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FOREIGN-TRADE ZONES BOARD

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**SERVICE SOLUTIONS SUCCESS**

EXECUTIVE SECRETARY

May 24, 2011

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

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

Dear Mr. McGilvray:

These comments are provided as the Grantee representative of Foreign-Trade Zone No. 68, under the Department of Aviation, City of El Paso. While we mostly support the comments submitted by the National Association of Foreign-Trade Zones, as the Grantee Administrator we want to express our concerns and recommendations on certain provisions of the proposed regulations.

**Areas of General Agreement:**

We support the U.S. Foreign Trade Zones Board (FTZB) proposed regulations under Subparts A—Scope, Definitions and Authority, sections 400.1 through Subpart D—Procedures for Application Evaluation and Reviews, section 400.36, with the suggested revisions submitted by the National Association of Foreign-Trade Zones (NAFTZ) on May 4, 2011 as they pertain to the subparts mentioned. In particular, we commend the NAFTZ for the addition of the export promotion provision which directs other US Department of Commerce agencies to promote the FTZ program as part of its export promotion goals, and further ties it to the President’s National Export Initiative.

**Areas of General Concern:**

In these proposed regulations some new provisions will actually create more burden on interested parties such as grantees, users and operators. There are also some provisions in which the requirements reduce the flexibility of the program that may cause the public to become disengaged with the U.S. Foreign-Trades Zone program. The following comments provide a more detailed explanation:

**400.40 – Monitoring and review of Zone Operations**

- We agree with the NAFTZ’s recommendations in which much of the language was changed to ensure significant evidence of detriment is added, and a fair review process is provided to affected parties.



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### 400.42 – Operations as Public Utility

- The President's Executive Order 12866, revised 1/18/11 specifies in Section 1, (b) (5) "that regulated entities must identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits....". The proposed regulation offers to do the opposite by requiring grantees to set up rates based only on costs incurred by the grantee regardless of funding sources available.
- We do not agree with the proposed provision because it decreases the flexibility of a grantee to setup an independent rate structure based on local or regional economic development strategies. The proposed regulation deters new grantees from meeting the requirements of the FTZ program, and would have a negative impact upon existing grantees regardless of their success with the FTZ program.
- We recommend that this section be broadened to allow grantees the flexibility to establish their own rates which allows distinct rates for pilot projects, target industries and various working frameworks (i.e., Users, Distribution Operators, and Manufacturer Operator agreements) including service levels, which permit a grantee to carry out its FTZ function based on local or regional economic development strategies as established by each grantee.

### 400.43 – Uniform Treatment

- We recommend that the FTZB modify this provision by requiring only the incorporation of a statement in a contract that stipulates all participants will be treated fairly and equally as described in the Public Utility and Uniform Treatment provisions of the FTZB regulations, and the Foreign Trade Zone Act.

### 400.47 – Grantee Liability

- The proposed provision would do more harm to grantees than to an actual zone participant such as an operator or user who commits a violation. We recommend that this provision be revised to clarify that a Grantee's liability should only be shared if grantee acts as operator under its Customs bond (FTZ Operator) and has signed a User agreement that allow its customers to operate as a user in the zone. While in circumstances which the grantee has signed an Operator agreement with a customer that is acting as their own Operator and has obtained their own Customs bond (FTZ Operator), then the Operator would be held at fault for any violations attributed to their actions.

### 400.48 – Retail Trade

- We agree with the **NAFTZs** suggestion clarifying that order fulfillment is not retail trade.

### 400.54 – Information

- We recommend that the provision be changed to allow business proprietary data to be kept confidential. The public's interest would be better served if the business or



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person requesting protection from public disclosure marks each page at the top "business proprietary". The FTZB can request a full explanation for any piece of data or page(s) which it needs to research as part of its regulatory role. Language providing confidentiality on proprietary data will ensure that existing businesses continue to use the FTZ program.

### 400.52 Notice and hearings

- We agree with the NAFTAZs suggested time frame for annual reporting is increased to one-hundred twenty (120) days after the end of the reporting period, and subject to extensions upon written approval by the Executive Secretary of the FTZB.

### 400.62– Fines, Penalties, and instructions to suspend activated status

- We do not agree with the proposed role of the FTZB as it seeks to take on an increased enforcement role by establishing a fines and penalties section. Instead the FTZB should consider leaving the existing provision intact, and inserting a small provision addressing the fine amounts for violations on production, annual reporting and conflicts of interest. Also, violations should only be given when a transparent appeals process has been exhausted. In a time when local government and not-for-profit grantees are working with lean budgets, the idea of new fines and penalties will discourage grantees, operators and users from pursuing activation of a FTZ site or from continuing to operate a FTZ in a local community. Procedures for determination of violation(s) should be done through a transparent process in which the grantee is notified of any complaint; and given the opportunity to respond to any such alleged violation. In addition, a Grantee should not be imposed any fine without having exhausted an appeal process finalizing with the FTZ Board.

### 400.63 – Prior Disclosure

- If Subpart G becomes a part of the final regulations, we recommend this provision be changed to "Voluntary" Disclosure (400.63). Also, if a party subject to a fine pursuant to the FTZ Act provides written disclosure, the FTZB will allow mitigation of a fine to a no penalty. If no mitigation is involved due to finding of fraud, the maximum fine of \$1,000 per occurrence may be given.

The FTZ program has become one of the most successful trade-related programs operated by the US Department of Commerce, International Trade Administration, because of the flexibility embedded in the regulations, and the FTZB staff's outreach efforts with private industry, grantees and the NAFTAZ. The FTZ 's program focus has been to promote U.S. exports, investment and job creation; we hope that the FTZB maintains this same disposition instead of taking on an enforcement one which could discourage US industry from participating in the program. The proposed regulations provide the ideal setting for planting the export promotion outlook that our country needs to remain globally competitive and achieve increased exports. Thereby providing employment for Americans and creating investment opportunities in the private sector.



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Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Quiñonez".

Jose Quiñonez, AZS  
Foreign-Trade Zone Manager