

Andrew McGilvray

From: Andrew McGilvray
Sent: Monday, June 09, 2014 12:07 PM
To: Craig Pool
Cc: 'Rick Tucker'; Greg Jones; Camille Evans
Subject: RE: VF Hackleburg- Quick Question

Hello Craig,

A quick response for general clarification per the attached letter. In general, after the February 28, 2014, delayed compliance date, under the public utility regulation:

- a grantee's contractor (such as HFTZC) may on behalf of the grantee "offer information" (to use Greg's terminology) that does not constitute providing "technical expertise" – that holds regardless of whether that "offer [of] information" is funded by the zone's mandatory fees

- a grantee's contractor (such as HFTZC) may on behalf of the grantee "offer information" that constitutes providing technical expertise provided that "offer [of] information" is not funded (directly or indirectly) by the zone's mandatory fees

- a grantee's contractor (such as HFTZC) may not on behalf of the grantee "offer information" that constitutes providing technical expertise if that "offer [of] information" is funded (directly or indirectly) by the zone's mandatory fees.

However, specific to VF Jeanswear, HFTZC may on behalf of the grantee "offer information" regardless of whether that "offer [of] information" constitutes providing technical expertise because the "start-up" fee funding that activity was payable before the public utility regulation's delayed compliance date of February 28, 2014. To reiterate: That finding would not apply for a zone's mandatory fee that was payable after February 28, 2014. Any such fee payable after February 28, 2014 may not directly or indirectly pay for technical expertise from a particular provider (such as HFTZC).

I hope this helps,

Andrew McGilvray
Executive Secretary/Staff Director, U.S. Foreign-Trade Zones Board

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From: Craig Pool [<mailto:CraigPool@ftzcorp.com>]
Sent: Friday, June 06, 2014 6:14 PM
To: Andrew McGilvray
Cc: 'Rick Tucker'; Greg Jones; Camille Evans
Subject: RE: VF Hackleburg- Quick Question

Hi Andrew,

I appreciate the letter and response. You indicate that providing technical advice to VF or any firm would not require or be based on the receipt of any funds or fees, and would have occurred regardless of whether a fee

was paid or not, I interpret your letter as allowing us to provide technical advice to assist those companies seeking to save money using the FTZ program. Am I correct?

Thanks,

Craig M. Pool
Foreign-Trade Zone Corporation
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June 6, 2014

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

Dear Messrs. Jones and Pool,

I am writing in response to your inquiry regarding whether it is “permissible” for your company – Huntsville Foreign-Trade Zone Corporation (HFTZC) in its role as “administrator” of FTZ 83 – to “offer information that might help VF Jeanswear... to resolve any differences of opinion with [U.S. Customs and Border Protection (CBP)] on operational matters” pertaining to the zone. Your inquiry states that “[i]n the past, this would have been regarded as part of the service that we offer under the Start-up Fee; that is to say, the Zone Operator would pay nothing extra for this service...” Based on this and additional information that you subsequently provided, I am pleased to provide you the following guidance in this matter.

Section 400.42 (“Operation as public utility”) of the FTZ Board’s regulations (15 CFR part 400) states in part: “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.”¹ The Preamble² to that regulation explains that the public utility requirement creates a “bar” on “including costs associated with the availability of technical expertise as part of the zone’s mandatory fees.” 15 CFR 400.42 also establishes a “delayed compliance date” of February 28, 2014.

Given the regulatory context delineated above, as a general matter, the question of whether a grantee’s contractor may “offer information that might help [an operator] to resolve any differences of opinion with [CBP] on operational matters” depends on whether the cited “offer [of] information” constitutes the provision of “technical expertise” for which the operator is required to pay (either directly or indirectly). Absent the zone requiring direct or indirect payment for the contractor’s technical expertise, 15 CFR 400.42 would not affect the activity. Similarly, the regulatory “bar” on “including costs associated with the availability of technical expertise as part of the zone’s mandatory fees” would not extend to a general facilitative role that a grantee’s contractor may play.

¹ This sentence from 15 CFR 400.42 closely follows language proposed by the National Association of Foreign-Trade Zones and numerous other parties during the regulatory notice-and-comment process.

² *Preamble, Foreign-Trade Zones in the United States, Final Rule, 77 FR 12112, 12128 (Feb. 28, 2012).*

Such facilitation could involve acquaintance with individuals in positions of responsibility relative to FTZ operations and arranging introductions or meetings between a zone participant and such officials (e.g., CBP officers), for example. In contrast, providing “technical expertise” inherently would involve the application of detailed knowledge of processes, procedures or requirements.

In sum, 15 CFR 400.42 does not bar a grantee’s contractor – such as HFTZC as “administrator” of FTZ 83 – from performing a general facilitative role for an operator of the zone in question. However, the regulation does preclude a contractor engaged by a grantee from providing “technical expertise” to an operator if the operator is required to pay either directly or indirectly for the contractor’s provision of that technical expertise.

Applying these parameters to VF Jeanswear, the information available to my office indicates that in June 2013, VF Jeanswear, HFTZC and the zone grantee signed an operator’s agreement that included a “start-up fee” payable at the time (*i.e.*, preceding the February 28, 2014, delayed compliance date for FTZs to modify their fees to exclude any required direct or indirect payment for the “availability of technical expertise” from “a particular provider”). You indicate that “offer[ing] information that might help VF Jeanswear... to resolve any differences of opinion with [CBP] on operational matters” has been considered “part of the service that we offer under the Start-up Fee.” Given this, even if HFTZC’s “offer[ing] information” to VF Jeanswear pursuant to the “start-up fee” were to constitute the provision of “technical expertise” funded directly or indirectly by the start-up fee, HFTZC may “offer information” to VF Jeanswear because the start-up fee encompassing “this service” was payable prior to the February 28, 2014, delayed compliance date of 15 CFR 400.42.

Please let us know if you have any questions regarding the guidance provided in this letter.

Sincerely,



Andrew McGilvray
Executive Secretary/Staff Director

cc: Richard Tucker
Huntsville-Madison County Airport Authority

Andrew McGilvray

From: Greg Jones <GregJones@ftzcorp.com>
Sent: Tuesday, June 03, 2014 4:00 PM
To: Andrew McGilvray; Craig Pool
Cc: Camille Evans; Rick Tucker
Subject: RE: VF Hackleburg- Quick Question

Follow Up Flag: Follow up
Flag Status: Completed

Hello Andrew,

Craig is traveling today, so perhaps I can give you more information.

Huntsville FTZ Corporation invoiced VF for the Start-up fee on June 25, 2013. As Craig noted, the invoice has not yet been paid. We have made no additional efforts to have the invoice paid.

The Grantee's letter of concurrence for VF's activation was submitted to Customs on January 21, 2014.

Since we were made aware of the issues between Customs and VF and were asked to provide assistance, our sole desire has been to do what we can to facilitate an understanding between VF and Customs that will result in Zone procedures that will make business sense for VF, comply with Customs regulations, and protect the revenue of the United States. Whether or not a check has been written to Huntsville FTZ Corporation is of no consequence to us. We would like to help these folks get activated and enjoy Zone benefits.

I can't imagine the significance of the timing of the payment. Any clarity you can provide would be helpful.

Thanks and best regards,

Greg

From: Andrew McGilvray [mailto:Andrew.McGilvray@trade.gov]
Sent: Tuesday, June 03, 2014 2:00 PM
To: Craig Pool; Greg Jones
Cc: Camille Evans; Rick Tucker
Subject: RE: VF Hackleburg- Quick Question

Hi Craig,

One follow-up question. Attached to FTZ 83's waiver request was a copy of the signed VF operator's agreement. The agreement was dated June 21, 2013. The "Exhibit 'A' schedule of operator fees" states that the "start-up fee" is payable "Upon execution of Foreign-Trade Sub-Zone Operator Agreement." Your message below says the start-up fee has not been paid yet (that is, almost a year after the June 21, 2013, date on which the agreement was "made and entered into" and, therefore, on which the start-up fee appears to have been payable). Please explain.

Thanks,

Andrew McGilvray
Executive Secretary/Staff Director, U.S. Foreign-Trade Zones Board

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From: Craig Pool [<mailto:CraigPool@ftzcorp.com>]
Sent: Tuesday, June 03, 2014 12:02 AM
To: Andrew McGilvray; Greg Jones
Cc: Camille Evans; Rick Tucker
Subject: RE: VF Hackleburg- Quick Question

Hi Andrew,

As of today, the start-up fee has not been paid.

Thanks,

Craig M. Pool
Foreign-Trade Zone Corporation
TEL: 251.445.1362
FAX:251.445.1386

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From: Andrew McGilvray [<mailto:Andrew.McGilvray@trade.gov>]
Sent: Monday, June 02, 2014 3:27 PM
To: Craig Pool; Greg Jones
Cc: Camille Evans; Rick Tucker
Subject: RE: VF Hackleburg- Quick Question

Hi Craig,

Your message was perfectly timed in a way. One question that has come up is when VF paid the “start-up” fee. Please provide that piece of information when you get a chance (month and year is fine – I don’t need to exact date).

Thanks in advance,

Andrew McGilvray
Executive Secretary/Staff Director, U.S. Foreign-Trade Zones Board

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From: Craig Pool [<mailto:CraigPool@ftzcorp.com>]
Sent: Sunday, June 01, 2014 5:21 PM
To: Andrew McGilvray; Greg Jones
Cc: Camille Evans; Rick Tucker
Subject: RE: VF Hackleburg- Quick Question

Hi Andrew,

This issue you reference and refer to as complex was actually very straight forward in my opinion, and that is one thing that concerns me. You replied stating you could not provide an answer due to my request being complex with legalistic issues, however, this determination was made with no follow up questions, or any discussion whatsoever by or with the FTZ Board Staff. Given that Huntsville FTZC was invited to attend and assist with the meeting by a prospective user and its consultant, it was clear that there was no risk of conflict as the prospective Operator already had service providers for both its consulting and software. Given the almost impossibility of any conflict, I am confused as to why this request was complex. How can there be any potential conflict if all parties involved desired to have FTZC at the meeting. If there were questions FTZ Board staff had, I am confused as to why those questions were not presented. In my experience working with Government Agencies, decisions are not deemed too complex to respond, without some open dialog and questions to clear up any confusion one party or the other may have. In this case, we received a one line response with no further questions or phone calls asking for clarification of any concerns of any type, or even the ramifications of the importance of the meeting.

I realize the chance to resolve the referenced issue quickly in order to help an Operator save money has passed. However, I am concerned about future queries where timely decisions are needed. In some cases, an untimely answer, or refusal to provide an answer to a query similar to my query about a meeting where the invitation for FTZC to attend was made by a prospective Operator's consultant, as well as that prospective Operator itself could lead not only to a delayed activation and loss of revenue, but an entire assembly line or a manufacturing plant going down, resulting in much more severe consequences.

I know these new regulations are complex, but my hope is that I will better understand the proper path to take to receive a timely response to assist a zone user or potential zone user when needed and especially when invited.

Respectfully,

Craig M. Pool
Foreign-Trade Zone Corporation
TEL: 251.445.1362
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From: Andrew McGilvray [<mailto:Andrew.McGilvray@trade.gov>]

Sent: Wednesday, May 28, 2014 4:28 PM

To: Craig Pool; Greg Jones

Cc: Camille Evans; Rick Tucker

Subject: RE: VF Hackleburg- Quick Question

Hello Craig,

As I noted, you presented some questions that you needed answered by the following day – which we were unable to provide – and it was recently raised to my attention that you are still interested in those answers. It seems to me that any delay or misunderstanding/miscommunication pertaining to your inquiry stemmed from those unusual circumstances. Rest assured that we all want to avoid misunderstanding/miscommunication or delay. On the general matter of timeframes for responses, I should simply caution that the amount of time required to provide a response to an inquiry generally depends on the substance of the inquiry (with novel inquiries generally taking longer than inquiries that present common questions, for example). Regardless, please do not hesitate to check in with me if you are unsure whether we have properly understood an inquiry you have presented or to check on the status of an inquiry.

Andrew McGilvray
Executive Secretary/Staff Director, U.S. Foreign-Trade Zones Board

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From: Craig Pool [<mailto:CraigPool@ftzcorp.com>]
Sent: Wednesday, May 28, 2014 3:04 PM
To: Andrew McGilvray; Greg Jones
Cc: Camille Evans; Rick Tucker
Subject: RE: VF Hackleburg- Quick Question

Hi Andrew,

We are still interested in the answer. However, I do have to note that asking any company to wait months on the FTZ Board staff to provide such an answer is not well received by those firms. This is simply because the firms simply do not understand the delays. Naturally these types of companies need to plan, and with the current manner questions are addressed, companies are suffering from the inability to plan due to the unknown time delays. Companies turn to my firm to provide them time frames on answers, and tell me they need to understand what the delay is and the resolution timeframe. However, when I am asked this question, to be honest, I don't know what to tell them and am seeking your guidance. Is the FTZ Board still interoperating the regulations on this, or will this kind of wait be the norm for such questions in the future? Any help you can provide here will assist me in knowing what to tell companies that need assistance in cases such as these.

Thanks,

Craig M. Pool
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From: Andrew McGilvray [<mailto:Andrew.McGilvray@trade.gov>]
Sent: Tuesday, May 27, 2014 11:27 AM
To: Greg Jones
Cc: Camille Evans; Rick Tucker; Craig Pool
Subject: RE: VF Hackleburg- Quick Question

Hello Greg, Craig and Rick,

In the e-mail below, you presented some questions that you needed answered by the following day – which we were unable to provide. It was recently raised to my attention that you are still interested in those answers. FYI, I have engaged the FTZ Board member delegates on matters of interpretation related to your inquiry and anticipate a decision from them in the near future.

Take care,

Andrew McGilvray
Executive Secretary/Staff Director, U.S. Foreign-Trade Zones Board

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From: Greg Jones [<mailto:GregJones@ftzcorp.com>]
Sent: Thursday, March 06, 2014 4:22 PM
To: Andrew McGilvray
Cc: Camille Evans; Rick Tucker; Craig Pool
Subject: FW: VF Hackleburg- Quick Question
Importance: High

Hello Andrew,

As follow-up to Craig's recent e-mail, I want to provide you with more detail that might be helpful.

As you know, VF Jeanswear and its consultant, KPMG, have invited us to attend a meeting that will include officers from CBP (including an official from CBP's Area Port) at VF's subzone facility in Hackleburg, Alabama. VF Jeanswear has submitted a request to activate the facility, and has received the concurrence of the Grantee to do so. However, CBP has raised some concerns about certain proposed procedures. Tomorrow's meeting will no doubt serve as an occasion upon which those concerns will be discussed.

In past years, our role at such meetings included two components. One of these was as the representative of the Grantee in conducting due diligence. The other was as a representative of the Grantee in facilitating the use of the FTZ program by providing information to all parties aimed at helping them resolve apparent differences of opinion with regard to operational compliance and/or the use of procedures that require the discretionary authority of Customs.

In past years, we felt comfortable in performing the latter duties based on the imperative that we, as Zone Project Administrators, should try and help members of the trade community enjoy an optimal set of procedures that best fit their operational needs.

However, the current regulations call into question whether or not we can continue meet this imperative.

Given this, can you tell me if you deem it permissible for us to offer information that might help VF Jeanswear and KPMG to resolve any differences of opinion with CBP on operational matters? In the past, this would have been regarded as part of the service that we offer under the Start-up Fee; that is to say, the Zone Operator would pay nothing extra for this service, and, as has been the case on a number of past occasions, this has been done in concert with the Operator and its consultant. However, given your recent comments about the nature of Start-up Fees, I want to make certain that you would regard our participation in tomorrow's meeting and our offer of useful information as legitimate.

Any guidance you can give me on this matter would be greatly appreciated.

Thanks and best regards,

Greg

From: Craig Pool
Sent: Thursday, March 06, 2014 2:56 PM
To: Andrew McGilvray; Ahanchian, Amie J
Cc: Camille Evans
Subject: RE: VF Hackleburg- Quick Question
Importance: High

Hi Andrew,

Can you tell me if it will be OK assisting VF, KPMG, and the Grantee work with CBP to have some special activation procedures approved. I don't want to create a conflict and would like to make sure this particular activity is OK. My goal is to assist in helping VF obtain procedures that allow for streamlined operations.

If there is any activity I cannot do, please let me know so I do not violate the regulations.

Thanks,

Craig M. Pool
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From: Andrew McGilvray [<mailto:Andrew.McGilvray@trade.gov>]
Sent: Thursday, March 06, 2014 2:16 PM
To: Ahanchian, Amie J
Cc: Craig Pool; Camille Evans
Subject: RE: VF Hackleburg- Quick Question

VF is free to invite the zone's grantee or someone working for the grantee to participate in VF's meeting with CBP.

From: Ahanchian, Amie J [<mailto:aahanchian@kpmg.com>]
Sent: Thursday, March 06, 2014 2:03 PM
To: Andrew McGilvray; Kathleen Boyce
Cc: craigpool@ftzcorp.com
Subject: VF Hackleburg- Quick Question
Importance: High

Andrew and Kathleen:

Hope that you are both doing very well. I have a quick question for you regarding the VF FTZ, which is a subzone to FTZ No. 83.

KPMG represents VF Jeanswear and has worked with VF on the application / activation process.

Craig Pool with FTZ Corp has a consulting agreement with the Grantee of FTZ No. 83 and is the consulting administrator. Tomorrow, we have a meeting with CBP at the VF site to discuss direct delivery and do a walk-through. I would like for the Grantee (and his consultant, Craig) to attend and participate in the meeting, but we wanted to confirm with you that it is ok under the new FTZ Board regulations.

Thank you so much in advance for your consideration.

Amie

Amie Jasmine Ahanchian
Managing Director
KPMG LLP - Trade and Customs Practice
Ph: (202) 533.3247
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1801 K Street NW
Suite 12000
Washington, DC 20006

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