense, with the operator subject to a fine of not more than 1,000 dollars (as adjusted for inflation pursuant to Sec. 400.62(k)) for each such separate offense:¶
(i)

Deleted: or foreign component or combination thereof

Deleted: operator had

Deleted: or to submit notification pursuant to Sec. 400.14(e)(1);¶
(ii) Production involving any finished product, foreign component, or combination thereof authorized by the FTZ Board (or properly notified under Sec. 400.14(e)(1)) at a level exceeding the plant's capacity authorized by the Board (or properly notified under Sec. 400.14(e)(2)); and,¶
(iii) Each

Deleted: during

Deleted: an offense cited in Sec.

Deleted: 400.62(b)(1)(i) or (ii) continues.¶
(2)

Deleted: grantee

Deleted: agent of the grantee

Deleted: oversight or direction of an operator

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:

Deleted: zone project
Deleted: grantee
Deleted: agent
Deleted: (as adjusted for inflation pursuant to Sec. 400.62(k))
Deleted: operator
Deleted: 400.62(b)(1)(i), (ii) or (iii).
Deleted: (c)
Deleted: annual report.
Deleted: grantee
Deleted: a complete and accurate annual report
Deleted: regulations
Deleted: (as adjusted for inflation pursuant to Sec. 400.62(k)).
Deleted: a zone operator
Deleted: zone's grantee
Deleted: grantee's
Deleted: a complete and accurate annual report
Deleted: (as adjusted for inflation pursuant to Sec. 400.62(k)).
Deleted: a zone operator's
Deleted: zone grantee
Deleted: operator
Deleted: focus
Deleted: .¶ (d) Violations involving conflicts of interest. Each day during which an agent of
Deleted: grantee
Deleted: (e)
Deleted: regulations
Deleted: agent
Deleted: (as adjusted for inflation pursuant to Sec. 400.62(k)).
Deleted: (e)
Deleted: regulation
Deleted: regulations

(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).

Deleted: (1)
Deleted: provide
Deleted: normally
Deleted: (2)
Deleted: (3)
Deleted: 's
Deleted: (4)
Deleted: fines
Deleted: Executive
Deleted: (f)
Deleted: (1)
Deleted: party
Deleted: Mitigating evidence
Deleted: determination
Deleted: .

(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

Deleted: (2)

Deleted: (i)

Deleted: over the preceding five years

Deleted: (ii)

Deleted: foreign-trade

Deleted: (iii)

Deleted: regulations

Deleted: (iv)

Deleted: (v)

Deleted: (beyond

Deleted: degree

Deleted: cooperation expected from a person under investigation for a violation) in ascertaining the facts establishing the violation

Deleted: (vi)

Deleted: (vii)

Deleted: significant

Deleted: written

Deleted: (viii)

Deleted: Executive

Deleted: (g)

Deleted: an

Deleted: (in whole or in part).

Deleted: (h)

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

Deleted: (i)

Deleted: Sec.

Deleted:) or 400.38(c

Deleted: operator

Deleted: a zone operation

Deleted: (1)

Deleted: grantee

Deleted: grantee.

Deleted: (2)

Deleted: (or a member of the Board staff designated by the Executive Secretary) within 30

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.

Deleted: (3)

Deleted: (i)

Deleted: (ii)

Deleted: ¶

Deleted: (j)

Deleted: <#> (k) Adjustment for inflation. The maximum dollar value of a fine for a violation of the FTZ Act or the Board's regulations is subject to adjustment for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996.¶

DISCUSSION - Sec. 400.63 Voluntary disclosure.

The NAFTZ 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 NAFTZ 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

Deleted: Prior

Deleted: (a)

Deleted: regulations

Deleted: (b)

Deleted: fully

Deleted: (1)

Deleted: (2)

Deleted: (3)

Deleted: (4)

Deleted: (5)

Deleted: (6) An assurance that the violation will not reoccur; and,¶ (7)

Deleted: (c)

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).

Deleted: .

Deleted: (d)

Deleted: (e)

Deleted: subject to a fine pursuant to Sec. 400.62

Deleted: prior

Deleted: it

Deleted: general policy of the Board (except in cases involving fraudulent intent) to reduce to a maximum of 1,000 dollars the total sum of potential fines for a single

Deleted: or series

Deleted: offenses stemming from

Deleted: continuing

Deleted: .

Deleted: (f)

Deleted: prior

Deleted: not involve the loss of revenue and is

Deleted: fines

Deleted: pursuant to

Deleted: prior disclosure

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 NAFTZ 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.

Deleted: (a)

Deleted: Sec. Sec. 400.12(d)(2), 400.14(d)-400.14(f), 400.35(d), 400.46, 400.48, 400.49, 400.62 and 400.63(c)

Deleted: (b)

Deleted: complaining party

National Association of Foreign-Trade Zones
1001 Connecticut Avenue NW Suite 350
Washington, DC 20036
202.331.1950

May 19, 2011

Mr. Andrew McGilvray
Foreign-Trade Zones Board
1401 Constitution Avenue, NW
Room 2111
Washington, D.C. 20230

Re: Foreign-Trade Board Proposed Rule
75 *Federal Register* 82340-82362, December 30, 2010
Docket # ITA-2010-0012, RIN 0625-AA81
Amendment to Comments Submitted May 4, 2011
Technical Corrections

Dear Mr. McGilvray:

The National Association of Foreign-Trade Zones (NAFTZ) is supplementing the comments contained in our May 4, 2011 submission with the following technical corrections::

1. **Section 400.1(c)**. In the 5th sentence beginning "For purposes of…" "Special Trade Preference Programs (STPPs)" should be deleted and "STTP" should be inserted. This was due to an inadvertent typographical error.

2. **Section 400.3(e)**. This section should be reinserted as presented in the NPRM with no change as it was inadvertently deleted.

3. **Section 400.45(b)(5)**. Delete the end of this sentence that reads: "including the Operator(s)'s standard rates or charges for all services offered." It should read as follows: "Information regarding any Operator(s) contracted to offer services to the public within the general-purposes zone; and" There was consensus expressed by the NAFTZ Grantee and Operator Committees to remove the requirement that the Fee Schedules of the individual Operators be included in the Grantee's Zone Schedule – it is only the Fee Schedule of the Grantee that should be required as part of the Zone Schedule.

4. **Section 400.62(a) and (b)**. "Operator" should be changed to "Zone Participant" throughout these two subsections. With regard to violations involving production activity, it may be possible for a User to be involved in the production activity so we have modified these two sections accordingly.

5. **Section 400.63(d)**. This section should be amended as follows: "Upon receipt of a written disclosure of a violation, the Executive Secretary will first determine the validity of the disclosure, provide notification of receipt of said disclosure to the Grantee, and then provide written notice of the determination to the disclosing party and the Grantee (subject

to confidentiality) within sixty (60) days of the perfection of the voluntary disclosure." The NAFTZ Grantee Committee felt that the Grantee should receive notice whenever a Zone Participant at its Zone Project filed a voluntary disclosure with the FTZB so as to be informed as to activities being conducted within, and possible infractions occurring at, it's Zone Project.

We appreciate the FTZB considering these minor technical corrections to our original May 4 submission.

Sincerely,

Willard M. Berry
President