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## MEMORANDUM

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TO: Foreign-Trade Zone Clients

FROM: Scott S. Taylor, Esq.

SUBJECT: Significant Changes to Foreign-Trade Zones Program

DATE: May 2, 2008

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Earlier this year we informed you that the Foreign-Trade Zones Board has been informally discussing a significant change to the general-purpose zone designation structure for U.S. Foreign-Trade Zones. The changes could impact all zone projects in the United States. In recent months the Executive Secretary, Mr. Andrew McGilvray has been discussing with a wide range of parties, possible changes to the U.S. Foreign-Trade Zones Program directly related to property designation. He has been contemplating a new concept to allow Grantees to more easily restructure their general-purpose zone sites that would directly effect every approved general-purpose zone site. The intention was to decrease the number and complexity of current boundary modifications and zone expansion applications. This concept is now called the "Available" Alternative Site-Designation and Management Framework. It is important to note that it is an "optional" concept; many Grantees may choose to not utilize the option. It appears that there may actually be increased complexity.

While the final details of the program will not be decided for weeks or months, we wanted you to be aware that this new concept will be an option for individual Grantees to participate in. It will essentially allow the Grantee's to restructure their zone with a formal Reorganization Application so that there is one primary or "anchor" site, with a possible limitation of 500 acres followed by a series of additional "magnet" sites with a 200 acre limit. The acres will in all instances "float" within a larger designated area. There will also be "activation-driven" sites with acre limits limited to the remaining acreage. If a Grantee opts into his the total acreage of a zone cannot exceed 2,000 acres.

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Our understanding is that "activation-driven" sites will be individual sites where an actual warehousing or manufacturing company will commit to activating its operation after it locates at that site. "Activation-driven" sites will be able to be secured through an administrative boundary modification proceeding in thirty (30) days. If a company has a manufacturing facility it would be permitted to secure manufacturing activity with the Temporary or Interim Manufacturing T/IM process. This will likely reduce the number of subzones in the future.

The benefit to Grantees is that they may add quickly sites included firms. The problem for existing zone sites is that they will no longer have as much of a special status as under current practice to attract zone users to their property. The size and scope of the zone sites may be reduced. Additionally, there will be a five (5) year time limit placed on zone sites. While sites added through new Expansion Applications may already face these time limits, the majority of existing zone projects do not. Time limits that will require at least one company to activate within each site to preserve that site for the future within a certain time period such as five (5) years.

Attached is a draft of the *Federal Register* notice regarding this new program that will be published in the next week. There will be a sixty (60) day public comment period from the date of publication. Please provide any thoughts or concerns to me and I will work on a comment for the notice.

These dramatic changes will not occur quickly. Details have not been decided. It will be an "option" and many Grantees may choose not to participate. We will continue discussions with Mr. McGilvray and the National Association of Foreign-Trade Zones and keep you posted.

BDO/CORR/158790 (6700)

DEPARTMENT OF COMMERCE  
Foreign-Trade Zones Board

**Proposal for Available Alternative Site-Designation and -Management Framework**

Summary: The Foreign-Trade Zones (FTZ) Board is inviting public comment on a staff proposal to make available an alternative framework for participating grantees to designate and manage their general-purpose FTZ sites. A key result of this proposal, which stems from a series of regional and state-level discussions with FTZ grantees that began in April 2007, would be greater flexibility and predictability for a participating grantee to use administrative “minor boundary modifications” to modify FTZ sites. The greater flexibility would be made possible by participating grantees’ increased focus on the FTZ sites needed for current or near-term zone activity, with a resulting improvement in the efficiency of FTZ oversight by government agencies. The availability of this alternative framework would affect only participating FTZ grantees and would occur within the existing statutory and regulatory context.

Background: Under the FTZ Act of 1934 (19 U.S.C. 81a-81u), the FTZ Board may authorize FTZ sites sponsored by local “grantee” organizations at locations within or adjacent to U.S. Customs and Border Protection (CBP) ports of entry. Under the FTZ Act and the FTZ Board’s regulations (15 CFR Part 400), FTZ designation for a particular parcel or site may result either from an application for action by the FTZ Board or from a request for an administrative “minor boundary modification” (MBM) action by the FTZ Board staff. The regulatory time frame for such FTZ Board actions is ten months versus a thirty-day time frame for administrative MBM actions, and there are significantly greater documentation requirements associated with applications for Board action than for requests for administrative action.

The FTZ Act gives the FTZ Board broad authority and discretion. In this context, the Board's 1991 regulations delineate criteria for evaluation of applications for Board action and requests for administrative action to authorize FTZ designation for new parcels or sites. The applicable regulatory criteria are general in nature and the Board's existing approach (practice) for MBMs and FTZ designation for new parcels or sites pre-dates both the enormous growth in international trade of recent decades and the significant evolution in trade-related security and oversight responsibilities within government since 2001.

Within the FTZ program itself, increased demand for rapid action regarding new FTZ parcels or sites is tied to an accelerated pace of decision-making among the types of businesses that constitute the ultimate users of the program. The program's ability to react to business needs in a timely manner is inextricably linked to the program's success in helping to retain or enhance U.S.-based activity. In this context, an alternative approach to MBMs and site management for grantees in need of greater flexibility and responsiveness can be important in fulfilling the FTZ program's purpose – "to expedite and encourage foreign commerce."

Proposal: The fundamental trade-off addressed in this proposal is greater flexibility and increased predictability for approval of FTZ sites through simple and rapid MBM actions in exchange for a grantee maximizing the linkage between designation of FTZ space and actual use of that space for FTZ activity (after "activation" by CBP). Maximizing this linkage can further other important program-related goals, including more efficient use of both FTZ Board and CBP resources.

Although the proposed alternative framework could be available to new or existing grantees, the major benefit would likely be for existing grantees who seek to enhance their ability to

respond to evolving FTZ-related needs in their communities. Under this proposal, existing or potential grantees would have the option of applying to establish or reorganize their FTZ by incorporating in an application for FTZ Board action elements from the following framework:

1. The "service area" within which the grantee intends to be able to propose FTZ sites (*e.g.*, specific counties, with documented support from new counties if the service area reflected a broader focus than the FTZ's current area served). The term "service area" applies a name to a concept which already exists in certain approved FTZ applications in which a grantee organization has named the localities it intends to serve. It should be noted that any service area would need to be consistent with the "adjacency" requirement of the FTZ Board's regulations (60 miles/90 minutes driving time from CBP Port of Entry boundaries).
2. An initial limit of up to 2,000 acres of designated FTZ space within the service area. Given the proposal's focus on linking FTZ designation more closely to FTZ activity, the 2,000-acre limit reflects the FTZ Board's existing practice of limiting any FTZ grantee to activation of 2,000 acres (regardless of the overall size of the grantee's zone) unless further approval is obtained from the FTZ Board. Acreage within the 2,000-acre limit which had not been applied to specific designated sites would effectively be "reserve" acreage available for future FTZ designation for parcels or sites within the grantee's approved service area.
3. Enhancement of the usefulness of the 2,000 available acres by emphasizing "floating" acreage within an individual site's boundaries (as has been the FTZ Board's practice with certain applications to date). For example, 100 acres of "floating" FTZ designation

within the boundaries of a 700-acre port complex would mean that it would be possible to activate with CBP up to 100 acres of total space anywhere within that 700-acre complex.

4. Mandatory designation of a primary “anchor” FTZ site able to attract multiple FTZ users. No “sunset” time limit (see below) would apply to the anchor site. The anchor site would generally be no more than 500 acres (which could be “floating” acres within larger site boundaries – see above). A grantee’s anchor site would be designated through the full application process for FTZ Board action.
5. Possible designation of a limited number of “magnet” sites selected by the grantee – often through local public processes – for ability and readiness to attract multiple FTZ users. An individual magnet site would generally be limited to 200 “floating” acres. A magnet site could only be designated through an application for FTZ Board action.
6. Possible designation of “user-driven” sites to serve companies not located in an anchor or magnet site but which are ready to pursue conducting activity under FTZ procedures. In the general interest of maximizing the linkage between FTZ site designation and FTZ activity at the site, a user-driven site would be limited – in the context of a larger industrial park or business district where other companies interested in FTZ procedures might be able to locate in the future – to the area(s) required for the company(ies) ready to pursue conducting activity under FTZ procedures.
7. Unlike anchor and magnet sites, user-driven sites could be designated through the current minor boundary modification (MBM) mechanism – a rapid administrative action by the Board’s staff – in addition to through FTZ Board action. A simplification of the MBM process would result from elimination of the need to “swap” like amounts of acreage

from existing sites as long as the total acreage for existing and proposed sites remained within the standard 2,000-acre limit.

8. In addition to the one anchor site, general initial limits of five magnet sites and ten user-driven sites which could exist simultaneously for a single FTZ. Increases of the limits applicable to a specific grantee could be justified over a longer term based on FTZ activity at a significant percentage of the grantee's designated sites. A grantee's request for a permanent increase in its number of authorized sites would be a matter for consideration by the FTZ Board. Also, the special circumstances of regional (multi-county) FTZs could be taken into account by an alternative general initial limit for such zones of two magnet sites per county. (Other limits in the proposal would be unaffected by such an alternative initial limit on numbers of magnet sites for regional FTZs.)
9. Consistent with current practice for many expansion applications, magnet sites and user-driven sites would be subject to "sunset" time limits which would self-remove FTZ designation from a site if there had been no FTZ activity before the site's sunset date (generally five years from the date of the site's approval). Magnet sites and user-driven sites would also be subject to ongoing "recycling" whereby FTZ activity at a site during the site's initial sunset period would serve to push back the sunset date by another five years (when the sunset test based on FTZ activity would again apply).

It is important to note that the elements of the proposal support each other in furthering the goals of flexibility and focus for FTZ site designation (with important resulting resource- and efficiency-related benefits for the government). As such, a framework incorporating these types of elements would incorporate the package of elements as an available alternative to the Board's

current practice. FTZ grantees opting to manage their zones under the Board's current framework would be unaffected by this proposal. As is currently the case, MBM actions would be approved by the Board's staff while modifications to a zone's "plan" (e.g., increase in authorized FTZ acreage, modification to service area) would be matters for the FTZ Board's consideration.

In addition, in order to help the FTZ Board evaluate the effectiveness and appropriateness of the alternative framework after actual experience with FTZ grantees, the FTZ staff would report to the Board on a periodic basis regarding the actual usage of the alternative framework. The staff's reporting regarding implementation of the framework at individual participating FTZs would result from staff-initiated reviews and would not require any request or application from the grantee.

Public comment on this proposal is invited from interested parties. We ask that parties fax a copy of their comments, addressed to the Board's Executive Secretary, to (202) 482-0002. We also ask that parties submit the original of their comments to the Board's Executive Secretary at the following address: U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW., Washington, DC 20230. The closing period for the receipt of public comments is [*Insert 60 days from the date of publication*]. Any questions about this request for comments may be directed to the FTZ Board staff at (202) 482-2862.

Dated:

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Andrew McGilvray  
Executive Secretary