



UNITED STATES DEPARTMENT OF COMMERCE  
The Foreign-Trade Zones Board  
Washington, D.C. 20230

July 2, 2014

Greg Jones  
Huntsville Foreign-Trade Zone Corporation  
2062 Old Shell Road  
Mobile, AL 36607

Dear Mr. Jones,

I am writing in response to the "Discussion Points" document you provided for the meeting that was held on June 19, 2014 (Attachment A). The document contains a list of elements of the current business model for your company – Huntsville Foreign-Trade Zone Corporation (HFTZC) – in its role as "administrator" of FTZ 83.

During the meeting on June 19, you requested a response on whether each business model element is permissible under the FTZ Board's 2012 regulations. A response regarding three of the business model elements (numbered as 5, 11 and 12 in the original document) is attached here (Attachment B), along with responses to the list of "additional" questions on the final page of the discussion points document (Attachment C).

In order for us to provide a more specific response to the remaining business model elements, we will need a detailed description of the actions taken and information provided by HFTZC for each of those elements.

Please let us know if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elizabeth Whiteman".

Elizabeth Whiteman  
Acting Executive Secretary

cc: Richard Tucker  
Huntsville-Madison County Airport Authority

## **Discussion Points For FTZ Meeting of July 19, 2014**

**Fundamental Question:** How can we make our business model work under the regulations that became effective on February 28, 2014?

### **BUSINESS MODEL TODAY**

#### **TRADE COMMUNITY AND POTENTIAL ZONE PARTICIPANTS**

**Benefits:**

- Cost-benefit analysis (no charge)
- Information about FTZ Board/trade policy considerations (no charge)
- Information about operational/security requirements (no charge)
- Review of applications to FTZ Board (no charge)
- Coordinate with applicants' service providers (no charge)
- Well-informed answers to operational/logistical/technical questions (sometimes as a "second opinion") (no charge)

**Obligations:**

- None

**ZONE PARTICIPANTS/OPERATORS** (Under three-party Agreement among Operator, Grantee, and Administrator)

**Benefits:**

- Information about operational/security requirements
- Well-informed answers to operational/technical questions (sometimes as a "second opinion")

**Obligations:**

- Comply with operational/regulatory requirements
- Contribute to (help fund) Zone project through user fees

**ADMINISTRATOR** (Huntsville FTZ Corporation)

**Benefits:**

- Opportunity to derive income from user fees
- Sister company (FTZ Corporation) may have an opportunity to provide professional services to Zone participants (This has occurred twice since 1989)

**Obligations:**

- Assist and advise Grantee in meeting its regulatory responsibilities (no charge)
- Assist Grantee in delivering FTZ program to the trade community (no charge)
- Assist in local economic development agencies in industrial recruitment efforts (no charge)
- Assist in local economic development agencies in efforts to help existing industries (no charge)
- Review activation requests
- Coordinate with other service providers in activation process (no charge)

## **Discussion Points For FTZ Meeting of July 19, 2014**

- Reduce potential Grantee liability (no charge)

### **GRANTEE (Huntsville-Madison County Airport Authority)**

#### **Benefits:**

- No subsidy for providing FTZ benefits to the trade community
- Assistance in understanding and meeting regulatory responsibilities
- Assistance in delivering FTZ program to the trade community
- Assistance in industrial recruitment efforts
- Reduction of potential Zone-related liability

#### **Obligations:**

- Deliver FTZ program to the trade community
- Participate in industrial recruitment efforts
- Cover costs of Zone-related activities
- Recognize that an important argument in favor of FTZ program is its proper use

### **What are the elements of the current business model?**

1. Cost-benefit analyses for potential Zone participants (no charge\*)
2. Inform potential Zone participants of Operational/security requirements (no charge\*)
3. Review of potential Zone participants operations in the context of Board/trade policy (no charge\*)
4. Review of potential Zone participants operations in the context of Operational/logistical considerations (no charge\*)
5. Review of applications to FTZ Board (no charge\*)
6. Coordinate with FTZB applicants and/or their service-providers (no charge\*)
7. Review of applications to activate with CBP (Start-up fee)
8. Coordinate with activation applicants and/or their service-providers (no charge)
9. Reduce potential grantee liability (compliance reviews, 3-party Operator Agreements) (Operator fees)
10. Respond to requests for information from existing and potential Zone participants (no charge\*)
11. Coordination with local and state industrial recruitments efforts (no charge\*)
12. Assist Grantee in reviewing/finalizing FTZ Board Annual Report (no charge\*)
13. Assist Grantee in developing Zone-related policies (no charge\*)
14. Inform Grantee of regulatory requirements for Grantees and Operators (no charge\*)

**Discussion Points  
For FTZ Meeting of  
July 19, 2014**

\*Denotes that this function continued to be performed during the several-year period when there was no Operator fee income.

**ADDITIONAL QUESTIONS**

1. Do the new regulations perceive a three party structure to be an actual or potential conflict of interest and therefore prohibit third party structure?
2. Do other zones deliver similar benefits?
3. If so, under what structure are they able to comply with the new regulations?
4. Do the new regulations prevent us from delivering these benefits to our current and future users, to our economic developers and provide the current efficient operation of our zone by the grantee?
5. We have successfully delivered these benefits to carry out the FTZ purposes for over 20 years, with no notification of complaint to us--What has changed?
6. Is there any way to grandfather our business model and let us service our community essentially the way we have done so for 20+ years? If so, please tell us how.

## **Discussion Regarding Elements of FTZ Corp's Current Business Model**

### Background:

In February 2012, the FTZ Board adopted revised regulations that incorporated provisions related to the requirement in the FTZ Act that zones be operated as public utilities, with uniform treatment under like conditions provided to zone participants. To provide zones with adequate time to make any needed adjustments, certain provisions in the 2012 regulations relating to public utility and uniform treatment were subject to a delayed compliance date of February 28, 2014.

Regarding public utility, the 2012 regulations clarified that fees may be imposed on zone participants by (or on behalf of) grantees to recover costs associated with the grantee function. The regulations also state that, "Other than the uniform rates and charges assessed by, or on behalf of, the grantee, zone participants shall not be required (either directly or indirectly) to utilize or pay for a particular provider's zone-related products or services." (15 CFR 400.42(a))

In addition, to prevent potential conflicts of interest and failure to provide the uniform treatment required by the FTZ Act, the 2012 regulations ordinarily bar a "person" (15 CFR 400.43(d)(2)) that offers or provides FTZ-related products/services to users of a zone from also performing any of three "key functions" (15 CFR 400.43(d)(1)) for the grantee of that zone. The regulations also allow parties to request from the FTZ Board a waiver of that general prohibition.

In the fall of 2013, waivers were submitted by FTZs 83, 134 and 158 relating to FTZ Corp's role as "administrator" of those zones. On May 30, 2014, the FTZ Board approved the waivers subject to certain conditions.<sup>1</sup> On June 6, 2014, in response to a question regarding a potential zone user in the Huntsville area, a letter was provided to FTZ Corp by the Executive Secretary of the FTZ program staff providing additional guidance on permissible activities under the public utility provision of the regulations. The June 6 letter, and a response to follow-up questions, clarified that FTZ Corp can offer information, including information related to a company's operational activities, if that information is not funded by the zone's mandatory fees.

In preparation for a meeting on June 19, 2014, a document was provided by FTZ Corp which included a list of elements of FTZ Corp's current "business model". In the meeting, FTZ Corp requested specific guidance on whether the business model elements were permitted under the 2012 regulations. Although the document indicated that there was no fee that funded many of the activities (which would itself make them permissible), further guidance on each activity was requested. The response below relates to three of the business model elements provided (numbers 5, 11 and 12 in the original document) and assumes that mandatory fees are being used to fund the activities. Further guidance on the remaining business model elements will be provided as soon as possible, but is also dependent on receiving additional clarifying information from FTZ Corp and/or the grantee, the Huntsville-Madison County Airport Authority.

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<sup>1</sup> The conditions outlined in the waivers are as follows:

- 1) FTZ Corp is limited to providing the following products/services:
  - a) Offering or providing its FTZ inventory-management software and software-support services to zone participants, whether or not it has an existing arrangement with a zone participant;
  - b) Continuing to provide zone-related products/services (in addition to inventory management software and support services cited in provision 1.a above) or representation to customers with which it already has existing arrangements;
- 2) The waivers will be effective for an initial period of five (5) years, with the possibility of renewal upon request; and,
- 3) The FTZ Board staff will monitor participants in the zones in question. If checks were to reveal abuse of position in undertaking the key function on behalf a zone grantee, as determined by the Board in its sole discretion, the Board could "discontinue" the waiver pertaining to that zone under 15 CFR 400.43(f).

### Specific Business Model Elements

- Review of applications to FTZ Board

Response: Assuming that the review of the application does not fall under 15 CFR 400.43(d)(1)(i), which would require a waiver for any “key categories of persons” (including those offering FTZ-related products or services), applications are generally – and in some cases must be – submitted by a grantee on behalf of a zone participant. A grantee (or an entity on behalf of a grantee) routinely reviews applications prior to submission to the FTZ Board. A grantee (or an entity on behalf of a grantee) is able to conduct this type of activity.

- Coordination with local and state industrial recruitments efforts

Response: As described, this activity would not directly involve zone participants that may be charged a fee or any activity that would require a waiver from the FTZ Board. Grantees routinely work with local and state economic development agencies on the recruitment and retention of businesses to an area. A grantee (or an entity on behalf of a grantee) is able to conduct this type of activity.

- Assist Grantee in reviewing/finalizing FTZ Board Annual Report

Response: The preparation of the annual report was not included in the 2012 regulations as a “key function” of a grantee and therefore no waiver is needed for “key categories of persons” (including those offering FTZ-related products or services). Both the FTZ Act and regulations require that each grantee submit a report to the FTZ Board on an annual basis. As a result, the preparation of the annual report is a function of a grantee organization and it is expected that a grantee (or an entity on behalf of the grantee) will perform this function.

### ADDITIONAL QUESTIONS – June 19 Meeting

1. Do the new regulations perceive a three party structure to be an actual or potential conflict of interest and therefore prohibit third party structure?

Response: The 2012 regulations do not preclude a grantee from contracting with an outside party to perform certain functions. In fact, the regulations specifically include provisions related to parties that are performing functions on behalf of the grantee.

However, the regulations do recognize that when an outside party is performing certain grantee functions, there is the potential for conflicts of interest and, therefore, they include provisions to prevent potential conflicts of interest. For example, if a party is undertaking a “key function” on behalf of a grantee, that party would not be able to offer or provide FTZ-related services to zone participants. The regulations also allow parties to submit a request to the FTZ Board for a waiver of this provision.

2. Do other zones deliver similar benefits?

Response: We are not aware if other zones use a structure similar to that within FTZ 83. Many zone grantees are not involved in the operational activities of zone participants.

Any party that falls into a “key category” within the meaning of 15 CFR 400.43(d)(2) would need a waiver from the FTZ Board to perform a “key function” on behalf of a grantee. Generally, review of specific information regarding a company’s FTZ operations with CBP are not part of a grantee’s functions. Involvement in a company’s operations actually could create liability for a grantee where it would not otherwise exist.

For more information, see 15 CFR 400.46:

“(a) Exemption from liability. A grant of authority, per se, shall not be construed to make the zone grantee liable for violations by zone participants. The role of the zone grantee under the FTZ Act and the Board's regulations is to provide general management of the zone to ensure that the reasonable needs of the business community are served. It would not be in the public interest to discourage public entities from zone sponsorship because of concern about liability without fault.

(b) Exception to exemption from liability. A grantee could create liability for itself that otherwise would not exist if the grantee undertakes detailed operational oversight of or direction to zone participants. Examples of detailed operational oversight or direction include review of an operator's inventory-control or record-keeping systems, specifying requirements for such a system to be used by an operator, and review of CBP documentation related to an operator's zone receipts and shipments.”

3. If so, under what structure are they able to comply with the new regulations?

Response: We have only received one other request for a waiver (relating to FTZ 147 – the request is still pending).

4. Do the new regulations prevent us from delivering these benefits to our current and future users, to our economic developers and provide the current efficient operation of our zone by the grantee?

The 2012 regulations are designed to provide additional clarity and consistency with respect to a zone's statutory requirement to operate as a public utility, while ensuring that zone participants have options when paying for FTZ-related services. In terms of specific activities, the May 30 waiver decision and June 6 response to a question regarding VF Jeanswear provide additional guidance on what is permissible within the regulatory framework.

If there are questions on any specific activities, please provide us with detailed information on the activity so that we can provide a more specific response.

5. We have successfully delivered these benefits to carry out the FTZ purposes for over 20 years, with no notification of complaint to us--What has changed?

Response: The FTZ Act has always required that each zone be operated as a public utility (19 USC 81(n)). In recent years, the FTZ Board members have recognized the need to provide guidance to grantees on the meaning of operating as a public utility while also ensuring that zones throughout the country are operated in a manner consistent with the FTZ Act. Prior to the 2012 revisions, the FTZ regulations had not been updated since 1991. In that time, the FTZ program grew considerably and the overall business and trade environment also changed. The regulations were revised in 2012 to meet the growing needs of the current zone program.

The public utility and uniform treatment sections of the 2012 regulations apply equally to all zones and were developed following and on the basis of substantial public comment. The FTZ Act requires that each zone be operated as a public utility – the regulations simply address the statutory requirement's implications for individual zones' operations.

6. Is there any way to grandfather our business model and let us service our community essentially the way we have done so for 20+ years? If so, please tell us how.

Response: The regulations do not include a provision for grandfathering existing situations. Instead, the regulations include the possibility of a waiver of the uniform treatment provision upon approval by the FTZ Board.

If there is additional information that was not considered in the initial waiver request, or if circumstances have changed, a new waiver request (with supporting information) can be submitted.