



STAFF REPORT

Proposal for Optional Alternative Site-
Designation and Management Framework

December 2008

EXECUTIVE SUMMARY

The statutory goal of the FTZ program -- “to expedite and encourage foreign commerce” -- has led the FTZ Board to focus consistently on meeting the real-world needs of grantees and the business community. However, real-world needs related to the designation of FTZ space often involve timeframes that are incompatible with any process for full FTZ Board action. Therefore, the Board has authorized staff-level action for “minor [zone] boundary modifications” (MBMs).

As the pace of business has accelerated, grantees have increasingly relied on MBM actions to respond to time-sensitive needs for new FTZ sites. However, simultaneous with the increased demand for MBMs has been a proliferation of FTZ sites largely driven by property owners’ interest in FTZ status for their properties (with grantees agreeing to propose numerous sites because they cannot foresee which sites will be used for FTZ activity). As a result, the FTZ Board and the U.S. Customs and Border Protection (CBP) offices with oversight responsibilities cannot accurately project the resources needed for future oversight of potential FTZ activity.

The factors cited above -- as well as burdens on grantees and on the FTZ Board related to the current MBM practice -- have led the FTZ Staff to develop a variation on the current approach to site designation and management. Through a lengthy consultative and public-comment process, including meetings with grantees and discussions with CBP port personnel, the FTZ Staff has developed a proposal for an “alternative site framework” (ASF). The proposal gives equal weight to increasing flexibility for grantees and businesses and to addressing oversight concerns by focusing FTZ designation primarily on sites where FTZ activity actually occurs.

In essence, the ASF proposal simply modifies existing practice by allowing MBMs that draw on unallotted acreage from a standard 2,000-acre activation limit for an individual FTZ. The Board already applies that limit to FTZs which have presented sites that, cumulatively, include more than 2,000 acres within their boundaries. The ASF proposal makes the MBM practice far more predictable and flexible by building into the “plan” adopted for a participating grantee the ability to designate one category of new sites through MBM action (as long as acreage from the 2,000-acre activation limit is available to be allotted). However, the ASF proposal’s increased flexibility for grantees is tied to several limitations and guidelines that will increase FTZs’ focus on active sites. As with current practice, no proposal to add or modify a FTZ site will be approved unless the appropriate CBP Port Director has concurred on the proposal.

The FTZ Staff proposes for the Board to make the ASF available only on an optional basis because, among the several hundred FTZs approved by the Board, there is a broad variation of approaches taken by the grantees. A certain number of grantees pursue the most traditional approach to site management, which is essentially focused on drawing users/operators (collectively “users”) to a very limited number of FTZ sites (as opposed to seeking to serve new needs at new locations). Both static and dynamic frameworks for site management can coexist provided that grantees have the proper information and tools to manage their zone projects effectively. Experience with administering the proposed ASF can help gauge the extent to which its elements could be appropriate to incorporate into future regulations.

The ASF proposal can be summarized as follows:

The ASF involves a change in FTZ Board practice that will allow the grantee to propose sites (subject to the grantee's standard 2,000-acre activation limit) within a defined service area. The 2,000-acre limit would be specifically apportioned among approved sites -- for example, authority to activate 200 acres within a 900-acre industrial park site. Unapportioned acreage from the overall activation limit would remain in reserve for future sites.

Under the ASF, a grantee would propose in an application to the FTZ Board:

- 1) Its service area (typically a list of counties); and,
- 2) "Magnet" site(s) -- a magnet site is a site intended to draw future users (as opposed to a "usage-driven site" that is designated to meet a specific user's need). The grantee would indicate the boundaries of any magnet site and the amount of the 2,000-acre activation limit to be apportioned to the site.

Grantees will have the increased flexibility to propose as a usage-driven site any site within the service area that accommodates a specific user's need. Usage-driven sites could be designated by simple "minor boundary modification" (MBM) actions by the FTZ Staff. This contrasts with the limited MBM flexibility available under the FTZ Board's current practice, which involves comparing each MBM -- both individually and cumulatively with prior MBMs -- to the locations and characteristics of the requesting grantee's already approved zone sites.

With the allowable exception of one magnet site, magnet and usage-driven sites designated under the ASF would be subject to "sunset" time limits that would automatically remove the FTZ designation if no FTZ activity had occurred within a specified period. To limit property speculation, the ASF would also have a general goal of six or fewer "magnet" sites per grantee. Proliferation of sites increases the cost to the government to oversee the FTZ program, and the FTZ Act proscribes the sale of FTZ-designated property for more than its fair market value would be without FTZ designation. The ASF is designed to reduce speculative sites while providing significantly improved access to the program for actual zone users.

Because many zones currently have more than six magnet-style sites, the ASF provides for a "transitional phase" that would allow a grantee to designate any number of existing sites as magnet sites for an initial five-year period. At the end of the five years, the activity-based "sunset" tests described above generally would automatically remove FTZ designation from unused sites. The result would generally be a zone with six or fewer magnet sites, and the sunset mechanism would be neutral and equitable for all affected parties.

Finally, for each zone that participates in the ASF, the FTZ staff would provide reports to the Board on a defined, periodic basis.

INTRODUCTION

Based on a broad and extended consultative process, the FTZ Staff has developed a proposal for the FTZ Board to make available to grantees -- on an optional basis -- an Alternative Site-Designation and Management Framework (Alternative Site Framework, or ASF). The key goals in developing the ASF were to give grantees significant additional flexibility and predictability in site designation while, for the benefit of the FTZ Board and CBP oversight and resource allocation, increasing the focus of the program on sites where FTZ activity actually occurs. After a year of consultations with grantees and CBP port personnel, the FTZ Staff published a detailed proposal for public comment in May 2008 and, based on the comments received in response, published a significantly revised proposal for public comment in September 2008. After receiving and considering comments on the revised proposal, the staff now proposes to the FTZ Board the formal adoption of the final version of the ASF as an option for grantees.

NEED FOR PROPOSAL

At the broadest level, an updated approach to site designation and management is needed to better meet the needs of U.S. facilities for which FTZ procedures can be a key contributing factor to competing successfully with companies and facilities overseas. Grantees also are burdened excessively by limitations associated with the FTZ Board's current practice. Of equal importance, the FTZ Board and CBP face excessive oversight-related burdens (or uncertainties) and other issues stemming from the shortcomings that have become apparent in the Board's current practice.

As the number of zones, the level of international trade, and the pace of business decision-making have all increased, the number of MBM requests has increased as well.¹ For some active grantees, MBMs have become the primary mechanism to successfully meet newly emerging needs for FTZ space. However, the increased use of MBMs has highlighted several weaknesses in the structure of the FTZ Board's regulations and practice. In particular, the documentation burden associated with each MBM effectively doubles due to the requirement for a grantee to "swap" acreage.² Specifically, in addition to documenting the boundaries of the newly proposed FTZ site/parcel, the grantee must precisely indicate the source of the acreage to be swapped from one (or more) of the grantee's existing sites. The document review burden for the FTZ Staff and CBP is commensurately higher as well.

1 The growth in the use of the MBM procedure is reflected in data from the FTZ Board's Annual Reports to Congress. For FY 1985 – the first year for which administrative actions were included in an Annual Report to Congress – the FTZ Staff approved 16 MBMs (versus 39 Board Orders issued during the year). For comparison, during FY 2008, the FTZ Staff approved 69 MBMs (versus 61 Board Orders issued during the year).

2 The swapping of acreage from an approved FTZ site to a proposed FTZ site originated as a means of ensuring compliance with the language, "Any expansion of the area of an established zone shall be made and approved in the same manner as an original application," from section 81f(b) of the FTZ Act. The swapping practice has also helped to ensure that a modification is "minor" relative to the standard in section 400.26 (a)(2)(ii) of the Board's regulations that require the Executive Secretary to consider the extent to which a proposed modification would "[e]xpand the physical dimensions of the approved zone area as related to the scope of operations envisioned in the original plan."

The documentation-related burdens and complexity associated with MBMs are further increased by two distinct practices: 1) temporary approval of a site via MBM, with the site later approved by the FTZ Board in a formal expansion, after which the amount of acreage originally swapped out of a donor site reverts to that site; and 2) permanent approval of a site via MBM in a context where the grantee believes that it subsequently needs to restore the amount of swapped acreage to the donor site and accomplishes that restoration through a subsequent expansion application to the FTZ Board. This type of disappearance and reappearance of designated acreage at sites poses significant record-keeping challenges for grantee and for the FTZ Board and CBP. However, although temporary or permanent swapping of acreage creates significant burden for FTZ grantees, the FTZ Staff, and CBP (both at the initial MBM request stage and later as the status of specific acreage is tracked), the swapping of acreage for MBMs is a key mechanism under the Board's current practice for easily ensuring compliance with the statutory and regulatory requirements cited above (from section 81f(b) of the FTZ Act and section 400.26(a)(2)(ii) of the Board's regulations).

Finally, grantees' accomplishment of their economic development goals is placed at risk due to the lack of bright-line standards for determining whether a MBM request -- on its own or cumulative with other MBM requests by the same grantee -- will be consistent with the "plan" approved for the zone by the FTZ Board. In this context, a grantee faces real uncertainty on whether a commitment can be made to a potential FTZ user regarding the feasibility of rapid FTZ designation through a MBM. Further, grantees have expressed considerable frustration at the lack of predictability associated with the vague standards for approval (or denial) of MBM requests. Certain active grantees have found themselves hamstrung in attempting to respond quickly to new needs for FTZ designation and instead finding that the FTZ Staff has determined that the cumulative effect of a grantee's MBMs to date require a reorganization application to the FTZ Board before additional MBMs can be considered. However, the broad range of types and structures of FTZs have made it problematic for the FTZ Staff to try to establish bright-line standards to apply across all zones.

The issues delineated above that relate to the FTZ Board's current MBM practice contribute to a broader need for a new approach to the designation and management of FTZ sites. Inflexibility and burden associated with the current practice not only hamstring grantees in their efforts to respond to time-sensitive needs but also contribute to the accumulation of too many unused FTZ sites. Difficulties or uncertainties associated with MBM requests can lead grantees to embrace proposing FTZ designation for larger numbers of speculative sites on the basis that the larger number of sites designated the more likely that an eventual interested user will happen to be located within one of them. At least as significantly, the requirement to swap acreage when a MBM is needed encourages grantees to retain unused sites (or portions of sites) as "fodder" for future MBMs -- an unofficial practice known as "land-banking."

A pattern has developed at many zones of an increasingly looser connection between FTZ designation at sites and actual FTZ activity at those sites. A key contributing factor appears to be property owners' and developers' interest in FTZ designation as a marketing tool. That interest has become widespread but, in many instances, does not appear to have led to larger

numbers of firms actually using FTZ procedures. Further, despite multiple new FTZ sites having been approved in recent years based on the grantees' expressed need for the additional space to draw new FTZ users, the same grantees often have subsequently submitted MBM requests to move FTZ designation to additional locations where potential FTZ users have actually turned up. This overall pattern of increased speculative site designation failing to diminish grantees' needs for MBM actions in order to meet the needs of actual zone users is indicative of a need for an updated model for site designation and management. Beyond the inefficiencies for grantees in meeting users' needs and the direct problems posed for the FTZ Board and CBP by the accumulation of unused FTZ sites, a general perception problem can exist for the FTZ program if a gap continues to grow between approved FTZ space and actual zone activity within that space.

DEVELOPMENT OF PROPOSAL

The FTZ Staff's effort to address the challenges posed by the FTZ Board's current site designation and management practice began with a series of meetings with various different grantees to understand their real-world needs. The Staff explored with grantees their experiences -- and degrees of success -- with attempting to attract potential users to existing FTZ sites versus moving FTZ designation to a potential user's existing non-FTZ location. Many grantees indicated that attempting to pre-designate FTZ sites and then attract users was a problematic model, in general, because many companies have existing locations and the costs or difficulties associated with moving would outweigh the benefits.

In examining the pros and cons of the FTZ Board's current site-designation and management practice, the FTZ Staff also became increasingly mindful of the challenges faced by the FTZ Board and CBP in administering and overseeing the program. In particular, an inherent concern regarding the number of speculative FTZ sites is that all such sites theoretically have potential for future multi-user activity (although experience has shown that relatively little of that potential activity is likely to occur). However, the resource implications of a proposed site for an agency like CBP, in particular, cannot be fully examined without an ability to identify the specific user(s) of a site -- something that is inherently impossible when a site is proposed on a speculative basis.³ In this context, it became apparent that the oversight agencies' interest in better targeting of FTZ designations to actual users was solidly in sync with many grantees' interest in pursuing designation for specific identified users, provided such designation could be accomplished in a simple, rapid fashion.

Subsequently, the FTZ Staff developed a specific proposal to make available -- as an option for grantees -- a more flexible and more focused approach to MBMs and to site designation. The proposal was published on May 8, 2008 (73 FR 26077-26078 -- see Appendix 4), with public comment invited through July 7, 2008. Based on the comments received from a number of

³ CBP Port Directors have specifically indicated to the FTZ Staff their difficulties in assessing future oversight-related resource demands for proposed sites which have no reliably identified users (often because the sites as yet have no tenants).

parties -- including the National Association of Foreign-Trade Zones (NAFTZ) -- the FTZ Staff made major modifications to the proposal.

The FTZ Staff published a revised proposal on September 11, 2008 (73 FR 52817-52822 -- see Appendix 5), with public comment invited through October 31, 2008. The few comments received on the revised proposal are summarized in Appendix 6. As explained in the Discussion of Elements of Final Proposal section, the final proposal summarized below incorporates changes based on certain of the comments.

SUMMARY OF FINAL PROPOSAL

Below is a summary of the final staff proposal for the ASF, which takes into account the public comments received on both the initial proposal and the revised proposal. (The final proposal is presented in full at Appendix 1 and the elements of the final proposal are discussed at length in Appendix 2.) The only substantive changes relative to the revised proposal published in September 2008 are a three-year sunset period for usage-driven sites (rather than five years) and allowance for each grantee to have the option of proposing permanent FTZ designation for one magnet site. A grantee could opt to participate in the ASF by incorporating the framework's elements into an application⁴ for FTZ Board action to reorganize the FTZ and adopt a new ASF-consistent "plan" for the FTZ.

The basic elements of the final ASF proposal would apply to each participating grantee as follows:

- 1) A standard 2,000-acre activation limit -- mirroring existing practice for large FTZs -- to be allotted among designated sites and acreage left in "reserve."
- 2) Allowance for site-specific activation limits -- again mirroring existing practice -- that will enhance the flexibility in allotting the overall 2,000-acre limit. (For example, a grantee could request to be able to activate up to 100 acres within the boundaries of a FTZ-designated 700-acre port facility.)
- 3) The "service area" (*e.g.*, a list of counties) within which the grantee intends to be able to propose FTZ sites under the ASF. This general concept already exists in certain approved FTZ applications. Any proposed service area would need to meet the "adjacency" requirement of the FTZ Board's regulations (60 miles/90 minutes driving time from CBP Port of Entry boundaries), state enabling legislation and the grantee organization's charter.

4 The FTZ Staff would provide specific guidelines to assist grantees in drafting such an application.

4) Designation through FTZ Board action of “magnet” sites intended to attract multiple FTZ users (as with traditional general-purpose FTZ sites). For each grantee, the initial goal would be a maximum of six magnet sites.⁵

5) Designation through either FTZ Board action or FTZ Staff administrative action (the existing MBM procedure) of “usage-driven” sites targeted to individual companies that are not located in a magnet site but which are ready to use FTZ procedures.

6) Concurrence from the CBP Port Director would continue to be required for any proposed designation of a site.

7) Continuing recent FTZ Board practice, “sunset” time limits self-remove FTZ designation from sites not used for FTZ purposes before a site’s sunset date. Magnet sites would generally have five-year sunset periods while usage-driven sites would have three-year sunset periods. FTZ use at a site during a given period would simply push back the sunset date (by another five years for magnet sites or three years for usage-driven sites); we have termed this “resetting.”

8) The FTZ Staff would carefully number and track both magnet and usage-driven sites based on a system that the Staff will develop in time for the ASF’s actual implementation. Information regarding each designated site and its status will be made available via the web, to the particular benefit of actual or potential users.

9) Periodic reports from the FTZ Staff to the FTZ Board on the effects of the ASF on individual participating FTZs. The FTZ Staff would submit a first report to the Board after no more than five years of a grantee’s participation in the ASF or ten usage-driven site-designation MBM actions for the grantee (whichever comes first). The reporting would result from FTZ Staff-initiated reviews, and would not require any request or application from the grantee.

Finally, in response to the initial proposal, grantees requested allowance for a transitional phase that could ease an existing zone’s transition to the new framework by enabling continued FTZ designation for any number of existing sites so that activity-based sunset tests could provide a neutral, equitable mechanism to automatically remove designation over time from unused sites:

10) The optional transitional phase would allow a grantee to propose any number of pre-existing sites as magnet sites, with minimum five-year sunset periods. For sites used during the sunset period, the FTZ Staff would evaluate the nature of site-specific activity. At the end of the transitional phase, the FTZ Board would be able to take action on Staff recommendations to

⁵ An ASF element like this general goal of six or fewer magnet sites (unless multi-user activity has actually been demonstrated at most or all of six pre-existing magnet sites) is intended to minimize FTZs competing simply based on the number of sites. Therefore, the intent in incorporating this element in the ASF parallels the FTZ Board’s intent in 1982 when the Board adopted the standard 2,000-acre activation limit as a means of minimizing the then-emerging problem of FTZs competing with each other based on the size of their zones (see the “Context: Law, Regulations, and FTZ Board Practice” section below).

apply either magnet or usage-driven designation to each such site depending on comments from the grantee and factors such as the number of distinct FTZ operations at the site.

CONTEXT: LAW, REGULATIONS AND FTZ BOARD PRACTICE

The FTZ Act establishes a relatively general framework within which the FTZ Board must operate the FTZ program. See 19 U.S.C. §§ 81a-81u. Courts have consistently recognized the broad discretion that Congress intended for the Board. In Armco Steel Corporation v. Stans, a seminal FTZ case before the Court of Appeals for the Second Circuit, the appeals court found that “Congress has delegated a wide latitude of judgment to the Foreign-Trade Zones Board to respond to and resolve the changing needs of domestic and foreign commerce through the trade zone concept. Because of the complexity and vagaries of our highly developed systems of trade, and the pressing needs for varying solutions to the problems that inevitably arise, it is imperative that the Board be permitted to experiment at the fringes of the tariff laws. As long as the Zones Board remains within the fringes and does not stray into areas clearly outside its delegated authority, a court should not interfere except for compelling reasons...” See Armco Steel Corp. v. Stans, 431 F.2d 779, 788 (2d Cir. 1970).

The ASF proposal outlined in this paper is well within the “fringes” of the FTZ Act. The proposal essentially constitutes a variation on -- and a natural evolution of -- the FTZ Board’s existing practice for designating and modifying sites where FTZ activity may take place. The foundation both for the Board’s current practice and for the ASF proposal is a conceptual shift by the FTZ Board approximately 30 years ago. Until that time, the Board approved only small amounts of “zone” space which were then required to be dedicated only to FTZ use. As such, all approved zone space was subject to strict security requirements and treated as outside the customs territory. However, the Board came to recognize the need for far greater flexibility if FTZs were to prove useful to grantees and businesses.⁶ As a result, in the mid-1970’s, the Board embraced a major conceptual shift by recognizing the distinction between “approval” of a site versus Customs “activation” of the site. As explained in the August 1983 examiners committee report for the expansion of FTZ 62 (in Brownsville, Texas):

[T]he concept of "approval/activation" is becoming more well-known and accepted. This concept, applied by the Board during the past seven years, involves approving areas as zones that will not be used exclusively for zone activity. Portions of the "approved" area are "activated" with Customs approval, with FTZ Staff and possibly Board involvement in new manufacturing situations. Only the "activated" areas are considered to be outside Customs territory. Inherent in the concept is the point that Board approval is conditional and "full" status does not occur until after a final Customs operational review and activation.

⁶ Until the mid-1970’s, a warehouse could not be used for non-zone activity once it had been designated as zone space. Only a burdensome and time-consuming process for action by the FTZ Board could allow the warehouse to revert to non-FTZ use, but such action would then prevent its future zone use until another burdensome and time-consuming process was undertaken to achieve action by the FTZ Board to restore designation.

The consistency of the “approval/activation” distinction with the FTZ Act can be illustrated in a series of statutory contexts. For example, section 81c of the Act -- entitled “Exemption from customs laws of merchandise brought into foreign trade zone” -- provides considerable detail on the distinctions between the treatment of goods in FTZs versus goods within the customs territory. However, since the development of the approval/activation distinction in the 1970’s, the exemption from customs laws has only applied to goods within the activated portions of sites which had already been approved for FTZ use by the FTZ Board. As such, only those activated portions constitute “zones” within the meaning of section 81c.

Similarly, section 81l of the FTZ Act (“Facilities to be provided and maintained”) includes the following requirement: “Each grantee shall provide and maintain in connection with the zone... (f) Adequate enclosures to segregate the zone from customs territory for protection of the revenue, together with suitable provisions for ingress and egress of persons, conveyances, vessels, and merchandise...” Numerous sites approved over the last three decades by the Board for FTZ designation -- such as “greenfield” sites on which no construction has yet taken place -- have not needed to meet the requirement of section 81l(f) in order to be designated as FTZ sites. Once again, this is because a designated site does not function as a “zone” until it is activated. Instead, CBP requires that the effective standards expressed in section 81l(f) be met as a precondition for activation; therefore, at the time of activation, the area in question actually begins to function as a “zone” (*i.e.*, is treated as if outside the customs territory).

Other examples stem from section 81o of the FTZ Act, which contains provisions on “Persons allowed to reside in zone” (“No person shall be allowed to reside within the zone except Federal, State, or municipal officers or agents whose resident presence is deemed necessary...”) and “Retail trade within zone” (“No retail trade shall be conducted within the zone...”). Again, these provisions of the FTZ Act apply only to the activated portions of sites that have been designated by the FTZ Board. There has, in fact, been both retail and residential activity within portions of sites previously designated by the FTZ Board (and for which the designation had not yet been removed -- such removal would be a logical step once a FTZ-incompatible use was in place at a site). However, the retail or residential activity did not violate the FTZ Act because it did not take place within activated space (*i.e.*, the portion of a designated site that actually functions as a “zone” within the meaning of the FTZ Act).

Through a specific recommendation, the above-cited 1983 examiners committee report for the Brownsville FTZ expansion made explicit the idea that the size of a zone was the area that could actually be activated simultaneously (and, therefore, truly function as a zone). Given the scale of the proposed Brownsville expansion (19,000 acres along the Brownsville Ship Channel) and the increasing numbers of large FTZ sites being proposed by grantees, the examiners committee made -- and the FTZ Board adopted -- the following recommendation:

Because zones tend to refer to the size of their approved area in promotional activity and because of concern by some Customs officials and FTZ that this might set an undesirable precedent, some type of limit should be imposed that relates to "activation". It appears that a restriction that would allow the flexibility that is desired, yet put a reasonable

ceiling on the amount of space that could be activated without further Board approval, would involve a limit of 2000 acres... The 2000 acres is an amount just short of what was recently approved for the Port of New York and New Jersey at its Newark-Elizabeth Marine Terminal, the busiest container port in the world. Since it is desirable under the approval/activation concept to have a general benchmark as to total area that could be activated without further FTZ Board involvement, the Newark/Elizabeth zone is proposed as such a benchmark for large seaport areas.

The FTZ Board subsequently maintained the 2,000-acre activation limit as its general standard for large FTZ projects. In addition, the Board has also applied activation limits to define the maximum size of individual zone sites. This has been the case with certain airport sites -- for which grantees tend to simply draw boundaries around a large portion (or even all) of an airport facility -- or large industrial parks. Specific examples include the airport in Minneapolis, Minnesota (a 500-acre activation limit within a perimeter that defines 3,002 acres), several industrial parks in Laredo, Texas (for example, a 500-acre activation limit within a perimeter that defines 1,600 acres), and multiple industrial parks in San Antonio, Texas (each of which has a 225-acre activation limit within varying larger site perimeters). It is also instructive that acreage swapped out of the above-cited Laredo industrial park site for MBM purposes reduced the site's 500-acre activation limit, rather than reducing the 1,600 acres within the defined perimeter. This reinforces the concept that -- when a site has an activation limit within a larger perimeter -- the "area" (within the meaning of section 81f(b) of the FTZ Act) of such a site is its activation limit rather than the amount of acreage defined by the site's overall marked perimeter.⁷

As indicated by the quoted sections of the Brownsville expansion examiners committee report above, the Board's actions beginning in the mid-1970's have embraced the concept that "full" FTZ status does not occur until "after a final Customs operational review and activation." That position is consistent with the vision of the legislators who drafted the FTZ Act and imagined zones as specific spaces that would be physically segregated from customs territory and devoted to FTZ use. The result for all of the early FTZ grantees had been zones that were small in size and that proved very costly to their sponsors due to the complete inflexibility associated with FTZ status.

In contrast, after the Board's adoption of the "approval/activation" concept, an industrial park approved for FTZ use -- perhaps with a certain activation limit -- would remain entirely useable as ordinary commercial space and completely integrated with U.S. customs territory until such time as some part of the industrial park was activated by CBP. Importantly, such activation might never occur and, therefore, none of that industrial park would ever end up being treated as if outside the customs territory. In this context, it is a natural conclusion that -- taking into

⁷ Once a zone is restricted to activating no more than 2,000 acres, its approved "area" within the meaning of section 81f(b) of the FTZ Act has been established by the Board as 2,000 acres and cannot expand beyond that size until Board action increases the activation limit beyond 2,000 acres. However, the fact that a zone's area has been limited by a standard restriction to 2,000 acres has not precluded the Board from requiring an application for full Board action to significantly modify the zone's "plan" (see 15 CFR 400.26(a)(2)(i)). However, that regulatory requirement is indicative of the Board's interest in evaluating any major proposed evolution in a FTZ's structure rather than reflective of a statutory requirement for full Board action on such a proposal.

account the envisioned meaning of a zone at the time of the FTZ Act's passage as an area outside the customs territory -- an industrial park (or any other space) which had been approved for FTZ designation but which had never been activated by CBP would never be a part of the "area" of the zone.

For the ASF proposal, we have been able to build on the concepts described above, including the 2,000-acre activation limit as the essential "area" of any zone to which it had been applied.⁸ The ASF proposal would build the 2,000-acre limit -- and the ability to use MBM actions to allot acreage within that limit for the sites in the "usage-driven" category -- into the "plan" to be adopted by the FTZ Board for a FTZ that opts to participate in the ASF. The ASF proposal also counter-balances the increased flexibility that would be available to participating grantees for certain MBMs by requiring the prior establishment through a full FTZ Board process -- including public notice and comment -- of the specific "service area" within which the grantee could propose future MBMs.

It is worth noting that the ASF proposal does not inherently diminish the FTZ Board's role in the designation and modification of sites for a given FTZ. Rather, for a participating grantee, the FTZ Board's approval of a revised "plan" to reorganize based on the ASF would lead to retrospective notification⁹ to the Board of all MBM actions approved by the FTZ Staff.¹⁰ The periodic, grantee-specific reports to the FTZ Board by the FTZ Staff will provide the Board with greater detail than is currently the case regarding MBM actions by the Staff. The Board would be free to open reviews or take other actions, as warranted, depending on the facts and circumstances reported. Further, given the magnitude of the FTZ Board's conceptual shift to the "approval/activation" model, the Board's practice in some sense has not yet evolved to fully reflect the implications of that shift.¹¹ Based on the reasons described above for making available a more flexible and focused framework to designate and manage FTZ sites, the ASF proposal lays out an additional evolutionary step for the Board to maximize the benefits for the FTZ program based on the full implications of the "approval/activation" concept.

8 The limit has not been applied to zones for which the sum of the acreage encompassed by the existing and proposed site perimeters is less than 2,000 acres.

9 The retrospective nature of the Board's involvement in MBM actions under the ASF proposal is roughly similar to the Board's adoption of the sourcing change notification option (19 CFR 400.28(a)(3)) to give greater flexibility for manufacturing firms. The sourcing change notification provision was created and implemented in the final revised regulations (December 1991) based on comments submitted in response to the proposed regulations. Those comments had indicated a need for greater flexibility to meet time-sensitive needs, and the Board modified its practice accordingly.

10 The intended benefit, of course, is the elimination of a grantee's current, sporadic need -- which varies depending on the number and nature of MBMs presented and their cumulative divergence from the FTZ's approved "plan" -- for the grantee to submit proposals to expand or reorganize its zone, with each such proposal aimed at gaining Board adoption of a new plan for the zone.

11 The incomplete evolution of practice to reflect the implications of the "approval/activation" shift can be attributed, at least in part, to a prior absence of adequate need for further evolution.

Finally, the ASF proposal was developed specifically to remain compatible with the FTZ Act and the FTZ Board's existing regulations. Each of the elements of the proposal derives directly from FTZ Board practice or is a minor modification of existing practice consistent with the FTZ Act and the Board's regulations. However, experience with actually administering the ASF can help gauge the extent to which its elements function as envisioned and could, therefore, be appropriate to consider for incorporation into future regulations.

(A detailed discussion of the relevant statutory and regulatory provisions and of the Board's related practice is provided in Appendix 3.)

OTHER CONSIDERATIONS

The effects of implementation of the ASF proposal are likely to extend far beyond positive impacts on burden for FTZ grantees or the FTZ Board and CBP. The largest impact is likely to come from an improved ability to make FTZ procedures readily accessible to U.S. facilities that compete with facilities abroad. Engaged grantees will be able to bring FTZ designation easily and quickly to companies for which incremental cost savings are increasingly important. This can be especially effective in combination with other initiatives by the FTZ Board to improve the program's accessibility and usefulness, particularly for small and medium-sized manufacturers (SMMs).

In 2004, the FTZ Board adopted the Temporary/Interim Manufacturing (T/IM) proposal as a mechanism for enabling SMMs, in particular, to better compete through the use of FTZ procedures. The Board modified T/IM in 2006 in an effort to make it a more effective tool for SMMs. However, a critical weak link has been the time and burden associated with bringing FTZ designation to a SMM's facility. The ASF proposal can enable engaged grantees to break through that final barrier to access. The enhancement of T/IM through the adoption of the ASF proposal would be magnified if the FTZ Board recognizes the appropriateness of the FTZ Staff being able to simultaneously consider a usage-driven site-designation request and a T/IM application from a particular manufacturer.

CONCLUSION

The specific ASF proposal is the result of an extensive, year-long consultative process. That process was followed by formal publication for public comment of an initial proposal and, after incorporation of many changes based on comments received, solicitation of public comment on a revised proposal. The final proposal delineated and explained above takes into account a small number of comments submitted on the revised proposal. The ASF concept overall, as well as its details, is strongly supported by a range of FTZ grantees and the National Association of Foreign-Trade Zones. The regular periodic reports to the FTZ Board regarding participating FTZs will enable the Board to continue to evaluate the impact of the ASF proposal if implemented. Based on the factors described in this report, the FTZ Staff recommends the implementation of the ASF proposal as an option for FTZ grantees.

It is important to recognize the ASF's potential to transform many active grantees' operation of their FTZs. The flexibility and speed with which participating grantees will be able to respond to emerging needs can have a significant positive impact on U.S. facilities' ability to compete internationally. That positive impact can easily extend to small and medium-sized U.S. manufacturers -- particularly in combination with the simultaneous availability of the FTZ Board's T/IM procedure. Importantly, the ASF concept also can play a key role in moving the FTZ program towards a longer-term refocusing on sites at which FTZ activity actually takes place. As such, the proposal has many benefits both for the private sector -- with resulting public benefits derived from private U.S. facilities' enhanced international competitiveness and employment -- and for the government agencies whose missions encompass oversight of FTZs.

Appendix 1

Final Proposal

The fundamental trade-off addressed in this proposal is greater flexibility and increased predictability for approval of FTZ sites through simple and rapid “minor boundary modification” actions in exchange for a grantee maximizing the linkage between designation of FTZ space and actual use of that space for FTZ activity (after “activation” by CBP). The major benefit would likely be for existing FTZ grantees, which would have the option of applying to reorganize their FTZ by incorporating in an application for FTZ Board action elements from the following framework:

1. An initial limit of up to 2,000 acres would be authorized for FTZ activation within a specific geographic area. The proposal is focused on linking FTZ designation more closely to FTZ activity, and the 2,000-acre limit reflects the Board’s existing practice of limiting any FTZ grantee to activation of 2,000 acres unless further approval is obtained from the FTZ Board. Acreage within the 2,000-acre limit which had not been allotted to specific designated sites would be considered “reserve” acreage available for activation at future sites within the general geographic area approved for the zone to serve (see “service area” below).
2. Enhanced flexibility by allowing site-specific activation limits that may represent only a portion of the acreage encompassed by the sites’ boundaries (as has been the FTZ Board’s practice with certain applications to date). For example, the boundaries of a site might encompass a 700-acre port facility but the grantee could request that a 100-acre activation limit apply to the site. The precise 100 (or fewer acres) that would be used within the site’s boundaries would be pinpointed at the time of CBP activation(s) of the specific area(s) within the site.
3. The "service area" within which the grantee intends to be able to propose general-purpose FTZ sites (*e.g.*, specific counties, with documented support from new counties if the service area reflected a broader focus than the FTZ’s current area served) using its standard 2,000-acre activation limit. The term “service area” applies a name to a concept which already exists in certain approved FTZ applications in which a grantee organization has named the localities it intends to serve. It should be noted that any service area must meet the "adjacency" requirement of the FTZ Board’s regulations (60 miles/90 minutes driving time from CBP Port of Entry boundaries). A grantee’s proposed service area would need to be consistent with enabling legislation and the grantee organization’s charter. The FTZ Board’s evaluation of a proposed service area could potentially involve examination of issues related to the “convenience of commerce” (19 U.S.C. 81b(b)) in regions served by more than one FTZ grantee. Also, designation of a service area for one grantee would not preclude other grantees from proposing to the FTZ Board a service area (or a site) that includes some or all of the same geographic area; the Board would evaluate the specific facts and circumstances on a case-by-case basis (including relative to the previously cited “convenience of commerce” standard).

4. Designation of a limited number of “magnet” sites selected by the grantee -- often as a result of local public processes -- for ability and readiness to attract multiple FTZ uses. An individual magnet site would generally be proposed with an allotment of no more than 200 acres for activation, although a larger proposed activation limit for a magnet site could be justified based on factors such as the nature of the site (*e.g.*, a major harbor facility) or a specific type of projected FTZ activity that would tend to require an unusually large number of acres in simultaneous “activated” status at the specific site. A magnet site could only be designated through an application for FTZ Board action.

5. Possible designation of “usage-driven” sites to serve companies which are not located in a magnet site but which are ready to pursue conducting activity under FTZ procedures. In the general interest of maximizing the linkage between FTZ site designation and FTZ activity at the site, a usage-driven site would be limited -- in the context of a larger industrial park or business district where other companies interested in FTZ procedures might be able to locate in the future -- to the area(s) required for the company(ies) specifically identified as ready to pursue conducting FTZ activity at the site.

6. Unlike magnet sites, usage-driven sites could be designated through the current minor boundary modification (MBM) mechanism -- a rapid administrative action by the Board’s staff -- in addition to through FTZ Board action. (It should be noted that usage-driven MBM actions could conceivably be used to designate additional acreage where needed at magnet site locations.) A simplification of the MBM process would result from elimination of the need to “swap” like amounts of acreage from existing sites because the total allotted acreage for activation of existing and proposed sites would remain within the standard 2,000-acre limit. Requests for MBM actions would continue to require concurrence from the appropriate CBP port director.

7. No specific limit on the number of usage-driven sites (although subject to the zone’s overall 2,000-acre activation limit). However, it should be noted that such usage-driven sites are by definition focused on only the specific physical area(s) required for company(ies) conducting FTZ activity or ready to pursue conducting FTZ activity. Therefore, with regard to numbers of usage-driven sites, the definition of such sites and the standard sunset limits (and resetting) described below inherently function to limit usage-driven sites on an ongoing basis to the number of specific areas required for activity by (or on behalf of) FTZ users.

8. Regarding numbers of magnet sites, the framework would reflect a general goal -- after any transition period, as outlined below -- of focusing each FTZ on six or fewer simultaneously existing magnet sites. Special circumstances of regional (multi-county) FTZs could be taken into account based on factors which could justify a larger number of magnet sites (*e.g.*, population size, level of trade-related activity). Also, a grantee seeking over a longer term to justify to the FTZ Board proposed authority for a larger number of magnet sites could provide evidence of multi-user FTZ activity -- as reflected in the grantee’s annual reports to the FTZ Board -- at a significant percentage of the grantee’s already designated magnet sites. (It should be noted that a grantee with an approved magnet site where only a single user activates over time will be able to consider requesting usage-driven designation for the active portion of that magnet

site, thereby helping to retain focus and enabling the grantee to consider whether a different site would be more appropriate for magnet designation while remaining consistent with the goal outlined above for total number of magnet sites.)

9. Magnet sites and usage-driven sites would be subject to “sunset” time limits which would self-remove FTZ designation from a site not used for FTZ purposes before the site’s sunset date. For magnet sites, the default sunset period would be five years with sunset based on whether a site had been activated by CBP. However, each grantee would have the option of proposing permanent FTZ designation for one magnet site and the FTZ Board could take a range of factors into account in determining the appropriate sunset period for a given site (*e.g.*, nature of the site, public ownership of the site). For a usage-driven site, the sunset limit would require within three years of approval admission into the site of foreign non-duty paid material for a *bona fide* customs purpose. Experience in administering the framework could also reveal a need to adjust practice for usage-driven sites to implement intermediate benchmarks (such as progress towards activation) rather than a single deadline date at the end of a three-year period.

10. Magnet sites and usage-driven sites would also be subject to ongoing “resetting” whereby activation at a site during the site’s initial sunset period would serve to push back the sunset date by another five years for magnet sites and by another three years for usage-driven sites (at which point the sunset test would again apply). Finally, if all of a grantee’s sites were due to sunset based on lack of activation, the grantee would need to apply to the FTZ Board at least 12 months in advance of the ultimate sunset termination to request designation of at least one site for the period beyond the sunset of the previously approved sites.

11. An optional five-year transitional phase would be available for grantees of zones with more than six existing magnet-style sites. For the optional transitional phase, an individual grantee could apply to reorganize its zone and request continued FTZ designation for existing sites that the grantee determines warrant further opportunity to demonstrate a need for FTZ status. For the transition period, there would be no specific goal in terms of numbers of existing sites which could be proposed for magnet designation. However, sites proposed for a zone’s transitional phase would need to comply with the framework’s limit of a 2,000-acre activation limit within the zone’s service area (see further discussion below).

12. For the transitional phase for a particular zone, the grantee would have the option of requesting usage-driven designation for any site where a single entity is conducting (or ready to conduct) FTZ activity. For sites that the grantee believes are better suited to a magnet (multi-user) role, the grantee could request magnet designation. Any usage-driven sites would have the standard three-year sunset period for such sites. The FTZ Board would establish sunset limits for individual magnet sites based on the facts of the case (particularly as they pertain to each site). For the transition phase, the default sunset limit for magnet sites would be five years but the FTZ Board would be able to establish longer sunset limits for specific sites if warranted by the facts and circumstances present.

13. The five-year transition period for a specific grantee would begin with approval of the grantee’s reorganization application by the FTZ Board. During the final year of the transition

period, the FTZ Board staff would initiate a review of all of the zone's sites for which the sunset limits align with the end of the transition period. The staff review would examine whether each of those sites had been activated during the transition period and, for activated sites, the specific FTZ activity which had taken place (including the operator(s)/user(s) for each site). The staff review of a zone's transition period would result in a report noting any sites subject to the review which had remained unactivated during the period (for which FTZ designation would self-remove at the end of the period). The staff report would also make preliminary recommendations regarding magnet or usage-driven designation going forward for sites activated during the period. The FTZ Board staff would provide its preliminary recommendations to the zone's grantee and allow a period of 30 days for the grantee to provide any response to the staff's recommendations. After the end of the 30-day period, the staff would create a final report taking into account any response from the grantee regarding the preliminary recommendations. The FTZ Board would be able to take action, as appropriate, on the FTZ Staff's final recommendations, and the grantee would be notified of any ultimate action.

14. The transitional phase for any zone would be limited by the 2,000-acre activation limit inherent in the proposed framework. In this context, if existing sites which a grantee wishes to propose for a transitional phase cumulatively exceed 2,000 acres in their current configuration, the grantee would need to determine the specific activation limit to propose allotting to each such existing site. (For example, if an existing site is the 340-acre Acme Industrial Park, the grantee could propose an activation limit of 100 acres within the 340-acre Acme Industrial Park.) A grantee might opt for a simple mechanism to apportion a certain total amount of its activation limit among sites it is proposing for the transitional phase (after making allowance for the amount of acreage the grantee determines it needs to keep in reserve for possible future minor boundary modifications; a grantee retaining a minimum of 200 acres in reserve is advisable).

It is important to note that the elements of the proposal support each other in furthering the goals of flexibility and focus for FTZ site designation (with important resulting resource- and efficiency-related benefits for the government). As such, a framework incorporating these types of elements would include the package of elements as an available alternative to the Board's current practice. As is currently the case, minor boundary modification actions would be approved by the Board's staff while modifications to a zone's "plan" (e.g., increase in authorized activation limit, modifications to service area) would be matters for the FTZ Board's consideration. FTZ grantees opting to manage their zones under the Board's current framework would be unaffected by this proposal.

Finally, in order to help the FTZ Board evaluate the effectiveness and appropriateness of the alternative framework after actual experience with FTZ grantees, the FTZ staff would report to the Board on a periodic basis regarding the actual usage of the alternative framework. The staff's reporting regarding implementation of the framework at individual participating FTZs would result from staff-initiated reviews and would not require any request or application from the grantee.

Appendix 2

Discussion of Elements of Final Proposal

The main principle underlying the ASF proposal can be summarized as follows: Link FTZ designation of sites as closely as possible to actual use of the sites. By enabling rapid, minimally burdensome actions to achieve designation when warranted, the need to designate sites speculatively is dramatically reduced. Active grantees can then devote far fewer resources to burdens like swapping acreage or reorganizing their zone to regularly update the “plan” approved by the Board. Instead, such grantees could focus on actively marketing their zones and making the competitiveness-enhancing benefits of the FTZ program available to as many U.S. firms as possible. In addition, multiple elements of the proposal should serve to maximize participating grantees’ focus on sites where FTZ activity actually occurs.

The elements of the ASF proposal complement each other in advancing the principles outlined above and accomplishing a series of program objectives. In addition, key elements of the ASF have been derived from existing FTZ Board practice. Together, the elements permit a grantee to present for adoption by the FTZ Board a new “plan” for the grantee’s zone under the ASF.

One commenter indicated that the FTZ Board should not require a formal reorganization application to designate magnet sites for a grantee if the sites are existing general-purpose FTZ sites designated through Board Order(s). The underlying premise of this comment -- minimization of burden on any grantee seeking to shift its zone to the ASF -- is very important. The same point was addressed in a slightly different fashion in the September 11, 2008 notice (which contained the revised proposal). In the section summarizing the comments received on the May 8, 2008 proposal and providing responses to each of the comments, the FTZ Staff indicated that it would aim to minimize the burden on a grantee applying to reorganize its zone under the ASF (particularly regarding the type of economic data which had been part of a justification which had previously been submitted to the Board). The same basic logic would hold true regarding justification requirements for existing sites -- particularly in instances where a grantee’s number of existing sites is relatively compatible with the goals expressed in the ASF.

Details of each element of the ASF -- including reasons for the proposed framing of certain elements -- are discussed below.

The standard 2,000-acre limit for the initial size of a zone ties directly to the FTZ Board’s practice of limiting each grantee to simultaneous activation of no more than 2,000 acres (regardless of the number of acres within the boundaries of the grantee’s approved sites). Given the proposal’s focus on more closely linking FTZ designation and activity, the existing 2,000-acre activation limit was a logical starting point and anchors the proposal in longstanding practice. As noted above, acreage from the 2,000-acre limit which had not been allotted to specific designated sites would effectively be “reserve” acreage available for allotment to future parcels or sites within the grantee’s service area. Participating grantees would need to manage their zone projects to ensure that adequate reserve acreage was maintained to meet unforeseen

needs. If a grantee's active zone space within its FTZ were to begin to approach 2,000 acres, the grantee could apply to the FTZ Board for an increase in its activation-acreage limit.

Allowing site-specific activation limits is essential to enhancing the usefulness of a zone's 2,000-acre allotment and enabling that standard limit to function effectively for almost any grantee. Further, the application of site-specific activation limits -- within site boundaries that encompass a larger facility -- has already been adopted by the FTZ Board in a number of instances. An example of a site-specific activation limit would be a 100-acre activation limit within a 700-acre port facility. The precise 100 (or fewer) acres to be used within the facility would be pinpointed at the time of CBP activation (and could also change over time within the designated overall site boundaries as old companies deactivate and new companies activate).

The service area for a grantee is a broad framing element that applies a specific term to a concept which already exists in certain approved FTZ applications (*i.e.*, that a grantee organization has listed the localities it intends to serve). The most straightforward approach to a service area for many grantees would be to name the counties in which they intend to be able to propose FTZ sites. It is important to recognize that in regions served by more than one FTZ grantee, the FTZ Board's evaluation of a proposed service area could potentially involve examination of issues related to the "convenience of commerce" (19 U.S.C. 81b(b)).¹ Specifically, after the first (entitlement) FTZ in a port of entry, additional FTZs generally could only be approved if they were able to demonstrate that the first grantee would not meet the convenience of commerce. Although additional zones may have met that test when first established with regard to their specific proposed zone sites, issues of convenience of commerce could need to be addressed anew when such grantees seek to define their service areas. Also, although the need for a grantee to document support from counties within its proposed service area is most critical when counties were not previously served by the zone, the standard practice should be to require evidence of support from all counties within a proposed service area. The age and/or limited scope of many existing FTZ sites means that a county's past support for one or more sites may not be indicative of its support for a proposed broader "service area" within the county.

One commenter maintained that inclusion of a geographic area within the designated service area of one grantee should not preclude another grantee from including the same geographic area within its service area. The final version of the proposal (see Appendix 1) incorporates clarification based on this comment. Another commenter indicated that, to establish a service area, a grantee should be required to obtain letters of agreement from neighboring grantees in addition to endorsements from local/regional governmental bodies. Such a requirement is not included in the final proposal because of the need to be able to evaluate each situation on a case-by-case basis. However, the views of neighboring grantees would be very important in the process of the FTZ Board considering many proposed service areas.

It is worth noting that applying a specific service area for a zone is an important complement to the standard 2,000-acre activation limit in defining the zone. Both the standard 2,000-acre limit and the grantee's proposed service area would be presented in the grantee's application to the

¹ Such an examination would take into account any relevant grantees in the same port of entry regardless of whether such grantees were adopting the ASF.

FTZ Board to reorganize the grantee's zone. As such, the 2,000-acre limit and the service area would both be integral to a specific "plan" approved for a zone by the Board and, consequently, could only be altered by FTZ Board action (rather than by administrative action).

Magnet sites are akin to the traditional vision of a foreign-trade zone site: one of a limited number of facilities selected by the grantee -- often as a result of local public processes -- for ability and readiness to attract multiple FTZ users. In order to provide some overall structure to grantees' attempts to frame their zones under the ASF, a general guideline would apply an activation limit of 200 or fewer acres for a single magnet site. However, a larger activation limit for a magnet site could be justified based on factors such as the nature of the site (*e.g.*, a major harbor facility) or a specific type of projected FTZ activity that would tend to require an unusually large number of acres in simultaneous "activated" status at the specific site. A magnet site could only be designated through an application for FTZ Board action.

The number of magnet sites would be limited in a general sense. This is attributable, in part, to the focus of the ASF on flexibility and speed for grantees to obtain FTZ designation for new users at unanticipated locations (for which usage-driven sites are the best solution). The ASF recognizes the legitimacy of grantees maintaining a certain number of magnet-style sites but, at the same time, recognizes that grantees will need to be selective in proposing magnet sites in order to help maintain the focus of the ASF on linking sites with actual activity (which is a key goal for the FTZ Board and CBP). As such, the ASF proposal delineates a general goal -- after any Transition Period, as discussed below -- of focusing each FTZ on six or fewer simultaneously existing magnet sites.

Although the ASF proposal establishes a general initial goal for maximum number of magnet sites, the proposal also specifically makes allowance for taking into account special circumstances such as regional (multi-county) FTZs. For such FTZs, a range of factors could be presented to the FTZ Board as possible justification for a larger number of magnet sites (*e.g.*, population size or the level of trade-related activity). Also, a grantee seeking over a longer term to justify to the FTZ Board proposed authority for a larger number of magnet sites could provide evidence of multi-user FTZ activity -- as reflected in the grantee's annual reports to the FTZ Board -- at a significant percentage of the grantee's already designated magnet sites. (It should be noted that a grantee with an approved magnet site at which only a single operator/user activates over time would be able to consider requesting usage-driven designation for the active portion of that magnet site. This would both help to retain focus and enable the grantee to consider whether a different site would be more appropriate for magnet designation while remaining consistent with the general goal for number of magnet sites per grantee.)

The concept of usage-driven sites reflects the reality faced by many FTZ grantees. Despite grantees' best efforts to anticipate trade-related needs and, effectively, pre-position FTZ designation for future users, grantees repeatedly are faced with requests for designation of new FTZ space driven by individual companies' needs or interest. Such requests often come despite large numbers of unused or underutilized sites within those same FTZs. The reality is that companies tend to find it far more cost effective to obtain FTZ designation for a facility they already occupy than to move to an already designated FTZ site. Further, such companies often

exist within industrial park or business district environments that contain additional space with potential for future FTZ use. However, at the time that a request is made to the grantee for FTZ designation, it is generally a single company driving the request.

Under the FTZ Board's existing framework, FTZ-designation requests explicitly driven by single companies have tended to be viewed as inappropriate for "general-purpose" (GP) (*i.e.*, multi-user) FTZ status. As such, grantees have at times resorted to an approach of building a larger GP proposal -- encompassing more of the industrial park or business district in which the requesting company is located -- in order to be able to pursue timely and straightforward FTZ designation for the single user through MBM action. However, grantees' proposing larger amounts of FTZ space solely to meet this type of GP standard for MBM requests is not necessarily beneficial for the grantees or for the government. On the other hand, there is little logic associated with the time and burden required for a grantee and user to pursue subzone designation for a portion of an industrial park or business district -- because the request is driven by a single current user's need and is therefore not general-purpose -- although the industrial park or business district encompasses additional space potentially suitable for other future FTZ users. The ASF aims to broaden the FTZ Board's practice incrementally in order to enable targeted designation of specific portions of industrial parks or business districts as usage-driven sites. The alternatives -- designation of extra space where no companies are currently interested in FTZ procedures or requiring the interested company to pursue subzone designation -- both involve significant negative impacts that can be alleviated through a well considered update of current practice under specific circumstances.

In the post-9/11 environment, it is critical for government agencies with oversight responsibility (such as CBP) to be able to anticipate future resource demands associated with a particular proposed FTZ site. As such, it is inefficient and problematic to request CBP concurrence on the designation of a FTZ site when the likely users of the site are unknown (and therefore the oversight burden associated with future activation(s) is unknowable). From the perspective of assessing future resource allocation, it is far more appropriate to adopt a targeted approach that involves requesting FTZ designation for only the portion of an industrial park or business district where the current interested company is located.

Beyond the benefits of significantly increased targeting of FTZ site designation to known proposed users, the other key benefit to the concept of usage-driven sites is the responsiveness and reduction of burden for small and medium-sized businesses (particularly manufacturers). In an increasingly challenging economic environment, FTZ procedures can represent a critical additional increment of cost savings for U.S. facilities struggling to compete with facilities abroad. The ASF proposal can enable grantees to devote more time marketing their zones, educating potential users, and then quickly and simply bringing FTZ designation to the facilities of companies that are ready to pursue the use of FTZ procedures.

Finally, given the range of considerations involved in the development of the concept of a usage-driven site, it naturally follows that a usage-driven site is designated for the specific operator(s)/user(s) and use delineated at the time of the site-designation request. If the operator(s)/user(s) present at the site were to change, the usage-driven designation of the site

would no longer be recognized. Importantly, a new usage-driven designation request could be submitted -- with minimal burden on the applicant -- if new operator(s)/user(s) at what had been a usage-driven site were interested in conducting FTZ activity.

Concurrence from the CBP Port Director would continue to be required for any action to establish or modify the boundaries of FTZ sites. The ASF does not modify this requirement in any way relative to the FTZ Board's longstanding practice. This basic requirement derives directly from the FTZ Board's regulations and reflects the essential role of CBP oversight (including the necessary determination of whether CBP has or will have resources available to oversee any ultimate activity at a site).

"Sunset" time limits would self-remove FTZ designation from a site not used for FTZ purposes before the site's sunset date. For magnet sites, activation by CBP would be required before the end of the sunset period, with a five-year default period. However, the FTZ Board could consider site-specific requests for longer sunset periods taking into account a range of factors (*e.g.*, nature of the site, public ownership of the site). Grantees would also have the option of proposing permanent status (*i.e.*, without a sunset limit) for one specific magnet site at the time of their application to reorganize their zone. Allowance for optional permanent status for one magnet site per grantee is a change from the revised proposal based on a comment received. The commenter further indicated that, for permanent magnet designation, a preference should be given to publicly owned sites. As a general policy matter, such a preference would be consistent with both the public interest mandate and the history of the FTZ program. However, determinations will need to be made on a case-by-case basis taking into account the specific facts present. The same commenter also proposed that a grantee be able to transfer the permanent status from one magnet site to another by MBM request to the FTZ Staff. This suggestion has not been adopted for the final proposal due primarily to concerns about the actual practical effect (including the possibility of repeated requests to shift permanent status among a grantee's magnet sites) and the related potential for abuse.

The sunset test for a usage-driven site would be based on admission of foreign non-duty paid or zone-restricted merchandise for a *bona fide* customs purpose within three years. The three-year sunset period for usage-driven sites is a change from the revised proposal based on comments received. One commenter also proposed that the sunset test for usage-driven sites should be applied based on admission into the site of foreign-status merchandise (as defined in 19 CFR 146.41 and 146.42) or zone-restricted merchandise (as defined in 19 CFR 146.44) for a *bona fide* purpose. Relative to the previously proposed standard, inclusion of zone-restricted merchandise is an addition which has been adopted for the final proposal. However, the commenter proposes that admission be held to a standard of "for a *bona fide* purpose" rather than the revised proposal's standard of "for a *bona fide* customs purpose" (emphasis added). The word "customs" has been retained for the final proposal because, although there can be non-customs related benefits at the state or local level – such as inventory or real property taxes – that a user/operator may consider as *bona fide* justifications for continuation of FTZ status, such benefits could raise public interest or legal concerns for the FTZ Board in the absence of *bona fide* customs reasons for the continued designation of a usage-driven site. Finally, if a grantee had no permanent FTZ site and all of the grantee's sites were due to sunset based on lack of

activation/activity (per the description above), the grantee would need to apply to the FTZ Board no less than 12 months in advance of the ultimate sunset termination to request FTZ designation for at least one site beyond the final sunset date.

Another key concept is the “resetting” of the sunset limit for an individual magnet or usage-driven site. If activation/activity (as appropriate) occurs during a site’s sunset period, the effect is to “reset” the sunset date by an additional five years for magnet sites and three years for usage-driven sites (at which point the sunset test would again apply to those sites). For example, if a sunset period for a magnet site ends on September 15, 2015, activation of the site during that sunset period resets the sunset date to September 15, 2020 (at which time the sunset test would be based on activation of the site during the period from September 16, 2015 to September 15, 2020). Activation during the five years through September 15, 2020 would reset the sunset date again to September 15, 2025, and so on.

The optional transitional phase that would be available on a one-time basis for each grantee may be critical to enabling a broad cross-section of grantees to participate in the ASF. Formal comments and informal input to the FTZ Staff indicate that grantees with significant numbers of existing sites may not be in a position to simply propose removal of FTZ designation from currently unused sites in order to better align their zones with the goals of the ASF. The transitional phase could provide -- based on sites’ actual use during the years after FTZ Board approval of a grantee’s ASF-consistent reorganization -- a neutral mechanism that would auto-select for retention the sites for which viability had been demonstrated through actual use. As such, for the transitional phase, there would be no specific goal in terms of numbers of existing sites which could be proposed for magnet designation. However, sites proposed for a zone’s transitional phase would need to comply with the framework’s allotment of a grantee’s 2,000-acre activation limit among the FTZ’s sites and reserve acreage (see further discussion below).

For the transitional phase for a particular zone, the grantee would have several options for existing sites. A grantee could request removal of designation from sites that the grantee has determined are no longer appropriate for inclusion as part of the FTZ. For any existing site where a single entity is conducting (or ready to conduct) FTZ activity, the grantee could request usage-driven designation. Finally, for existing sites that the grantee believes are suited to a magnet (multi-user) role, the grantee could request magnet designation.

Sunset periods for the transitional phase would apply the following methodology: Any usage-driven sites would be subject to the standard three-year sunset period for such sites. For individual magnet sites, the FTZ Board would establish the sunset based on the specific facts and circumstances presented. The standard sunset limit for magnet sites would be five years. However, the FTZ Board would be able to make an exception and establish a longer sunset limit for a specific magnet site -- including the option described above of permanent FTZ status for one site -- if warranted by evidence presented by the applicant.

The transitional phase for a particular zone would be a five-year period (designed to track the length of the sunset limits that will apply to most magnet sites) near the end of which the FTZ Staff would evaluate a zone’s specific sites and activity as a supplement to the automatic sunset

tests associated with most magnet sites. The goal of the Staff's evaluation would be to enable an optimal targeting of FTZ designation by assessing whether certain sites with activity during the transitional phase appeared to be better suited to usage-driven designation -- based on activity by a single user or operator -- rather than magnet designation.

Based on the FTZ Staff's evaluation, the Staff would provide its preliminary recommendations to the zone's grantee regarding magnet or usage-driven designation going forward for sites activated during the transitional phase. The grantee would then have 30 days to provide any response to the staff's recommendations. After the end of the 30-day period, the staff would create a final report taking into account any response from the grantee regarding the preliminary recommendations. The FTZ Board would be able to take action, as appropriate, on the FTZ Staff's final recommendations, and the grantee would be notified of any ultimate action.

As noted above, the transitional phase for any zone would apply the 2,000-acre activation limit inherent to the proposed framework. In this context, if existing sites which a grantee wishes to propose for a transitional phase cumulatively exceed 2,000 acres in their current configuration, the grantee would need to determine the site-specific activation limits to propose for each such existing site. (For example, if an existing site is a 340-acre industrial park, the grantee could propose an activation limit of 100 acres for that site.) A grantee might opt for a simple mechanism to apportion the 2,000-acre activation limit among sites it is proposing for the transitional phase (after making allowance for the amount of acreage the grantee determines it needs to keep in reserve for possible future minor boundary modifications; a grantee retaining a minimum of 200 acres in reserve is generally advisable).

Numbering and tracking of both magnet and usage-driven sites will be subject to specific requirements that the FTZ Staff will develop before the first FTZ Board action on an application to reorganize a zone under the ASF. An important commitment related to the implementation of the ASF is public availability via the web of information regarding each designated site and its status. (This meshes with one comment submitted in response to the revised proposal.)

Finally, the FTZ Staff will provide periodic reports to the FTZ Board -- on a grantee-specific basis -- for the zones that participate in the ASF. This reporting will perform an important function given that some FTZ grantees which participate in the ASF may then largely rely on administrative MBMs to modify their FTZ sites. As such, periodic Staff-generated reports would help the FTZ Board evaluate the effectiveness and appropriateness of the alternative framework after actual experience with grantees. For the first round of reports for each grantee, the FTZ Staff would create a report after no more than five years of a grantee's participation in the ASF or ten usage-driven site-designation MBM actions for the grantee (whichever comes first). The frequency could vary for subsequent rounds of reports depending on the Board's experience with the first round (including subsequently varying by zone, if appropriate). All such reporting would result from FTZ Staff-initiated reviews, and would not require any request or application from the grantee.

Appendix 3

Background on the FTZ Act, the FTZ Board's Regulations, and the Board's Existing Practice

Statutory Provisions:

The FTZ Board's practice on designation and management of FTZ sites has taken place in the context of the FTZ Act's provisions that relate to application for, and approval of, zone sites and facilities within those sites:

§ 81f. Application for establishment and expansion of zone

(a) Application for establishment; requirements

Each application shall state in detail –

- (1) The location and qualifications of the area in which it is proposed to establish a zone, showing (A) the land and water or land or water area or land area alone if the application is for its establishment in or adjacent to an interior port; (B) the means of segregation from customs territory; (C) the fitness of the area for a zone; and (D) the possibilities of expansion of the zone area;
- (2) The facilities and appurtenances which it is proposed to provide and the preliminary plans and estimate of the cost thereof, and the existing facilities and appurtenances which it is proposed to utilize;
- (3) The time within which the applicant proposes to commence and complete the construction of the zone and facilities and appurtenances;
- (4) The methods proposed to finance the undertaking;
- (5) Such other information as the Board may require.

(b) Amendment of application; expansion of zone

The Board may upon its own initiative or upon request permit the amendment of the application. Any expansion of the area of an established zone shall be made and approved in the same manner as an original application.

§ 81g. Granting of application

If the Board finds that the proposed plans and location are suitable for the accomplishment of the purpose of a foreign trade zone under this chapter, and that the facilities and appurtenances which it is proposed to provide are sufficient it shall make the grant.

Regulatory Provisions:

Regarding the designation and modification of FTZ sites, the FTZ Board's regulations have consistently delineated detailed requirements for applications to the Board. Section 400.603¹ of the pre-1991 regulations and section 400.24 of the Board's 1991 regulations (which remain in effect) are the key sections in this regard. However, beyond those application-related sections -- which provide far more specificity than section 81f(a) of the FTZ Act but merely delineate the detailed requirements for each application exhibit to be presented for Board review -- certain provisions tell key stories about the evolving concepts embraced by the Board at the time (in the context of an unchanged statute).

In the Board's regulations from 1935 through 1971, section 400.607 had consisted of the following language -- drawn *verbatim* from section 81f(b) of the FTZ Act:

Applications for expansion of an established zone shall be made and approved in the same manner as an original application.

In December 1971, the Board amended section 400.607 to add the following language:

In cases of requests for minor modifications in zone boundaries which are not designed to expand zone operations and will not result in such an expansion, the Executive Secretary is authorized to determine the requirements for the exhibits to such applications. Among the exhibits there shall be a report from the District Director of Customs and of the District Engineer. If the latter two officials recommend that the requested modification be approved, the Executive Secretary shall have the authority to approve the application.

The December 1971 amendments to the regulations also added a new subsection (j) to Section 400.1301 ("Executive Secretary of the Board"), which consequently included the following language:

As principal operating official of the Board, the Executive Secretary shall:

...

(j) Approve in appropriate cases, with the prior recommendations of the District Director of Customs and the District Engineer, requests for minor modifications to zone boundaries which will not result in an expansion of zone operations.

In 1991, the FTZ Board adopted fully revised regulations. The successor section to Section 400.607 is Section 400.26 of the Board's 1991 regulations, which recognized the distinction between major and minor changes. Based on the Board's evolving practice, Section 400.26 also

¹ The pre-1991 regulations employed a different numbering system from the current regulations. It should also be noted that the substance of certain pre-1991 sections reflects the involvement in the Board's processes of the Army Corps of Engineers as representatives of the Secretary of the Army (who was a FTZ Board member until removed by an amendment of the FTZ Act in 1996).

established a bare-bones test for determining whether a request to modify a zone's boundaries is major or minor:

a) In general. (1) A grantee may apply to the Board for authority to expand or otherwise modify its zone project.

2) The Executive Secretary, in consultation with the Port Director, will determine whether the proposed modification involves a major change in the zone plan and is thus subject to paragraph (b) of this section, or is minor and subject to paragraph (c) of this section. In making this determination the Executive Secretary will consider the extent to which the proposed modification would:

i) Substantially modify the plan originally approved by the Board; or
ii) Expand the physical dimensions of the approved zone area as related to the scope of operations envisioned in the original plan.

b) Major modification to zone project. An application for a major modification to an approved zone project shall be submitted in accordance with the format in §400.24, except that:

1) Reference may be made to current information in an application from the same applicant on file with the Board; and

2) The content of Exhibit Four shall relate specifically to the proposed change.

c) Minor modification to zone project. Other applications or requests under this subpart, including those for minor revisions of zone boundaries, grant of authority transfers, or time extensions, shall be submitted in letter form with information and documentation necessary for analysis, as determined by the Executive Secretary, who shall determine whether the proposed change is a minor one subject to this paragraph (c) instead of paragraph (b) of this section (see, §400.27(f)).

Section 400.27(f) of the 1991 regulations largely mirrored the content of prior Section 400.1301(j) in delineating:

Procedure-Application for minor modification of zone project. (1) The Executive Secretary, with the concurrence of the Port Director, will make a determination in cases under §400.26(c) involving minor changes to zone projects that do not require a Board order, such as boundary modifications, including certain relocations, and will notify the applicant in writing of the decision within 30 days of the determination that the application or request can be processed under §400.26(c).

2) The Port Director shall provide the decision as to concurrence within 20 days after being notified of the request or application.

Evolution of the FTZ Board's Practice on FTZ Sites:

The FTZ Act established a framework which is sufficiently general to enable the FTZ Board to evolve its perspective over time pertaining to some of the core issues related to the characteristics of a FTZ. As the need arose, the Board consciously explored the flexibility of the statutory framework in order to find the most effective allowable mechanisms for its administration of the FTZ program. During the 1970's, with the growth of international trade

and of local communities' interest in FTZs as economic development tools, the FTZ Board implemented several key changes in practice that culminated in perhaps the single largest conceptual shift since the passage of the FTZ Act.

Through the 1960's, the Board had -- relative to the requirements of sections 81f and 81g of the FTZ Act -- implemented a narrow interpretive approach to the designation of zone sites and the approval of buildings. For any proposed zone site, the Board required the specification in advance of the precise area of the site -- which could then only be used for zone activity -- and a detailed description of any buildings or facilities that would be constructed. Board Order number 2 (January 30, 1936), granting authority for FTZ # 1 in New York City, included the following language as the first of the "express conditions and limitations" to which the grant was subject:

The Grantee shall make no deviation from the maps, plans, specifications, drawings, and blue prints, accompanying the said application and marked Exhibits Numbers 1 to 13, inclusive, before or after completion of the structures or work involved, unless modification of such maps, plans, specifications, drawings, and blue prints, has previously been submitted to and has received the approval of the Board.

The Board's practice over the ensuing forty-five years remained static, with Board Order number 93 (March 23, 1973), granting authority for FTZ # 15 in Kansas City, Missouri, containing substantively identical language² in the first of the grant's "express conditions and limitations." However, during the course of 1973, the Board chose to modify its practice. The State of Michigan had applied to establish a new FTZ on a 17-acre site within the Sault Ste. Marie (Soo) Industrial Park. The site was described in the examiner's report as "currently under development" and the report noted that:

The space to be allocated to the Zone in the Soo Industrial Park was the subject of considerable discussion as the application was being developed. Although the applicant states that 17 acres may be more than is needed at the outset, specified land needs of prospective clients cannot be determined until the grant is authorized and serious negotiations can begin. It is advanced that a zone of significant size will provide maximum flexibility in attracting the widest range of diversified firms.

In Board Order 94 (June 11, 1973), the FTZ Board granted authority for the proposed Sault Ste. Marie zone but -- for the first time -- did not include in its order the restrictive condition that the "Grantee shall make no deviation from the maps, plans, specifications, drawings, and blue prints..." In fact, that restrictive condition never reappeared in subsequent Board Orders.

² The exact language from the first restriction in Board Order 93 is, "The Grantee shall make no deviation from the maps, plans, specifications, drawings, and blue prints, accompanying the said application and marked Exhibits Nos. I to XIII inclusive, before or after completion of the structures or work involved, unless such deviation has previously been submitted to and has received the approval of the Board."

Instead, after one other approval of a new FTZ without the old restrictive language in the Board Order³, the Board adopted an explicitly new approach.

For the May 1974 proposal to establish a FTZ in San Jose, California -- comprised of one 15-acre section and one 16-acre section "about a quarter mile apart within a 500-acre industrial park" -- the examiners committee made the following recommendation to the Board:

Since the proposed facility would be an industrial park the committee suggests that the Board's action on the application extend to an endorsement of the general construction plans for plants within the zone which would make it unnecessary for each individual plant to be approved by the Board separately, so long as the operation is consistent with the instant application.

Consequently, in approving the San Jose zone as FTZ 18, the resolution accompanying Board Order number 103 (November 27, 1974) contained the following new language⁴:

Since the proposal involves an industrial park type zone that envisages the construction of the buildings by other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations⁵, as are necessary to carry out the proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the District Army Engineer, when appropriate, and the Board's Executive Secretary.

The inclusion of Board approval for future buildings as part of the approval for a proposed site was a complete break from prior practice. As such, the Board beginning in 1974 had changed its interpretation of the FTZ Act's requirement that "[e]ach application shall state in detail... [t]he facilities and appurtenances which it is proposed to provide and the preliminary plans and estimate of the cost thereof..." and "[t]he time within which the applicant proposes to commence and complete the construction of the zone and facilities and appurtenances." 19 U.S.C. 81f(a).

3 The Board Order in question is number 97 (May 17, 1974) approving FTZ 17 in Kansas City, Kansas and expanding the related zone in Kansas City, Missouri.

4 Except for approvals of applications where proposed zone sites involved only specific pre-existing enclosed space, all subsequent Board Orders through 1991 that related to new FTZ sites included either this reference to "an industrial park type zone" or a reference to "open land" or "open space" that similarly was available for construction of buildings by other than the grantee, and for which Board approval was included in the granted authority. (In 1991, the Board's revised regulations incorporated a new section which rendered the 1974 through 1991 resolution language unnecessary – Section 400.28(a)(6): A grant of authority approved under this subpart includes authority for the grantee to permit the erection of buildings necessary to carry out the approved zone project subject to concurrence of the Port Director.)

5 Section 400.815 stated: "The grantee may, with the approval of the Board, and under reasonable and uniform regulations for like conditions and circumstances to be prescribed by it, permit other persons, firms, corporations or associations to erect such buildings and other structures within the zone as will meet their particular requirement..."

Section 400.815 was replaced in the Board's 1991 regulations by section 400.28(a)(6), which stated: "A grant of authority approved under this subpart includes authority for the grantee to permit the erection of buildings necessary to carry out the approved zone project subject to concurrence of the Port Director."

The Board had shifted from an interpretation of section 81f(a) that any building for which details had not been provided in the application would require further approval by the Board prior to construction to an interpretation that an application should provide the details of current or future buildings to the extent practicable (but with authorization for future, as-yet-unplanned buildings within the boundaries of a site included in the Board's approval of a plan involving that site).

During the ensuing years, the FTZ Board also opted to alter its practice regarding the scale and scope of acceptable FTZ sites. The key change accepted by the Board in this regard was a recognition of the legitimacy of "standby" space (as opposed to the prior standard of approving space which would be dedicated exclusively to FTZ use). The September 1980 examiners committee report for the establishment of a FTZ covering 2,000 acres in Brownsville, Texas (FTZ # 62 approved by Board Order number 166 -- 10/20/1980) included the following explanation:

It is to be noted that insofar as the standby space is concerned the FTZ Board has accepted in recent years the proposition that when zones are part of large development projects, abundant standby space is justified for marketing purposes. The fact that approval by the Board is contingent upon further operational approval by Customs officials and a reporting system on new manufacturing is considered adequate protection against improper activity. This attitude of the Board is consistent with current policy in facilitating projects relating to economic development.

Also of note, in January 1982, the Port Authority of New York and New Jersey, grantee of FTZ # 49, applied to expand its FTZ to encompass the entire 2,200 acre Port Newark/Elizabeth Port Authority Marine Terminal (subsequently approved by Board Order number 211, 5/26/1983). The March 1983 examiners committee report discusses the proposal as follows:

What is novel about this proposal is not its size, but that it involves designation of an entire complex as an approved zone area, though it is anticipated that only portions of the area would ever be activated. This flexibility, argues the Port Authority's director "is the only practical means available to satisfy interest on a timely basis and give the Port Authority the marketing flexibility that is critical to achieve its goals to expedite and encourage foreign commerce, increase economic growth, and develop new employment". This was in response to a written request from the chief examiner that the Port Authority consider reducing the space requested by about 50 percent to exclude areas not expected to be activated. The position of the Port Authority is not that it "needs" all of the space for zone activity, but that it needs the flexibility to be effective in using the zone to its full economic potential. It is strongly supported by the cities in which the complex is located, backed by county and state officials. Unemployment is high in both Newark and Elizabeth and the port complex is seen as an economic resource that can help create new trade-related employment opportunities with a more aggressive use of free zone status.

The Newark report added:

The Board has already supported the concept of approving large standby areas to help grantees market their zones more effectively. This practice reduces red tape and the need for incessant requests for expansions and boundary changes. There is no loss of control, for Customs must approve activations and the Board reviews manufacturing cases as they arise.

Then, in August 1982, the Brownsville, Texas grantee applied to expand its FTZ to include an additional 19,000 acres within the 42,000 Brownsville Navigation District. The August 1983 examiners committee report on the application explained the Board's rapidly evolving practice in the context of what, in retrospect, represents perhaps the most important conceptual shift in the program's history:

[T]he concept of "approval/activation" is becoming more well-known and accepted. This concept, applied by the Board during the past seven years, involves approving areas as zones that will not be used exclusively for zone activity. Portions of the "approved" area are "activated" with Customs approval, with FTZ Staff and possibly Board involvement in new manufacturing situations. Only the "activated" areas are considered to be outside Customs territory. Inherent in the concept is the point that Board approval is conditional and "full" status does not occur until after a final Customs operational review and activation.

For that Brownsville expansion, which proposed adding 19,000 acres to Brownsville's existing 2,000 acre FTZ, the August 1983 examiners committee also recommended (and the FTZ Board adopted in Board Order number 226, October 7, 1983) what would become the Board's standard 2,000-acre activation limit for any general-purpose zone:

Because zones tend to refer to the size of their approved area in promotional activity and because of concern by some Customs officials and FTZ that this might set an undesirable precedent, some type of limit should be imposed that relates to "activation". It appears that a restriction that would allow the flexibility that is desired, yet put a reasonable ceiling on the amount of space that could be activated without further Board approval, would involve a limit of 2000 acres.

The 2000 acres is an amount just short of what was recently approved for the Port of New York and New Jersey at its Newark-Elizabeth Marine Terminal, the busiest container port in the world. Since it is desirable under the approval/activation concept to have a general benchmark as to total area that could be activated without further FTZ Board involvement, the Newark/Elizabeth zone is proposed as such a benchmark for large seaport areas. The [Brownsville grantee] has indicated that this limitation would not prevent [the grantee] from accomplishing its objectives. Under the circumstances, the 2000-acre activation limit is recommended.

The series of above-cited decisions (as well as those on similar cases of the time⁶) taken by the FTZ Board reflect a major reassessment of what the FTZ Board could and should authorize under the FTZ Act and the Board's regulations. The single most significant change was entirely conceptual, namely from viewing the Board's action as designating space as an area outside the customs territory to viewing the action as designating space which would potentially be treated as outside the customs territory (but only if approved for activation by the Customs Service).

Context of Regulations on Administrative Minor Modifications:

By the early 1970's, the Board had also recognized a need -- unmet by the Board's then-current practice and procedures -- to be able to quickly bring FTZ designation to new buildings or parcels when circumstances warranted. As a result, in December 1971, the Board adopted an amended regulation that allowed simplified and faster action by the Board staff to authorize minor modifications of zone boundaries. The authority to enable the staff -- at the staff level rather than by the Board -- to approve certain modifications of zone boundaries did not derive directly from any specific language found in the FTZ Act, but rather from the FTZ Board's overall statutory authority and broad discretion in carrying out the purposes of the FTZ Act. The initial standard expressed in the regulations for allowable minor modifications was that they "will not result in an expansion of zone operations," and the 1991 regulations provided a standard that was only slightly less vague. However, the key point is not the specific standard established but rather the conceptual shift that changes could be made by administrative action as long as the result remained consistent with the "plan" approved by the Board for the zone in question.

During the decades following the regulatory change that first instituted the concept of a minor boundary modification, the FTZ Board's practice regarding modifications to zones continued to evolve and become further defined. Increasing numbers of FTZs were approved⁷ and levels of international trade grew dramatically, both of which contributed to greater FTZ use and greater demand for changes to existing FTZs (including to meet time-sensitive needs).

The FTZ Staff's current practice on administrative minor boundary modifications (MBMs) reflects a conservative approach to the statutory and regulatory requirements (including sections 400.26 and 400.27(f) of the Board's regulations). The FTZ Staff essentially approves MBM requests only if there is no increase in the total combined acreage of a FTZ's approved sites (or, on occasion, if an increase would only be small and truly temporary in nature). A grantee seeking a permanent action to add a new parcel or site is required to remove an equivalent amount of similar space elsewhere in its general purpose zone ("swap" acreage).

6 The March 1983 examiners committee report for the expansion of the Newark, New Jersey zone cited a series of then-recent cases in which the Board had adopted the practice of allowing large zone areas: "A number of zones have been approved in recent years covering large areas, including Brownsville, Texas (2000 acres), Huntsville, Alabama (1300 acres), Galveston (884 acres) and San Antonio (556 acres)."

7 A total of 13 FTZs were approved between the passage of the FTZ Act in 1934 and the end of 1971. From 1971 through 1991, the FTZ Board approved 170 additional FTZs.

The FTZ Staff also evaluates the effect of each proposed MBM relative to the zone's most recent "plan" established through FTZ Board action. This evaluation is both individual and cumulative with prior MBMs since the last Board action establishing the zone's plan. The cumulative impact of multiple MBM actions for a zone at times leads the FTZ Staff to inform the zone's grantee that new proposed MBM actions will not be possible until the grantee has reorganized its zone and obtained FTZ Board approval for a new zone plan (thereby effectively resetting the gauge against which a grantee's proposed MBMs are measured to determine whether they "[s]ubstantially modify the plan originally approved by the Board" -- 15 CFR 400.26(a)(2)(ii)). In this context, even with swapping of acreage from an existing FTZ site, issues arise such as when a proposed MBM site is located far from an existing site of the same zone. The FTZ Staff would then be concerned about whether the proposed MBM substantially modifies the plan approved by the Board. Such concerns often lead either to denial of the MBM or approval only on a temporary basis until the grantee makes full application to FTZ Board to establish a new plan for the zone.

Appendix 4

**First Published Proposal
(5/8/08; 73 FR 26077-26078)**

information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395-7285, or David_Rostker@omb.eop.gov.

Dated: May 5, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8-10226 Filed 5-7-08; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Proposal for Available Alternative Site-Designation and Management Framework

SUMMARY: The Foreign-Trade Zones (FTZ) Board is inviting public comment on a staff proposal to make available an alternative framework for participating grantees to designate and manage their general-purpose FTZ sites. A key result of this proposal, which stems from a series of regional and state-level discussions with FTZ grantees that began in April 2007, would be greater flexibility and predictability for a participating grantee to use administrative "minor boundary modifications" (MBMs) to modify FTZ sites. The greater flexibility would be made possible by participating grantees' increased focus on the FTZ sites needed for current or near-term zone activity, with a resulting improvement in the efficiency of FTZ oversight by government agencies. The availability of this alternative framework would affect only participating FTZ grantees and would occur within the existing statutory and regulatory context (including the role of the local CBP port director relative to any application for Board action or MBM request).

Background:

Under the FTZ Act of 1934 (19 U.S.C. 81a-81u), the FTZ Board may authorize FTZ sites sponsored by local "grantee" organizations at locations within or adjacent to U.S. Customs and Border Protection (CBP) ports of entry. Under the FTZ Act and the FTZ Board's regulations (15 CFR Part 400), FTZ designation for a particular parcel or site may result either from an application for action by the FTZ Board or from a request for an administrative MBM action by the FTZ Board staff. The regulatory time frame for such FTZ Board actions is ten months versus a thirty-day time frame for administrative MBM actions, and there are significantly greater documentation requirements

associated with applications for Board action than for requests for administrative action.

The FTZ Act gives the FTZ Board broad authority and discretion. In this context, the Board's 1991 regulations delineate criteria for evaluation of applications for Board action and requests for administrative action to authorize FTZ designation for new parcels or sites. The applicable regulatory criteria are general in nature and the Board's existing approach (practice) for MBMs and FTZ designation for new parcels or sites pre-dates both the enormous growth in international trade of recent decades and the significant evolution in trade-related security and oversight responsibilities within government since 2001.

Within the FTZ program itself, increased demand for rapid action regarding new FTZ parcels or sites is tied to an accelerated pace of decision-making among the types of businesses that constitute the ultimate users of the program. The program's ability to react to business needs in a timely manner is inextricably linked to the program's success in helping to retain or enhance U.S.-based activity. In this context, an alternative approach to MBMs and site management for grantees in need of greater flexibility and responsiveness can be important in fulfilling the FTZ program's purpose "to expedite and encourage foreign commerce."

Proposal: The fundamental trade-off addressed in this proposal is greater flexibility and increased predictability for approval of FTZ sites through simple and rapid MBM actions in exchange for a grantee maximizing the linkage between designation of FTZ space and actual use of that space for FTZ activity (after "activation" by CBP). Maximizing this linkage can further other important program-related goals, including more efficient use of both FTZ Board and CBP resources.

Although the proposed alternative framework could be available to new or existing grantees, the major benefit would likely be for existing grantees who seek to enhance their ability to respond to evolving FTZ-related needs in their communities. Under this proposal, existing or potential grantees would have the option of applying to establish or reorganize their FTZ by incorporating in an application for FTZ Board action elements from the following framework:

1. The "service area" within which the grantee intends to be able to propose FTZ sites (e.g., specific counties, with documented support from new counties if the service

area reflected a broader focus than the FTZ's current area served). The term "service area" applies a name to a concept which already exists in certain approved FTZ applications in which a grantee organization has named the localities it intends to serve. It should be noted that any service area would need to be consistent with the "adjacency" requirement of the FTZ Board's regulations (60 miles/90 minutes driving time from CBP Port of Entry boundaries).

2. An initial limit of up to 2,000 acres of designated FTZ space within the service area. Given the proposal's focus on linking FTZ designation more closely to FTZ activity, the 2,000-acre limit reflects the FTZ Board's existing practice of limiting any FTZ grantee to activation of 2,000 acres (regardless of the overall size of the grantee's zone) unless further approval is obtained from the FTZ Board. Acreage within the 2,000-acre limit which had not been applied to specific designated sites would effectively be "reserve" acreage available for future FTZ designation for parcels or sites within the grantee's approved service area.
3. Enhancement of the usefulness of the 2,000 available acres by emphasizing "floating" acreage within an individual site's boundaries (as has been the FTZ Board's practice with certain applications to date). For example, 100 acres of "floating" FTZ designation within the boundaries of a 700-acre port complex would mean that it would be possible to activate with CBP up to 100 acres of total space anywhere within that 700-acre complex.
4. Mandatory designation of a primary "anchor" FTZ site able to attract multiple FTZ users. No "sunset" time limit (see below) would apply to the anchor site. The anchor site would generally be no more than 500 acres (which could be "floating" acres within larger site boundaries see above). A grantee's anchor site would be designated through the full application process for FTZ Board action.
5. Possible designation of a limited number of "magnet" sites selected by the grantee often through local public processes for ability and readiness to attract multiple FTZ users. An individual magnet site would generally be limited to 200 "floating" acres. A magnet site could only be designated through an application for FTZ Board

action.

6. Possible designation of “user-driven” sites to serve companies not located in an anchor or magnet site but which are ready to pursue conducting activity under FTZ procedures. In the general interest of maximizing the linkage between FTZ site designation and FTZ activity at the site, a user-driven site would be limited in the context of a larger industrial park or business district where other companies interested in FTZ procedures might be able to locate in the future to the area(s) required for the company(ies) ready to pursue conducting activity under FTZ procedures.
7. Unlike anchor and magnet sites, user-driven sites could be designated through the current minor boundary modification (MBM) mechanism a rapid administrative action by the Board’s staff in addition to through FTZ Board action. A simplification of the MBM process would result from elimination of the need to “swap” like amounts of acreage from existing sites as long as the total acreage for existing and proposed sites remained within the standard 2,000-acre limit.
8. In addition to the one anchor site, general initial limits of five magnet sites and ten user-driven sites which could exist simultaneously for a single FTZ. Increases of the limits applicable to a specific grantee could be justified over a longer term based on FTZ activity at a significant percentage of the grantee’s designated sites. A grantee’s request for a permanent increase in its number of authorized sites would be a matter for consideration by the FTZ Board. Also, the special circumstances of regional (multi-county) FTZs could be taken into account by an alternative general initial limit for such zones of two magnet sites per county. (Other limits in the proposal would be unaffected by such an alternative initial limit on numbers of magnet sites for regional FTZs.)
9. Consistent with current practice for many expansion applications, magnet sites and user-driven sites would be subject to “sunset” time limits which would self-remove FTZ designation from a site if there had been no FTZ activity before the site’s sunset date (generally five years from the date of the site’s approval). Magnet sites and user-

driven sites would also be subject to ongoing “recycling” whereby FTZ activity at a site during the site’s initial sunset period would serve to push back the sunset date by another five years (when the sunset test based on FTZ activity would again apply).

It is important to note that the elements of the proposal support each other in furthering the goals of flexibility and focus for FTZ site designation (with important resulting resource- and efficiency-related benefits for the government). As such, a framework incorporating these types of elements would incorporate the package of elements as an available alternative to the Board’s current practice. FTZ grantees opting to manage their zones under the Board’s current framework would be unaffected by this proposal. As is currently the case, MBM actions would be approved by the Board’s staff while modifications to a zone’s “plan” (e.g., increase in authorized FTZ acreage, modification to service area) would be matters for the FTZ Board’s consideration.

In addition, in order to help the FTZ Board evaluate the effectiveness and appropriateness of the alternative framework after actual experience with FTZ grantees, the FTZ staff would report to the Board on a periodic basis regarding the actual usage of the alternative framework. The staff’s reporting regarding implementation of the framework at individual participating FTZs would result from staff-initiated reviews and would not require any request or application from the grantee.

Public comment on this proposal is invited from interested parties. We ask that parties fax a copy of their comments, addressed to the Board’s Executive Secretary, to (202) 482-0002. We also ask that parties submit the original of their comments to the Board’s Executive Secretary at the following address: U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW., Washington, DC 20230. The closing period for the receipt of public comments is July 7, 2008. Any questions about this request for comments may be directed to the FTZ Board staff at (202) 482-2862.

Dated: May 2, 2008.

Andrew McGilvray,
Executive Secretary.

[FR Doc. E8-10274 Filed 5-7-08; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-807]

Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Amended Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 8, 2008.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4475 and (202) 482-0649, respectively.

SUMMARY: On April 3, 2008, the Department of Commerce (the Department) published in the **Federal Register** the final results of the antidumping duty changed circumstances review and reinstatement of the antidumping order on polyethylene terephthalate film, sheet, and strip from Korea. The review covered a single firm, Kolon Industries, Inc. (Kolon) and the period July 1, 2005 to June 30, 2006. See *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of the Antidumping Duty Order*, 73 FR 18259 (April 3, 2008) (*Final Results*). We are amending the *Final Results* to correct a ministerial error in the calculation of the cash deposit rate for Kolon pursuant to 19 CFR 351.224(e).

SUPPLEMENTARY INFORMATION: On April 7, 2008, the Department received from Kolon a timely allegation of a ministerial error pursuant to 19 CFR 351.224(c)(1). Kolon alleges an error in formatting product-specific control numbers. Kolon asserts the Department assigned a revised field of only 6 characters in length for the variable CONNUM2H in the home market comparison program while assigning a field length of 10 characters for the variable CONNUM2H in the margin program. Kolon argues that the effect of this error is to truncate some of the CONNUM2H values used for matching purposes in the final results. Petitioners did not comment on the alleged ministerial error.

Appendix 5

**Second Published Proposal
(9/11/08; 73 FR 52817-52822)**

free). Components and materials sourced from abroad (representing 50–65% of the value of the finished product) include: Synthetic filament tow, artificial filament tow, polyester fibers, polypropylene fibers and rayon fibers (HTSUS duty rate ranges from 4.3 to 7.5%).

FTZ procedures would exempt Cellusuede from customs duty payments on the foreign components used in export production. The company anticipates that 10–20 percent of the plant's shipments will be exported. On its domestic sales, Cellusuede could choose the duty-free rate during customs entry procedures that applies to finished flock for the foreign inputs noted above. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 10, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 25, 2008.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 605 Fulton Ave., Suite E103, Rockford, IL 61103.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:
Elizabeth Whiteman at
Elizabeth_Whiteman@ita.doc.gov or
(202) 482-0473.

Dated: September 3, 2008.

Andrew McGilvray,
Executive Secretary.

[FR Doc. E8-21231 Filed 9-10-08; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Revised Proposal for Available Alternative Site-Designation and -Management Framework

SUMMARY: Based on comments received in response to the May 8, 2008, notice (73 FR 26077–26078), the Foreign-Trade Zones (FTZ) Board staff is making a number of revisions to its proposal to make available an alternative framework (for grantees that choose to participate) to designate and manage their general-purpose FTZ sites. Comments on the May proposal were overwhelmingly supportive overall with regard to making such a framework available to grantees on an optional basis. However, comments also raised a number of important questions and concerns.

In response, we have made some significant revisions to the proposal. Key revisions are allowance for a special transitional phase for each grantee applying to transfer to the alternative framework, elimination of a general initial limit on the number of “usage-driven” (formerly “user-driven”) sites, elimination of the concept of an “anchor” site, and flexibility on the duration of the sunset limits for “magnet” sites—with five years established as a minimum rather than a fixed standard—so that the FTZ Board may take specific circumstances into account.

Comments and questions are summarized and addressed below by general topic. The revised proposal is delineated after the discussion of the comments/questions.

Comments Received

Comments on Overall Framework and Application Process

(1) One commenter suggested that, recognizing that a number of FTZ grantees currently have more FTZ sites and/or acreage than envisioned under the standard numbers associated with the proposed alternative site-designation and -management framework (“alternative framework”), the FTZ Board could require participating grantees to submit a plan in advance of an application to restructure the grantee's zone project outlining the process and standards to be used in assessing which of the grantee's existing sites to propose for continued FTZ status.

(2) One commenter stated that a grantee seeking to use the alternative framework would be changing its zone plan, which could only be accomplished through application to

and approval by the FTZ Board. However, designating existing sites as Anchor or magnet sites should be at the grantees' discretion. Further, requiring grantees to recompile economic data to resubstantiate the designation of already approved sites would tend to be time-consuming while yielding little benefit.

(3) More than one commenter suggested a transitional period that would allow grantees whose numbers of existing sites exceed the envisioned standard limitations the opportunity to exceed those standard limitations if they believe it is desirable to do so for an initial period, with a sunset provision for all affected sites helping to “weed out” unused or unneeded zone sites at the end of the initial period.

(4) One commenter indicated that the FTZ Board should provide an appeals process for any existing property owners that may be “detrimentally impacted” by a grantee's decisionmaking process regarding whether to retain FTZ designation at currently designated sites. The framework should also address issues of concurrence needed from property owners that may not necessarily agree to have zone status removed.

(5) One commenter stated that it is important that the process be managed as a flexible framework rather than as a set of rigid requirements. The final framework should set general standards but specific grants of authority should be based on grantee requests and the FTZ Board's assessment of applications. It would be incumbent on grantees to demonstrate the need to diverge from the established general standards.

(6) One commenter stated that, for states where local inventory taxes can be a possible issue for approval of new sites, the FTZ Board should require evidence of taxing authority concurrence as part of the designation process. However, for existing FTZ sites being considered as part of the reframing of a zone project under the new framework, no new taxing authority approvals should be required. Also, if under the new framework FTZ designation is removed from a site either at the grantee's discretion or via a sunset mechanism, a taxing authority approval previously in place for the site should “remain in place” in the event of a future request for redesignation of the site as magnet or user-driven.

(7) One commenter suggested that the FTZ Board allow a grantee to benefit from some of the proposal's benefits (“floating acreage,” simplified process for minor boundary modifications) within a 2,000-acre limitation but based on the grantee's own zone-site management plan, which the FTZ Board

could determine was an acceptable alternative to the model delineated in the alternative site management proposal.

Response on Overall Framework and Application Process

Reframing the “plan” for a general purpose zone project under the alternative framework would inherently involve application to the FTZ Board (including the procedural requirement for technical comments from CBP pursuant to 15 CFR 400.27(d)(1)) so that the Board could evaluate and possibly approve the proposal for a new plan for the zone. For existing FTZs with disparities between their levels of designated sites and acreage relative to their sites and acreage where FTZ activity is being conducted, we agree with the comments suggesting allowance for a transitional phase between a grantee’s existing structure and a future structure consistent with the goals of the alternative framework. As a result, the revised proposal outlined below specifically incorporates a mechanism for an optional, one-time transitional phase for a participating grantee.

We also agree with comments indicating that applying rigid standards would be counterproductive. The proposal has been revised to eliminate any numeric limit or goal for usage-driven (formerly user-driven) sites. The revised proposal also reflects that a request for designation for a usage-driven site would be explicitly linked to the specific entity(ies) which will be conducting FTZ activity at the site (or for which such activity will be conducted). As such, the designation of a usage-driven site—and continuation of that designation—would be directly tied to the specific entity(ies) associated with the request. Further, the revised proposal emphasizes a general goal of no more than six magnet sites per zone while recognizing the special circumstances that may exist with regard to certain zones (such as regional, multi-county projects). The revised proposal explicitly allows for a range of situations while also emphasizing the type of justification that would be needed for a larger number of magnet sites.

Regarding grantee decisionmaking standards and appeals of such decisions, we agree that any grantee making a decision about whether to retain existing sites should apply uniform neutral standards in making that determination. A standard element of processing any application for Board action is a **Federal Register** notice with a public comment period. The notice

and comment process provides appropriate procedural safeguards regarding any application for Board action. Also, as noted above, any grantee’s use of the proposed alternative framework would be the result of an application to the FTZ Board to “reorganize” the zone. The FTZ Staff would aim to minimize the burden on the applicant (particularly regarding the type of economic data which had been part of a justification which had previously been submitted to the Board).

Finally, regarding documentation for concurrence of local taxing entities in states with inventory taxes, the Board would be able to evaluate on a case-by-case basis pre-existing documentation for sites newly proposed for designation whose previous FTZ designation had lapsed.

Comments on “Service Area” Concept

(8) One commenter, while agreeing with the concept of a “service area” (geographic area within which the grantee intends to be able to propose FTZ sites), noted that more than one grantee might present the same geographic location as part of their service areas and states that a grantee must satisfy the “convenience of commerce” (19 U.S.C. 81b(b)) for any portion of its service area that overlaps another grantee’s service area. The same commenter raised a number of questions regarding service areas: Will there be a process to continue overlaps in service areas? Will the Board determine the service area for each grantee and, if so, would there be an appeals process? Would the establishment of service areas require the transfer of existing sites from one grantee to another? Must a grantee’s subzones be within the boundaries of the service area associated with that grantee?

(9) One commenter stated that, in implementing the concept of a zone’s service area, there is no need to change existing FTZ “projects” from one port of entry affiliation to another where ports of entry overlap and each has its own FTZ grantee.

Response on “Service Area” Concept

The complexity of the FTZ Board’s evaluation of a grantee’s proposed service area may vary depending on the proposal and the region to which the proposal relates. Some regions have multiple existing grantees serving a single Customs and Border Protection (CBP) port of entry (POE) and the limitations of the areas those grantees seek to serve may not have been defined to date. (It should be noted that some regions with multiple grantees serving a

POE may have the basic framework in place to define service areas through the plans previously presented to the FTZ Board, some of which may have tended to focus on a single county within a broader region served by the POE.) In instances where there is disagreement over proposed service area(s) serving a POE, the FTZ Board would need to evaluate the history of the zone(s) at issue (particularly as such history relates to the “convenience of commerce” clause of section 81b(b) of the FTZ Act). The FTZ Board will be able to evaluate such issues on a case-by-case basis.

It is also important to recognize that the primary purpose of defining a service area is to put in place a zone “plan” that would clearly be compatible with subsequent requests for minor boundary modifications (MBMs) within the service area. As such, if a POE area is already served by multiple grantees with some overlap of communities served, defining a service area for grantee “A” would not inherently have an impact on an existing site of grantee “B” that happens to fall within the newly defined service area of grantee “A.” Also, approval of a service area for one grantee does not necessarily preclude another grantee in the POE from proposing a new FTZ site in the first grantee’s approved service area based on evidence that the first grantee “will not adequately serve the convenience of commerce” (19 U.S.C. 81b(b)). In fact, the service areas could conceivably overlap although the FTZ Board would need to examine the public interest implications of such a situation, including burden on the resources of government agencies involved in administration and oversight related to the FTZ program.

A key additional point is that a service area could only be defined through an application for FTZ Board action. Action by the FTZ Board would establish the service area, and the Board would retain its existing discretion to determine whether to approve an application in its entirety and whether restrictions or limitations might be required. In this context, presentation of a proposed service area in an application does not guarantee approval of the exact service area by the Board (particularly if controversy has arisen regarding the proposed service area during the processing of the application). In instances where any party may wish to object to the service area proposed by a grantee in an application to the Board, the standard **Federal Register** notice and public comment procedures for applications to the Board will ensure that all

perspectives can be presented for consideration.

Finally, the proposal at issue here relates to a grantee's management of its general-purpose FTZ. As such, subzones are not a subject of *any* element of the proposal (service area, standard overall acreage limit, etc.) and, in any case, already are subject to regulations addressing issues of geography and sponsorship (see 15 CFR 400.22(d)(2)).

Comments on 2,000 Acre Limit and "Floating" Acreage

(10) More than one commenter indicated that the proposed initial limit of 2,000 acres of designated FTZ space for a participating grantee appears reasonable in light of the concept of "floating acreage" also described in the proposal, but that the proposal would likely fail without the flexibility associated with the floating acreage. The same commenters state that the proposed general initial limitations of 500 floating acres at an anchor site and 200 floating acres at a magnet site seem reasonable as long as the grantee is able to request an increase in the amount of floating acreage designated at a given site based on actual FTZ activity at the site.

(11) Two commenters indicated that the proposed 2,000-acre limit per zone could cause confusion for some property owners of sites within a zone that currently exceeds 2,000 designated acres. Clarification should be provided regarding the availability of user-driven designation so that existing land owners (public and private) can understand how removal of designation now does not preclude them from getting FTZ designation on a usage-driven basis in the future.

(12) One commenter was concerned that the proposed 2,000-acre limitation would be too restrictive for a grantee whose existing site approaches 2,000 acres in size.

(13) One commenter asked whether acreage for subzones was included in the proposed 2,000-acre limit.

Responses on 2,000 Acre Limit and "Floating" Acreage

The 2,000-acre limit reflects the FTZ Board's existing practice of limiting any FTZ grantee to activation of 2,000 acres (regardless of the overall size of the grantee's zone) unless further approval is obtained from the FTZ Board. It is important to emphasize that the concept of "floating" acreage significantly enhances the usefulness of the 2,000 acres. Given that major portions of large sites tend to remain unactivated, actual facilities encompassing significantly more than 2,000 acres could be served

effectively by 2,000 floating acres. (For example, 500 floating acres within a 4,000 acre airport complex would enable activation of up to 500 acres anywhere within the complex.)

Comments on "Anchor" Site Concept

(14) One commenter maintains that, where an existing site is to be proposed as an "Anchor" site, the grantee should be able to accomplish "Anchor" designation through a letter to the FTZ Board staff rather than a full application to the FTZ Board.

Response on "Anchor" Site Concept

Based on factors described elsewhere in this notice, the revised proposal no longer includes the concept of an anchor site. Flexibility introduced into the revised concept for a magnet site enables magnet designation to cover a broader range of needs. At the same time, the proposal is simplified by having two categories of sites rather than three.

Comments on "Magnet" Site Concept

(15) More than one commenter maintained that, where an existing site is to be proposed as a magnet site, the grantee should be able to accomplish magnet designation through a letter to the FTZ Board staff rather than a full application to the FTZ Board.

Response on "Magnet" Site Concept

The designation of magnet sites is intended to be part of the reframing of a zone's plan through application to the FTZ Board. As such, magnet designation cannot be accomplished through administrative action by the FTZ Board staff. However, there is real merit to commenters' point that burden should be minimized for a grantee seeking to propose existing sites as magnet sites. Minimizing burden in that manner will be a goal for any guidelines to be issued by the Board staff for applications to reorganize zones using the alternative framework. Further, as noted above, such guidelines would aim to minimize any need to present new economic data for existing sites.

Comments on "User-Driven" Site Concept

(16) One commenter recommended changing the nomenclature of "user-driven" sites to "usage-driven" sites to reflect that designation of certain sites may be driven by the needs of an "operator" (15 CFR 400.2(s)) rather than a "user" (15 CFR 400.2(v)).

(17) One commenter recommended changing the nomenclature of "user-driven" sites to "operator/user-driven"

to reflect the possible use of such sites by third-party operators.

Response on "User-Driven" Site Concept

The term "user-driven" unintentionally gave the impression of limiting such sites to situations driven by the needs of a zone "user" (as defined in 15 CFR 400.2(v)). In this revised proposal, we have adopted the recommended nomenclature "usage-driven" (which will be used throughout the remainder of this notice). Usage-driven sites would be designated for the physical area(s) required for company(ies) conducting FTZ activity or ready to pursue conducting FTZ activity.

Comments on Numbers of Sites

(18) Several commenters questioned the need to have general limits on the numbers of magnet and user-driven sites.

(19) One commenter stated that a grantee should have the flexibility to determine appropriate numbers of magnet and user-driven sites for its zone project without limits on the numbers of such sites as long as the grantee's zone project remained within the overall 2,000 acre limit.

(20) One commenter indicates that for regional FTZ projects that span more than one county, of which multiple examples exist in the FTZ program, each county should be able to have an "Anchor" site.

(21) Two commenters indicated that the concept should be amended to allow for designation of one anchor site per city or county participating in the zone project.

(22) One commenter indicated that limitations on numbers of sites and on acreage for a type of site may be appropriate for many zones but inappropriate for some regionally focused zones. Also, the number of counties participating in a zone may be a good point of reference in many instances. However, counties can vary significantly in size, population and business activity, so counties may not be an appropriate point of reference in all cases.

(23) One commenter indicated that it sees no reasonable or fair limits to the number of FTZ sites, whether magnet or user-driven.

Response on Numbers of Sites

In addition to elimination of the concept of an "anchor" site, the proposal has been revised in several significant ways regarding numbers of sites. First, there is no longer a suggested initial limit on the number of

proposed usage-driven sites per FTZ. For magnet sites, the revised proposal describes a general goal of no more than six magnet sites per zone over the long term. However, the revised proposal also makes clear that the goal is not a fixed standard. There is explicit recognition that flexibility may be needed for zone projects with structures that could potentially justify larger numbers of magnet sites. Further, the newly proposed option for a transitional phase for any participating grantee incorporates initial flexibility on numbers of sites.

At the same time, it is important to recognize that the alternative framework delineated in the proposal is, fundamentally, about significantly enhanced flexibility in marketing and managing a zone project. The increased flexibility for the grantee is explicitly linked to other elements, including a need for greater focus that makes such flexibility possible. The proposal also reflects the reality expressed by many grantees of the great difficulty in prospectively placing FTZ designation where it may be needed in the future. The proposal looks to enable a grantee to move beyond repeated (often unsuccessful) attempts at prospective FTZ designation by recognizing that the primary mechanism for a participating grantee to serve new needs would be usage-driven minor boundary modifications (MBMs) within the service area, with a lesser role for long-term efforts to attract FTZ use to specific pre-designated magnet sites. Concentrating FTZ designation where it is actually used will also yield important benefits for the government in terms of oversight burden and other resource-related considerations.

One factor to bear in mind regarding the revised proposal's goal of no more than six magnet sites per grantee is that sites which begin their FTZ designation as magnet may ultimately prove appropriate to be shifted to usage-driven designation. For example, an industrial park newly designated as a magnet site may, after a number of years, be fully occupied but only have one active FTZ user and no other occupants that envision a short- to medium-term need for FTZ services. At the same time, the grantee may determine that it is desirable to propose a new industrial park as a magnet site. In that context, one option for a grantee to consider is redesignating the active FTZ portion of the older industrial park as a usage-driven site while seeking magnet designation for the new industrial park. Consideration of this type of option would be particularly appropriate if the grantee already had six magnet sites,

and the FTZ Board could examine the number of distinct activated operations within each existing magnet site when evaluating a request for additional magnet sites beyond the goal of no more than six. This reflects that a grantee's participation in the alternative framework will make rapid MBM action available for any unanticipated FTZ-related need within the service area (including, when warranted, to bring usage-driven FTZ designation to any parcel that may have previously had zone designation).

Comments on Sunset Limits

(24) One commenter stated that it is reasonable for magnet and user-driven sites to be subject to "sunset" limits whereby FTZ designation "self-removes" at the end of a five-year sunset period if no FTZ activity has occurred but added that differing standards should apply to magnet versus user-driven sites. Specifically, the commenter indicates that magnet sites should be subject to a sunset/removal standard based on "activation" (19 CFR 146.1(b)) whereas user-driven sites should be subject to a stricter sunset/removal standard based on the admission of foreign non-duty paid material into the zone site for a *bona fide* customs purpose.

(25) One commenter expressed concerns that sunset limits may be counterproductive by inhibiting investment in FTZ sites by property owners, adding that the time frames needed for zoning, infrastructure, construction, as well as activation of a finished facility by CBP, can make a five-year sunset period unrealistically short.

Response on Sunset Limits

Based on comments received, this revised proposal envisions a five-year period as the minimum sunset limit for magnet sites and allows flexibility in the FTZ Board's evaluation of evidence so that a longer sunset period for a specific magnet site could be approved where appropriate based on the circumstances. For usage-driven sites, the proposed five-year sunset limit is unaltered since the first proposal and reflects the nature of usage-driven sites. The ability to designate a usage-driven site within a grantee's service area via simple and rapid MBM action should also enable the grantee to address needs for new FTZ designation in situations where activation for a specific operator or user could not be accomplished during a site's initial sunset period.

With regard to the standard to be applied in the application of sunset limits, this revised proposal adopts

standards suggested in comments. Specifically, FTZ designation will self-remove from a magnet site unless the site is activated by CBP prior to the specific site's sunset deadline. For a usage-driven site, FTZ designation will self-remove unless there has been prior to the sunset deadline the admission into the site of foreign non-duty paid material for a *bona fide* customs purpose. These standards also apply to the periodic reapplication of the sunset test for a site under the "recycling" concept.

Comment on Site Numbering

(26) One commenter stressed that the FTZ Board should coordinate with various other Federal agencies to ensure compatibility of any site numbering in automated systems and across agencies. The same commenter indicated that the Board should issue guidance on the potential need for grantees to amend zone schedules (15 CFR 400.42(b)) and agreements with third parties if the Board renumbers zone sites.

Response on Site Numbering

The commenter is correct in highlighting the importance of the FTZ Board coordinating any site numbering or re-numbering with key government agencies. For any such numbering/re-numbering, the FTZ Board staff can also issue guidance where needed for affected grantees and third parties.

Comment on Tracking of Sites

(27) One commenter indicated that increased complexity of site tracking associated with a grantee's participation in the optional framework means that the Board should require such a grantee to post to the FTZ Board's Web site regularly updated site and activation plans.

Response on Tracking of Sites

The tracking of sites, including designation and sunset, will be critical to the successful functioning of the alternative framework. For any implementation of the alternative framework, the FTZ Board staff would coordinate availability and use of an effective, publicly available tracking mechanism.

Comment on Procedures for Minor Boundary Modifications

(28) One commenter suggests enhancing the process for minor boundary modifications (MBMs) within the site management framework by allowing a grantee to request from the Customs and Border Protection port director a "Zone time approval" that would give the Grantee blanket CBP

concurrence for any user-driven sites the grantee might propose based on certain conditions.

Response on Procedures for Minor Boundary Modifications

The process for local CBP evaluation and possible concurrence for proposed MBMs often involves an examination of the specific activity and entities involved. Variation in activities, users, etc., can have a significant impact on the ultimate burden imposed on CBP resources. In this context, the current request-by-request consideration by CBP will be maintained for MBMs under the revised proposal.

Revised Proposal

The fundamental trade-off addressed in this proposal continues to be greater flexibility and increased predictability for approval of FTZ sites through simple and rapid minor boundary modification actions in exchange for a grantee maximizing the linkage between designation of FTZ space and actual use of that space for FTZ activity (after "activation" by CBP). The major benefit would likely be for existing FTZ grantees, which would have the option of applying to reorganize their FTZ by incorporating in an application for FTZ Board action elements from the following framework:

1. The "service area" within which the grantee intends to be able to propose general-purpose FTZ sites (e.g., specific counties, with documented support from new counties if the service area reflected a broader focus than the FTZ's current area served). The term "service area" applies a name to a concept which already exists in certain approved FTZ applications in which a grantee organization has named the localities it intends to serve. It should be noted that any service area would need to be consistent with the "adjacency" requirement of the FTZ Board's regulations (60 miles/90 minutes driving time from CBP Port of Entry boundaries). A grantee's proposed service area would need to be consistent with enabling legislation and the grantee organization's charter. The FTZ Board's evaluation of a proposed service area could potentially involve examination of issues related to the "convenience of commerce" (19 U.S.C. 81b(b)) in regions served by more than one FTZ grantee.

2. An initial limit of up to 2,000 acres of designated FTZ space within the service area. Given the proposal's focus on linking FTZ designation more closely to FTZ activity, the 2,000-acre limit reflects the FTZ Board's existing practice of limiting any FTZ grantee to

activation of 2,000 acres (regardless of the overall size of the grantee's zone) unless further approval is obtained from the FTZ Board. Acreage within the 2,000-acre limit which had not been applied to specific designated sites would effectively be "reserve" acreage available for future FTZ designation for parcels or sites within the grantee's approved service area.

3. Enhancement of the usefulness of the 2,000 available acres by emphasizing "floating" acreage within an individual site's boundaries (as has been the FTZ Board's practice with certain applications to date). For example, 100 acres of "floating" FTZ designation within the boundaries of a 700-acre port complex would mean that it would be possible to activate with CBP up to 100 acres of total space anywhere within that 700-acre complex.

4. Designation of a limited number of "magnet" sites selected by the grantee—often as a result of local public processes—for ability and readiness to attract multiple FTZ uses. An individual magnet site would generally be proposed with no more than 200 "floating" acres, although a larger number of proposed acres for a magnet site could be justified based on factors such as the nature of the site (e.g., a major harbor facility) or a specific type of projected FTZ activity that would tend to require an unusually large number of acres in simultaneous "activated" status at the specific site. A magnet site could only be designated through an application for FTZ Board action.

5. Possible designation of "usage-driven" sites to serve companies which are not located in a magnet site but which are ready to pursue conducting activity under FTZ procedures. In the general interest of maximizing the linkage between FTZ site designation and FTZ activity at the site, a usage-driven site would be limited—in the context of a larger industrial park or business district where other companies interested in FTZ procedures might be able to locate in the future—to the area(s) required for the company(ies) specifically identified as ready to pursue conducting FTZ activity at the site.

6. Unlike magnet sites, usage-driven sites could be designated through the current minor boundary modification (MBM) mechanism—a rapid administrative action by the Board's staff—in addition to through FTZ Board action. (It should be noted that usage-driven MBM actions could conceivably be used to designate additional acreage where needed at magnet site locations.) A simplification of the MBM process

would result from elimination of the need to "swap" like amounts of acreage from existing sites as long as the total acreage for existing and proposed sites remained within the standard 2,000-acre limit. Requests for MBM actions would continue to require concurrence from the appropriate CBP port director.

7. No specific limit on the number of usage-driven sites. However, it should be noted that such usage-driven sites are by definition focused on only the specific physical area(s) required for company(ies) conducting FTZ activity or ready to pursue conducting FTZ activity. Therefore, with regard to numbers of usage-driven sites, the definition of such sites and the standard sunset limits (and recycling) described below inherently function to limit usage-driven sites on an ongoing basis to the number of specific areas required for activity by (or on behalf of) FTZ users.

8. Regarding numbers of magnet sites, the framework would reflect a general goal—after any transition period, as outlined below—of focusing each FTZ on six or fewer simultaneously existing magnet sites. Special circumstances of regional (multi-county) FTZs could be taken into account based on factors which could justify a larger number of magnet sites (e.g., population size, level of trade-related activity). Also, a grantee seeking over a longer term to justify to the FTZ Board proposed authority for a larger number of magnet sites could provide evidence of multi-user FTZ activity—as reflected in the grantee's annual reports to the FTZ Board—at a significant percentage of the grantee's already designated magnet sites. (It should be noted that a grantee with an approved magnet site where only a single user activates over time will be able to consider requesting usage-driven designation for the active portion of that magnet site, thereby helping to retain focus and enabling the grantee to consider whether a different site would be more appropriate for magnet designation while remaining consistent with the goal outlined above for total number of magnet sites.)

9. Magnet sites and usage-driven sites would be subject to "sunset" time limits which would self-remove FTZ designation from a site not used for FTZ purposes before the site's sunset date. For magnet sites, the default sunset period would be five years with sunset based on whether a site had been activated by CBP. However, the FTZ Board could take a range of factors into account in determining the appropriate sunset period for a given site (e.g., nature of the site, public ownership of the site). For a usage-driven site, the

sunset limit would require within five years of approval admission into the site of foreign non-duty paid material for a *bona fide* customs purpose. Experience in administering the framework could also reveal a need to adjust practice for usage-driven sites to implement intermediate benchmarks (such as progress towards activation) rather than a single deadline date at the end of a five-year period.

10. Magnet sites and usage-driven sites would also be subject to ongoing "recycling" whereby activation at a site during the site's initial sunset period would serve to push back the sunset date by another five years (when the sunset test would again apply). Finally, if all of a grantee's sites were due to sunset based on lack of activation, the grantee would need to apply to the FTZ Board at least 12 months in advance of the ultimate sunset termination to request designation of at least one site for the period beyond the sunset of the previously approved sites.

11. An optional five-year transitional phase would be available for grantees of zones with existing configurations that differ from the general parameters envisioned in the proposal. For the optional transitional phase, an individual grantee could apply to reorganize its zone and request continued FTZ designation for existing sites that the grantee determines warrant further opportunity to demonstrate a need for FTZ status. For the transition period, there would be no specific goal in terms of numbers of existing sites which could be proposed for magnet designation. However, sites proposed for a zone's transitional phase would need to comply with the framework's limit of 2,000 floating acres within the zone's site (see further discussion below).

12. For the transitional phase for a particular zone, the grantee would have the option of requesting usage-driven designation for any site where a single entity is conducting (or ready to conduct) FTZ activity. For sites that the grantee believes are better suited to a magnet (multi-user) role, the grantee could request magnet designation. Any usage-driven sites would have the standard five-year sunset period for such sites. The FTZ Board would establish sunset limits for individual magnet sites based on the facts of the case (particularly as they pertain to each site). For the transition phase, the default sunset limit for magnet sites would be five years but the FTZ Board would be able to establish longer sunset limits for specific sites if warranted by the facts and circumstances present.

13. The five-year transition period for a specific grantee would begin with approval of the grantee's reorganization application by the FTZ Board. During the final year of the transition period, the FTZ Board staff would initiate a review of all of the zone's sites for which the sunset limits align with the end of the transition period. The staff review would examine whether each of those sites had been activated during the transition period and, for activated sites, the specific FTZ activity which had taken place (including the operator(s)/user(s) for each site). The staff review of a zone's transition period would result in a report noting any sites subject to the review which had remained unactivated during the period (for which FTZ designation would self-remove at the end of the period). The staff report would also make preliminary recommendations regarding magnet or usage-driven designation going forward for sites activated during the period. The FTZ Board staff would provide its preliminary recommendations to the zone's grantee and allow a period of 30 days for the grantee to provide any response to the staff's recommendations. After the end of the 30-day period, the staff would create a final report taking into account any response from the grantee regarding the preliminary recommendations. Where appropriate, the Board's Executive Secretary would be able to take action on a recommended transition of a site from magnet to usage-driven designation via the minor boundary modification process.

14. The transitional phase for any zone would be limited by the defining 2,000 acre limit inherent in the proposed framework. In this context, if existing sites which a grantee wishes to propose for a transitional phase cumulatively exceed 2,000 acres in their current configuration, the grantee would need to determine the amount of "floating" acreage to propose within the boundaries of each such existing site. (For example, if an existing site is the 340-acre Acme Industrial Park, the grantee could propose 200 floating acres within the 340-acre Acme Industrial Park.) A grantee might opt for a simple mechanism to apportion a certain total amount of floating acreage among sites it is proposing for the transitional phase (after making allowance for the amount of acreage the grantee determines it needs to keep in reserve for possible future minor boundary modifications; a grantee retaining a minimum of 200 acres in reserve is advisable).

It is important to note that the elements of the proposal support each other in furthering the goals of

flexibility and focus for FTZ site designation (with important resulting resource- and efficiency-related benefits for the government). As such, a framework incorporating these types of elements would include the package of elements as an available alternative to the Board's current practice. FTZ grantees opting to manage their zones under the Board's current framework would be unaffected by this proposal. As is currently the case, minor boundary modification actions would be approved by the Board's staff while modifications to a zone's "plan" (e.g., increase in authorized FTZ acreage, modifications to service area) would be matters for the FTZ Board's consideration.

In addition, in order to help the FTZ Board evaluate the effectiveness and appropriateness of the alternative framework after actual experience with FTZ grantees, the FTZ staff would report to the Board on a periodic basis regarding the actual usage of the alternative framework. The staff's reporting regarding implementation of the framework at individual participating FTZs would result from staff-initiated reviews and would not require any request or application from the grantee.

Public comment on this proposal is invited from interested parties. We ask that parties fax a copy of their comments, addressed to the Board's Executive Secretary, to (202) 482-0002. We also ask that parties submit the original of their comments to the Board's Executive Secretary at the following address: U.S. Department of Commerce, Room 2111, 1401 Constitution Ave., NW., Washington, DC 20230. The closing period for the receipt of public comments is October 31, 2008. Any questions about this request for comments may be directed to the FTZ Board staff at (202) 482-2862.

Dated: September 8, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8-21232 Filed 9-10-08; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Ralph Michel

**Ralph Michel, 41 Rosewood Drive,
Easton, CT 06612, U.S., Respondent;
Order**

On November 12, 2003, having approved the terms of a settlement

Appendix 6

Comments on Revised Proposal (published September 11, 2008)

In response to the revised proposal published on September 11, 2008, the following comments were received from three parties (with some overlap between parties' comments):

- 1) Inclusion of a geographic area within the designated service area of one grantee should not preclude another grantee from including the same geographic area within its service area. There are many situations where the service areas of two or more grantees may overlap. To provide the initial grantee with exclusivity to a geographical area could lead to a race between participating grantees to participate in the ASF, a result which would not be intended or equitable.
- 2) To establish a service area, a grantee should be required to obtain letters of agreement from neighboring grantees in addition to endorsements from local/regional governmental bodies.
- 3) The sunset limit for usage-driven sites should be reduced from the proposed five year period to a period of three years. The sunset test for usage-driven sites should be based on the admission into the site of foreign-status merchandise (as defined in 19 CFR 146.41 and 146.42) or zone-restricted merchandise (as defined in 19 CFR 146.44) for a *bona fide* purpose.
- 4) Clear identification and tracking of each grantee's magnet and usage-driven sites will be needed for the benefit of the FTZ Board, CBP and actual or potential operators/users. It would be beneficial for grantees that participate in the ASF to provide quarterly reports to the FTZ Board indicating all sites and their status, with the Board posting such reports on its web site. The Board should also issue a directive specifying how all magnet and usage-driven sites will be numbered and tracked.
- 5) The FTZ Board should not require a formal reorganization application to designate magnet sites for a grantee if the sites are existing general-purpose FTZ sites designated through Board Order(s). A grantee should be able to designate – in a letter to the FTZ Staff – the magnet nature of the site and the amount of acreage to be apportioned to the site from the grantee's 2,000-acre limit. One of each grantee's magnet sites should have permanent FTZ designation (not be subject to a sunset limit), with preference given to a publicly owned site. Further, a grantee should be able to transfer the permanent status from one magnet site to another by MBM request to the FTZ Staff.