United States Department of Commerce
The Foreign-Trade Zones Board
Washington, D.C. 20230

July 29, 2014

Paul Wesch
Senior Director of Finance
City of Mobile
P.O. Box 1827
Mobile, AL 36633

Dear Mr. Wesch:

I am pleased to inform you that the Foreign-Trade Zones (FTZ) Board has voted to approve the pending waiver request submitted by FTZ 82 under 15 CFR 400.43(f), subject to certain conditions/limitations.

As set forth in more detail in the attached, this approval generally authorizes Mobile Foreign-Trade Zone Corporation to offer or provide its FTZ inventory-management software and software-support services to zone participants, regardless of whether Mobile Foreign-Trade Zone Corporation has an existing arrangement with a particular participant.

A copy of the approval documents, signed by the Board members, is attached, as is a related memorandum from the Executive Secretary.

Please let me know if you have any questions or concerns.

Sincerely,

Andrew McGilvray
Executive Secretary

Attachments

RESOLUTION

Waiver Request under 15 CFR 400.43(f)
from City of Mobile, Grantee of FTZ 82

The FTZ Board has considered the request from the City of Mobile, grantee of FTZ 82 for a waiver pursuant to 15 CFR 400.43(f). The waiver request pertains to a consultant, Mobile Foreign-Trade Zone Corporation, an affiliate of Foreign-Trade Zone Corporation, collectively "FTZ Corp." Mobile Foreign-Trade Zone Corporation acts as "administrator" of FTZ 82. The pending request indicates that FTZ Corp does not currently offer/provide zone-related products/services to, or represent, zone participants of FTZ 82 but seeks to allow FTZ Corp to undertake such activities while also undertaking a "key function" for the zone's grantee (*i.e.*, being a party to the zone's agreements with zone participants).

DECISION

Upon consideration and review of the recommendation in the memorandum of the Executive Secretary discussing the request, the Board would approve a waiver for FTZ 82 with the following conditions or limitations in order that the risk of non-uniform treatment can be mitigated to a satisfactory degree:

1) FTZ Corp is limited to offering or providing its FTZ inventory-management software and software-support services[1] to zone participants, whether or not it has an existing arrangement[2] with a zone participant;

2) The waiver 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 FTZ 82. If checks were to reveal abuse of position in undertaking the key function on behalf of the grantee, as determined by the Board in its sole discretion, the Board could "discontinue" the waiver

[1] A condition regarding FTZ Corp providing its software product(s)/service(s) to zone participants would include FTZ Corp's providing support for users specific to the software product(s)/service(s) but would not include broader advice/expertise from FTZ Corp (*i.e.*, advice/expertise not directly tied to use of the software product(s)/service(s)).

[2] Existing arrangements would be comprised of agreements or contracts between FTZ Corp and a zone user that pre-date the April 30, 2012, effective date of 15 CFR 400.43(d) and that pertain to FTZ Corp providing one or more zone-related product/service or representation to that user, as well as any renewal of such an agreement/contract.

under 15 CFR 400.43(f). Examples of potential abuse are effectively requiring zone participants to purchase FTZ Corp's software product(s)/service(s), requiring zone participants to pay higher prices for such software product(s)/service(s) relative to other zones, or using a software contract as a vehicle for providing non-software services otherwise not allowed under the waiver.

I hereby vote to approve a waiver for FTZ 82 with the conditions/limitations described above.

Signed: _____ Date: July 29, 2014

Paul Piquado
Assistant Secretary of Commerce
for Enforcement and Compliance

RESOLUTION

Waiver Request under 15 CFR 400.43(f)
from City of Mobile, Grantee of FTZ 82

The FTZ Board has considered the request from the City of Mobile, grantee of FTZ 82 for a waiver pursuant to 15 CFR 400.43(f). The waiver request pertains to a consultant, Mobile Foreign-Trade Zone Corporation, an affiliate of Foreign-Trade Zone Corporation, collectively "FTZ Corp." Mobile Foreign-Trade Zone Corporation acts as "administrator" of FTZ 82. The pending request indicates that FTZ Corp does not currently offer/provide zone-related products/services to or represent zone participants of FTZ 82 but seeks to allow FTZ Corp to undertake such activities while also undertaking a "key function" for the zone's grantee (*i.e.*, being a party to the zone's agreements with zone participants).

DECISION

Upon consideration and review of the recommendation in the memorandum of the Executive Secretary discussing the request, the Board would approve a waiver for FTZ 82 with the following conditions or limitations in order that the risk of non-uniform treatment can be mitigated to a satisfactory degree:

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3) The FTZ Board staff will monitor participants in FTZ 82. If checks were to reveal abuse of position in undertaking the key function on behalf of the grantee, as determined by the Board in its sole discretion, the Board could "discontinue" the waiver

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under 15 CFR 400.43(f). Examples of potential abuse are effectively requiring zone participants to purchase FTZ Corp's software product(s)/service(s), requiring zone participants to pay higher prices for such software product(s)/service(s) relative to other zones, or using a software contract as a vehicle for providing non-software services otherwise not allowed under the waiver.

I hereby vote to approve a waiver for FTZ 82 with the conditions/limitations described above.

Signed: Timothy E. Skud

Timothy E. Skud
Deputy Assistant Secretary of the Treasury
(Tax, Trade, and Tariff Policy)

Date: 23 July 2014

United States Department of Commerce
The Foreign-Trade Zones Board
Washington, D.C. 20230

Memorandum for: Paul Piquado
Assistant Secretary of Commerce
for Enforcement and Compliance

Timothy E. Skud
Deputy Assistant Secretary of the Treasury
(Tax, Trade, and Tariff Policy)

From: Andrew McGilvray
Executive Secretary
Foreign-Trade Zones Board

Through: Scott McBride SOM
Senior Attorney, Office of the Chief Counsel
for Trade Enforcement & Compliance

Date: July 22, 2014

Subject: Waiver Request from City of Mobile under 15 CFR 400.43(f)

BACKGROUND

The Regulations Have a Default Bar on Certain Conflicts of Interest but Allow for Waivers

Section 81n of the FTZ Act (19 U.S.C. 81a-81u) requires that grantees provide "uniform treatment under like conditions" for zone participants[1]. In 2007, the Foreign-Trade Zones Board (the Board) published a *Federal Register* notice citing "[c]oncerns [that] ha[d] been raised to the FTZ Board" and inviting comment "related to potential conflicts of interest in local access to FTZ procedures" in the context of the FTZ Act's uniform treatment requirement. In 2012, after an extensive notice-and-comment process, the Board adopted regulations (15 CFR Part 400) that include a provision (§ 400.43(d)) designed to prevent certain conflicts of interest within a given FTZ.[2] Responding to comments on the similar

[1] 15 CFR 400.2(x) defines a "zone participant" as "a current or prospective zone operator, zone user, or property owner."

[2] A "person" in a "key category" may not undertake any "key function" for a grantee. Key categories are: (1) A person that engages in, or has during the preceding 12 months engaged in, offering/providing a zone-related product/service to or representing a user of a zone; (2) A person that stands to gain from a person's offer/provision of a zone-related product/service to or representation of a user of a zone; or (3) A person "related" to the persons in (1) or (2). Key functions are: (1) Taking action on behalf of a grantee, or making recommendations to a grantee, regarding the disposition of proposals or requests by zone users pertaining

regulatory provision proposed by the FTZ Board in 2010, section 400.43(f) of the 2012 regulations also allows a party to request a waiver by the Board of the requirements of § 400.43(d) based on the circumstances presented by the party. Absent approval of a waiver, "existing business arrangements" which would otherwise be precluded by § 400.43(d) were required to be terminated or brought into compliance no later than February 28, 2014.

Pending Request for Waiver from City of Mobile

Now pending is a request from the City of Mobile, grantee of FTZ 82, for a waiver pursuant to 15 CFR 400.43(f). The waiver request pertains to a consultant, Mobile Foreign-Trade Zone Corporation, an affiliate of Foreign-Trade Zone Corporation, collectively "FTZ Corp." Mobile Foreign-Trade Zone Corporation acts as "administrator" of FTZ 82. The pending request indicates that FTZ Corp does not currently offer/provide zone-related products/services to or represent zone participants of FTZ 82 but seeks to allow FTZ Corp to undertake such activities while also undertaking a "key function" for the zone's grantee (*i.e.*, being a party to the zone's agreements with zone participants).

KEY ARGUMENTS PRESENTED BY THE REQUESTER

Key arguments presented in the waiver request – attached in full at Appendix 1 – include the following:

- "[I]ndividual Zone participants are free to use Zone-related services and products from whomever they may choose."

- "Under the Zone Project Administration Agreement between [FTZ Corp] and the Grantee, [FTZ Corp's] income is dependent on its success in seeing that members of the trade community successfully utilize Zone procedures."

- "By allowing [FTZ Corp] to serve as a party to the 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."

- "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 [*i.e.*, FTZ Corp]."

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to FTZ authority or activity (including activation by CBP); (2) Approving, or being a party to, a zone user's agreement with the grantee (or person acting on behalf of the grantee) pertaining to FTZ authority or activity (including activation by CBP); or (3) Overseeing zone users' operations on behalf of a grantee.

STANDARD FOR DECISIONS

The regulatory standard (in Sec. 400.43(f)) for decisions on waiver requests is as follows:

> In deciding whether to grant a waiver, the Board shall determine whether there is an unacceptable risk that the waiver would result in non-uniform treatment being afforded by the person undertaking a key function(s) listed in paragraph (d)(1) of this section. In its assessment, the Board shall consider the specific circumstances presented, including the nature and extent of the person's involvement in undertaking a key function(s) listed in paragraph (d)(1) of this section. In general, the more significant the requester's involvement or interest in the undertaking of a key function(s) listed in paragraph (d)(1) of this section or activity(ies) identified in paragraph (d)(2)(i) of this section, the greater the risk will be that non-uniform treatment will be afforded and, thus, the less likely it will be that a waiver will be granted. The Board may attach to individual waivers such conditions or limitations (including, for example, the length of time a waiver is to be effective) as it deems necessary.

The Preamble to the regulations included the following additional explanation pertaining to the waiver provision:

> [I]n response to comments received, we have added new Sec. 400.43(f) that will allow the Board to issue case-by-case waivers of the provision in Sec. 400.43(d) that bars certain categories of persons from performing certain key functions. This approach strikes an appropriate balance in order to avoid the types of broad, negative impacts projected by commenters while continuing to reflect the fact that a zone grantee often has a monopoly in its region for valuable access to the federal privilege of FTZ use (with zone participants reluctant to make uniform treatment-related complaints to the FTZ Board because of a perceived risk of jeopardizing key relationships with grantees or with third parties undertaking key functions on behalf of grantees)... In considering whether to approve an individual application for a waiver, the Board will take into account the specific circumstances presented, and the Board will also impose conditions on individual waivers, as warranted. As raised by one commenter, a key factor the Board will consider is whether a grantee's specific arrangement presents a significant risk that zone users will experience implied pressure to procure a particular private party's services as a condition of obtaining access to the federal FTZ program.

DISCUSSION

As detailed above, the regulatory standard for decisions on waivers includes: "In general, the more significant the requester's involvement or interest in the undertaking of a key function(s) listed in paragraph (d)(1) of this section or activity(ies) identified in paragraph (d)(2)(i) of this section, the greater the risk will be that non-uniform treatment will be

afforded and, thus, the less likely it will be that a waiver will be granted." The "key function(s) listed in paragraph (d)(1)" include "[a]pproving, or being a party to, a zone participant's agreement with the grantee (or person acting on behalf of the grantee) pertaining to FTZ authority or activity (including activation by CBP)." The "activity(ies) identified in paragraph (d)(2)(i)" are "engag[ing] in... offering/providing a zone-related product/service to or representing a zone participant in the grantee's zone."

Regarding the significance of FTZ Corp's involvement or interest in "the undertaking of a key function(s)," the pending waiver request indicates that – with the exception of one agreement concluded in the mid-1990's – FTZ Corp is a party to the operators' agreements in the zone (which constitutes the "key function" that FTZ Corp currently undertakes in that zone). Without the conclusion of such an operator's agreement, a potential operator cannot "activate" its zone site(s) with U.S. Customs and Border Protection (CBP) and achieve the financial benefits of FTZ use. Thus, a potential new operator in the zone is unable to achieve FTZ financial benefits unless FTZ Corp signs an operator's agreement with the company (or unless the operator opts for an agreement directly with the City of Mobile, which would involve processes that the city states "often require significant amounts of time" – thereby reducing substantially the viability of that theoretical alternative in today's time-sensitive business environment).

Regarding the significance of FTZ Corp's involvement or interest in "engag[ing] in... offering/providing a zone-related product/service to or representing a zone participant in the grantee's zone," FTZ 82's waiver request indicates that FTZ Corp "does, from time to time, provide Zone-related services to Zone participants." Moreover, FTZ Corp's "involvement or interest" in offering/providing a zone-related product/service to or representing zone participants cannot be gauged only in terms of FTZ Corp's current user base in that zone. In particular, a firm's "interest" in providing products/services to or representing companies clearly can relate to clients the firm would like to solicit in the future.

The standard form for waiver requests includes a question regarding the importance to the firm in question of offering/providing zone-related products/services to or representing zone participants. The waiver request does not respond to the substance of that question directly.[3] However, FTZ Corp's website appears to provide one indication of the firm's

[3] In response to the question, the waiver request includes the following statements: "With regard to the importance of providing Zone-related services or products, such services and/or products are, in terms of [FTZ Corp's] services as the Zone Project Administrator, entirely distinct and separate. If [FTZ Corp] derives income from providing services to participants within the [FTZ 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 [FTZ Corp]. With regard to its services as the Zone Project Administrator, those remain the same whether or not [FTZ Corp] has any clients from among the population of FTZ No. 82 Zone participants. Accordingly, [FTZ Corp] remains entirely responsible for providing the resources necessary to serve the Zone project. Under the Zone Project Administration Agreement between [FTZ Corp] and the Grantee, [FTZ Corp's] income is dependent on its success in seeing that members of the

interest in offering/providing zone-related products/services to or representing zone participants. Specifically, the firm's website states that "The Foreign-Trade Zone Corporation is the only firm that limits its practice to FTZ consulting and foreign trade zone software" and cites "[t]he firm's focus on Foreign-Trade Zone consulting..." Given that FTZ Corp's sole line of business is "FTZ consulting and foreign-trade zone software," characterizing FTZ Corp's "involvement or interest" in offering or providing zone-related products/services to or representing participants in a given zone as insignificant may be difficult. Further, the greater FTZ Corp's interest in selling its products/services to or representing participants in a given zone, the greater the risk of FTZ Corp using leverage such as the potential for delay in concluding operators' agreements – without which companies cannot obtain FTZ benefits – as a means of encouraging companies to choose FTZ Corp's products/services or representation over competing providers of products/services or representation.

In the prior waiver requests pertaining to FTZ Corp, one requester also raised the issue of the impact of FTZ Board's waiver decisions on the market for specialized software used to manage FTZ inventories.[4] For FTZ consulting services in general, there appears to be a large number of firms offering to provide such services (for example, the program for the most recent annual conference of the National Association of Foreign-Trade Zones lists at least 15 different firms that offer FTZ consulting services). However, the prior request noted above indicated that there are very few providers of FTZ inventory-management software – with FTZ Corp offering "one of the two most robust FTZ management systems that are available to Zone users nationwide" – and that the FTZ Board's regulations "have impinged on the freedom of choice of Zone Operators in Alabama when it comes to FTZ management software." Based on research by the FTZ Board staff, it does appear that zone participants have far fewer choices for providers of FTZ inventory-management software than for providers of general FTZ consulting services.

CONCLUSIONS AND RECOMMENDATIONS

As noted, 15 CFR 400.43(f) states that "[i]n its assessment [of waiver requests], the Board shall consider the specific circumstances presented, including the nature and extent of the person's involvement in undertaking a key function(s) listed in paragraph (d)(1) of this section. In general, the more significant the requester's involvement or interest in the undertaking of a key function(s) listed in paragraph (d)(1) of this section or activity(ies) identified in paragraph (d)(2)(i) of this section, the greater the risk will be that non-uniform treatment will be afforded and, thus, the less likely it will be that a waiver will be granted." As outlined above, given the key function that FTZ Corp would undertake if granted a waiver in FTZ 82, a potential new operator in the zone would be unable to achieve FTZ

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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."

[4] See waiver request of the Huntsville-Madison County Airport Authority dated September 27, 2013.

benefits without FTZ Corp signing an agreement for that operator. As also outlined above, providing zone-related products/services to, or representing, zone participants is FTZ Corp's sole line of business. Therefore, it is difficult to view FTZ Corp's involvement or interest in providing those products/services or representation as insignificant.

This analysis is not specific only to FTZ Corp, but would apply to any company in FTZ Corp's situation. The greater such a company's involvement or interest in selling its products/services to, or representing, participants in a given zone, the increased possibility that the company could use its leverage to the disadvantage of existing and possible future competitors. In that context, a consulting company that is a party to a zone's operators' agreements could delay or deny the completion of operators' agreements, without which companies cannot obtain FTZ benefits, as a means of encouraging companies to choose its products/services or representation over competing providers of products/services or representation. The Board's adoption of 15 CFR 400.43(d) and the related waiver provision in 15 CFR 400.43(f) "strikes an appropriate balance in order to avoid the types of broad, negative impacts projected by commenters while continuing to reflect the fact that a zone grantee often has a monopoly in its region for valuable access to the federal privilege of FTZ use (with zone participants reluctant to make uniform treatment-related complaints to the FTZ Board because of a perceived risk of jeopardizing key relationships with grantees or with third parties undertaking key functions on behalf of grantees)." [5]

The Preamble to the Board's regulations also states that "a key factor the Board will consider is whether a grantee's specific arrangement presents a significant risk that zone users will experience implied pressure to procure a particular private party's services as a condition of obtaining access to the federal FTZ program."[6] Given the facts and analysis outlined above, it appears there is an unacceptable risk that an approval of a waiver for FTZ 82 without condition or limitation could result in the affording of non-uniform treatment to different private parties.

Beyond a consideration of the policy justification for a general or blanket waiver such as that requested in this case, there appear to be facts specific to the FTZ inventory-management software produced and sold by FTZ Corp that warrant additional consideration. The particularly limited range of options for such software in the marketplace is a factor that warrants serious consideration, as the FTZ regulations are intended to help promote, and not prohibit, commerce and competition. Nonetheless, absent additional conditions, there would still appear to be an unacceptable risk of non-uniform treatment being afforded to potential software purchasers. In the unique context of the market for FTZ inventory-management software, however, it appears that the risk of non-uniform treatment can be mitigated to a satisfactory degree by the FTZ Board staff's monitoring of activities in FTZ 82 pertaining to uniformity of treatment for zone participants.

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[5] *Preamble, Foreign-Trade Zones in the United States, Final Rule*, 77 FR 12112, 12131 (Feb. 28, 2012).

[6] *Id.*

In this context, I recommend approving a waiver which would allow FTZ Corp to continue to offer/provide its inventory-management software even if it is undertaking the proposed "key function" on behalf of FTZ 82, provided the FTZ Board staff conducts monitoring to ensure it does not abuse that privilege.

Regarding products/services other than inventory-management software, it should be noted that the FTZ Board's decision on the three prior requests pertaining to FTZ Corp (including related entities) included a condition allowing FTZ Corp to continue to offer/provide such zone-related products/services to existing customers in the zones in question.[7] However, FTZ 82's waiver request indicates that FTZ Corp has no such existing customers in the zone. In that context, a condition pertaining to continuing to serve such existing customers in the zone appears to be inapplicable; therefore, no such condition is included among the recommendations for FTZ 82's waiver request.

Finally, I recommend the waiver should be limited in time. The waiver process is relatively new, and therefore the Board has no past experience on which to rely in gauging the likely impact(s) of a waiver approval. By limiting the waiver period initially, the Board could assess any proposed renewal request near the end of the waiver's initial effective period, and consider the actual experience of zone participants while the waiver had been in place.

Summary

In sum, based on consideration of the information presented by the requester in the applicable regulatory context (as outlined above), I recommend a waiver for FTZ 82 with the following conditions or limitations[8]:

1) FTZ Corp is limited to offering or providing its FTZ inventory-management software and software-support services[9] to zone participants, whether or not it has an existing arrangement[10] with a zone participant;

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[7] See resolutions signed by Paul Piquado, Assistant Secretary of Commerce for Enforcement and Compliance, and Timothy E. Skud, Deputy Assistant Secretary of the Treasury (Tax, Trade, and Tariff Policy), dated May 30 and May 29, 2014, respectively.

[8] § 400.43(f) states that "[t]he Board may attach to individual waivers such conditions or limitations (including, for example, the length of time a waiver is to be effective) as it deems necessary."

[9] A condition regarding FTZ Corp providing its software product(s)/service(s) to zone participants would include FTZ Corp's providing support for users specific to the software product(s)/service(s) but would not include broader advice/expertise from FTZ Corp (*i.e.*, advice/expertise not directly tied to use of the software product(s)/service(s)).

[10] Existing arrangements would be comprised of agreements or contracts between FTZ Corp and a zone user that pre-date the April 30, 2012, effective date of 15 CFR 400.43(d) and that pertain to FTZ Corp

2) Approval of the waiver would be 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 zone. If checks were to reveal abuse of position in undertaking the key function on behalf of the grantee, as determined by the Board in its sole discretion, the Board could "discontinue" the waiver under 15 CFR 400.43(f). Examples of potential abuse are effectively requiring zone participants to purchase FTZ Corp's software product(s)/service(s), requiring zone participants to pay higher prices for such software product(s)/service(s) relative to other zones, or using a software contract as a vehicle for providing non-software services otherwise not allowed under the waiver.

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providing one or more zone-related product/service or representation to that user, as well as any renewal of such an agreement/contract.

Appendix 1:
Waiver Request
from FTZ 82

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

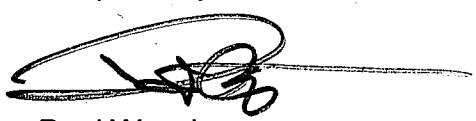
activated in November 1986. Beginning in 1988, a series of subzones were approved, and, after two expansions, a number of distribution and manufacturing operations were accommodated within the general-purpose Zone. The result is a Zone project that has not only served the competitive interests of existing 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.

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 consultationt 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.

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[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.