



September 12, 2014

Richard Tucker
Executive Director
Huntsville-Madison County Airport Authority
1000 Glenn Hearn Blvd.
Box 20008
Huntsville, AL 35824

Dear Mr. Tucker:

I am writing in response to your e-mail message of August 1, 2014, requesting guidance regarding the permissibility of certain “Business Model Elements” (BMEs) of FTZ 83. We have reviewed and considered the information you have provided us regarding these BMEs. Based on this information, our analysis is summarized below and detailed in the attached appendix.

The questions you raise tie directly to the FTZ Act’s mandate that all FTZ’s operate as a “public utility” (19 U.S.C. §81n) and to the FTZ Board’s regulations (15 CFR Part 400) that implement this public utility requirement. As you know, during 2010-2012, the FTZ Board conducted a comprehensive notice and comment rulemaking process that was designed to “improve flexibility for U.S.-based operations, particularly for most circumstances involving exports; enhance clarity; and strengthen compliance and enforcement”¹ in the FTZ program. As part of this process the Board solicited comments on this proposed rulemaking, and provided the public approximately five months to submit such comments, after which the public was provided an additional one-month period to submit “reply comments.”

During the rulemaking process, the Board received scores of comments, including those submitted by the National Association of Foreign-Trade Zones (NAFTZ) – an organization that represents approximately 650 public and private organizations involved in the FTZ program – related to the FTZ Act’s public utility requirement. In its comments, the NAFTZ stated that it believed that the FTZ Board needed to adopt new public utility regulations in order “to ensure that Zone Participants are not forced to use

¹ Foreign-Trade Zones in the United States, Proposed Rule, 75 FR 82340 (Dec. 30, 2010).

or pay for the services of Administrators beyond reimbursement to the Grantee of expenses incurred for zone project administration requirements.”² This proposal was supported by dozens of other parties. Another party similarly commented that “[s]ubzone operators should have choice in whom they select for a particular service and should not be forced... to pay for consulting or expert services as a condition of participating in a federal program... There is a real cost for these services and subzone operators should be free to select the expert consultant of their choice and not be required to contract with a particular technical expert in order to be able to operate within a zone.”³

The FTZ Board considered these comments seriously and sought to incorporate and reflect them in its new regulations. As such, the revised public utility regulation that the FTZ Board issued at the close of the notice and comment process (15 CFR 400.42(a)) now provides that “[a] rate or charge (fee) may be imposed on zone participants to recover costs incurred by or on behalf of the grantee for the performance of the grantee function” but that “zone participants shall not be required (either directly or indirectly) to utilize or pay for a particular provider's zone-related products or services.” In issuing this regulation, the Board explained that “[a]ny effective requirement for a user to pay for additional products or services in order to be permitted to use the zone would be inconsistent with the principles associated with the Act's public utility requirement.” The public utility mandate of the FTZ Act, as implemented by the Board's regulations, thus informs our reply to your inquiry.

In your correspondence you note that FTZ 83 has delineated fourteen BMEs that Huntsville Foreign-Trade Zone Corporation (HFTZC) undertakes in administering the zone; you have also indicated that HFTZC undertakes twelve of those BMEs at “no charge” to zone participants and that charges are imposed only for the following two BMEs:

“7. Review of applications to activate with CBP (Start-up fee)”

“9. Reduce potential grantee liability (compliance reviews, 3-party Operator Agreements) (Operator fees).”

With respect to the fees that FTZ 83 currently charges zone participants, FTZ 83's most recent zone schedule indicates that each zone operator is required to pay HFTZC a start-up fee of \$10,000 as well as an annual “manufacturing/production” operator fee of up to \$30,000 or a monthly “non-manufacturing/production” operator fee of up to \$2,000.

² NAFTAZ comment submission regarding the FTZ Board's proposed regulations, May 4, 2011, page 62.

³ Reply comment submission from Kelley, Drye and Warren, June 27, 2011, page 2.

Based on this information, and as we set out in more detail in the attached appendix, we conclude that the requirements that zone participants pay for BME # 7 in its entirety and pay for the “compliance reviews” component of BME # 9 are incompatible with the FTZ Board’s public utility regulation. This is because BME #7 and the “compliance reviews” component of BME #9 appear to involve “zone-related products or services” of the sort offered to users by a range of consulting firms. (The “3-party Operator Agreements” component of BME # 9 does not appear to be incompatible with the public utility regulation because operators’ agreements, in general, are encompassed in “the performance of the grantee function” rather than constituting “a particular provider’s zone-related products or services.”) The remaining BMEs in question would not be incompatible with the public utility regulation if performed at “no charge” – either direct or indirect – to zone participants.⁴

In addition, in response to your questions regarding a possible shift to operators’ agreements involving solely the grantee and the operator, if HFTZC were not a party to such an agreement then HFTZC would not be performing the “key function” identified in FTZ 83’s waiver request. Therefore, HFTZC would not need a waiver under 15 CFR 400.43(f) in order to provide zone-related products/services to the operator in question. For any operator subject to an agreement to which HFTZC would be a party, the waiver requirement would continue to apply to HFTZC.

Please note that the findings described in this letter and detailed further in the attached appendix are based on the information received to this point. If you feel that the analysis does not reflect actual circumstances, you are welcome to submit additional information for us to take into account. If you have questions regarding these matters, do not hesitate to contact myself or Elizabeth Whiteman at (202) 482-2862.

Sincerely,



Andrew McGilvray
Executive Secretary/Staff Director

Attachment

⁴ Footnote 7 in the appendix addresses the effect on this analysis if zone participants were to be charged indirectly for HFTZC to undertake the remaining BMEs in question.

APPENDIX: Discussion and Analysis In Response To Questions From FTZ 83

FTZ 83 has presented what it describes as “Business Model Elements” (BMEs) undertaken by the zone’s “administrator,” Huntsville Foreign-Trade Zone Corporation (HFTZC), and has requested guidance as to whether those elements are permissible under the FTZ Board’s regulations. In particular, FTZ 83’s e-mail of August 1, 2014, requested that we further address BMEs # 1, 2, 3, 4, 6, 7, 8, 9, 10, 13 and 14¹ based on information contained in FTZ 83’s prior communications to the FTZ Board and staff.

Background: Public Utility Regulation Regarding Forced Use of Services

The FTZ Act (19 U.S.C. §§81a-81u) includes a requirement that each zone operate as a “public utility” and authorizes the FTZ Board to issue implementing regulations. During 2010-2012, the FTZ Board undertook its first rulemaking process since 1990-1991. In comments submitted for the 2010-2012 rulemaking process, the National Association of Foreign-Trade Zones (NAFTZ) – “a trade association of 650 members representing public and private organizations involved in the foreign-trade zones program... including zone grantees, operators and users”² – proposed a specific approach which it stated was intended “to ensure that Zone Participants are not forced to use or pay for the services of Administrators beyond reimbursement to the Grantee of expenses incurred for zone project administration requirements.”³ More than 40 additional parties supported NAFTZ’s proposed approach. Furthermore, the Board received a reply comment that “[s]ubzone operators should have choice in whom they select for a particular service and should not be forced... to pay for consulting or expert services as a condition of participating in a federal program... There is a real cost for these services and subzone operators should be free to select the expert consultant of their

¹ FTZ 83 has provided the following descriptions for the Business Model Elements in question: “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*). 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*). 13. Assist Grantee in developing Zone-related policies (no charge*). 14. Inform Grantee of regulatory requirements for Grantees and Operators (no charge*). *Denotes that this function continued to be performed during the several-year period when there was no Operator fee income.”

² NAFTZ Press Release, August 27, 2014, available at <http://www.naftz.org/wp-content/uploads/2014/08/NAFTZ-News-Release-Foreign-Trade-Zone-Activity-Reaches-Record-High.pdf>

³ NAFTZ comment submission regarding the FTZ Board’s proposed regulations, May 4, 2011, page 62.

choice and not be required to contract with a particular technical expert in order to be able to operate within a zone.”⁴

After considering the full range of comments submitted, the FTZ Board incorporated the above-referenced approach proposed by the NAFTAZ and supported by numerous other parties in adopting the current public utility regulation (15 CFR 400.42(a)) which states that “[a] rate or charge (fee) may be imposed on zone participants to recover costs incurred by or on behalf of the grantee for the performance of the grantee function” but that “zone participants shall not be required (either directly or indirectly) to utilize or pay for a particular provider’s zone-related products or services.” In the Preamble to the new FTZ regulations, the Board explained: “Any effective requirement for a user to pay for additional products or services in order to be permitted to use the zone would be inconsistent with the principles associated with the Act’s public utility requirement. This bar extends both to a direct requirement to procure a product or service and to an indirect requirement for such procurement...”⁵

Questions for Evaluating Functions Undertaken for Grantee

The FTZ Board’s regulation cited above implements the statutory public-utility requirement. Under that regulation, the following two sequential questions guide our analysis as to whether or not the grantee may charge zone participants for particular functions performed on the grantee’s behalf:

- 1) Are zone participants “required (either directly or indirectly) to utilize or pay” for the function?
- 2) If zone participants are “required (either directly or indirectly) to utilize or pay” for the function, does the function involve activities that constitute “a particular provider’s zone-related products or services?”

Application of Two Questions to BMEs Presented

Question # 1: Are zone participants “required (either directly or indirectly) to utilize or pay” for the activities of HFTZC under any of the BMEs at issue?

FTZ 83’s zone schedule (with an effective date of February 25, 2014) states that “[e]ach Operator of Foreign-Trade Zone No. 83 and its Subzones shall pay the Zone Project Administrator Operator fees as set forth in the table herein listed below.” The zone schedule lists a “start-up fee” of \$10,000 applicable to any operator in FTZ 83. For

⁴ Reply comment submission from Kelley, Drye and Warren, June 27, 2011, page 2.

⁵ Preamble, Foreign-Trade Zones in the United States, Final Rule, 77 FR 12112, 12128 (Feb. 28, 2012) (Preamble).

“manufacturing/production operators,” FTZ 83’s zone schedule also includes annual fees that range from \$20,000 to \$30,000 – depending on whether the operator is a primary manufacturer or a first or lower tier supplier. For “non-manufacturing/production operators,” FTZ 83’s zone schedule includes monthly fees of up to \$2,000.

In more recent communications with the FTZ Board staff, FTZ 83 has listed fourteen BMEs under the question, “What are the elements of the current business model?”. FTZ 83 states that twelve of those BMEs are at “no charge” to zone participants, with charges to zone participants for only the following two BMEs:

“7. Review of applications to activate with CBP (Start-up fee)”

“9. Reduce potential grantee liability (compliance reviews, 3-party Operator Agreements) (Operator fees).”

BME # 7 thus appears to require each operator to pay a start-up fee of \$10,000 for “Review of applications to activate with CBP”, and BME # 9 appears to require each operator to pay an annual fee of up to \$30,000 (“manufacturing/production”) or a monthly fee of up to \$2,000 (“non-manufacturing/production”) for two activities designed to “Reduce potential grantee liability” – *i.e.*, “compliance reviews” and “3-party Operator Agreements”.⁶ With regard to the other BMEs in question, FTZ 83 indicates that zone participants do not pay for activities under those elements.⁷ In addition, there is no

⁶ Specific to Business Model Element 9, FTZ 83 has characterized the goal of that element as to “reduce potential grantee liability.” To address grantees’ concerns about potential liability, the FTZ Board adopted in 2012 a new regulation (15 CFR 400.46 – “Grantee liability”) which articulates the “[e]xemption from liability” that applies to grantees unless a grantee “create[s] liability for itself that otherwise would not exist” by “undertak[ing] detailed operational oversight of or direction to zone participants.” Therefore, under 15 CFR 400.46, “compliance reviews” conducted on behalf of a grantee can only serve to create potential liability from which the grantee would otherwise have been exempt. It should also be noted that HFTZC’s role in the “3-party Operator Agreements” cited in Business Model Element 9 was addressed previously pursuant to 15 CFR 400.43(f) in the context of FTZ 83’s waiver request of September 27, 2013, and the FTZ Board’s approval of a waiver with certain conditions on May 30, 2014.

⁷ If FTZ 83’s statements that there is “no charge” for each of the other Business Model Elements at issue were to mean that there is no direct charge (*i.e.*, no separate payment required for each function) but that those Business Model Elements are funded indirectly through FTZ 83’s fees, then it would be necessary to assess whether activities of HFTZC under Business Model Elements 1, 2, 3, 4, 6, 8, 10, 13 and 14 constitute “a particular provider’s zone-related products or services” versus “the performance of the grantee function.” Based on the basic description provided by FTZ 83 for each Business Model Element, Business Model Elements 1, 2, 3 and 4 each appear to be a function whereby HFTZC provides a zone-related product or service that a range of consulting firms vie to provide to zone participants. In contrast, Business Model Elements 6, 8, 10, 13 and 14 each appear to involve – or to be closely tied to – “the performance of the grantee function” rather than constituting “a particular provider’s zone-related products or services” (of the sort that a range of providers offer to zone participants). In this context, FTZ 83 charging fees to recover costs (plus a reasonable return on investment, as applicable) for HFTZC to undertake Business Model Elements 6, 8, 10, 13 and 14 would not be inconsistent with the public utility regulation. (One caveat should be noted regarding Business Model Element 10: This element does not

information indicating that zone participants are otherwise “required” to “utilize” HFTZC for such activities.

Question # 2: Given that zone participants must pay for BMEs 7 and 9, do any of the activities of HFTZC under those BMEs constitute “a particular provider’s zone-related products or services?”

The sole activity listed for BME # 7 is “Review of applications to activate with CBP” while BME # 9 is listed as having two components: “compliance reviews” and “3-party Operator Agreements.”⁸ A review of marketing materials for various consulting firms indicates that “[r]eview of applications to activate with CBP” and “compliance reviews” are each a zone-related product or service of a type that multiple companies vie to provide to zone participants. For example, among sponsors listed in the program for the 2014 Annual Conference of the NAFTAZ, at least five firms offer these types of services based on the materials on their websites.⁹ Based on this, we conclude that BME # 7 (“Review of applications to activate with CBP”) and the “compliance reviews” component of BME # 9 constitute “a particular provider’s zone-related products or services.”¹⁰ The “3-party Operator Agreements” component of BME # 9, however, does not appear to be incompatible with the public utility requirement because operators’ agreements, in general, are encompassed in “the performance of the grantee function” rather than constituting “a particular provider’s zone-related products or services.”

appear to be inconsistent with the public utility regulation so long as “[r]espond[ing] to requests for information from existing and potential Zone participants” involves providing information of a general nature (rather than detailed, technical guidance of the type that would constitute a zone-related product/service that a range of providers offer to zone participants).

⁸ Based on the information provided to date by FTZ 83 and publicly available information about the FTZ program, “compliance reviews” appears to pertain to examination of FTZ operators’ records for compliance with CBP requirements (and, potentially, requirements of other agencies overseeing FTZ activity), while “review of applications to activate with CBP” appears to pertain to evaluation for conformity with CBP’s requirements of applications to be submitted to CBP requesting to “activate” designated FTZ space. Based on the “summary of remarks” of Richard A. Tucker, Executive Director of the grantee of FTZ 83, dated March 12, 2014, “3-party Operator Agreements” pertains to that fact that “[o]ur Operator Agreements are three-party agreements among the Grantee, Operator and Administrator [*i.e.*, HFTZC].”

⁹ The firms in question – in order as listed on the “sponsors” page of the conference program – are: Indigo Trade Solutions; Foreign-Trade Zone Corp. (which is related to HFTZC); Page-Fura P.C.; PointTrade Services, Inc.; and, Rockefeller Group Foreign-Trade Zone Services.

¹⁰ We note that FTZ 83 would be free to require each of its operators to undergo periodic compliance reviews. However, the public utility regulation would not permit FTZ 83 to require operators to use a particular provider for such reviews.

Conclusion

Based on the information and characterizations provided by FTZ 83, we conclude that, with the exception of BMEs # 7 and 9, the BMEs in question are not inconsistent with 15 CFR 400.42(a) because zone participants are not “required (either directly or indirectly) to utilize or pay” for the associated activities of HFTZC.

With regard to BMEs # 7 and 9, our analysis concludes that zone participants are required to “pay” for the associated activities of HFTZC. Further, the sole activity (“Review of applications to activate with CBP”) conducted under BME # 7 and the “compliance reviews” activity under BME # 9 involve “a particular provider’s zone-related products or services.” Therefore, pursuant to 15 CFR 400.42(a), FTZ 83 may not require zone participants to utilize or pay for those activities conducted by HFTZC (as currently required through the “start-up” fee and “operator” fees payable to HFTZC under FTZ 83’s zone schedule). On the other hand, FTZ 83’s conclusion of “3-party Operator Agreements” (under BME # 9) appears to constitute “performance of the grantee function” – rather than “a particular provider’s zone-related products or services” – and FTZ 83 may therefore recover associated costs through commensurate charges to zone participants for this function.

Andrew McGilvray

From: Elizabeth Whiteman
Sent: Friday, August 01, 2014 4:47 PM
To: Andrew McGilvray
Subject: FW: June 19th Meeting with Huntsville FTZ Board
Attachments: Attachment #1 - Sources of Information for Huntsville FTZ Business Model....pdf;
Attachment #2 - Cross-references for Huntsville FTZ Business Model Eleme....pdf

From: Rick Tucker [<mailto:Rick@hsvairport.org>]
Sent: Friday, August 01, 2014 4:37 PM
To: Elizabeth Whiteman
Cc: Camille Evans; 'Hanson, Alan (Shelby)'; 'Hines, Shannon (Appropriations)'; 'Rathburn, Kolo (Appropriations)'; 'Dunn, Jay (Shelby)'; 'Ronnie Flipppo'; 'Vicki Wallace (rgflipppo@erols.com)'; 'Greg Jones'
Subject: RE: June 19th Meeting with Huntsville FTZ Board

Hello Liz,

I have reviewed your letter of July 2, 2014 and its attachments. My delayed response is due to the fact that I have been out of the office most of July, including one trip out of the country and another to Washington, DC.

Thank you for the guidance on Business Model elements 5, 11 and 12. This guidance has already been of help to us as we have worked on business recruitment projects and the finalization of applications that will be coming your way in the near future.

While your correspondence seems to answer one question very clearly (i.e. the impossibility of providing the trade community with a full range of choices for Zone-related services under our three-party Operator Agreement), the last sentence of the first page of your "Attachment B" leaves me more than a little puzzled. You say that "further guidance on the remaining business model elements" will be "dependent on receiving additional clarifying information" from us.

I guess my fundamental question is, "What have we given you that is unclear?" It seems that the guidance you have given to us regarding Business Model Elements 5, 11, and 12 is based on an understanding that the services involved are not those that are set forth in any Operator Agreement with Zone participants.

With regard to Business Model Elements 1, 2, 3, 4, 6, 7, 8, 9, 10, 13 and 14, I have prepared two attached documents that I hope will help you to help us with the additional guidance that we are seeking.

The first attachment (Attachment #1 - Sources of Information for Huntsville FTZ Business Model) lists the materials I believe you already have, or have access to, that should contain information clearly describing the elements of our Business Model.

In the second attachment (Attachment #2 - Cross-references for Huntsville FTZ Business Model Elements and Questions related thereto), I have cross-referenced each Business Model Element with the document or documents you already have that should provide the information you say you need. Please let me know if this is insufficient. The second attachment also contains two additional questions that have come to mind.

I look forward to hearing from you at your earliest convenience.

Rick Tucker

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From: Elizabeth Whiteman [<mailto:Elizabeth.Whiteman@trade.gov>]
Sent: Wednesday, July 02, 2014 8:42 AM
To: "GregJones@ftzcorp.com" . GWIA-03. ITA-GWIA (GregJones@ftzcorp.com); Rick Tucker
Cc: Camille Evans
Subject: RE: June 19th Meeting with Huntsville FTZ Board

Greg and Rick,

Attached is the initial follow-up to the questions from the June 19 meeting.

If you would like to discuss, let me know.

Thanks,

Liz

Elizabeth Whiteman
Senior Analyst, U.S. Foreign-Trade Zones Board

Enforcement and Compliance
U.S. Department of Commerce | International Trade Administration
(202) 482-0473; Elizabeth.Whiteman@trade.gov
www.trade.gov/ftz

Attachment 1:

Sources of Information for Huntsville FTZ Business Model

Your letter of July 2 says that you need “a detailed description” of the Business Model Elements 1, 2, 3, 4, 6, 7, 8, 9, 10, 13 and 14 in order for you to provide guidance as to the consistency of each Element with the Board’s regulations. If my recollection serves me correctly, you brought a file to our meeting of June 19 that was more than 1 or 2 inches thick. I presume that the contents of that file consist of our previous correspondence between us and the FTZ Board/DOC.

I believe that the following documents in your possession should provide the clarifying information that you have indicated you need in order to provide guidance on the above-mentioned Business Model Elements:

- Our public comments (See my letter of May 25, 2011) on the proposed regulations, which include a comprehensive review of our FTZ business model, our history, access to information about the Airport Authority’s history, development, and organizational structure, and the context in which we provide the FTZ to the community.
- The extensive e-mail correspondence between myself and Andrew McGilvray (which commenced with a follow-up to our meeting with Andrew and Camille in late February, 2013). If so, it would contain the many questions that were based on what I thought was a pretty good description of our business model.
- The detailed follow-up information to our meeting with Secretaries Piquado and Skud, during which I laid out in some detail the various elements of our business model.
- Our waiver request – and more importantly – my letter of transmittal in which I laid out in great detail the thoroughness that went into the development of our FTZ Business Model.

With the volume of material that we have already provided to you, I am having trouble figuring out what we have not already shared with you.

Along with my comments and questions, Attachment #2 contains cross-references between each Business Model Element and the documentation that I believe you already have.

I hope this is helpful to you. Please let me know if I need to provide anything further.

Attachment 2:

Cross-references for Huntsville FTZ Business Model Elements and Questions related thereto

Below are my questions with regard to what needs to be further clarified for each Business Model element, along with a reference to the documentation that I believe you already have.

1. Cost-benefit analyses for potential Zone participants (no charge*)

I suppose I'm most confused about what you want in the way of further clarification when it comes to what we must do to clarify items like "cost-benefit analyses." (See Item 1 of the elements of the current business model.) Do we need to define "cost-benefit analysis?"

2. Inform potential Zone participants of Operational/security requirements (no charge*)

With regard to Item 2 of our current business model -- "Inform potential Zone participants of Operational/security requirements (no charge)" -- I think I mentioned in my "Summary of Remarks" made at the meeting of March 12, 2014 (which were sent to Andrew as an attachment in my e-mail of March 21) that we want our Administrator to be able to share with folks like Customs and prospective users (e.g. VF) information that will enable them to reach an understanding of what is compliant and operationally sound. (I hope you recall this from the March 12 meeting. I mention it in Section D of my Summary). I think I described the issues; although, if you like, please see the January 24 letter from CBP Port Director Dave Berry to VF (also included as an attached to my e-mail of March 21). I think that after our discussion of the matter, the term "Operational/security requirements" ought to be clear enough; or perhaps I misunderstand what needs to be clarified. I would think that the term "No charge" would also mean "without obligation" if the information is supplied to a "potential" Zone participant, but perhaps I am mistaken.

3. Review of potential Zone participants operations in the context of Board/trade policy (no charge*)

I would think that the same guiding principle would apply to Item 3 of our business model -- "Review potential Zone participants operations in the context of Board/trade policy (no charge)" -- but I cannot be sure. I think it would be obvious that it is a sound practice to notify a prospective Zone participant in a case in which its contemplated use of the FTZ program would run afoul of Board or trade policy. Is this what needs clarification? If so, I cannot imagine how offering such information without cost or obligation can be construed as forcing a prospective Zone participant to utilize or pay for a particular provider's zone-related products or services. Please help me if you can.

4. Review of potential Zone participants operations in the context of Operational/logistical considerations (no charge*)

With regard to Item 4 of our current business model -- "Review of potential Zone participants operations in the context of Operational/logistical considerations (no charge)" -- I believe the material provided at our March 12 meeting (See excerpt from CBP report on Mercedes-Benz operation) gives you an idea about the level of knowledge that is available; however, I'm not sure if that is what you want clarified.

Again I wonder if the nature of the information is of any relevance if it is given without cost or obligation. If so, I can't imagine how providing any sort of information without cost of obligation can possibly be construed as forcing a Zone participant to utilize or pay for a particular provider's zone-related products or services.

6. Coordinate with FTZB applicants and/or their service-providers (no charge*)

With regard to Item 6 of our current business model – “Coordinate with FTZB applicants and/or their service providers (no charge)” – I think you can look at e-mails with your office regarding the applications of Toray and VF. (The most recent would be Toray. You should be able to look at your ftz@trade.gov address and find representative examples of such coordination between February and March of 2013 and April and May of 2014.) I would hope this correspondence would make the description of this item clear enough.

7. Review of applications to activate with CBP (Start-up fee)

With regard to Item 7 of our current business model – “Review application to activate with CBP” – I believe that our waiver request of September 2013 makes it clear that this is a matter of due diligence. As I discussed in our March 12 meeting (and noted in Part B of my March 21 “Summary of Remarks”), this review is conducted to make sure that CBP’s minimum operational and recordkeeping requirements appear to have been met by the prospective user. Is any more clarification necessary? Does the issue concern the question of whether or not Zone Grantees are entitled to employ professional services to see that minimum standards are met without subsidizing that activity? Please help me understand what needs to be further clarified.

8. Coordinate with activation applicants and/or their service-providers (no charge)

With regard to Item 8 of our current business model – “Coordinate with activation applicants and/or their services providers (no charge)” – I would have thought that all of the information that we have provided (e.g. our meeting of March 12, my Summary of Remarks of March 21, the numerous e-mails between early March and early June regarding the VF situation, CBP Port Director’s letter of January 24 to VF) would have made it pretty clear what we try to do to help facilitate the process of activation by coordinating with activation applicants and their service providers. Please let me know what is still unclear.

9. Reduce potential grantee liability (compliance reviews, 3-party Operator Agreements)
(Operator fees)

With regard to Item 9 of our current business model – “Reduce potential grantee liability (compliance reviews, 3-party Operator Agreements) (Operator fees)” – I believe that all of this was thoroughly discussed in our March 12 meeting, spelled out clearly in our waiver request, and described in some detail in the excerpt from the CBP report on Mercedes-Benz. Please let me know what requires further clarification. As I noted in my e-mail, it appears that 3-party Operator Agreements must be abandoned. If there is some confusion about the concept of compliance reviews, please let me know.

10. Respond to requests for information from existing and potential Zone participants (no charge*)

With regard to Item 10 of our current business model – “Respond to requests for information from existing and potential Zone participants (no charge)” – I thought that we had thoroughly discussed this at our meeting of June 19 and had been told by you and your colleagues that this part of our business model is in compliance with the Board’s regulations. Must I further clarify the meaning of “respond” in the context of “requests for information?” Do I need to clarify what a “request for information” is? I must say that I’m at a loss to figure it out because we gave examples in our discussion during the meeting. At the conclusion of our last meeting, I thought this issue was resolved.

13. Assist Grantee in developing Zone-related policies (no charge*)

14. Inform Grantee of regulatory requirements for Grantees and Operators (no charge*)

With regard to Items 13 and 14 of our current business model – “Assist Grantee in developing Zone-related policies (no charge)” and “Inform Grantee of regulatory requirements for Grantees and Operators (no charge)” – I believe that all of the recent meetings and correspondence ought to give you a good idea as to the meaning of these two items. Please let me know if they do not, and if not, how these two items can possibly be construed as forcing Zone participants to utilize or pay for a particular provider's zone-related products or services.

(Further note for your clarification: “*” Denotes that this function continued to be performed during the several-year period when there was no Operator fee income.)

Finally, I must ask you to consider two more questions. As noted above in our most recent meeting, the conditions of our waiver approval make it impossible for our Zone project to continue to offer a full range of choice for Zone-related services and products to members of our trade community unless we abandon the three-party Operator Agreement structure. Given the discussion in the Executive Secretary’s recommendations to the Board in our waiver decision, it appears that the concern about so-called conflicts of interest pertain to future Zone participants. As we have discussed with you, the three-party Operator Agreement provides some protection to the Zone Operator that would not be present in a two-party Agreement between the Grantee and the Operator only. As I have noted in our meetings and correspondence, the Huntsville-Madison County Airport Authority is serious about offering choices to the public. Assuming that we adopt a two-party Operator Agreement (i.e. Grantee-Operator) for all future Zone participants, my questions are these:

1. Does our approved waiver enable us to offer existing Operators a choice between retaining their existing three-party Agreements or signing on to the new two-party Agreement and still meet the regulations’ requirement that the Huntsville FTZ Corporation does not perform a “key function” for our Grantee organization while it provides Zone-related services and products to existing and/or future FTZ 83 Zone participants?
2. If the answer to Question 1 is “Yes,” must we apply for another waiver within 5 years in order to continue to offer the same choice to any existing Operators who may opt to keep their existing three-party Agreement?

I look forward to hearing from you at your earliest convenience.