

## New Foreign Trade Zones Board Regulations—NAFTZ Position Paper

February 2012

The Foreign Trade Zones (FTZ) program is the most flexible trade and Customs-related program for U.S. companies. Realizing the potential of the program could add significantly to our national economy, promote exports, create and maintain employment and encourage investment in the U.S. In December 2010, the FTZ Board proposed new rules for the first time since 1991. The National Association of Foreign-Trade Zones (NAFTZ) has filed two sets of extensive comments in response to these proposed rules, on May 4 and June 27, 2011. Getting these rules right is the highest priority of the NAFTZ. Sound policies and fair administration are vital to the continued success of the FTZ program and will set the tone for the program for years to come.

The Association's recommendations, highlights of which are outlined below, are intended to further these stated goals. They are the result of a comprehensive effort that developed ideas from NAFTZ members and others throughout the nation.

The NAFTZ recommendations are based on four key principles:

- 1) The FTZ program should encourage activity in the United States that could, for trade or Customs reasons, otherwise be done in other countries.
- 2) FTZs can and should promote U.S. exports in accord with international trade rules.
- 3) FTZ Board procedures should be as prompt, transparent and straightforward as possible.
- 4) Effective zone administration requires that FTZ grantees, operators, and users be clearly informed by government agencies of their compliance obligations.

Highlights of the Association's comments include:

**Manufacturing/Production.** The NAFTZ proposed specific provisions covering manufacturing authority for exports, including provision for a fast track Board Order to authorize export production. We addressed the need for expedited approval of new imported materials in U.S. production by proposing a new and simplified process for approval of intermediate and finished goods for U.S. manufacturers, avoiding the complexity and delay for Board approval of all new inputs in advance. We also supported reducing proposed restrictions on inputs used for export manufacturing.

**Expedited FTZ Approval.** A clear consensus exists among all parties that FTZ status should be granted expeditiously to qualified applicants. This is especially critical if export promotion is involved. The NAFTZ proposes an expedited schedule for processing applications that would sharply reduce current time periods.

**New Ideas for FTZ Program Improvements.** The NAFTZ recommended newly revised provisions to strengthen and improve the FTZ program:

- (1) Addressing the role of the local Customs (CBP) Port Director as the designated local representative of the FTZ Board and providing for expedited FTZ activation interim authority;
- (2) Requiring federal agencies to document FTZ compliance requirements;
- (3) Achieving the FTZ Board's twin concerns of Grantee "equal treatment" and activity under "public utility" principles by applying procedures in a more balanced and comprehensive manner than proposed by the FTZ Board;
- (4) Reducing the risks affecting Grantees and Operators from significantly increased penalties in the FTZ Board's proposed rules; and,
- (5) Adding a new export promotion process acting in concert with the Commerce Department's domestic and overseas export promotion efforts.

The NAFTZ supports an appropriate balancing of interests affecting all stakeholders. The NAFTZ will work with all sides to accomplish our goal of export promotion and maximum global competitiveness for U.S. operations within existing laws and policies, furthering the President's National Export Initiative and jobs promotion. The NAFTZ's aim is to produce more here at home and avoid exportation of jobs and economic activity. FTZs are a secure and practical way to achieve these ends.

We note that FTZs are outside the Customs territory of the United States. Admissions of products into zones are not entries and they are not subject to AD/CVD duties, as entries into a third country. We are firmly opposed to uncertainties and delays in FTZ applications; they only encourage investments and job creation outside the United States. Our recommendations meet the requirements of the law, promote enforcement of AD/CVD orders involving U.S. commerce, and allow objections to be heard.

NAFTZ is a 650-member organization comprised of public entities, corporations and service providers focused on promoting the use of the US Foreign-Trade Zone (FTZ) program. FTZs play an important role in facilitating international trade and increasing the global competitiveness of U.S.-based companies by maintaining the cost competitiveness of U.S.-based operations with their foreign-based competitors. Over 2,500 U.S. companies and 330,000 American workers participate in the FTZ economy.

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## **NAFTZ Recommends Comprehensive Changes to Proposed Foreign-Trade Zone Rulemaking**

WASHINGTON, DC – On May 5, the National Association of Foreign-Trade Zones (NAFTZ) filed comprehensive comments on proposed rules issued by the Foreign Trade Zones (FTZ) Board on December 30, 2010. The FTZ Board's proposed rules would substantially revise the substance and process governing application, public interest criteria and administration of FTZ activity throughout the country. The NAFTZ comments were filed well before the FTZ Board's May 26 deadline so all interested parties will have an opportunity to evaluate the NAFTZ's positions prior to the deadline.

"The new rules are vital to the continued success of the FTZ program as an incentive to U.S. manufacturing, investment and exports," said current NAFTZ Chairman Lewis Leibowitz. "This is the first time since 1991 that a comprehensive rewrite of the FTZ Program's governing rules has been proposed. This rulemaking will set the tone for the FTZ Program as an economic competitiveness, job growth and export promotion tool for years to come. It is critically important that the final regulations strike the proper balance of interests for all groups."

The NAFTZ fully supports the goals of expanding production for exports in furtherance of the National Export Initiative; of encouraging new U.S. production and manufacturing employment; and ensuring that zones nationwide observe basic principles of uniform treatment of all users.

The NAFTZ comments aim to advance the goals of the FTZ Board and encourage increased zone use across the country. Highlights of the Association's comments include:

- **Manufacturing/Production.** The NAFTZ proposes adding a specific section and processes for expedited export production authority, including provision for a Board Order to authorize export production. The NAFTZ also addresses the need for expedited approval of new imported materials in U.S. production by suggesting an entirely new and significantly simplified process for approval of intermediate and finished goods, avoiding the complexity and delay for approval of all new inputs.
- **Equal Treatment/Public Utility Principles.** The NAFTZ suggests significant changes to Subpart E of the FTZ Board's proposed rule concerning the way zones are managed by Grantees, Administrators and consultants. The FTZ Board's proposal stems from concerns that these parties control and dictate the terms of zone project use in certain limited circumstances. The NAFTZ recommendations address the FTZ Board's twin concerns of Grantee "equal treatment" and activity under "public utility" principles in an entirely different manner.
- **New Penalty Provisions.** The NAFTZ believes the proposed rule increasing FTZ Board penalties could have a chilling effect on Grantees and Operators currently participating in the FTZ Program, as well as on potential participants considering whether to join the Program. The NAFTZ proposes several sensible modifications to Subpart C.

- **Expedited FTZ Approval.** A clear consensus exists among all parties that FTZ status should be granted expeditiously to qualified applicants. The NAFTZ proposes a revised schedule for processing applications that would reduce current application times by fifty percent.
- **Incorporation of ASF into Regulations.** The NAFTZ comments urge the incorporation of the FTZ Board's Alternative Site Framework (ASF) into the Proposed Rule. NAFTZ members believe it is essential that this Framework be firmly established in the regulations so that this option for grantee organization of zones is viewed as permanent.
- **Confidentiality.** The NAFTZ comments propose changes to address significant concerns raised by zone users that yearly statistical information by subzone firms and all zone users should no longer be published in the FTZ Board's Annual Report to Congress.
- **New Ideas for FTZ Program Improvements.** The NAFTZ also suggests three new provisions to strengthen and improve the program:
  1. Expressly name the Customs and Border Protection (CBP) Port Director for each zone project in or near that Port as the designated local representative of the FTZ Board, including steps to expedite the commencement of new activity (activation) to align with the goals of expedited export production and U.S. competitiveness;
  2. Establish procedures for determining the management procedures of other government agencies concerned with imports; and
  3. Add a new export promotion process acting in concert with the Commerce Department's domestic and overseas export promotion efforts.

To view the NAFTZ comments in their entirety, visit <http://naftz.org>.

"FTZs are an important job creation and economic development tool used all across the country to improve local communities and increase U.S. competitiveness," said NAFTZ President Will Berry. "We believe our recommendations will strengthen the Foreign-Trade Zones Board's proposed revisions and look forward to detailed discussions with the Board to ensure the program continues to achieve these objectives."

Since its founding more than 35 years ago, the NAFTZ has committed to working with the FTZ Board and CBP to realize the enormous potential of the zones program. The Association's recommendations resulted from an extensive process that included convening a special Regulations Task Force that worked to refine hundreds of recommendations received from association members throughout the nation.

#### **About NAFTZ**

The National Association of Foreign-Trade Zones is a not-for-profit trade association of 650 members representing public and private organizations involved in the foreign-trade zones program, including state and local governments, economic development organizations, distribution and warehouse firms, corporations engaged in exporting and importing, and legal services and professional consulting firms. The NAFTZ is the primary voice of communities and industries that utilize the FTZ program, including zone grantees, operators and users.

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