

# BC CAL KAL

BC CAL KAL Inland Port Development Corporation  
Port of Battle Creek - Foreign-Trade Zone 43

May 12, 2011

Andrew McGilvray  
Executive Secretary  
Foreign-Trade Zones Board  
International Trade Administration  
US Department of Commerce  
1401 Constitution Avenue NW, Room 2111  
Washington, DC 20230

***Submitted via Federal eRulemaking Portal***

**Re: Docket No. ITA-2010-0012, RIN 0625-AA81**

Dear Mr. McGilvray:

These comments are provided on behalf of the Battle Creek, Calhoun County, Kalamazoo County Inland Port Development Corporation (BC CAL KAL), an IRS-designated 501(c)(3) nonprofit private corporation under contract with the city of Battle Creek to administer the federal grant of authority for Foreign-Trade Zone 43 at the US Customs and Border Protection Port of Battle Creek, Michigan.

As a member of the board of directors for the National Association of Foreign-Trade Zones (NAFTZ), and its Grantee Committee, I had the opportunity to ensure that concerns, recommendations, and support from the Grantee Committee were incorporated into a version of changes submitted by the NAFTZ. There are many stakeholders in the FTZ program, but the points of view here represent BC CAL KAL and the perspective of an Administrator on behalf of a Grantee. While we fully support recommendations of the NAFTZ, the following are most salient for our purposes:

400.2 Definitions. Please define "Administrator" as the person acting on behalf of our under agreement with the Grantee in zone matters. Many Grantees contract with administrators to manage the business of General Purpose FTZs and there are benefits to a regulatory definition of the relationship. The term should be consistently and appropriately used throughout new regulations. Administrators should not be limited to public entities, but may also include private nonprofit corporations.

In its recommended changes to the proposed regulations, the NAFTZ added 400.7, which we fully support. Customs, as part of the process and the Board representative at the local port, should be held accountable to a time period for their response to better clarify the process and serve the needs of commerce.

In 400.42 it is imperative that zones operate under “public utility principles” but not as “public utilities.” Rates and charges should incorporate costs incurred by either the Grantee or its Administrator – please add “Administrator” to 400.42 (a). Furthermore, rates or charges included in the Zone Schedule paid to the Grantee or Administrator may be paid directly to the Grantee or its Administrator. Please add “Administrator” to this portion of 400.42(a).

Regarding the Zone Schedule, it is neither fair nor reasonable to expect to accomplish equal treatment by posting the schedule on the Grantee or Administrator website. These should of course be made available by request. It would be fair and reasonable if the FTZ Board posted all Zone Schedules on its own website.

400.43 should allow for Grantees or their Administrators to provide standard contractual provisions, subject to changes of terms as individual circumstances warrant. This allows, for example, for a Subzone to follow the advice of its legal counsel, provided the Grantee or Administrator approve of the proposed changes in contractual language. It’s also possible the standard contract did not take into consideration sets of unique circumstances in Subzones.

Additionally 400.43 Uniform treatment, we have not changed our position on comments we submitted January 16, 2008, responding to a Request for Comments on Uniform Treatment and Local Access to Foreign-Trade Zone Procedures, 72 Federal Register 53989-90 (September 21, 2007) Docket No. 46-2007:

“We believe we have the processes in place to ensure transparency, establish fair and reasonable fees, and provide access to all who may benefit from FTZ services. We do not believe, however, that we should be required to sponsor any or all projects brought to our attention for consideration ... We must be afforded the ability to determine which projects are within the original scope of authority for the grant we administer...”

In general, everywhere reasonably possible, FTZ regulations should support and enhance US manufacturers’ abilities to export their products. It should be an overarching and guiding principle supported and clearly evidenced in the regulations. With this principle in mind, flimsy, unwarranted, or unscrupulous dissent or misuse becomes difficult in Zone applications and Zone activities. Such a guiding principle sets a foundation and establishes policy encouraging modernity and flexibility for Zone projects engaged in export. It would, and should, put finished products at the forefront for scrutiny instead of inputs thus avoiding complications or delays associated with requiring Board approval for all new inputs.

As stated in our letter of June 21, 2010 regarding export benefits from inverted tariffs, “When empirical evidence demonstrates that an existing US supplier would be harmed, restrictions on a zone project are realistic and make good sense. When there is no negative impact to the public interest and like competitors have equal access to FTZ procedures, however, restrictions seem counter intuitive. We respectfully urge you to consider modern, globally-competitive manufacturing facilities fairly and reasonably in their applications for FTZ designation.”

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The goal should be equal access to FTZ benefits for like competitors and a proactive stance in support of exports from the United States.

Thank you for your consideration of these comments.

Sincerely,



Jan Frantz  
Executive Director