Mississippi Coast Foreign Trade Zone, Inc.

Hancock, Harrison & Jackson Counties

July 28, 2015

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

Re: Request for Waiver pursuant to 15 CFR 400.43(f)

I am writing to request a waiver that, if granted, will remove any potential regulatory questions regarding the full range of services provided by the FTZ No. 92 Zone project.

I understand that you have recently stated that third-party reviews of FTZ Operator compliance may constitute the "key function" of "Overseeing zone participants' operations on behalf of a grantee." While each of our Zone Operators is responsible for conducting and overseeing its own Zone operation, we believe it prudent to seek a waiver from your office in order to obviate any future questions that may arise concerning the ability of the Mississippi Coast Foreign-Trade Zone project and its Zone Project Administrator, the Foreign-Trade Zone Corporation, to provide a full range of Zone-related services to the trade community of southern Mississippi.

As a number of our past Annual Reports to your office indicate, the Mississippi Coast Foreign Trade Zone, Inc., Grantee of Foreign-Trade Zone No. 92, is a non-profit corporation organized under the laws of the State of Mississippi, whose Board members are appointed by five regional public agencies. These include the Gulfport-Biloxi Regional Airport Authority, Hancock Port and Harbor Commission, the Harrison County Development Commission, the Jackson County Port Authority, and the Mississippi State Port Authority. Our Board governs all matters relating to the Zone project. Since1995 our grantee organization has maintained a professional relationship with the Foreign-Trade Zone Corporation – first as a consultant, then as our Zone Project Administrator. This relationship has proved beneficial for our grantee organization and its volunteer Board Members, but for the trade community as well.

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One thing that you should be aware of is that our organization recruited the Foreign-Trade Zone Corporation. In the first decade of our Zone project's operations, two things became apparent to us: 1) In order to maximize the Zone project's economic impact, we needed to employ real expertise in guiding businesses through the processes necessary to successfully implement Zone procedures; and, 2) We needed someone with clearly evident responsibilities to the Grantee to engage existing Zone Users and local U.S. Customs officials to resolve conflicts, and to provide both groups with accurate information about regulatory and operational matters. With much patient and dedicated effort, the Foreign-Trade Zone Corporation succeeded in both of these tasks.

Zone-related activity within our Zone project continues to comprise a significant portion of Mississippi's manufacturing employment and output. Essential to the success of our Zone project has been the ability to provide the resources necessary for local and area companies to properly evaluate the Zones program and successfully implement it when the need exists. Additionally, relationships between Zone Operators and local Customs officials have advanced to a state of informed compliance and user friendliness.

Even though our Zone project involves the services of a Zone Project Administrator that may also serve as a consultant and FTZ software provider to Zone Operators and users, the growth and health of our Zone project, along with its "open door" policy with regard to our Operators' ability to choose their own service providers, has created a number of opportunities for service providers and software vendors who have conducted Zone-related work for companies that use our Zone project. These include some names that will be familiar to you: Ernst & Young, Hogan & Hartson, Integration Point, and Miller & Company.

With regard to the needs of our Zone participants and Operators, we believe that our Zone Project Administrator has been judicious in distinguishing between consulting work and Zone project management. In late 1997, when Friede Goldman Offshore discovered that it had a significant tariff problem it had not anticipated, the Foreign-Trade Zone Corporation served as an important local source of expertise in a consulting role in coordinating with local Customs and the Grantee in crafting two interdependent solutions that met the extraordinarily time-sensitive needs of the company. Some years later Ingalls Shipbuilding, Operator of Subzone 92-B, expressed an interest in automating its FTZ inventory Control and Recordkeeping System. Even though it offers SmartZone, an automated FTZ Management system, the Foreign-Trade Zone Corporation provided important information and feedback to Ingalls as the company implemented its preferred solution of enhancing its own in-house systems. The Foreign-Trade Zone Corporation provided its expertise as part of its Zone project management duties, and, in accordance with its business relationship with the Mississippi Coast Foreign Trade Zone, Inc., did so at no charge to Ingalls or to our grantee organization.

When one of our Zone Operators who had been a participant in a U.S. Customs pilot program aimed at expanded FTZ Weekly Entry procedures stood to lose those privileges because of a change in policy by Customs Headquarters, the Foreign-Trade Zone Corporation in its role as Zone Project Administrator worked with our grantee organization and other organizations in fixing the problem. As you may know, the solution came in the form of a provision within the Trade and Development Act of 2000, which secured the use of FTZ Weekly Entry procedures for all types of Zone users around the country. During the two-year effort that led to the change in law, our Zone Project Administrator was tasked with interaction and coordination with a number of pertinent parties. These included the U.S. Treasury Office of Trade Enforcement, the Senate Majority Leader and his Legislative staff, the senior staff members of the Senate Finance Committee, and the Congressional Budget Office. All of the work performed by the Foreign-Trade Zone Corporation was done at no cost to anyone.

I hope the information I've related gives you a deeper understanding of the degree to which our Zone Project Administrator has been integrated into our efforts at facilitating the use of the Foreign-Trade Zones program by businesses on the Mississippi Gulf Coast. I want you to also know the importance of our ability to bring to bear a complete range of Zone-related services from which members of our trade community may choose. In granting our waiver request your office would assure that our ability to do so would be unimpeded and unquestioned . Accordingly, I ask for your permanent, unconditional approval of this waiver request. Given that 15 CFR 400.42 in and of itself protects Zone project participants from being forced to use any particular service provider for other Zone-related services, I see no impediment to your permanent, unconditional approval of this waiver request.

Should you have any questions about the information that I have provided in this letter, please feel free to contact or the attached d waiver application, please contact our Legal Counsel, Mr. Rick Tubertini, at (228) 896-1144.

Sincerely,

Travis Lott, Jr.
President

Copies to: Hon. Thad Cochran
Hon. Roger Wicker

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 Mississippi Coast Foreign Trade Zone, Inc. on behalf of 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. 92, located in Hancock, Harrison, and Jackson Counties, Mississippi. The grantee of the Zone project is the Mississippi Coast Foreign Trade Zone, Inc. a non-profit corporation, organized under the laws of the State of Mississippi, whose Board members are appointed by various public agencies.

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.

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.

No.

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/Yes, depending upon whom one asks. We are convinced that any request we make of our Zone Project Administrator to review the compliance of prospective or existing Zone Operators would not constitute "overseeing" zone participants' operations on our behalf; however, the Executive Secretary of the Board has indicated in recent public statements that he believes the act of reviewing zone participants operations on our behalf in order to confirm or review Customs compliance may constitute the performance of a "key function" under the Board's regulations. Accordingly, we are asking for a waiver so that spot checks or compliance reviews can be performed by a professional organization of our choosing, even if that organization has provided Zone-related services or products within the previous 12 months to Zone participants of FTZ No. 92.

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 Foreign-Trade Zone Corporation has, from time to time provided Zone-related services to Zone participants. The 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 Zone-related 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

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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.

Foreign-Trade Zone Corporation derives income from providing consulting and software services to participants within the FTZ No. 92 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 Foreign-Trade Zone Corporation. With regard to its services as the Zone Project Administrator, those remain the same whether or not the Foreign-Trade Zone Corporation has any clients from among the population of FTZ No. 92 Zone participants. Accordingly, the 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 Foreign-Trade Corporation and the Grantee, the Foreign-Trade Zone Corporation's income is dependent on its success in seeing that members of the Mississippi coast trade community successfully utilize Zone procedures. The Foreign-Trade Zone Corporation's income from its consulting and software product is entirely dependent on it success in seeing that members of the U.S. trade community successfully utilize Zone procedures, regardless of which Zone project sponsors their participation. With regard to the Mississippi Coast Foreign-Trade Zone project, the offer of a complete set of services and products by a firm that also has a responsibility to local and regional public entities is seen as an asset. At the same time, individual Zone participants are free to use Zone-related services and products from whomever they may choose.

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 Foreign-Trade Corporation Zone does stand to gain when it provides consulting or software services to Zone participants of FTZ No. 92. The Foreign-Trade Zone Corporation stands to gain in exactly the same manner as it does when it provides similar services to participants of other Zone projects in which it has no contractual relationship with the Zone grantee. 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 who 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.

No. 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. Neither the Foreign-Trade Zone Corporation nor its shareholders have any relationship or stake of ownership to any person or firm that provides Zone-related products or services, or representation of, Zone participants within FTZ No. 92.

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

It is understood by the Mississippi Coast Foreign Trade Zone, Inc. that the purpose of the provisions of 15 CFR 400.43 is to ensure that no "key functions" are performed by a third party who may have any control over the access of Zone participants to the use of Zone procedures, except as permitted under a waiver issued by the Foreign-Trade Zones Board, if the third party also provides Zone-related products/services to participants of that Zone project. The Mississippi Coast Foreign Trade Zone, Inc. requires through its Operator Agreement with each Zone Operator that the Operator agrees to operate its Zone or subzone site in accordance with the terms and conditions of Operator Agreement, the effective Zone Schedule, and any applicable standards of operation, rules or regulations which may exist, or which may in the future be instituted or amended by the Grantee, U.S. Customs and Border Protection, the Foreign-Trade Zones Board, or any other federal, state or local authority with jurisdiction over Foreign-Trade Zone operations. Each Zone Operator also agrees to provide the right of entry to its Zone or subzone site to the Grantee, the U.S. Customs Service, the Foreign-Trade Zones Board, and any other federal, state or local authority of competent jurisdiction, and their authorized agents or representatives. This right may be exercised at all reasonable times and upon reasonable advanced notice, to ensure that all activities conform to the operating standards set forth in the Zone Schedule and the requirements of the Operator Agreement. Any such entry is limited to normal working hours and is made in accordance with the established security procedures of Operator. As the Zone Grantee, the Mississippi Coast Foreign Trade Zone, Inc. has <u>sole</u> discretion in determining who its representative or representatives may be in interacting with Zone Operators in assessing the Operator's compliance with the terms of its Operator Agreement with the Grantee and the requirements of all applicable federal, state, and local authorities – including the discretion to designate representatives of the Foreign-Trade Zone Corporation to enter the Zone site and review Operator conformance. The Foreign-Trade Zone Corporation is not a party to the Operator Agreement, and accordingly, has no authority to enforce any provision of the Operator Agreement. The Zone Grantee is the <u>sole</u> authority who controls Zone participants' access to the FTZ No. 92 Zone project.

Please note that this request is for a permanent, unconditional waiver that would allow the Foreign-Trade Zone Corporation to conduct compliance reviews on behalf of the Grantee, and also offer other Zone-related services and products, including FTZ software, to Zone participants of the FTZ No. 92 Zone project.