

Marsha Foust

From: Coulter, Lindsay <lindsay.coulter@cityofmobile.org>
Sent: Thursday, June 05, 2014 4:17 PM
To: FTZ; Andrew McGilvray
Subject: Application for Waiver
Attachments: Questionnaire-Application of Waiver.pdf; Application for Waiver.pdf

Hello again,

I apologize for previously attaching the wrong document. Hard copies to follow.

Thank you,

Lindsay

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THE CITY OF MOBILE, ALABAMA

FINANCE DEPARTMENT

June 4, 2014

Mr. Andrew McGilvray
Executive Secretary
Foreign-Trade Zones Board
U.S. Department of Commerce
1401 Constitution Avenue, NW
Room 21013
Washington, DC 20230

Re: Application for waiver under 15 CFR 400.43(f)

Dear Mr. McGilvray:

As the duly authorized representative of the City of Mobile, grantee of Foreign-Trade Zone No. 82, I am submitting the enclosed Application for waiver under 15CFR 400.43(f) on behalf of the Mobile Foreign-Trade Zone Corporation, which serves as the Zone Project Administrator of the FTZ No. 82 Zone project, and on behalf of the Foreign-Trade Zone Corporation – a “related person” under 15 CFR 400.43(d)(2)(e)(6).

As you may be aware, the Mobile Foreign-Trade Zone Corporation has served as the Zone Project Administrator for our Zone project for nearly 28 years. I believe more information about the relationship of the Mobile Foreign-Trade Zone Corporation with the City and the trade community will help you see how its present operation is consistent with the aims of the Board in assuring easy access to the Zones program.

As of 2013, the economic output of Zone participants (about \$6.7 billion) comprised roughly 30% of the total economic activity within Mobile and Baldwin Counties. I believe that this is indicative of the degree to which the Zones program has been successfully integrated into the area’s economy. However, this was not always the case.

The City of Mobile received its grant of authority to establish, operate and maintain a Zone project on February 24, 1983. The City’s original grant of authority created a 13-acre general-purpose Zone area within the Brookley Complex, a downtown airport and industrial site that formerly served as a U.S. Air Force base. There were no buildings or structures at the original general-purpose Zone site. The City designated the newly created Mobile Airport Authority as the Zone Operator and Administrator. During the first

two years of the Zone's existence, it was neither activated nor utilized. In 1984, the Economic Development team of the local non-governmental organization, Leadership Mobile, took on the Foreign-Trade Zone as its project for study and recommendation. As one might imagine, the team's study, entitled "The Mobile Foreign Trade Zone: Boon or Boondoggle?" attracted some attention within the corridors of City Hall and the Airport Authority. To make matters even more sensitive, it was learned that foreign cargo was consistently arriving at the Port of Mobile, only to be transferred in-bond to an activated Zone more than 150 miles away. The City and the Airport Authority recognized that a number of the recommendations of the Leadership Mobile Economic Development Team were consistent with ideas that the City and Airport Authority were already considering. Among these recommendations were those to "Remove the administration of the foreign trade zone from a politicized environment," and to "Obtain professional foreign trade zone management for the administration and marketing of the zone."

Recognizing that development of the Zone project would require management that would be immune from local bureaucratic inertia, and would be motivated to see that the City delivers the Zones program to as many businesses as practically possible, the City published a Request for Proposals for management of the Zone project in 1985. Among the responses received was one from a public warehousing company that served as the exclusive Operator of another Zone project. Another was from Greg Jones, who was the sales manager of a local transportation and warehousing firm. He proposed that the Zone project should be managed by an entity that does not engage in the warehousing business, and whose object is to see that any company that needs the FTZ program is able to use it. He also asserted that the term "marketing" is a misnomer; that "education" of the business community was necessary to deliver the FTZ program to those who need it. Mr. Jones made it clear that finding a niche for FTZ warehousing would be the relatively fast and easy way for a company to make money from the local Zone project; but he preferred to operate in the administrative mode in order to avoid competing with the interests of those who might need the Zones program to enhance their own company's competitiveness. Naturally, this approach would be slower to develop and would require a period of subsidization. The City and the Airport Authority agreed that Mr. Jones' approach would provide the greatest chance by which the FTZ project would have the greatest influence on the local economy, and began subsidizing his company's management of the Zone project in January, 1986. After obtaining a minor boundary modification to the general-purpose Zone, its first Zone user was

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activated in November 1986. Beginning in 1988, a series of subzones were approved, and, after two expansions, a number of distribution and manufacturing operations were accommodated within the general-purpose Zone. The result is a Zone project that has not only served the competitive interests of existing businesses in the area, but has contributed to the success of a number of industrial recruitment efforts (e.g. Airbus, Aker Solutions, Austal USA, BAE Systems, and ThyssenKrupp).

I believe that several important factors have contributed to our Zone project's successful development. Foremost among these is the employment of a management structure that strips away local bureaucracy. While it is necessary and good for city governments to maintain separation of powers and systems of checks and balances, the processes that result can often slow down a city's ability to respond to the needs of the community. In recognition of this, one of the important initiatives that the new City Administration is undertaking is an examination of the means by which the City of Mobile can be a more efficient and responsive local government entity. The existing management structure of the Foreign-Trade Zone provides an example of one means of accomplishing this end. By allowing the Mobile Foreign-Trade Zone Corporation to serve as a party to Operator/User Agreements, Zone participants are able to avoid the Administrative and Council processes that would otherwise be necessary for each such Agreement to be placed on the City Council Agenda and approved by the Council. This alone can make the Zone program available to Operators or Users several weeks sooner than might otherwise be the case. Also, by making the managing entity's income dependent on the number of Zone participants that actually use Zone procedures, the management structure encourages exactly what every community wants its public utilities to do: bring the benefits of their services to as many customers as possible. Finally, from the beginning, the Mobile Foreign-Trade Zone Corporation made clear the intent that commercial relationships between Zone Users and other service providers should not be disturbed. This paradigm has included more than other Zone-related service providers (e.g. Arthur Andersen, Ernst & Young, Integration Point, Metro International Trade Services, Miller & Company), but also carriers, third-party warehousing companies, freight forwarders and Customs house brokers. This policy has been based on the idea that a strict adherence to a policy aimed at facilitation would result in the greatest economic impact. On several occasions over the years, part of that facilitation has involved the Mobile Foreign-Trade Zone Corporation providing Zone-related consulting services to local Zone participants. I believe that it is appropriate for local Zone participants to be able to choose the party from whom they wish to obtain Zone-related services – including local talent.

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This brings me to a word about the Foreign-Trade Zone Corporation. As mentioned in the attached questionnaire, Mr. Greg Jones, President of the Mobile Foreign-Trade Zone Corporation, is also a major shareholder in the Foreign-Trade Zone Corporation. As may be seen from your own records, the Foreign-Trade Zone Corporation has never submitted an application to you on behalf of a participant of our Zone project, even though the company is headquartered in Mobile. As I believe you are also aware, the Foreign-Trade Zone Corporation has provided an FTZ management software package to Zone Users on a national basis. Yet, because the nature of most Users of Mobile's Zone project enables them to more readily enhance their in-house systems, the Mobile Foreign-Trade Zone Corporation has helped them do that, rather than purchase an FTZ management software package. Why? – Because that practice represents the best solution for those Zone participants. Accordingly, I am happy that the Foreign-Trade Zone Corporation – with its 15 employees – is headquartered in Mobile, Alabama.

I hope you will agree that Zone participants of Mobile's Zone project should be able to use the services of the Mobile Foreign-Trade Zone Corporation and the Foreign-Trade Zone Corporation should these desire to do so. Therefore, I hope you will approve our application for waiver under 15 CFR 400.43(f). For information about the attached Questionnaire, please feel free to contact Mr. Greg Jones at (251) 445-1372. If you have other questions, please feel free to contact me at (251) 208-7395. Thank you for your consideration of this request.

Respectfully submitted,



Paul Wesch
Executive Director of Finance

Questionnaire – Application for Waiver under 15CFR 400.43(f)

Identity of Applicant and Affected FTZ

1. State your name (individual or organization, as appropriate) as the applicant for a waiver.

This application is made by the City of Mobile, Alabama on behalf of the Mobile Foreign-Trade Zone Corporation, and the Foreign-Trade Zone Corporation.

2. State the specific FTZ (zone number and city/state) to which your application pertains.

This application pertains to activities of Foreign-Trade Zone No. 82. The grantee of the Zone project is the City of Mobile.

Key Functions (15 CFR 400.43(d)(1))

3. If your application for a waiver is approved, do you propose to:

a. Take action on behalf of the grantee of the FTZ identified in your response to Question 2, or make recommendations to that grantee, regarding the disposition of proposals or requests by zone participants pertaining to FTZ authority or activity (including activation by CBP)? If yes, explain fully. Explain the specific actions you propose to take, or the specific types of recommendations you propose to make, regarding the disposition of zone participants' proposals/requests.

No. While the Mobile Foreign-Trade Zone Corporation reviews requests by Zone participants pertaining to FTZ authority or activations, its function is to ascertain whether those requests meet the minimum standards required by the federal agencies involved. While the Mobile Foreign-Trade Zone Corporation may provide relevant information to Zone participants and the Grantee, it does not make recommendations to the Grantee *per se*. It is the sole decision of the City of Mobile as grantee to act upon participants' proposals/requests. (To date, all such requests have been approved by the grantee. Moreover, it is the duty of the Mobile Foreign-Trade Zone Corporation to make sure that the City does what it is supposed to do for members of the business community in keeping with the grantee's responsibilities under the Foreign-Trade Zones Act.)

b. Approve, or be a party to, a zone participant's agreement with the grantee of the FTZ identified in your response to Question 2 (or person acting on behalf of that grantee) pertaining to FTZ authority or activity (including activation by CBP)? If yes, explain fully.

Explain the specific types of agreement that you propose to approve, or to which you propose to be a party.

Yes. The Mobile Foreign-Trade Zone Corporation is a party to all User/Operator Agreements. As a party to such Agreements, the Mobile Foreign-Trade Zone Corporation is directly bound by certain provisions that are designed to protect the interests of the Zone Operator or User. Additionally, the policy of having User/Operator Agreements between the Mobile Foreign-Trade Zone Corporation and each Zone participant enables each participant to enjoy Zone status sooner than would be the case if that Agreement is between the City and the Zone participant. This is because all contracts to which the City is a party must be vetted by the Administration, then docketed and approved by the City Council at a regular public meeting. These processes often require significant amounts of time. (It should be noted that on one occasion in the mid-1990s, a Zone participant requested that its Agreement be with the City. This request was accommodated.)

c. Oversee zone participants' operations on behalf of the grantee of the FTZ identified in your response to Question 2? If yes, explain fully. Explain the specific oversight activities that you propose to conduct.

No. The Mobile Foreign-Trade Zone Corporation exercises a monitoring function; however, it does not oversee Zone participants' operations – that is, it does not direct or police Zone participants' operations. Each participant that is an Operator or User conducts its own Zone operations, and is directly and solely responsible for operational compliance. When the Mobile Foreign-Trade Zone Corporation is made aware of non-compliance, it serves as a resource available to the Operator or User in order to enable the Operator or User to make educated decisions about corrective action. Should a case arise in which Operator or User non-compliance rises to the level of fraudulent or criminal actions, then upon discovery, the Mobile Foreign-Trade Zone Corporation would be expected to help the grantee meet its responsibilities to encourage corrective action. Any enforcement responsibilities of the Mobile Foreign-Trade Zone Corporation would be on an as needed basis as determined by consultation with, and the direction of, the Grantee.

Key Categories of Persons (15 CFR 400.43(d)(2))¹

4. For the FTZ identified in your response to Question 2, do you currently engage in, or have you during the preceding twelve months engaged in a) offering/providing a zone-related product/service to or b) representing a zone participant? If yes, explain fully. Describe the type of zone-related product/service you offered or provided, or the type of representation of zone participant(s) you undertook. How often have you done so? Also explain the importance – in terms of income derived and resources committed – of offering/providing zone-related products/services, or representing zone participants, for the FTZ identified in your response to Question 2.

No. However, the Mobile Foreign-Trade Zone Corporation does, from time to time, provide Zone-related services to Zone participants. The Mobile Foreign-Trade Zone Corporation has provided consulting services in instances in which the Zone participant has requested specific Zone-related services (*e.g.* assistance with applications and activations). All such relationships have been entered into with the mutual consent of each party. Other Zone participants utilize other FTZ management services as they wish. With regard to the importance of providing Zone-related services or products, such services and/or products are, in terms of the Foreign-Trade Zone Corporation's services as the Zone Project Administrator, entirely distinct and separate. If the Mobile Foreign-Trade Zone Corporation derives income from providing services to participants within the FTZ No. 82 Zone project, then the income derived from those services and products is to its benefit. Likewise, the resources – including personnel, expenses, and overhead – are entirely the responsibility of the Mobile Foreign-Trade Zone Corporation. With regard to its services as the Zone Project Administrator, those remain the same whether or not the Mobile Foreign-Trade Zone Corporation has any clients from among the population of FTZ No. 82 Zone participants. Accordingly, the Mobile Foreign-Trade Zone Corporation remains entirely responsible for providing the resources necessary to serve the Zone project. Under the Zone Project Administration Agreement between the Mobile Foreign-Trade Corporation and the Grantee, the Mobile Foreign-Trade Zone Corporation's income is dependent on its success in seeing that members of the trade community successfully utilize Zone procedures. At the same time, individual Zone participants are free to use Zone-related services and products from whomever they may choose.

¹ Although the questions in this section are written in the present tense, if you are seeking a waiver because you at some point in the future intend or expect to fall within one of the key categories of persons, then please answer these questions in the context of your intent or expectation.

5. Do you stand to gain from a person's offer/provision of a zone-related product/service to, or representation of, a zone participant in the FTZ identified in your response to Question 2? If yes, explain fully (including an explanation of the nature and extent of the gain you may receive).

The Mobile Foreign-Trade Zone does stand to gain when it provides consulting services to Zone participants of FTZ No. 82. Likewise, the Foreign-Trade Zone stands to gain when it provides consulting or software services to Zone participants of FTZ No. 82. In the case of the Foreign-Trade Zone Corporation, it stands to gain in exactly the same manner as it does when it provides similar services to participants of other Zone projects. Likewise, the resources – including personnel, expenses, and overhead – it must devote to providing those services are one and the same as those devoted to clients that are participants of other Zone projects.

6. With respect to the FTZ identified in your response to Question 2, are you related (within the meaning of 15 CFR 400.43(e)) to a) any person that currently engages in, or has during the preceding twelve months engaged in, offering/providing a zone-related product/service to or representing a zone participant or b) any person that stands to gain from a person's offer/provision of a zone-related product/service to or representation of a zone participant? If yes, explain fully.

Yes. Gregory Jones, President of the Mobile Foreign-Trade Zone Corporation, is a shareholder of the Foreign-Trade Zone Corporation. The Foreign-Trade Zone Corporation is organized as a regular corporation under the laws of the State of Alabama. Its shareholders are Craig M. Pool and Gregory Jones. Accordingly, this waiver request is submitted on behalf of both the Mobile Foreign-Trade Zone Corporation and the Foreign-Trade Zone Corporation.

7. Please provide any other information that you would like the FTZ Board to consider in evaluating your request.

Please see the letter of transmittal from Mr. Paul Wesch, Executive Director of Finance of the City of Mobile, Grantee of the FTZ No. 82 Zone project. This letter should provide some much-needed description of the context in which services to the trade community and the Grantee are provided.

Also, please consider a rather simple matter of reason: Even if the Mobile Foreign-Trade Zone Corporation is mistakenly regarded as what has sometimes been referred to as the "Gatekeeper" of the Zone project, it stands to gain nothing unless the "gate" is open. Any action aimed at excluding or in any way discouraging a Zone participant would be self-defeating.