

Unofficial Summary of Key Provisions in Revised FTZ Board Regulations

The summary below – covering key changes in the FTZ Board’s revised regulations – is provided as a courtesy to assist parties in their review of the regulations. Note that this summary relies primarily on abbreviated language, rather than verbatim quotes from regulatory text. The actual text of the regulations and Preamble is definitive and should be relied upon for any question regarding the operation of the regulations.

Definitions

- Definition of “production” (section 400.2(o)) substantively combines the 1991 regulations’ definitions of “manufacturing” and “processing.”
- Added definition of “activation limit” (400.2(b)). (This term is used for the procedure to designate a subzone via “minor boundary modification” (400.24(c)), for example.)
- Other definitions added for “alternative site framework (ASF)” (400.2(c)), “Board Order” (400.2(e)), “magnet site” (400.2(j)), “modification” (400.2(k)), “service area” (400.2(q)), “usage-driven site” (400.2(t)), and “zone plan” (400.2(y)) (replacing “zone project”). Definition of “zone site” (400.2(z)) incorporates proposed term “site.” Proposed definitions of “agent” and “Port Director” removed.

Production Activity

- Authorization from FTZ Board required before any production activity may begin (400.14(a)).
- New standard “notification” process for all proposed production (400.37).
- Notification to FTZ Board lists components and finished products for which production authority is requested, and indicates whether any of the components are subject to a trade proceeding (e.g., AD/CVD proceeding or order) (400.22).
- Standard 40-day public comment period for all submitted notifications (400.37(b)).
- Based on FTZ Staff’s evaluation of notification (taking into account factors like comments received, input from industry specialists within government), FTZ Board members determine whether to allow proposed activity. 120-day timeframe for Board decision (from time complete notification received by Board) (400.37(c)).
- FTZ Board’s Executive Secretary may allow start of production activity on interim basis during Board’s evaluation of submitted notification (except for component(s) subject to AD/CVD order/proceeding) (400.37(d)).

- In considering submitted notification, FTZ Board members may determine that more extensive “application” is required for Board to evaluate proposed activity (400.37(c)).
- Similar detailed requirements as prior regulations for application contents (400.23).
- Application process substantively parallels the prior regulations (sections 400.31, 32, 34 and 36 cover the stages of the process): Same ordinary 12-month processing time (400.31(a)) and 60-day comment period (400.32(c)(2)).
- Production operation’s scope of authority = approved production inputs and finished products. Capacity eliminated as ordinary element of production scope. (400.14(b))
- FTZ Board will make available on its website information about components and finished products listed in approved notifications and applications (400.14(c)).

Subzone-Designation Procedures

- Complete separation of processes for subzone designation for a physical location and approval for production activity at that location.
- Dramatically simplified application requirements for subzone designation (400.25) – largely parallel requirements for minor boundary modifications (MBMs).
- Standard 40-day public comment period on subzone applications (400.32(c)(2)).
- Subzone applications evaluated under same standard as general-purpose applications (demonstration of need) (400.26).
- Ordinary five-month timeframe to process subzone applications (400.31(a)).
- Authority delegated to Executive Secretary to approve a subzone if it will be subject to the sponsoring zone’s Board-established activation limit (400.36(f)). Three-month timeframe to process subzone applications under delegated authority (400.31(a)).
- Within ASF service area, MBM procedures may be used to designate subzones in place of usage-driven sites (if needed to better serve companies’ needs) (400.24(c)).

Application Requirements, Processing, and Review Standards

- Provision for Executive Secretary to incorporate regulations’ requirements into application guidelines/forms to be published in the *Federal Register* (400.21(b)).
- Submission of a “legal description” no longer ordinarily required for proposed FTZ sites (400.21(d)(2)(i)).

- Burden of proof standards for all applications, comments submitted, requests to extend comment periods and responses to comments submitted (400.28).
- Pre-docketing submission of a single copy of an application. Final version of application to be submitted after pre-docketing copy has been determined to be sufficient (400.32(a)) with one additional hard copy plus electronic copy (400.21(i)).
- Provisions for preliminary “recommendations” of case examiner, and for public comment to be invited on such recommendations when warranted. (400.33(e)(1) for non-production applications; 400.34(a)(5)(iv)(A) for production applications).
- Provision for termination of application review in certain circumstances (400.36(g)). Assistant Secretary for Import Administration can terminate review if Board cannot reach unanimous decision. Executive Secretary can terminate review if overall circumstances presented in application no longer exist due to material change.

Public Utility

- Provisions stemming from FTZ Act's requirement that each zone be operated as a “public utility.” Fees may be imposed on zone participants by (or for) grantees to recover costs, with any such fee to be directly related to the service provided by the grantee. Fees may incorporate a reasonable return on investment, but may not be tied to the level of benefits derived by zone participants. (400.42(a)).
- Two-year delayed compliance date (400.42(b)).

Uniform Treatment

- Provisions to ensure that a grantee affords all zone participants uniform treatment, as required by the FTZ Act (400.43).
- Agreements with zone participants by (or for) grantee must be in writing (400.43(a)).
- Requires uniform treatment in evaluation of proposals by (or for) grantee. Grantee not required to accept all proposals, but bases for grantee's decisions on proposals must be consistent with uniform treatment requirement. (400.43(b)).
- Upon request from FTZ Board's Executive Secretary, requires a grantee to provide justification for differing treatment of zone participants (400.43(c)).
- “Avoidance of non-uniform treatment” (400.43(d)): In a given zone, a person that falls into key categories cannot ordinarily perform key grantee-related functions.

- Key categories = Person who within last year has engaged in offering/providing zone-related product/service to (or representing) a zone participant in the grantee's zone. Extends to other persons who would gain or who are related. (400.43(d)(2))
- Key functions = taking action for (or making recommendations to) grantee regarding disposition of applications for FTZ authority/activity; approving (or being a party to) agreements with (or for) grantee pertaining to FTZ authority/activity; and overseeing zone participants' operations on behalf of grantee. (400.43(d)(1))
- Section 400.43(f) allows for grantee or affected person to apply to the FTZ Board for waiver from ordinary effect of section 400.43(d).
- Allows for party to submit request to Executive Secretary for determination on arrangement's consistency with requirements of uniform treatment section (400.43(g)).
- Allows FTZ Board to require grantee to identify any person undertaking a zone-related function on grantee's behalf (400.43(h)).
- For existing arrangements, two-year delayed compliance date (400.43(i)).

Zone Schedule

- Must include zone's internal rules/policies plus fees charged by (or for) grantee. Operator's info. and fees (for zone-specific services) in zone schedule only if operator has agreement with grantee to offer services to the public. (400.44(b)).
- Zone may not apply fees or other provisions that were not included in the most recent zone schedule submitted to the FTZ Board (400.44(d)).
- Grantee must make zone schedule freely available to public, and zone schedules will be available on the FTZ Board's internet site (400.44(e)).
- Two-year delayed compliance date (400.44(f)).

Complaints Related to Public Utility and Uniform Treatment

- Allows complaints (incl. confidential) about alleged public utility or uniform treatment violations; no requiring zone participants to disclose confidential complaints (400.45(a)). Preamble: FTZ Board does not intend to penalize on basis of confidential complaints without disclosing contents, but such complaint(s) may spur examination of a zone(s).

Retail Trade

- Authorizes Executive Secretary to make retail-trade determinations (with CBP input). Under prior regulations, CBP made determinations with Exec. Sec. input. (400.47)

Grantee Liability

- Exemption from liability: Grant of authority, *per se*, does not make grantee liable for violations by operators. (400.46(a))
- Exception to exemption from liability: Limitation on liability may not apply to grantee that undertakes detailed oversight/direction of operators/users. (400.46(b))

Annual Reports

- Sets deadline for grantees' reports, requires operators to timely submit info. to grantees, and allows for Executive Secretary to approve time extensions (400.51(c)).

Business Proprietary Information

- Enhanced instructions on the submission of business proprietary information (400.54(c)).

Fines, Penalties and Instructions to Suspend Activated Status

- Fines limited to late annual reports (with operator – not grantee – subject to fine if operator is at fault) and uniform treatment-related violations (400.62(a)-(c)).
- Provisions delineating fining procedures (400.62(d), 400.62(f)-(g)) and allowing mitigation of fines (400.62(e)).
- Potential suspension of activated status for repeated and willful failure to comply with FTZ Act, regulations or restriction/prohibition imposed by FTZ Board (400.62(h)).

Prior Disclosure

- Final rule eliminates proposed “prior disclosure” provision based on narrowed focus of fining provision (400.62(a)-(c)).

Production Equipment

- Provision on production equipment reflects statutory provision enacted in 1996 (400.15).

State/Local Personal Property Taxes

- Provision pertaining to statutory exemption of certain merchandise from state and local *ad valorem* personal property taxes (400.16). In response to comments, adopted provision mirrors statute *verbatim*.