

**Unsafe Condition**

(e) This AD was prompted by results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

**Compliance**

(f) Comply with this AD within the compliance times specified, unless already done.

**Installation**

(g) For airplanes in Groups 1 and 2, Configuration 2, as identified in Boeing Service Bulletin 777-28A0047, Revision 5, dated September 20, 2010: Within 36 months after the effective date of this AD, install a new P301 panel on the left side of the airplane, install a new P302 panel on the right side of the airplane, and change the wiring, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777-28A0047, Revision 5, dated September 20, 2010.

(h) For airplanes in Groups 1 and 2, Configuration 1, as identified in Boeing Service Bulletin 777-28A0047, Revision 5, dated September 20, 2010: Within 36 months after the effective date of this AD, perform bonding resistance measurements and rework the airplane installation if necessary, depending on airplane configuration, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777-28A0047, Revision 5, dated September 20, 2010.

**Concurrent Requirements**

(i) Prior to or concurrently with accomplishing the requirements of paragraph (g) of this AD, do the actions in paragraphs (i)(1), (i)(2), (i)(3), and (i)(4) of this AD.

(1) Install new software in the electrical load management system (ELMS) electronics units in the P110, P210, and P310 power management panels, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777-28A0040, Revision 1, dated March 18, 2010.

(2) Install airplane information management system 2 (AIMS-2) software in the AIMS-2 hardware, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777-31-0097, Revision 3, dated February 22, 2007.

(3) Modify the P110 left power management panel by incorporating wiring changes, in accordance with the Accomplishment Instructions of GE Aviation Service Bulletin 5000ELM-28-456, Revision 1, dated January 7, 2010.

(4) Modify the P210 right power management panel by incorporating wiring changes, in accordance with the Accomplishment Instructions of GE Aviation Service Bulletin 6000ELM-28-457, Revision 1, dated January 7, 2010.

**Credit for Actions Accomplished in Accordance With Previous Service Information**

(j) Installations done before the effective date of this AD in accordance with Boeing

Alert Service Bulletin 777-28A0040, dated April 13, 2007, are acceptable for compliance with the requirements of paragraph (i)(1) of this AD.

(k) Installations done before the effective date of this AD in accordance with Boeing Service Bulletin 777-28A0047, Revision 3, dated June 11, 2009; or Revision 4, dated May 20, 2010; are acceptable for compliance with the requirements of paragraphs (g) and (h) of this AD.

(l) Installations done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 777-31-0097, dated March 30, 2006; Revision 1, dated August 10, 2006; or Revision 2, dated October 26, 2006; are acceptable for compliance with the requirements of paragraph (i)(2) of this AD.

**Paperwork Reduction Act Burden Statement**

(m) A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120-0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES-200.

**Alternative Methods of Compliance (AMOCs)**

(n)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to: [9-ANM-Seattle-ACO-AMOC-Requests@faa.gov](mailto:9-ANM-Seattle-ACO-AMOC-Requests@faa.gov).

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

**Related Information**

(o) For more information about this AD, contact Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6482; fax (425) 917-6590; e-mail: [Georgios.Roussos@faa.gov](mailto:Georgios.Roussos@faa.gov).

(p) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data &

Services Management, P.O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; e-mail [me.boecom@boeing.com](mailto:me.boecom@boeing.com); Internet <https://www.myboeingfleet.com>. For GE Aviation service information identified in this AD, contact GE Aviation, Customer Services—Clearwater, P.O. Box 9013, Clearwater, Florida 33758; telephone 727-539-1631; fax 727-539-0680; e-mail [cs.support@ge.com](mailto:cs.support@ge.com). You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, the FAA, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

Issued in Renton, Washington, on December 17, 2010.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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**DEPARTMENT OF COMMERCE****Foreign-Trade Zones Board****15 CFR Part 400**

[Docket No. 090210156-0416-01]

RIN 0625-AA81

**Foreign-Trade Zones in the United States**

**AGENCY:** Foreign-Trade Zones Board, International Trade Administration, Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Foreign-Trade Zones Board (the Board) proposes to amend its regulations, and invites public comment on these proposed amendments. Through this action, the Board proposes to amend the substantive and procedural rules for the authorization of Foreign-Trade Zones (FTZs or zones) and the regulation of zone activity. The purpose of zones as stated in the Foreign-Trade Zones Act (FTZ Act or the Act) is to “expedite and encourage foreign commerce, and other purposes.” The regulations proposed here 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. The changes are comprehensive and the proposed action constitutes a major revision. These revisions encompass changes related to manufacturing and value-added activity, as well as new rules designed to address compliance with the Act’s requirement for a grantee to

provide uniform treatment for the users of a zone. The new rules should improve flexibility for U.S.-based operations, particularly for most circumstances involving exports; enhance clarity; and strengthen compliance and enforcement. The revisions would also reorganize the regulations in the interest of ease-of-use and transparency.

**DATES:** Comments on the proposed rule must be received on or before April 8, 2011.

**ADDRESSES:** All comments must be submitted through the Federal eRulemaking Portal at <http://www.Regulations.gov>, Docket No. ITA-2010-0012, unless the commenter does not have access to the internet. Commenters that do not have access to the internet may submit their comments by mail or hand delivery/courier. All comments should be addressed to Andrew McGilvray, Executive Secretary, Foreign-Trade Zones Board, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 2111, Washington, DC 20230.

All comments received are a part of the public record and will generally be posted to <http://www.Regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information, as such information may become part of the public record.

The FTZ Board will accept anonymous comments (enter N/A in required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only. All comments to Regulations.gov must be submitted into Docket Number ITA-2010-0012, and comments should refer to RIN 0625-AA81. The public record concerning these regulations will be maintained in the Office of the Executive Secretary, Foreign-Trade Zones Board, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 2111, Washington, DC 20230. Written public comments will be available at the facility in accordance with 15 CFR part 4 and may also be available electronically over the internet via <http://www.trade.gov/ftz> or <http://www.Regulations.gov>. Questions may be directed to the Foreign-Trade Zones Board staff by calling (202) 482-2862 or via e-mail to [ftz@trade.gov](mailto:ftz@trade.gov).

**FOR FURTHER INFORMATION CONTACT:**

Andrew McGilvray, Executive Secretary, Foreign Trade Zones Board, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 2111, Washington, DC 20230, (202) 482-2862 or Matthew Walden, Senior Attorney, Office of Chief Counsel for Import Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4610, Washington, DC 20230, (202) 482-2963.

**SUPPLEMENTARY INFORMATION:**

**Background**

Foreign-Trade Zones (FTZs or zones) are restricted-access sites in or near U.S. Customs and Border Protection (CBP) ports of entry. The zones are licensed by the Board and operated under the supervision of CBP (*see* 19 CFR part 146). Specifically, zones are physical areas into which foreign and domestic merchandise may be moved for operations involving storage, exhibition, assembly, manufacture or other processing not otherwise prohibited by law. Zone areas "activated" by CBP are considered outside of U.S. customs territory for purposes of CBP entry procedures. Therefore, the usual formal CBP entry procedure and payment of duties is not required on the foreign merchandise in FTZs unless and until it enters U.S. customs territory for U.S. domestic consumption. In fact, U.S. duties can be avoided on foreign merchandise re-exported from a FTZ, including after incorporation into a downstream product through activity in the FTZ. 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.

Domestic goods moved into a zone for export may be considered exported upon entering the zone for purposes of excise tax rebates and drawback.

"Subzones," a special-purpose type of ancillary zone, are authorized by the Board, through grantees of general-purpose zones, in situations such as when the "adjacency" requirement (distance/driving time) for general-purpose zones cannot be met. Goods that are in a zone for a *bona fide* customs reason are exempt from State and local *ad valorem* taxes. Zones and subzones are operated by corporations that have met certain regulatory criteria for submitting applications to the Board to operate zones. Under the FTZ Act, zones must be operated under public utility principles, and provide uniform

treatment to all that apply to use the zone. The Board reviews and approves applications for authority to establish zone locations and to conduct certain activity within zones, and oversees zone grantees' compliance with zone regulations. The Board can limit or deny zone use on a case-by-case basis on public interest grounds. In response to applications, the Board can also provide the applicant with specific authority to choose whether to pay duties either on the original foreign material or on a downstream product incorporating the foreign material.

To receive approval to operate a zone, an applicant must demonstrate the need for zone services, a workable plan that includes suitable physical facilities for zone operations, and financing for the operation. Successful applicants are granted licenses to operate zones. License grantees' sponsorship of specific sites for proposed FTZ designation is based on the grantees' determinations regarding the sites' appropriateness and potential for FTZ use, and a grantee may subsequently request removal of FTZ designation from a site based on factors such as the grantee's determination that projected FTZ use has not occurred.

Through this proposed action, the Board intends to update and modify the rules for FTZs. Continued interest in zones, on the part of both communities providing zone access as part of their economic development efforts and firms using zone procedures to help improve their international competitiveness, demonstrates zones' importance to international trade and to investment in the domestic economy. Since the issuance of the Board's current regulations (last revised substantively in 1991), several issues or trends have emerged which necessitate fresh approaches in the regulations, as detailed below. Key revisions in the proposed regulations pertain to activity in zones in which an imported component is combined with one or more other components to create a different finished product. The current regulations divide such activity into two categories—"manufacturing" or "processing," depending on whether the activity involves "substantial transformation" of the component—and apply procedures that can differ between the two categories. The proposed regulations would simplify use of the FTZ program through application of a unified concept—"production" as defined in § 400.2(l)—and provide a single set of procedures pertaining to that type of activity. All changes to rules pertaining to production activity have been carefully

balanced, including through adoption of certain additional constraints and safeguards such as enhanced authority to conduct reviews and restrict activity that is determined not to be in the public interest.

The proposed regulations would eliminate the general requirement for advance approval from the FTZ Board for all manufacturing (*i.e.*, substantial transformation) activity. The proposed regulations would only require advance approval for production activity under specific circumstances (*e.g.*, if a lower U.S. duty rate will be applied to the component through its incorporation into a downstream product in the FTZ) (see § 400.14(a)). This and other changes related to production activity respond to trends such as dramatically shorter timeframes for companies' decision-making on production locations (U.S. versus offshore), and the growth in contract manufacturing in which U.S. manufacturers compete with foreign-based alternatives for contracts under deadlines that are often incompatible with existing regulatory timeframes for obtaining authority from the FTZ Board.

In circumstances where advance approval is required for specific production activity, the proposed rule would delegate authority to the Commerce Department's Assistant Secretary for Import Administration to approve the activity on an interim basis pending completion of the full FTZ Board's review of the request, which would significantly decrease the time a company must wait for approval (see § 400.14(d)(3)). This new provision would replace and is significantly more flexible than the temporary/interim manufacturing (T/IM) procedure adopted by the FTZ Board in 2004 (and modified in 2006), and which had not yet been the subject of specific regulations. The T/IM procedure was limited to activity similar to that approved by the FTZ Board in the preceding five years. The new provision for interim approvals contains no requirement for similarity to recently approved activity.

The proposed regulations also provide improved flexibility to accommodate changes in production at previously approved FTZ operations through retrospective notifications to the FTZ Board (see §§ 400.14(e)(1) and 400.37). The current regulations allow grantees or zone operators to notify the FTZ Board of new components but require advance approval for any new finished products. The proposed regulations would allow grantees or zone operators to notify the Board of new finished products as well as new components. However, in order to preserve the public

process long associated with FTZ Board evaluation of new "manufacturing" activity, the proposed regulations would also require that a production operation obtain advance FTZ Board approval—after a public comment period on the proposal—for the list of broad categories of components or finished products within which specific new components or finished products would be notified. In addition, the proposed regulations would provide for a public comment period on all notifications submitted to the FTZ Board, as well as procedures to review any such notifications and to impose restrictions on notified changes when warranted.

Two other significant areas of change in the proposed regulations pertain to the statutory requirements that each zone be operated as a public utility and provide uniform treatment to all that apply to use the zone. The current regulations do not provide grantees guidance on the practical implementation of these requirements. The proposed regulations would provide such guidance and would establish specific standards for compliance with those requirements (see §§ 400.42 and 400.43). For example, regarding the public utility requirement, they would tie the fees that a grantee charges zone users to the costs that the grantee incurs. With respect to the uniform treatment requirement, they would preclude certain conflicts of interest that could otherwise lead to non-uniform treatment of actual or potential zone users by private firms that assist zone grantees in zone management. Explicit standards regarding uniform treatment would help to ensure that the broadest range of U.S.-based operations can use zones to maximize their global competitiveness.

Additionally, the proposed regulations would implement the statutory authority to issue fines for violations of the FTZ Act or the Board's regulations through specific provisions targeting certain types of violations (see § 400.62). The current regulations contain no provisions pertaining to the statutory fining authority. The fining provisions are supplemented by provisions through which the Board or the Commerce Department's Assistant Secretary for Import Administration may order the suspension of the activated status of a zone operation in response to a violation. The proposed regulations' fining and suspension-of-activation provisions would help to ensure compliance with the statutory or regulatory requirements that zones submit annual reports to the FTZ Board, obtain advance approval (or submit notification) for certain production

activity, and avoid certain conflicts of interest inconsistent with the statutory uniform treatment requirement.

Finally, the proposed regulations contain a new provision allowing for the "prior disclosure" of violations of the FTZ Act or the Board's regulations (see § 400.63). Disclosure of a violation to the FTZ Board prior to its discovery by the Board would generally result in the potential total fine for the violation (or series of offenses stemming from a continuing violation) being reduced to 1,000 dollars.

Thus, the proposed regulations would generally simplify and clarify requirements pertaining to FTZ use, while also helping to ensure compliance with specific statutory and regulatory requirements. The proposed regulations are intended to improve access and flexibility for U.S. manufacturing and value-added operations—particularly in most circumstances related to exports—and to enhance safeguards in order to avoid negative economic consequences from certain zone activity.

Proposed changes are described in the following summary:

1. Section 400.1. This section on the "scope" of the regulations contains a summary statement of zone benefits to users and is essentially unaltered.

2. Section 400.2. A small number of new terms or refinements to existing terms have been added to this definitions section. The definitions of "manufacturing" and "processing" have been eliminated in favor of a new definition of "production" activity, for which advance approval (or notification) under specific circumstances and reporting to the Board would be required.

3. Section 400.3. This section adopts with minimal alterations the contents of current § 400.11. The section contains a statement of the Board's authority, the roles of the Chairman and Alternates, and the procedure for decision making (determinations).

4. Section 400.4. This section on the Executive Secretary's role is modified from current § 400.12 to reflect responsibilities involving application formats, termination of reviews under certain circumstances, production changes, fining, suspension of activated status, and retail trade.

5. Section 400.5. This section is unchanged in substance from current § 400.43.

6. Section 400.6. This section is unchanged in substance from current § 400.13.

7. Section 400.11. This section closely parallels current § 400.21.

8. Section 400.12. This section closely parallels current § 400.22.

9. Section 400.13. This section primarily incorporates existing restrictions and conditions from § 400.28. Specifically, §§ 400.13(a)(1) through (a)(5) plus (a)(7) mirror current §§ 400.28(a)(1) and 400.28(a)(4)-(a)(7) and the first sentence of current § 400.28(a)(8) regarding preconditions for actual use of FTZ designated sites, the lapse of authority for unused zones, authority to construct buildings in the zone, allowing federal and local officials to have access to the zone, and the sale or transfer of a grant of authority. In combination with § 400.14(a), § 400.13(a)(6) parallels the general effect of current § 400.28(a)(2) regarding requirements specific to manufacturing. Section 400.13(a)(8) incorporates the language of all but the first sentence of current § 400.28(a)(8), and also adds a statutorily-derived sentence regarding no vested right to zone designation approved for privately owned land or facilities. Section 400.13(b) parallels existing §§ 400.31(a) and 400.33(a) regarding the authority to prohibit or restrict zone activity. Section 400.13(c) is unchanged from current § 400.28(b) regarding authority to impose additional conditions or restrictions on grants of authority.

10. Section 400.14. This section addresses a series of general provisions and restrictions that relate to production activity in FTZs. Section 400.14(a) parallels the general effect of current § 400.28(a)(2), but focuses on the types of production activity that have raised public interest concerns in certain circumstances in the past, or that appear to have significant potential to raise such concerns in the future (e.g., duty reduction on foreign components, avoidance of antidumping or countervailing duties, avoidance of orders of the International Trade Commission under 19 U.S.C. 1337). Section 400.14(b) is new and makes explicit in regulation an existing practice of requiring all activity involving production in zones to be reported annually to the Board. Section 400.14(c) addresses the limits associated with the scope of approved production authority, and parallels to some degree a portion of current § 400.28(a)(2). Section 400.14(d)(1) is the same in substance as current § 400.32(b)(1)(iv), while §§ 400.14(d)(2) and (d)(3) are new. Section 400.14(d)(2) delegates authority to the Commerce Department's Assistant Secretary for Import Administration to approve production authority where the sole zone benefit requiring advance approval from the Board is for scrap or waste resulting from the production activity. The new interim authority in

§ 400.14(d)(3) replaces the temporary/interim manufacturing (T/IM) authority adopted by the Board in 2004, but is potentially applicable to many applications involving production authority, while eliminating the complex comparison(s) to previously approved authority that had been required to establish eligibility for T/IM. Section 400.14(e)(1) parallels to some degree current §§ 400.28(a)(3)(ii) and (iii), but broadens the current notification provision for changes in "sourcing" to encompass "production" changes (now defined as new finished products or new foreign components/inputs), and it also imposes certain key limitations on the production change procedure. Section 400.14(e)(2) is new and defines a procedure for notification of increases in production capacity. Section 400.14(e)(3) to some degree parallels current § 400.28(a)(3)(iii)(B), and delineates authority to impose prohibitions or restrictions in response to production-change and capacity-increase notifications. Section 400.14(f) on "scope determinations" largely mirrors the content of current § 400.32(c). Section 400.14(g) mirrors current § 400.33(b).

11. Section 400.15 is new, and reflects a statutory change (Pub. L. 104-295, Sec. 31(a), 110 Stat. 3536 (1996), codified at 19 U.S.C. 81c(e)) regarding "production equipment." Specifically, this statutory change allows the reduction and deferral of duty payment on equipment assembled in a zone for use in production activity. The language of this section reflects the statute, the legislative history and Board practice.

12. Section 400.16 relates to state and local *ad valorem* taxes and expands upon existing § 400.1(c) by adopting language regarding this topic from the conference report on the 1984 legislation (Pub. L. 98-573, title II, Sec. 231(a)(2), 98 Stat. 2990 (1984), codified at 19 U.S.C. 81o(e)).

13. Section 400.21 is very similar in substance to current § 400.24, but eliminates the current format of five "exhibits," and instead provides for the requirements of the section to be addressed in guidelines/formats or related documents established by the Executive Secretary and published in the **Federal Register**.

14. Section 400.22 indicates the requirements for production and subzone applications. The section is similar in many ways to current § 400.25, but makes a clearer distinction between production requirements and subzone requirements to reflect the increasing prevalence of production activity in non-subzone environments and the increasing number of subzone

applications involving only distribution-related activity.

15. Section 400.23 is very similar in substance to current § 400.26, with the exception of the elimination of § 400.26(b)(1), which allowed reference to information in applications already on file with the Board, and which has proven problematic in practice.

16. Section 400.24 is generally similar to current § 400.23, but replaces one existing criterion encompassing the adequacy of operational and financial plans and the suitability and justification for a new zone site with a new criterion specific to the suitability of a new zone site and a new criterion specific to the justification for a new zone site.

17. Section 400.25 sets forth criteria for evaluating production and subzone applications. The first paragraph of the section parallels current § 400.27(d)(3)(v)(B). Sections 400.25(a)(1) and (2) are substantively unaltered from current §§ 400.31(b)(1) and (2). Sections 400.25(b) and (c) essentially parallel current § 400.23(b), but distinguish more clearly between production authority and subzone designation, and require all applications for production authority to meet the significant public benefit standard because of the increasing incidence of production activity in general-purpose zone environments rather than in subzones.

18. Section 400.26 parallels current § 400.31(c)(3), but includes standards for all applications.

19. Section 400.27 is substantively identical to current § 400.29.

20. Sections 400.31 through 400.36 delineate the procedural steps for processing applications, and are generally the same in content as current § 400.27, but also incorporate the content of current § 400.31(c). However, the new sections provide greater ease-of-use for the applicants by limiting each section to a particular case-processing stage. Section 400.31 parallels current §§ 400.27(a) and 400.27(b)(1). Section 400.32 parallels current §§ 400.27(b)(2), 400.27(c), and 400.27(d)(1). Section 400.33 parallels current § 400.27(d)(2). Section 400.34(a) parallels current § 400.27(d)(3) while § 400.34(b) parallels current § 400.31(c). Section 400.35 parallels current § 400.27(e). Section 400.36 parallels current § 400.27(f).

21. Section 400.37, which establishes procedures for authority and notification related to production changes, parallels to some degree current §§ 400.28(a)(3)(ii) and (iii). However, the section is significantly expanded, with additional elements intended to make the procedure more

useful and also ensure the proper balance between flexibility and program oversight.

22. Section 400.38 generally parallels current § 400.31(d) in both substance and structure.

23. Section 400.41 is substantively unchanged from the current section of the same number.

24. Section 400.42 provides new guidance and requirements related to the statutory mandate for operation of a zone as a public utility (referred to in current § 400.2(e)). This section also contains a provision allowing a delayed compliance date.

25. Section 400.43 provides new guidance and requirements to implement the statutory mandate for a grantee's uniform treatment of zone users (referred to in current § 400.42(b)(2)(v)). This section also contains a provision allowing a delayed compliance date.

26. Section 400.44 groups together requirements from current §§ 400.42(a)(1), 400.28(a)(4) and 400.42(b)(1).

27. Section 400.45 generally parallels current § 400.42 regarding requirements for a grantee's zone schedule, but adds specificity to the documentation requirements for a zone's policies and the standard contractual provisions the zone offers. This section also contains a provision allowing a delayed compliance date.

28. Section 400.46 substantially modifies current § 400.42(b)(5), which dealt with complaints about fees, by adding in § 400.46(a) general procedures for complaints by zone participants regarding compliance with the uniform treatment requirement of the FTZ Act. Section 400.46(b), which addresses complaints about fees, adds new specificity.

29. Section 400.47 is based on current § 400.28(a)(9) regarding ordinary limitations on grantee liability, and provides further explanation concerning the bases for those limitations by adding language largely derived from the Board position in response to comments on § 400.41 in the October 1991 final rule document for the current regulations. This section also adds a final sentence stating specific circumstances in which a grantee's actions could undermine the limitations on its liability.

30. Section 400.48 parallels current § 400.45, but shifts responsibility for determinations from the Port Director (with the Executive Secretary's concurrence) to the Executive Secretary (with the Port Director's concurrence).

31. Section 400.49 is substantively unchanged from current § 400.44.

32. Section 400.51 is largely unchanged from current § 400.46, with minimal non-substantive additional language.

33. Section 400.52 parallels current § 400.51.

34. Section 400.53 is unchanged in substance from current § 400.52.

35. Section 400.54 is largely unchanged from current § 400.53, with the exception of an added sentence on the public nature of information submitted pursuant to certain regulatory sections.

36. Section 400.61 closely parallels current § 400.28(c), with language added regarding the subzone operator.

37. Section 400.62 is new and establishes procedures related to the imposition, mitigation, and assessment of fines as authorized by the FTZ Act (this authority is reflected in current § 400.11(a)(10)), as well as for instructing CBP to suspend activated status in certain circumstances.

38. Section 400.63 is new and establishes procedures for "prior disclosure" of information to the Board regarding violations of the FTZ Act or the Board's regulations.

39. Section 400.64 is unchanged in substance from current § 400.47.

#### **Classification**

This revision is proposed under the authority of section 8 of the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81h).

#### *Executive Order 12866*

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

#### *Regulatory Flexibility Act*

The Acting Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. (5 U.S.C. 605(b)). In this rule, which is consistent with 19 USC 81a-1u, the Foreign Trade Zones Board proposes to simplify and expedite access to FTZ benefits for U.S. manufacturers, particularly for export-oriented activity. In addition, the revised regulations would provide increased transparency, guidance and enforcement of the public utility and uniform treatment aspects of the program.

The FTZ Board's current regulations date to 1991. The proposed rule would eliminate the general advance approval requirement for most export manufacturing. This approval process

generally took between 6 and 12 months. Instead, the proposed rule would require advance approval for export manufacturing only in certain relatively rare circumstances (such as when an imported component used in the manufacturing process is subject to an antidumping or countervailing duty). For manufacturing in FTZs for goods that are destined for the U.S. market, which generally is conducted in competition with factories overseas, the proposed rule would eliminate the FTZ Board's general advance approval requirement and instead limit the advance approval process to the specific types of FTZ benefits that could potentially impact other domestic manufacturers. These amendments should dramatically reduce the economic burden on large and small businesses involved in FTZ export manufacturing by reducing and streamlining the regulatory process for such manufacturing.

The second area of focus for the proposed rule involves circumstances in which the organization licensed by the FTZ Board to serve a particular region is not complying with the FTZ Act's requirements to operate the zone as a public utility and provide uniform treatment to all users. Use of the FTZ program provides certain cost savings that are designed to enhance the competitiveness of U.S. facilities in competition with sites abroad. Improved access to FTZs and simplification of the rules and procedures regarding FTZ activity should therefore generally have a net positive effect for all potential users of the program regardless of size.

To determine which entities using the FTZ program qualify as "small" entities, pursuant to 13 CFR 121.201, the FTZ staff used the Small Business Administration (SBA) size standards identified by North American Industry Classification System (NAICS) codes. Major users of the FTZ program include ocean freight companies and manufacturers of various products. Under the SBA size standards, ocean freight companies are considered small entities if they have fewer than 500 employees. The size standards for manufacturing operations vary by the NAICS code of the product manufactured. Manufacturing in FTZs involves a wide variety of industries and products, and the NAICS codes for all zone users are not always known by the FTZ staff. Therefore, to assess the potential impact from this rule, FTZ manufacturing operations were categorized as "miscellaneous manufacturing" which, under the SBA size standards, are considered small entities if they have fewer than 500

employees. With these size standards, potentially impacted companies operating in FTZs were considered small entities if they had fewer than 500 employees. Use of the 500 employee standard also appears consistent with what has been done in other circumstances that involve a large variety of industries. For example, under the Small Business Size Regulations, entities are considered small for the purpose of reduced patent fees if the number of employees does not exceed 500 (13 CFR 121.802), and a similar standard applies for entities to qualify for small business set-asides or 8(a) contracts under 13 CFR 121.406.

To determine the number of small entities involved, the FTZ Board staff analyzed data on activity within the zones in 2009 from annual reports submitted by each FTZ. The information submitted included the number and types of companies using each FTZ. Research was then conducted to determine whether each company would be considered a small entity. Based on the research and analysis conducted, it is anticipated that the rule would impact approximately 200 business entities that have fewer than 500 employees, i.e., small entities under 13 CFR 121.201. The proposed revisions would apply equally to all companies and organizations involved in the FTZ program. However, simplified procedures for zone applicants and for access to zone use are expected to provide the greatest benefit to small entities, particularly those with more limited resources, because they would reduce administrative and application costs for these companies. These changes would allow program use by more small entities that are currently underserved in the program. The changes proposed in this rule also could increase the number of small entities using the program. Such an increase would result from the simplified procedures proposed and would extend the cost savings achieved through the program to additional small entities that had been unable to access those benefits in the past.

The proposed rule would also reduce the number of applications for FTZ authority that need to be submitted for export manufacturing, thereby reducing the submission and recordkeeping burden on companies using the program for such activity. The reduction in burden is expected to increase the use of the program for this activity. In the past, the FTZ staff has received informal comments from companies that the application required was difficult to prepare, and that the process itself was burdensome and time consuming. The

proposed rule is intended to address those concerns to the extent possible. Moreover, many changes in non-export related FTZ activity that currently require advance approval (through a 6 to 12 month application process) would be eligible under the proposed rule for a dramatically simpler process that allows a company to notify the FTZ Board that a change has occurred in activity. This proposed change is in addition to the general elimination of advance approval for export manufacturing. As a result of this significantly reduced burden, use of the FTZ program should be much more accessible to all companies and, in particular, to small entities.

The proposal to simplify procedures and reduce the number of applications submitted was the result of analysis and extensive discussion concerning the most effective means of improving the program while maintaining the appropriate balance and safeguards. The application structure for manufacturing in the current regulations is intended to ensure that other domestic companies are not negatively impacted if a company benefits from the savings available in the FTZ program. As a result, certain information and procedures are necessary in the review process, and the application process cannot be completely eliminated. At the same time, the FTZ Board recognizes that certain activity, such as manufacturing for export markets, generally does not have such an impact on other domestic companies.

The preparation of the proposed rule involved an assessment of the areas where procedures could be simplified or reduced to decrease the burden on companies while maintaining those procedures that are necessary to ensure that the program is not misused. One alternative analyzed was to simplify the procedures pertaining to FTZ manufacturing, without eliminating the requirement for the submission of applications for certain manufacturing (particularly for most export activity). While this option would reduce the burden on all companies using the program, the net positive impact would be less than what is being proposed. In addition, the elimination of advance approval for most export manufacturing is expected to provide the greatest benefit to small entities using or seeking to use the program. The second alternative was to maintain the current application procedures. Under this alternative, there would be no impact on small entities using the program, but it would continue to discourage certain export activity as well as new companies, particularly small entities, from entering the program. This

proposed rule would both eliminate the need for certain applications and simplify manufacturing-related procedures as a whole, resulting in the largest possible reduction in burden of the options considered.

The FTZ Act and current regulations require the submission of an annual report from each zone to the FTZ Board. This reporting would not be impacted by the revised rule, and no increased burden would result.

Most fundamentally, all businesses and organizations, whether small or not, have access to the use of FTZs. The proposed rule simply lays out the procedures that the FTZ Board would follow when businesses or organizations apply to establish FTZs or engage in certain activities in FTZs, and they delineate certain rights and responsibilities of zone grantees, operators and users that have decided to make use of the FTZ program. The procedures, rights and responsibilities apply equally, whether the affected party is a small or large entity. The FTZ Act of 1934 and the FTZ program are tools of economic development, and when entities use the FTZ program, it can be assumed they do so because it is in their economic interest. Accordingly, this proposed rule, which is designed to improve access to the FTZ program, should only further the economic interests of current and future zone users, including small entities.

Because this rule results in reduced burden for many types of FTZ activity, with a net positive impact to entities involved in the FTZ program, this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, an IRFA is not required, and none has been prepared.

#### *Executive Order 13132*

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

#### *Paperwork Reduction Act*

This rule contains information collection activities subject to the Paperwork Reduction Act. It would impose no additional reporting or record keeping burden on the public and there would be no impact on the collection that falls under the Office of Management and Budget (OMB) Control No. 0625-0109 (Annual Report to Foreign-Trade Zones Board). This proposed rule would amend the collection under OMB Control No. 0625-0139 (Application to Foreign-Trade Zones Board). Under this proposed rule, the application

requirements associated with the latter collection for zone applicants, grantees, operators, and users would be simplified, and there is an overall reduction of the burden on those parties. The amended requirement would be submitted to OMB for approval.

The changes proposed in this rule are expected to decrease the annual number of future production (manufacturing) applications submitted to the FTZ Board from 27 to 20. The reduction in the total number of applications would result, in part, from the elimination of the requirement for advance approval for certain export production activity. Moreover, many changes in non-export related FTZ activity that currently require advance approval (through a 6 to 12 month application process) would be eligible under the proposed rule for a dramatically simpler process that allows a company to notify the FTZ Board that a change has occurred in activity. These changes are expected to reduce the total annual burden associated with applications for production authority from 1,026 to 680 hours. As a result of this significantly reduced burden, use of the FTZ program should be much more accessible to all companies involved in production activity.

In addition to changes pertaining directly to production activity, the rule also specifically adopts the alternative site framework (ASF) authorized by the FTZ Board in December 2008. The ASF procedures reduce the time and complexity involved in designating FTZ sites for many companies. As use of the ASF becomes more widespread, the need for expansion and subzone applications will be reduced. As a result, with increased use of the ASF by zones, there is expected to be a decline in the number of expansion applications as well as a shift from the submission of more complex subzone applications to applications for production authority. The combined effect of the changes pertaining to production activity and to the ASF is expected to result in an even more significant reduction in application burden. The annual number of expansion applications should decline by half, from 20 to 10, reducing the annual burden from 2,100 to 1,050 hours. While the overall number of production applications is anticipated to increase (from 27 to 29 per year) despite the elimination of the need for advance approval in certain circumstances, this largely reflects the shift from subzone to production applications, and the number of complex subzone applications is expected to decline. The application for production authority is a simpler

process and involves notably fewer burden hours than a subzone application. As a result, the combined annual burden for subzone and production requests is expected to decline from 4,098 to 2,681 hours. In total, the annual FTZ application burden through the provisions proposed in this rule would be reduced from 6,651 to 4,184 hours.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the contact listed in **ADDRESSES** above, and e-mail to Wendy Liberante (*Wendy\_L\_Liberante@omb.eop.gov*).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### List of Subjects in 15 CFR Part 400

Administrative practice and procedure, Confidential business information, Customs duties and inspection, Foreign-trade zones, Harbors, Imports, Reporting and recordkeeping requirements.

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.

#### Subpart B—Ability To Establish Zone; Limitations and Restrictions on Authority Granted

- 400.11 Number and location of zones and subzones.
- 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 zone.
- 400.22 Application for production or subzone authority.
- 400.23 Application for expansion or other modification to zone project.
- 400.24 Criteria for evaluation of zone proposals or expansion or other modifications to zone projects.
- 400.25 Criteria for evaluation of production and subzone proposals.
- 400.26 Burden of proof.
- 400.27 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.
- 400.36 Procedure for application for minor modification of zone project.
- 400.37 Procedure for notification and review of production changes.
- 400.38 Monitoring and reviews of zone operations and activity.

#### Subpart E—Operation of Zones and Administrative Requirements

- 400.41 Operation of zones; general.
- 400.42 Operation as public utility.
- 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 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 Prior disclosure.
- 400.64 Appeals to the Board of decisions of the Assistant Secretary for Import Administration and the Executive Secretary.

**Authority:** Foreign-Trade Zones Act of June 18, 1934, as amended (Pub. L. 397, 73rd

Congress, 48 Stat. 998–1003 (19 U.S.C. 81a–81u).

## Subpart A—Scope, Definitions and Authority

### § 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.

(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. 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 if used in production activity, 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 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.

### § 400.2 Definitions.

(a) Act means the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u).

(b) Agent means a person (as defined in § 400.2(h)) acting on behalf of or under agreement with the zone grantee in zone-related matters.

(c) 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.

(d) CBP means U.S. Customs and Border Protection.

(e) Executive Secretary is the Executive Secretary of the Foreign-Trade Zones Board.

(f) Foreign-trade zone (FTZ or zone) is a restricted-access site, in or adjacent (as defined by § 400.11(b)(2)) to a CBP port of entry, operated pursuant to public utility principles under the sponsorship of a corporation granted authority by the Board and under the supervision of CBP.

(g) Grant of authority is a document issued by the Board that authorizes a zone grantee to establish, operate and maintain a zone project or a subzone, subject to limitations and conditions specified in this part and in 19 CFR part 146. The authority to establish a zone includes the authority to operate and the responsibility to maintain it.

(h) Person includes any individual, enterprise, or entity.

(i) Port Director is normally the director of CBP for the CBP jurisdictional area in which the zone is located.

(j) Port of entry means a port of entry 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).

(k) 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.

(l) Production, as used in this part, means any activity which results in a change in the customs classification of an article or in 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.

(m) 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.

(n) Site is one or more parcels of land organized as an entity, such as all or part of an industrial park or airport facility.

(o) State includes any state of the United States, the District of Columbia, and Puerto Rico.

(p) Subzone means a special-purpose zone established as an adjunct to a zone project for a limited purpose.

(q) Zone 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, unless the context indicates otherwise.

(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.

### § 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 zones and subzones, and approve modifications to the original zone project;
- (3) Approve production activity in zones and subzones as described in this part;
- (4) Make determinations on matters requiring Board decisions under this part;
- (5) Decide appeals in regard to certain decisions of the Commerce Department’s Assistant Secretary for Import Administration or the Executive Secretary;

(6) Inspect the premises, operations and accounts of zone grantees and operators;

(7) Require zone grantees to report on zone operations;

(8) Report annually to the Congress on zone operations;

(9) Restrict or prohibit zone operations;

(10) Terminate reviews of applications under certain circumstances pursuant to § 400.35(d);

(11) Authorize under certain circumstances the return of “zone-restricted merchandise” for entry into customs territory under § 400.49;

(12) Impose fines for violations of the Act and this part;

(13) Instruct CBP to suspend activated status pursuant to § 400.62(i);

(14) Revoke grants of authority for cause; and,

(15) Determine, as appropriate, whether zone activity is or would be in the public interest or detrimental to the public interest.

(b) *Authority of 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) *Authority of the Assistant Secretary for Import Administration (Alternate Chairman).* The Commerce Department’s Assistant Secretary for Import Administration has the authority to:

(1) Make determinations pursuant to § 400.14(d);

(2) Terminate reviews of applications under certain circumstances pursuant to § 400.35(d);

(3) Mitigate and assess fines pursuant to §§ 400.62(f) and (g) and instruct CBP to suspend activated status pursuant to § 400.62(i); and,

(4) Restrict the use of zone procedures under certain circumstances pursuant to §§ 400.14(e) and 400.38(c).

(e) *Determinations of 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.

#### § 400.4 Authority and responsibilities of the Executive Secretary.

The Executive Secretary has the following responsibilities and authority:

(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 subzone sponsorship questions as provided in § 400.12(d);

(j) Make recommendations in cases involving questions as to whether zone activity should be prohibited or restricted for public interest reasons, including reviews under § 400.5;

(k) Determine questions of scope under § 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 §§ 400.21, 400.22, and 400.23;

(m) Issue instructions, guidelines, forms and related documents specifying time, place, manner and formats for applications as provided in § 400.21(b);

(n) Determine whether proposed modifications involve major changes under § 400.23(a)(2);

(o) Determine whether applications meet pre-docketing requirements under § 400.31(b);

(p) Terminate reviews of applications under certain circumstances pursuant to § 400.35(d);

(q) Authorize minor modifications to zone projects under § 400.36;

(r) Review production changes under § 400.37;

(s) Direct monitoring and reviews of zone operations and activity under § 400.38;

(t) Accept rate schedules and determine their sufficiency under § 400.45(e);

(u) Assess potential issues and make determinations pertaining to uniform

treatment under § 400.43 and review and decide complaint cases under § 400.46;

(v) Make certain determinations and authorizations pertaining to retail trade under § 400.48;

(w) Authorize under certain circumstances the return of “zone-restricted merchandise” for entry into customs territory under § 400.49;

(x) Determine the format and deadlines for the annual reports of zone grantees to the Board and direct preparation of an annual report to Congress from the Board under § 400.51(d);

(y) Make recommendations and certain determinations regarding violations and fines, and undertake certain procedures related to the suspension of activated status, as provided in § 400.62; and,

(z) Designate an acting Executive Secretary.

#### § 400.5 Authority to restrict or prohibit certain zone operations.

(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) *Initiation of review.* The Board may conduct a proceeding, or the Executive Secretary a review, to consider a restriction or prohibition under paragraph (a) of this section either self-initiated, or in response to a complaint made to the Board by a party directly affected by the activity in question and showing good cause.

#### § 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.

#### Subpart B—Ability To Establish Zone; Limitations and Restrictions on Authority Granted

##### § 400.11 Number and location of zones and subzones.

(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.

(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 and subzones—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 Port Director) from the outer limits of a port of entry.

(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 grantee/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.

#### **§ 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.

(b) *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 also be consistent with the charter or organizational papers of the applying entity.

(c) *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.

(d) *Applicants for subzones—*

(1) *Eligibility.* The following entities are eligible to apply for a grant of authority to establish a subzone:

(i) The zone grantee of the closest zone project in the same state;

(ii) The zone grantee of another zone 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 (d)(1)(ii) or (iii) of this section, the Executive Secretary will:

(i) Notify, in writing, the grantee specified in paragraph (d)(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;

(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 zone’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* § 400.64 regarding appeals of decisions of the Executive Secretary).

#### **§ 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 or subzones, including those already issued, are subject to the Act and this part and the following general conditions or limitations:

(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 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.

(3) A grant of authority for a zone or a subzone shall lapse unless the zone project (in case of subzones, the subzone facility) is activated, pursuant to 19 CFR part 146, and in operation not later than five years from the Board order authorizing the zone or subzone.

(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, and users shall permit federal government officials acting in an official capacity to have access to the zone project and records during normal business hours and under other reasonable circumstances.

(6) Activity involving production is subject to the specific provisions in § 400.14.

(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 zone land and facilities is permitted provided the zone grantee retains the control necessary to implement the approved zone project. 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 zone grantee must retain, by agreement with the new owner, a level of control which allows the grantee to carry out its responsibilities as grantee. 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. 810(c)), the Board has authority to restrict or prohibit zone activity “that in its judgment is detrimental to the public interest.” In approvals of the applications for zone or subzone production authority required by § 400.14(a), 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 §§ 400.14(d) and (e). When evaluating zone or subzone production activity, either as proposed in an application or as part of a review of an ongoing operation, the Board shall determine whether the

activity is in the public interest by reviewing it in relation to the evaluation criteria contained in § 400.25.

(c) *Additional conditions, prohibitions and restrictions.* Other conditions/requirements, prohibitions and restrictions under Federal, State or local law may apply to the zone or subzone authorized by the grant of authority.

**§ 400.14 Production—activity requiring approval or reporting; restrictions.**

(a) *Activity requiring advance approval.* Approval in advance by the Board (or notification to the Board under the circumstances described in § 400.37) is required for all production activity in zones or subzones which involves:

(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 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) 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 orders that were not in effect at the time of the Board's prior consideration of the foreign article's use in the production operation; or,

(iii) Which is subject (were it to enter U.S. customs territory) to a Section 337 order that was not in effect at the time of the Board's prior consideration of the foreign article's use in the production operation.

(b) *Activity requiring reporting.* All production activity in zones or subzones must be reported to the Board annually in accordance with any instructions, guidelines, forms and related

documents specifying time, place, manner and format(s) established by the Executive Secretary pursuant to § 400.51(d)(1).

(c) *Scope of approved authority.* The Board's approval of production authority for a particular operation is limited to the inputs, finished products, and production capacity presented in the approved application pursuant to § 400.22(a) (or for which notification has been made to the Board pursuant to § 400.14(e)). If a grantee, operator or user is uncertain of whether activity falls within the scope of activity approved by the Board, the grantee, operator or user may request a scope determination pursuant to § 400.14(f). Applications for expanded production authority shall meet the requirements of § 400.22 and shall be processed pursuant to §§ 400.31–32 and 400.34–35 (or § 400.14(d), where applicable). Activity conducted without required authority from the Board could be subject to penalties pursuant to § 400.62.

(d) *Delegation to Assistant Secretary for Import Administration.* The Commerce Department's Assistant Secretary for Import Administration may make determinations in cases requiring production authority, based upon a review by the Board staff and the recommendation of the Executive Secretary, when:

(1) The Port Director determines 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 Assistant Secretary for Import Administration's determination will only be on an interim basis, in response to a request from the applicant, to enable some or all of the activity in question to commence until the Board is able to complete action pursuant to § 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 Executive Secretary, which will take into account the factors in § 400.25, any public comments received, and any other relevant 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 realistic projected timeframe for commencement of the proposed activity and 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 Assistant Secretary for Import Administration until the Board has acted and is subject to modification or rescission for cause during the interim period.

(e) *Production changes and capacity increases.*

(1) *Production changes.* Where advance approval is required under § 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. § 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 (§ 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 §§ 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. Upon notification of an increase in capacity pursuant to this paragraph, the Executive Secretary within 45 days will conduct a preliminary analysis of the increase in relation to the approved (or previously notified) capacity level for the production operation in question, taking into account the factors

enumerated in § 400.25(a)(2) as appropriate, and determine whether further review is necessary to ensure that activity involved in these situations continues to be in the public interest. The procedures of §§ 400.32 and 400.34 shall be used in these situations when appropriate.

(3) The Commerce Department's Assistant Secretary for Import Administration may, based on public interest grounds, order the prohibition or restriction of the use of zone procedures in regard to a production change or capacity increase notified pursuant to §§ 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 shall comply or potentially be subject to actions that could include penalties pursuant to § 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 the production change or capacity increase or, where warranted by the circumstances, prior to the conduct of further review in order to avoid or mitigate potential or ongoing negative effects during the pendency of the further review.

(f) *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 §§ 400.32 and 400.34 will be followed.

(g) *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 or subzone. 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.

#### § 400.15 Production equipment.

(a) *In general.* Pursuant to § 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 zone production activity as defined in § 400.2(l) of this part. 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 production activity shall be treated as normal merchandise eligible for standard zone-related benefits (*i.e.*, benefits not subject to the requirements of § 400.14(a)), provided the equipment is entered for consumption or exported prior to its use.

#### § 400.16 Exemption from state and local ad valorem taxation of tangible personal property.

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. 810(e)). The exemption from such taxation is limited to tangible personal property imported from outside the United States and held in a zone for the purposes stated in 19 U.S.C. 810(e), 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 processes stated in 19 U.S.C. 810(e).

#### Subpart C—Applications To Establish and Modify Authority

##### § 400.21 Application for zone.

(a) *In general.* An application for a grant of authority to establish a zone project (including pursuant to the Alternative Site Framework 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) 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, 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 currently dated and signed by an officer of the corporation authorized in the resolution for the application (see § 400.21(d)(1)(iii)). The application letter shall also describe:

(1) How the proposal is consistent with the state enabling legislation and the grantee's charter;

(2) The type of authority requested from the Board;

(3) The proposed zone site(s) and facility(ies) and the larger project of which the zone is a part;

(4) The project background;

(5) The relationship of the project to the community's and state's international trade-related goals and objectives;

(6) Any production authority requested, where applicable; and,

(7) 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 described in §§ 400.12(b) and (c);

(ii) A copy of the sections of the applicant's charter or organization papers pertinent to foreign-trade zones; and,

(iii) A certified copy of a recent resolution of the governing body of the corporation specific to the application authorizing the official signing the application letter.

(2) Site Descriptions (including a table with site designations 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 (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);

(iv) A description of existing or proposed site qualifications, including appropriate land-use zoning (with environmentally sensitive areas avoided) and physical security;

(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;

(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 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 and objective 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, 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 from proposed zone 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 § 400.22.

(5) Maps and Blueprints shall be documented with:

(i) State and county maps showing the general location of the proposed site(s) in terms of the area's transportation network;

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

(iii) For any proposed site, a legible, detailed blueprint of the zone or subzone area showing zone boundaries in red, with dimensions, and showing existing and proposed structures; and,

(iv) For proposals involving existing zones, one or more maps showing the relationship between existing zone sites and the proposed changes.

(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 expand the scope of a request shall be subject to comment period requirements such as those of § 400.32(c)(2) with a minimum comment period of 30 days.

(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) *Format and number of copies.* Unless the Executive Secretary alters the requirements of this paragraph, 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 8½" x 11" (216 x 279 mm) paper and one electronic copy.

(i) *Where to submit an application.* Mailing address is: Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. Options for submission of electronic copies are described on the FTZ Board's Internet site.

#### **§ 400.22 Application for production or subzone authority.**

(a) *In general.* In addition to any applicable requirements of § 400.21, an

application involving proposed production authority under § 400.14(a) shall include:

(1) A summary as to the reasons for the application 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 (Section 337), or other trade-related proceeding(s) or issue(s);

(iv) Domestic materials, foreign materials, and plant value added (as percentages of finished product value);

(v) Projected shipments to domestic market and export market (percentages);

(vi) Estimated total or range of annual value of benefits to proposed user (broken down by category), including as a percent of finished product value;

(vii) Annual production capacity (current and planned) for the proposed FTZ activity, in units;

(viii) Information to assist the Board in making a determination under §§ 400.25(a)(1)(iii) and 400.25(a)(2);

(ix) Information as to whether alternative procedures have been considered as a means of obtaining the benefits sought;

(x) Information on the industry involved and extent of international competition; and,

(xi) Economic impact of the operation on the area.

(4) Information regarding any request for authority to submit notifications of future production changes pursuant to § 400.37; and,

(5) Any additional information requested by the Board or the Executive Secretary in order to conduct the review.

(b) An application to establish a subzone as part of a proposed or existing zone shall be submitted in accordance with the requirements in § 400.21, except that the focus of the information pursuant to § 400.21(d)(4) (Economic Justification) shall be on the specific activity involved and shall include:

(1) A summary as to the reasons for the subzone and a detailed explanation of its anticipated economic effects;

(2) Identity of the subzone user and its corporate affiliation;

(3) A description of the proposed activity, including the information

required in §§ 400.22(a)(3)(i), (iv), (v), (vi), (x), (xi), and tariff schedule headings and duty rates for products;

(4) For subzone applications involving requests for production authority, the information required in § 400.22(a);

(5) Reason operation cannot be conducted within a general-purpose zone; and,

(6) Statement as to environmental impact.

**§ 400.23 Application for expansion or other modification to zone project.**

(a) *In general.* (1) A grantee may apply to the Board for authority to expand or otherwise modify its zone project (including pursuant to the Alternative Site Framework 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).

(2) 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.

(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 § 400.21, except that the content submitted pursuant to § 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 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*, § 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 §§ 400.31–400.35 shall be followed, where relevant. If not, the procedure set forth in § 400.36 shall generally apply (although the Executive Secretary may elect to follow the procedures of §§ 400.31–400.35 when warranted).

**§ 400.24 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 in the port of entry area, 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 compatibility of the zone project with the community's master plan or stated goals for economic development and 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 affected by proposed zone activity; and,

(f) If the proposal involves production activity, the criteria in § 400.25.

**§ 400.25 Criteria for evaluation of production and subzone proposals.**

(a) *Production.* The Board will apply the criteria delineated in § 400.25(a) 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, and net effect on U.S. employment:

(1) *Threshold factors.* It is the policy of the Board to authorize zone activity

only when it 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 enumerated in § 400.25(a)(2), the Board shall deny or restrict authority for proposed or ongoing 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

(viii) Other relevant information relating to the public interest and net economic impact considerations, including technology transfers and investment effects.

(3) The significant 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.

(b) *Subzones.* In reviewing proposals for subzones, in addition to application of the factors delineated in § 400.25(a) where production activity is involved, the Board will also consider:

(1) Whether the operation could be located in or otherwise 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 pursuant to §§ 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 adopted by companies to improve their international competitiveness.

#### § 400.26 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 significant public benefit(s) that would result from the activity and may submit evidence and comments as to policy considerations.

(b) *Responses to evidence of negative effects.* Applicants making submissions in response to comments received during the public comment period or pursuant to § 400.33(e)(1) or § 400.34(a)(5)(iv)(A) should submit evidence that is probative and substantial in addressing the matter in issue.

#### § 400.27 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 (§ 400.21; § 400.11(a)(2))—\$3,200

(2) Special-purpose subzones (§ 400.22(b)):

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

(ii) Production activity with three or more products—\$6,500

(3) Expansions (§ 400.23(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 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 § 400.31(b), or withdrawn by applicants prior to formal docketing, refunds will be made.

### Subpart D—Procedures for Application Evaluation and Reviews

#### § 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 §§ 400.21–400.23. 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 1 year, and those not involving such activity, within 10 months. While the schedules set forth a standard time frame, the Board may determine that it requires additional time based on special circumstances, such as when the public comment period must be reopened pursuant to §§ 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 requests relating to production in already approved zone or subzone space, 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 §§ 400.12, 400.21, 400.22, 400.23, and other applicable provisions of this part such that the application is sufficient for docketing. If the pre-docketing copy of the application is deficient, the Executive Secretary will notify the applicant within 30 days of receipt of the pre-docketing copy, specifying the deficiencies. An affected zone participant may also be contacted regarding relevant application elements requiring additional information or clarification. If the applicant does not correct the deficiencies and submit a corrected pre-docketing application copy within 30 days of notification, the pre-docketing application (single copy) will be discarded.

#### § 400.32 Procedures for docketing application and case review.

(a) Once the pre-docketing copy of the application is determined to be sufficient, the Executive Secretary will notify the applicant within 15 days 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 § 400.27, 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 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 §§ 400.21–400.22, or § 400.23(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 60 days after the date the notice appears, except that, if a hearing is held (see § 400.52), the period will not close prior to 15 days after the date of the hearing. The closing date for general comment will ordinarily be followed by an additional 15-day period for rebuttal comments. All submissions of evidence, factual information, and written arguments by parties other than the applicant must be made during the comment period. A comment period may be opened or reopened for 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, 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 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, will submit a report to the Executive Secretary within 45 days of the conclusion of the public comment period described in paragraph (c)(2) of this section.

**§ 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 § 400.24 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;
- (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 120 days of the close of the period for public comment (*see* § 400.32):

(1) 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. The applicant shall be given 30 days from the date of notification in which to respond to the recommendations and submit additional evidence pertinent to the factors considered in the development of the preliminary recommendations. Public comment may be invited on preliminary recommendations when warranted.

(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 30 days, with an additional 15-day period for rebuttal comments.

(3) If the bases for an examiner's recommendation(s) change based on new evidence, the procedures of §§ 400.33(e)(1) and (2) shall be followed, where applicable.

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

**§ 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, § 400.25, 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 parties of record;
- (4) Developing information and evidence necessary for analysis of the threshold factors and the economic factors enumerated in § 400.25; and,
- (5) Conducting an analysis to include:
  - (i) An evaluation of policy considerations pursuant to §§ 400.25(a)(1)(i) and (ii);
  - (ii) An evaluation of the economic factors enumerated in §§ 400.25(a)(1)(iii) and 400.25(a)(2), 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 industry surveys when necessary; and
  - (iv) Developing recommendations to the Board (and submitting a report to the Executive Secretary), generally within 150 days of the close of the period for public comment:

(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. The applicant shall be given 45 days from the date of notification in which to respond to the recommendations and submit additional evidence pertinent to the factors considered in the development of the preliminary recommendations. Public comment may be invited on preliminary recommendations when warranted.

(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 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 30 days, with an additional 15-day period for rebuttal comments.

(C) If the bases for an examiner's recommendation(s) change based on new evidence, the procedures of §§ 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:

(1) The first phase (§ 400.25(a)(1)) involves consideration of threshold factors. If an examiner or reviewer makes a negative finding on any of the factors in § 400.25(a)(1) in the course of a review, the applicant shall be informed pursuant to § 400.34(a)(5)(iv)(A). 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 § 400.34(a)(5)(iv)(A). If the Board determines in the negative regarding any of the factors in § 400.25(a)(1), it shall deny or restrict authority for the proposed or ongoing activity.

(2) The process for § 400.25(a)(2) involves consideration of the enumerated economic factors, taking into account their relative weight and significance under the circumstances. Previous evaluations in similar cases will be considered.

**§ 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).

(b) The Treasury Board member will return its vote to the Executive Secretary within 30 days, unless a formal meeting is requested (*see*, § 400.3(b)).

(c) The Commerce Department will complete the decision process within 15 days of receiving the vote of the Treasury Board member, and the Executive Secretary will publish the Board decision.

(d) The Board or the Commerce Department's Assistant Secretary for Import Administration may opt to terminate review of an application with no further action if the applicant has failed to provide in a timely manner information needed for evaluation of the application, or if the Board is unable to reach a unanimous decision regarding

the disposition of the application. The Executive Secretary may terminate review of an application where the circumstances presented in the application are no longer applicable 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.

**§ 400.36 Procedure for application for minor modification of zone project.**

(a) The Executive Secretary, with the concurrence of the Port Director, will make a determination in cases under § 400.23(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 30 days of the determination that the application or request can be processed under § 400.23(c).

(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.

**§ 400.37 Procedure for notification and review of production changes.**

(a) *Requests for authority to use notification procedure.* Pursuant to § 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 § 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 § 400.37(a) shall be conducted in accordance with the procedures delineated in §§ 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 §§ 400.22(a)(3)(iv) and (vi) relative to prior approvals and notifications pursuant to § 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 change:

(1) *Public comment period.* Within 30 days after the deadline for receipt of notifications pursuant to § 400.37(b)(1), the Executive Secretary shall transmit for publication in the **Federal Register** a notice describing any production change for which such notification was received. The notice shall identify the zone or subzone operator/user associated with a change, the specific finished products or components notified for the operator/user, and the tariff schedule categories and tariff rates for the notified products or components. Such notice may be done in combination with notices for any other production changes notified for the same quarter. A public comment period of not less than 30 days shall be allowed.

(2) *Analysis and recommendation.* The Executive Secretary's preliminary review will examine the notified production change in relation to the operation's previously approved activity to determine whether it could have significant adverse effects (individually or cumulatively with other notified changes under this section associated with the same production operation), taking into account the factors enumerated in § 400.25 and any comments received in response to the **Federal Register** notice announcing the notified change. Based on the review, the Executive Secretary shall make a

recommendation to the Commerce Department's Assistant Secretary for Import Administration regarding whether further review is warranted for the notified production change. The Executive Secretary's recommendation shall be made within 90 days of the deadline for receipt of notifications pursuant to § 400.37(b)(1), except where a notified production change was the subject of negative public comment or of a hearing pursuant to § 400.52.

(3) *Decision on further review.* Based upon the Executive Secretary's recommendation, the Commerce Department's Assistant Secretary for Import Administration shall determine whether further review is necessary. When warranted, further review shall be conducted in accordance with the procedures delineated in §§ 400.31–32 and 400.34–35, as appropriate. The Assistant Secretary for Import Administration may terminate any further review based upon a recommendation by the Executive Secretary.

(d) *Limitations on use of notification provision.* Pursuant to § 400.14(e)(1), the notification procedure described in this section does not apply to changes involving foreign status components/inputs subject to antidumping duty (AD) or countervailing duty (CVD) orders or which would be otherwise subject to suspension of liquidation under AD/CVD procedures (if they were to enter U.S. customs territory), subject to an order of the International Trade Commission pursuant to 19 U.S.C. 1337 (Section 337) (if they were to enter U.S. customs territory), subject to any ongoing AD/CVD or Section 337 proceeding, or subject to quantitative import controls (quotas).

**§ 400.38 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 the public interest and 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 raise questions as to whether the activity is detrimental to the public interest, taking into account the factors enumerated in § 400.25. 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. After initiation of a review, any affected party shall provide in a timely manner any information requested as part of the conduct 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 (taking into account the provisions of § 400.25 where production activity is involved), the Board or the Commerce Department's Assistant Secretary for Import Administration may order the prohibition or restriction of the activity in question. Such prohibitions or restrictions may be put in place after a preliminary review (e.g., prior to potential steps such as a public comment period) if circumstances warrant such action until further review can be completed. The appropriateness of a delayed effective date will be considered.

### Subpart E—Operation of Zones and Administrative Requirements

#### § 400.41 Operation of zones; general.

Zones shall be operated by or under the contractual oversight of zone 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. Zone grantees shall ensure that the reasonable zone needs of the business community are served by their zone projects. 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.

#### § 400.42 Operation as public utility.

(a) *In general.* Pursuant to Section 14 of the FTZ Act (19 U.S.C. 81n), each zone shall be operated as a public utility, 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 and shall be directly related to the service provided by the grantee (for which the rate or charge recovers costs incurred) to the 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. Any rates, charges or penalties paid by zone participants related to grantee functions shall be paid directly to the grantee (or, 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 § 400.42 shall be no later than two years after the date of publication of the final rule.

#### § 400.43 Uniform treatment.

Pursuant to Section 14 of the FTZ Act (19 U.S.C. 81n), a grantee 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 offer of standard contractual provisions for agreements for zone participants. The standard provisions proposed by the grantee must be included in the grantee's zone schedule (see § 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 the zone participant and the grantee.

#### (c) *Neutral evaluation criteria.*

Uniform treatment shall be ensured in the grantee's evaluation of proposals from potential zone participants through the grantee's application of evaluation criteria that are neutral and public interest-based. Uniform treatment does not require a grantee to accept all proposals by zone participants, but the bases for a grantee's decision on a particular proposal must be consistent with the grantee's evaluation criteria.

(d) *Justification for differing treatment.* Given the requirement for uniform treatment under like conditions, for any instance of divergence from uniform treatment a grantee must be able to document upon request by the Executive Secretary the specific dissimilarity of conditions that justifies 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).

(g) *Requests for determinations.* A grantee or other 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 of this section.

(h) *Identification of agent.* The Board, the Commerce Department's Assistant Secretary for Import Administration, or the Executive Secretary may require a zone grantee to identify any agent that has performed one or more of the zone-related grantee functions cited in

§ 400.43(e) in the zone project during a specified period of time.

(i) *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 § 400.43 shall be no later than two years after the date of publication of the final rule.

**§ 400.44 Requirements for commencement of operations in a zone project.**

The following actions are required before operations in a zone may commence:

(a) 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;

(b) Prior to activation of a zone, the zone 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;

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

**§ 400.45 Zone schedule.**

(a) *In general.* The zone grantee shall submit to the Executive Secretary (in both paper and electronic copies) and to the Port Director 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. If warranted, the Board may subsequently amend the requirements of this section by Board Order.

(b) Each zone schedule shall contain:

- (1) A title page, with information to include:
  - (i) The name of the zone grantee;
  - (ii) The date of the original schedule;
- and,
  - (iii) The name of the preparer;
  - (2) A table of contents;
  - (3) One or more sections with internal rules and regulations and policies for the zone, including a clear presentation of the standard contractual provisions offered to the various categories of zone participants. Inclusion of the standard contractual provisions in the zone schedule may take the form of one or more sample contracts or agreements presented in one or more appendices to the zone schedule;
  - (4) All rates or charges assessed by or on behalf of the grantee;
  - (5) Information regarding any operator(s) offering services to the user

community, including the operator(s)'s 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 zone 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. A grantee may 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 freely available for public inspection at the offices of the zone grantee and any operator offering FTZ services to the user community. For any such grantee or operator that maintains a site on the internet, the current complete zone schedule shall also be made available via that internet site. The Board may make copies of zone schedules available via its own Internet site. The zone grantee shall send a copy to the Port Director, who may submit comments to the Executive Secretary.

(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 § 400.45 shall be no later than two years after the date of publication of the final rule.

**§ 400.46 Complaints related to public utility and uniform treatment.**

(a) *In general.* A 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 and uniform treatment requirements of the FTZ Act and these regulations. Complaints may be made

on a confidential basis, if necessary. Grantees shall not enter into or enforce contractual provisions for agreements or contracts with zone participants that would require zone participants to disclose to other parties, including the grantee, any confidential communication with the Board 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. The Executive Secretary will review the complaint and issue a report and decision, which will be final unless appealed to the Board within 30 days. The Board or the Executive Secretary may otherwise initiate a review for cause. The factors considered in reviewing fairness and reasonableness will include:

(1) The actual costs of the specific services rendered by the zone grantee or operator, taking into account any extra costs incurred relative to non-zone operations and including return on investment, and reasonable out-of-pocket expenses; and,

(2) The going-rates and charges for like zone operations (including based on other like operations at other similarly situated zones, taking into account any specific factors that may lead to differing underlying costs).

**§ 400.47 Grantee liability.**

A grant of authority will not ordinarily be construed to make the zone grantee automatically 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 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 that undertakes detailed operational oversight or direction to operators/users within its zone.

**§ 400.48 Retail trade.**

(a) *In general.* Retail trade is prohibited in 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 zone grantee and approved by the Board, 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 zone or subzone for consumption on premises by individuals working therein. The Executive Secretary will determine whether an activity is retail trade, subject to review by the Board when the zone grantee requests such a review with a good cause.

(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, subject to the concurrence of the Port Director.

(c) *Criteria*. In evaluating requests under this section, the Executive Secretary and the Port Director will consider:

(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.

#### **§ 400.49 Zone-restricted merchandise.**

(a) *In general*. Merchandise which has been given export status by CBP officials ("zone-restricted merchandise"—19 CFR 146.44) may be returned to the customs territory of the United States only when the Board determines that the return would be in the public interest. Such returns 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 involved in allowing their return; 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 zone grantee or operator (with copy to the grantee) of the zone in which the merchandise is located, 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 less and that are accompanied by a letter of concurrence from the Port Director.

### **Subpart F—Records, Reports, Notice, Hearings and Information**

#### **§ 400.51 Accounts, records and reports.**

(a) *Zone accounts*. Zone accounts shall be maintained in accordance with generally accepted accounting principles, and 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 zone grantee shall retain copies of applications it submits to the Board.

(c) *Maps and drawings*. Zone grantees or operators, and Port Directors, shall keep current layout drawings of approved sites as described in § 400.21(d)(5), showing activated portions, and a file showing required approvals. The zone grantee shall furnish necessary maps to the Port Director.

(d) *Annual reports*. (1) Each zone grantee shall submit a complete and accurate annual report to the Board within 90 days of the end of the reporting period, 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 zone operator shall submit to the grantee 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.

(2) The Board shall submit an annual report to the Congress.

#### **§ 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*, § 400.32), and with regard to other reviews or matters considered under this part when public comment is necessary. Applicants shall give appropriate notice of their proposals in local general-circulation newspapers allowing at least 30 days for

submission of comments regarding the proposal in question. The Board, the Secretary, the Commerce Department's Assistant Secretary for Import Administration, or the Executive Secretary, as appropriate, may schedule and/or hold hearings during any proceedings or reviews conducted under this part whenever necessary or appropriate.

(b) *Requests for hearings*. (1) A directly affected party showing good cause may request a hearing during a proceeding or review.

(2) The request must be made within 30 days of the beginning of the period for public comment (*see* § 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.

(3) A determination as to the need for the hearing will be made by the Commerce Department's Assistant Secretary for Import Administration within 15 days after the receipt of such a request.

(c) *Procedure for public hearings*. The Board will publish notice in the **Federal Register** of the date, time and location of a hearing. All participants shall have the opportunity to make a presentation. Applicants and their witnesses shall ordinarily appear first. The presiding officer may adopt time limits for individual presentations.

#### **§ 400.53 Official record; public access.**

(a) *Content*. The Executive Secretary will maintain at the location stated in § 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.

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

(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 appropriate safeguards to prevent disclosure of proprietary or privileged information.

#### § 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, and if the person submitting the information does not agree to its public disclosure, the Board will return the information and not consider it in the proceeding. Information to meet the basic requirements of §§ 400.21 through 400.23 and 400.37 is inherently public information to allow meaningful public evaluation pursuant to those sections and § 400.32.

(c) *Business proprietary information.* Persons submitting business proprietary information 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 § 400.46 shall contain brackets at the beginning 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, NW., 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

##### § 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 or subzone whenever it determines that the zone grantee or, in the case of subzones, the subzone operator, has violated, repeatedly and willfully, the provisions of the Act.

(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 of the zone or subzone operator in question in writing stating the nature of the alleged violations, and provide the grantee or subzone operator an opportunity to 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 4 months after providing notice to the zone grantee 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 the **Federal Register**.

(c) As provided in section 18 of the Act (19 U.S.C. 81r(c)), the grantee of the zone or subzone in question may appeal an order of the Board revoking the grant of authority.

##### § 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 (as adjusted for inflation pursuant to § 400.62(k)), with each 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. 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

(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 zone 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).

(b) *Violations involving production activity.*

(1) For purposes of § 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 § 400.62(k)) for each such separate offense:

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

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

(iii) Each day during which an offense cited in § 400.62(b)(1)(i) or (ii) continues.

(2) Consistent with § 400.47, in instances where a grantee or agent of the grantee has undertaken detailed operational oversight or direction of an operator engaged in production within a zone project, the grantee or agent may also be subject to a fine of not more than 1,000 dollars (as adjusted for inflation pursuant to § 400.62(k)) for each offense of the operator that is subject to § 400.62(b)(1)(i), (ii) or (iii).

(c) *Violations involving requirement to submit annual report.* Each day during which a grantee fails to submit a complete and accurate annual report pursuant to section 16 of the FTZ Act (19 U.S.C. 81p(b)) and § 400.51(d)(1) of these regulations constitutes a separate offense subject to a fine of not more than 1,000 dollars (as adjusted for inflation pursuant to § 400.62(k)). Further, each day during which a zone operator fails to submit to the zone's grantee the information required for the grantee's timely submission of a complete and accurate 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 § 400.62(k)). Consistent with § 400.47, in

circumstances where the violation demonstrably results from a zone operator's failure to submit a complete and accurate report to the zone grantee, the responsible operator would be the focus of any fine-assessment action by or on behalf of the Board.

(d) *Violations involving conflicts of interest.* Each day during which an agent of the grantee violates the provisions of § 400.43(e) of these regulations constitutes a separate offense for which the agent would be subject to a fine of not more than 1,000 dollars (as adjusted for inflation pursuant to § 400.62(k)).

(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:

(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 the party(ies) a specified period (normally 30 days, with consideration given to any requests for an extension) 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 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) 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 recommended fines 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 Secretary 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 party 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 and argument pertaining to mitigating factors must be submitted within 30 days of the determination described in paragraph (e)(4) of this section.

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

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

(ii) A violator's inexperience in the type of foreign-trade 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 (beyond the degree of cooperation expected from a person under investigation for a violation) in ascertaining the facts establishing the violation;

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

(vii) 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) Other such factors as the Board, or the Executive Secretary, 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 an 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 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 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.

(i) *Procedures for instruction to suspend activated status.* When a fine assessed pursuant to §§ 400.62(e) through (h) has not been paid within 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 §§ 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, 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 in the circumstances noted, the following steps shall be taken:

(1) *Notification of party(ies).* The Executive Secretary will notify the responsible 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 15 days) to respond in writing to the notification;

(2) *Hearing.* If the notified responsible 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 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 party(ies);

(3) The Executive Secretary shall make a recommendation on the record of the proceeding not earlier than 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.

(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.

(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.

#### **§ 400.63 Prior disclosure.**

(a) A party subject to a fine pursuant to § 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.

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

- (1) The zone(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) An assurance that the violation will not reoccur; and,
- (7) Copies of sufficient documentation for the Board to identify the act(s) constituting the violation.

(c) 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.

(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 business days.

(e) If a party subject to a fine pursuant to § 400.62 submits a valid written prior disclosure, it shall be 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 violation or series of offenses stemming from a continuing violation.

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

#### **§ 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 §§ 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) 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, the Board will notify the complaining party of its decision in writing.

Dated: December 27, 2010.

**Christian Marsh,**

*Acting Deputy Assistant Secretary for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

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**BILLING CODE 3510-DS-P**

## **DEPARTMENT OF THE INTERIOR**

### **National Park Service**

#### **36 CFR Part 9**

[2310-0062-422]

#### **Nonfederal Oil and Gas Development Within the Boundaries of Units of the National Park System; Intent To Prepare an Environmental Impact Statement for a Proposed Revision**

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule; intent to prepare an environmental impact statement.

**SUMMARY:** Notice is hereby given in accordance with the National Environmental Policy Act of 1969 (NEPA) and Council on Environmental Quality regulations that the U.S. Department of the Interior, National Park Service (NPS), will prepare a programmatic environmental impact statement (EIS) on proposed revisions to existing regulations governing the exercise of nonfederal oil and gas rights within the boundaries of units of the National Park System. The current regulations have been in effect for over thirty years and have not been substantively updated during that period. The EIS will analyze a range of reasonable alternatives for regulating nonfederal oil and gas development and the potential environmental impacts on park resources such as threatened and endangered species, water resources, soils, vegetation, wetlands, air resources, night skies, wildlife, cultural resources, and soundscapes. Effects on oil and gas operators, visitor experience and public safety, adjacent lands, and park operations will also be analyzed.

**DATES:** Comments must be received by February 28, 2011.

**ADDRESSES:** Written comments or requests for information should be addressed to Sandy Hamilton, Environmental Quality Division, National Park Service, Academy Place, P.O. Box 25287, Denver, CO 80225. If you wish to comment electronically, you may submit your comments online in the NPS Planning, Environment and Public Comment (PEPC) Web site at <http://parkplanning.nps.gov/WASO>. Faxed or e-mailed comments will not be accepted. Comments should be received by the NPS within 60 days of the date of the publication of this notice in the **Federal Register**. Please be aware that your entire comment—including personal identifying information—may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**FOR FURTHER INFORMATION CONTACT:** Sandy Hamilton, Environmental Protection Specialist, at 303-969-2068, or by mail at Sandy Hamilton, Environmental Quality Division, National Park Service, Academy Place, P.O. Box 25287, Denver, CO 80225. Further information about this project, including the Advanced Notice of Public Rulemaking and "Frequently Asked Questions" about the difference