

Unofficial Summary of Key Provisions in Proposed FTZ Board Regulations

The summary below is unofficial and is provided solely as a courtesy to assist parties in their review of the FTZ Board's proposed regulations. The proposed regulations as published in the *Federal Register* should be consulted for definitive reference.

Definitions

- Replaces separate definitions of “manufacturing” and “processing” with a single definition for “production” activity (Section 400.2(l)).
- Adds definitions of “agent” (400.2(a)), “person” (400.2(h)), “site” (400.2(n)), and “zone participant” (400.2(t)).

Production Activity

- For production for export, limits requirement for advance FTZ Board approval to situations in which a production input is subject to an antidumping/countervailing duty (AD/CVD) order, an order of the International Trade Commission pursuant to 19 U.S.C. §1337 (Section 337), or quantitative restriction (quota) (400.14(a)(2)).
- For production for the U.S. market, limits requirement for advance FTZ Board approval to situations in which: there is an inverted tariff (400.14(a)(1)); a production input is subject to an antidumping/countervailing duty (AD/CVD) order, an order of the International Trade Commission pursuant to 19 U.S.C. §1337 (Section 337), or a quantitative restriction (quota) (400.14(a)(2)); or the production activity will result in duty avoidance on scrap/waste (400.14(a)(3)).
- For previously approved production activity, requires advance approval for production involving a foreign input newly subject to an AD/CVD or Section 337 order or for which there is a new or increased rate of duty (400.14(a)(4)).
- Requires all production activity – including that not requiring advance approval – to be reported annually to the FTZ Board (400.14(b)).
- Defines a production operation's scope of authority – approved production inputs, finished products, and capacity (400.14(c)).
- Delegates to Assistant Secretary for Import Administration authority to approve applications for production activity for which the sole benefit requiring advance approval is duty avoidance on scrap/waste (400.14(d)(2)).

- Delegates to Assistant Secretary for Import Administration authority to approve applications for production activity on an interim basis – after end of the comment period and with concurrence from CBP Port Director addressing the applicant’s projected timeframe for commencement of the activity in question – pending final action by FTZ Board (400.14(d)(3)).
- Replaces current “sourcing change” notification provision – limited to new inputs – with “production change” provision applicable to both new inputs and new finished products. Limits notification of production changes to HTS headings previously approved by FTZ Board for the production operation in question. (400.14(e)(1) and 400.37).
- New provision for notification to FTZ Board of increases in production capacity (replacing current requirement for advance FTZ Board approval of such increases). (400.14(e)(2)).
- Enhanced authority to conduct reviews – including of notifications – and restrict activity determined not to be in the public interest. (400.14(e)(3), 400.38).

Production Equipment

- New provision on production equipment (reflecting statutory provision enacted in 1996). (400.15)

State/Local Personal Property Taxes

- Expanded provision pertaining to statutory exemption of certain merchandise from state and local *ad valorem* personal property taxes (400.16).

Application Requirements, Processing, and Review Standards

- Provision for FTZ Board’s Executive Secretary to incorporate the regulations’ requirements into application guidelines or forms that would be published in the *Federal Register* (400.21(b)).
- Submission of a “legal description” will no longer be ordinarily required for proposed FTZ sites (400.21(d)(2)(i)).
- Inclusion of significant public benefit standard in criteria for all applications for production authority (including production subzones) but not for warehousing/distribution subzones (400.25).
- Burden of proof standards for all applications (400.26).

- Pre-docketing submission of a single copy of an application. Final version of application and any additional copies to be submitted after pre-docketing copy has been determined to be sufficient (400.32(a)).
- Provisions for preliminary “recommendations” of case examiner, and for public comment to be invited on such recommendations when warranted. (400.33(e)(1) for non-production applications; 400.34(a)(5)(iv)(A) for production applications).
- Provision for termination of application review in certain circumstances (400.35(d)).

Public Utility

- Provisions stemming from FTZ Act’s requirement that each zone be operated as a “public utility.” Includes requirements that fees imposed by a grantee on zone participants be based on costs incurred by the grantee, directly related to the service provided by the grantee, and – for grantee functions contracted to third parties – reflect going rates for such functions. Requires that fees be paid directly to grantee (or another public entity under legal/contractual arrangement with grantee). Bars tying fees to levels of benefits derived by zone participants. (400.42).
- Allows for delayed compliance date – two years from date of publication of final revised regulations (400.42(b)).

Uniform Treatment

- Provisions to ensure that a grantee affords all zone participants uniform treatment, as required by the FTZ Act (400.43).
- Requires a grantee to offer standard contractual provisions to all zone participants (400.43(a)).
- Requires a grantee’s agreements with zone participants to be made directly with grantee in writing (400.43(b)).
- Requires a grantee to apply neutral criteria in evaluating proposals from zone participants (400.43(c)).
- Upon request from FTZ Board’s Executive Secretary, requires a grantee to provide justification for differing treatment of zone participants (400.43(d)).
- In a given zone project, precludes conflicts of interest by barring third parties that represent or offer services to zone participants from undertaking key grantee functions pertaining to consideration of applications, activation by CBP, oversight of zone participants, or collecting/evaluating data for annual report to FTZ Board. Extends the bar on conflicts of interest to include related parties. (400.43(e) and 400.43(f)).

- Allows for parties to request determinations from the Executive Secretary on whether a given arrangement is consistent with the regulatory requirements pertaining to uniform treatment (400.43(g)).
- Allows FTZ Board, Assistant Secretary for Import Administration, or Executive Secretary to require a grantee to identify any agent that has performed certain functions on behalf of the grantee (400.43(h)).
- Allows for delayed compliance date – two years from date of publication of final revised regulations (400.43(i)).

Zone Schedule

- Requires that a grantee's zone schedule include the standard contractual provisions that it offers to zone participants (400.45(b)(3)).
- Bars a grantee from applying fees or other provisions that were not included in the most recent zone schedule submitted to the FTZ Board (400.45(d)).
- Requires that any grantee that maintains an internet site make the grantee's complete zone schedule available on that site. Also allows for the FTZ Board to make zone schedules available on the Board's internet site. (400.45(e)).
- Allows for delayed compliance date – two years from date of publication of final revised regulations (400.45(f)).

Complaints Related to Public Utility and Uniform Treatment

- Allows for complaints (including on a confidential basis) to the Executive Secretary regarding a zone's alleged non-compliance with public utility and uniform treatment requirements. Bars grantees from entering into or enforcing contractual provisions that would require a zone participant to disclose to other parties, including the grantee, any such confidential complaint made to the Executive Secretary. (400.46)

Grantee Liability

- Provides guidance on the limited nature of grantees' liability with regard to the operations of operators/users. Also clarifies that such limitations on liability may not apply to grantees that undertake detailed oversight/direction of operators/users. (400.47; also 400.62(b)(2)).

Retail Trade

- Authorizes the Board's Executive Secretary to make determinations on retail trade (with the concurrence of the Port Director). Current regulations provide for the Port Director to make such determinations. (400.48)

Annual Reports

- Requires annual reports to be submitted within 90 days of the end of the reporting period. Requires operators to submit information to grantees in a manner that will enable the grantees' timely submission of their reports to the Board. (400.51(d)).

Business Proprietary Information

- Enhanced instructions on the submission of business proprietary information (400.54(c)).

Fines, Penalties and Instructions to Suspend Activated Status

- Provides for fines, suspension of activated status and suspension of processing of zone's/subzone's requests to FTZ Board in certain circumstances (400.62(a)).

- Provision specific to violations involving production activity (400.62(b)).

- Provision specific to failure to timely submit annual report. Indicates that if an operator is at fault, that operator – rather than the zone's grantee – will be the Board's focus for fines. (400.62(c)).

- Provision for fining agents of grantees for violations (as delineated in 400.43(e)) involving conflicts of interest (400.62(d)).

- Provisions delineating fining procedures (400.62(e), 400.62(g), etc.).

- Provision allowing for mitigation of fines (400.62(f)).

- Provision delineating procedures for instruction to suspend activated status (400.62(i)).

Prior Disclosure

- Provides for prior disclosure to FTZ Board of violations of FTZ Act or Board's regulations (400.63).