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<u>PART 400—REGULATIONS OF THE FOREIGN-TRADE ZONES BOARD</u>	PART 400—REGULATIONS OF THE FOREIGN-TRADE ZONES BOARD	
<u>§ 400.2 Definitions.</u>	2. In § 400.2: a. Revise paragraphs (h) and (t); b. Remove paragraph (u); and c. Redesignate paragraphs (v) through (aa) as paragraphs (u) through (z). The revisions read as follows:	
(h) <b>Foreign-trade zone</b> (FTZ or zone) includes one or more restricted-access sites, including subzones, in or adjacent (as defined by § 400.11(b)(2)) to a CBP port of entry, operated as a public utility (within the meaning of § 400.42) under the sponsorship of a zone grantee authorized by the Board, with zone operations under the supervision of CBP.	(h) <i>Foreign-trade zone</i> (FTZ or zone) includes all sites/subzones designated under the sponsorship of a zone grantee, in or adjacent (as defined by § 400.11(b)(2)) to a CBP port of entry, operated as a public utility (within the meaning of § 400.42), with zone operations under the supervision of CBP.	The text has been reworded to combine all types of zones under one definition.  Our reading of this new definition is that it does not have any substantive impact on the definition of “adjacency” in Section 400.11(b)(2)(i).  We are considering whether to propose adding “authorized by the Board” after “zone grantee.”
(t) <b>Usage-driven site</b> means a site tied to a single operator or user under the ASF.	(t) <i>Usage-driven site</i> means a site established for a single operator or user under the ASF.	Improved wording only.
(u) <b>Zone</b> means a foreign-trade zone established under the provisions of the Act and these regulations. Where used in this part, the term also includes subzones, unless the context indicates otherwise.		The text has been removed because it is redundant.
(v) Zone grantee is the corporate recipient of a grant of authority for a zone. Where used in this part, the term “grantee” means “zone grantee” unless otherwise indicated. (w) Zone operator is a person that operates within a zone or subzone under the terms of	(u) Zone grantee is the <u>corporate</u> recipient of a grant of authority for a zone. Where used in this part, the term “grantee” means “zone grantee” unless otherwise indicated. (v) Zone operator is a person that operates within a zone or subzone under the terms of	Re-lettering of provisions required by removal of the definition of “zone.”

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<p>an agreement with the zone grantee (or third party on behalf of the grantee), with the concurrence of CBP.</p> <p><b>(x)</b> Zone participant is a current or prospective zone operator, zone user, or property owner.</p> <p><b>(y)</b> Zone plan includes all the zone sites that a single grantee is authorized to establish.</p> <p><b>(z)</b> Zone site (site) means a physical location of a zone or subzone. A site is composed of one or more generally contiguous parcels of land organized and functioning as an integrated unit, such as all or part of an industrial park or airport facility.</p> <p><b>(aa)</b> Zone user is a party using a zone under agreement with a zone operator.</p>	<p>an agreement with the zone grantee (or third party on behalf of the grantee), with the concurrence of CBP.</p> <p><b>(w)</b> Zone participant is a current or prospective zone operator, zone user, or property owner.</p> <p><b>(x)</b> Zone plan includes all the zone sites that a single grantee is authorized to establish.</p> <p><b>(y)</b> Zone site (site) means a physical location of a zone or subzone. A site is composed of one or more generally contiguous parcels of land organized and functioning as an integrated unit, such as all or part of an industrial park or airport facility.</p> <p><b>(z)</b> Zone user is a party using a zone under agreement with a zone operator.</p>	
<p><b><u>§ 400.4 Authority and responsibilities of the Executive Secretary.</u></b> The Executive Secretary has the following responsibilities and authority:</p>	<p><b>3. In § 400.4, revise paragraphs (m) and (t) to read as follows:</b></p> <p><b><u>§ 400.4 Authority and responsibilities of the Executive Secretary.</u></b> The Executive Secretary has the following responsibilities and authority:</p>	
<p>(m) Issue instructions, guidelines, forms and related documents specifying time, place, manner and formats for applications <b>and</b> notifications in various sections of this part, including <b>§§ 400.21(b) and 400.43(f)</b>;</p>	<p>(m) Issue instructions, guidelines, forms and related documents specifying time, place, manner and formats for applications, notifications, <b>application fees and zone schedules</b> in various sections of this part, including <b>§§ 400.21(b), 400.29, 400.43(f), and 400.44;</b></p>	<p>Language added to clarify current FTZ Board practices.</p>

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(t) Review <b>rate</b> schedules and determine their sufficiency under <a href="#">§ 400.44(c)</a> ;	(t) Review <b>zone</b> schedules and determine their sufficiency under § 400.44(c);	"Zone" is more accurate than "rate."
<a href="#">§ 400.11 Number and location of zones and subzones.</a>	4. In § 400.11, revise paragraph (b)(2)(i) to read as follows:  <b>§ 400.11 Number and location of zones and subzones.</b>	
(i) A <b>general-purpose</b> zone site is located within 60 statute miles or 90 minutes' driving time (as determined or concurred upon by CBP) from the outer limits of a port of entry boundary as defined in <a href="#">19 CFR 101.3</a> .	(i) A zone site is located within 60 statute miles or 90 minutes' driving time (as determined or concurred upon by CBP) from the outer limits of a port of entry boundary as defined in 19 CFR 101.3.	We understand this change eliminating the phrase "general-purpose" clarifies that Subzones within the 60 mile or 90-minute requirements also satisfy the adjacency requirement. This clarifies current FTZ Board practice.  We believe that this change in language does not alter the adjacency standard for subzones set forth in Section 400.11(b)(2)(ii). We intend to request confirmation from the FTZ Board.
<a href="#">§ 400.13 General conditions, prohibitions and restrictions applicable to authorized zones.</a>	5. In § 400.13: a. Revise paragraph (a)(8); b. Redesignate paragraph (c) as paragraph (d); and c. Add a new paragraph (c). The revision and addition read as follows: <b>§ 400.13 General conditions, prohibitions and restrictions applicable to authorized zones.</b>	
<i>(a) In general. Grants of authority issued by the Board for the establishment of zones and any authority subsequently approved for such zones, including those already issued, are subject to the Act and this part and the following general conditions or limitations:</i>	(a) * * *	(a)(1)-(7) No Changes

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<p><i>(8) Private ownership of zone land and facilities is permitted, provided the zone grantee retains the control necessary to implement the approved zone. Such permission shall not constitute a vested right to zone designation, nor interfere with the Board's regulation of the grantee or the permittee, nor interfere with or complicate the revocation of the grant by the Board. <b>Should title to land or facilities be transferred after a grant of authority is issued, the zone grantee must retain, by agreement with the new owner, a level of control which allows the grantee to carry out its responsibilities as grantee. The sale of zone-designated land/facility for more than its fair market value without zone designation could, depending on the circumstances, be subject to the prohibitions set forth in section 17 of the Act (19 U.S.C. 81q).</b></i></p>	<p><i>(8) Private ownership of zone land and facilities is permitted, provided the zone grantee retains the control necessary to implement the approved zone. Such permission shall not constitute a vested right to zone designation, nor interfere with the Board's regulation of the grantee or the permittee, nor interfere with or complicate the revocation of the grant by the Board. <b>Grantees shall retain</b> a level of control which allows the grantee to carry out its responsibilities as grantee. The sale of zone-designated land/facility for more than its fair market value without zone designation could, depending on the circumstances, be subject to the prohibitions set forth in section 17 of the Act (19 U.S.C. 81q).</i></p>	<p>This change clarifies that Grantees must retain a level of control to carry out their functions at all times, prior to and after sales of land or facilities. By removing “by agreement” we assume the FTZ Board is leaving it to the Grantee’s discretion on how to retain proper control. We intend to request clarification in our comments to the FTZ Board.</p>
<p><b>(e) Additional conditions, prohibitions and restrictions.</b> Other conditions/requirements, prohibitions and restrictions under Federal, State or local law may apply to authorized zones and subzones.</p>	<p><b>(d) Additional conditions, prohibitions and restrictions.</b> Other conditions/requirements, prohibitions and restrictions under Federal, State or local law may apply to authorized zones and subzones.</p> <p><b>(c) Restrictions on items subject to antidumping and countervailing duty actions—(1) Board policy. Zone procedures shall not be used to circumvent antidumping duty (AD) and countervailing duty (CVD) actions under 19 CFR part 351.</b></p> <p><b>(2) Admission of items subject to AD/CVD actions. Items subject to AD/CVD orders, or</b></p>	<p>This simply moves existing Board policy to a new section in the regulations.</p> <p>New Paragraph (c) is being renumbered from the current Section 400.14 (e).</p> <p>We are considering the addition of “Trade Remedies” to this provision.</p>

	<p>items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, shall be placed in privileged foreign status (19 CFR 146.41) upon admission to a zone or subzone. Upon entry for consumption, such items shall be subject to duties under AD/CVD orders or to suspension of liquidation, as appropriate, under 19 CFR part 351.</p>	
<p><u><a href="#">§ 400.14 Production—requirement for prior authorization; restrictions.</a></u></p>	<p>6. In § 400.14:  a. Revise the section heading and paragraph (a); and  b. Remove paragraph (e).  The revisions read as follows:  <b>§ 400.14 Production – requirement for prior authorization.</b></p>	
<p><i>(a) In general. Production activity in zones shall not be conducted without prior authorization from the Board. To obtain authorization, the notification process provided for in <a href="#">§§ 400.22</a> and <a href="#">400.37</a> shall be used. If Board review of a notification under <a href="#">§ 400.37</a> results in a determination that further review is warranted for all or part of the notified activity, the application process pursuant to <a href="#">§§ 400.23</a>, <a href="#">400.31</a>, <a href="#">400.32</a>, <a href="#">400.34</a> and <a href="#">400.36</a> shall apply to the activity.</i></p>	<p><i>(a) In general. Production activity in zones shall not be conducted without prior authorization from the Board. To obtain authorization, the notification process provided for in §§ 400.22 and 400.37 shall be used. If Board review of a notification under § 400.37 results in a determination that further review is warranted for all or part of the notified activity, the application process pursuant to §§ 400.23, 400.31 through 400.32, 400.34, and 400.36 shall apply to the activity. Notifications and applications requesting production authority may be submitted by the zone’s grantee or by the operator that proposes to undertake the activity (provided the operator at the same</i></p>	<p>The new text codifies existing FTZ Board practices.</p>

	<p>time furnishes a copy of the notification or application to the grantee and that submissions by the operator are consistent with the grantee’s zone schedule).</p>	
<p><b>(e) Restrictions on items subject to antidumping and countervailing duty actions</b></p> <p>—</p> <p>(1) <b>Board policy.</b> Zone procedures shall not be used to circumvent antidumping duty (AD) and countervailing duty (CVD) actions under <a href="#">19 CFR part 351</a>.</p> <p>(2) <b>Admission of items subject to AD/CVD actions.</b> Items subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, shall be placed in privileged foreign status (<a href="#">19 CFR 146.41</a>) upon admission to a zone or subzone. Upon entry for consumption, such items shall be subject to duties under AD/CVD orders or to suspension of liquidation, as appropriate, under <a href="#">19 CFR part 351</a>.</p>		<p>See Text at new 400.13 (c)</p>
<p><b><u><a href="#">§ 400.16 Exemption from state and local ad valorem taxation of tangible personal property.</a></u></b></p> <p><i>Tangible personal property imported from outside the United States and held in a zone for the purpose of storage, sale, exhibition, repackaging, assembly, distribution, sorting, grading, cleaning, mixing, display, manufacturing, or processing, and tangible personal property produced in the United</i></p>	<p>7. Revise § 400.16 to read as follows:</p> <p><b>§ 400.16 Exemption from state and local ad valorem taxation of tangible personal property.</b></p> <p>Tangible personal property imported from outside the United States and held in <b>foreign status in the activated area</b> of a zone for the purpose of storage, sale, exhibition, repackaging, assembly, distribution, sorting, grading, cleaning, mixing, display, manufacturing, or processing, and tangible</p>	<p>There are two key terms added, “foreign status” and “activated area.”</p> <p>Our reading of these changes is that foreign merchandise held in a zone would only be eligible for tax savings if it is admitted in foreign zone status (nonprivileged foreign, privileged foreign, and zone restricted) in the</p>

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<p><i>States and held in a zone for exportation, either in its original form or as altered by any of the <b>above</b> processes, shall be exempt from state and local ad valorem taxation.</i></p>	<p>personal property produced in the United States and held in <b>the activated area of</b> a zone for exportation, either in its original form or as altered by any of the processes <b>set out in this section</b>, shall be exempt from state and local ad valorem taxation.</p>	<p>activated area. Foreign merchandise that has been entered with duties paid and stored in domestic zone status would not be eligible for tax savings.</p> <p>Both domestic and foreign merchandise admitted into a zone will only be eligible for tax savings if it is held in an activated portion of a zone. We think this simply clarifies current expectations and does not add anything new.</p> <p>We will file comments on this subject and recommend that “production” be added to the list of activities.</p>
<p><b><u><i>Subpart C—Applications To Establish and Modify Authority</i></u></b></p> <p><b><u><i>§ 400.21 Application to establish a zone.</i></u></b></p>	<p><b>8. In § 400.21:</b></p> <ul style="list-style-type: none"> <li>a. Revise paragraphs (a) and (c)(1);</li> <li>b. In paragraph (c)(5), add the word <b>“and”</b> following the semicolon;</li> <li>c. Remove paragraph (c)(6);</li> <li>d. Redesignate paragraph (c)(7) as paragraph (c)(6);</li> <li>e. Remove paragraph (d)(2)(vi);</li> <li>f. Redesignate paragraphs (d)(2)(vii) and (ix) as paragraphs (d)(2)(vi) through (viii);</li> <li>g. Revise paragraphs (e)(3), (h), and (i); and</li> <li>h. Remove paragraph (j).</li> </ul> <p><b>The revisions read as follows:</b></p> <p><b>§ 400.21 Application to establish a zone.</b></p>	

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<p><i>(a) In general. An application for a grant of authority to establish a zone (including pursuant to the ASF procedures adopted by the Board; see 74 FR 1170, Jan. 12, 2009, 74 FR 3987, Jan. 22, 2009, and 75 FR 71069, Nov. 22, 2010) shall consist of an application letter and detailed contents to meet the requirements of this part.</i></p>	<p><i>(a) In general. An application for a grant of authority to establish a zone (including pursuant to the ASF procedures adopted by the Board (§ 400.2(c)) shall consist of an application letter and detailed contents to meet the requirements of this part.</i></p>	<p>This change is inconsequential, referring the reader to an earlier section of the regulations that provides the information being removed here.</p>
<p><i>(c) <b>Application letter.</b> The application letter shall be dated within six months prior to the submission of the application and signed by an officer of the corporation authorized in the resolution for the application (see § 400.21(d)(1)(iii)). The application letter shall also describe:</i></p> <p><i>(1) The relationship of the proposal to the state enabling legislation and the grantee's charter;</i></p>	<p><i>(c) * * *</i></p> <p><i>(1) The relationship of the proposal to the state enabling legislation and the applicant's charter;</i></p>	<p>This change clarifies that at the time of application, there is no “grantee,” only an “applicant.”</p>
<p><i>(5) The relationship of the project to the community's and state's international trade-related goals and objectives;</i></p> <p><i>(6) Any production authority requested; and</i></p> <p><i>(7) Any additional pertinent information needed for a complete summary description of the proposal.</i></p>	<p><i>(5) The relationship of the project to the community's and state's international trade-related goals and objectives; and</i></p> <p><i>(6) Any additional pertinent information needed for a complete summary description of the proposal.</i></p>	<p>We believe the FTZ Board views production authority as separate from requests for Grants of authority to establish FTZs and agree with this change.</p>
<p><i>(d) <b>Detailed contents.</b></i></p> <p><i>(2) Site descriptions (including a table with site designations when more than one site is involved) shall be documented with:</i></p> <p><i>(iv) A description of existing or proposed site qualifications, including appropriate land-use</i></p>	<p><i>(d) <b>Detailed contents.</b></i></p> <p><i>(2) Site descriptions (including a table with site designations when more than one site is involved) shall be documented with:</i></p> <p><i>(iv) A description of existing or proposed site qualifications, including appropriate land-use</i></p>	



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<p>zoning (with environmentally sensitive areas avoided) and physical security;          (v) A description of current and planned activities associated with the site;          (vi) A summary description of transportation systems, facilities, and services, including connections from local and regional transportation hubs to the zone;          (vii) A statement regarding the environmental aspects of the proposal;          (viii) The estimated time schedules for construction and activation; and          (ix) A statement as to the possibilities and plans for future expansion of the site.</p>	<p>zoning (with environmentally sensitive areas avoided) and physical security;          (v) A description of current and planned activities associated with the site;          (vi) A statement regarding the environmental aspects of the proposal;          (vii) The estimated time schedules for construction and activation; and          (ix) A statement as to the possibilities and plans for future expansion of the site.</p>	<p>We believe the FTZ Board thinks it no longer needs this information to decide whether to issue a Grant of Authority.</p>
<p><b>(e) ASF applications.</b> In addition to the general application requirements of this section, applications under the ASF shall include the following, where applicable:          (3) Appropriate information regarding usage-driven sites.          (h) <b>Drafts.</b> Applicants are encouraged to submit a draft application to the Executive Secretary for review. A draft application must be complete with the possible exception of the application letter and/or resolution from the grantee.          (i) <b>Format and number of copies.</b> Unless the Executive Secretary alters the requirements of this paragraph, the applicant shall submit an original (including original documents to meet the requirements of paragraphs (c) and (d)(1)(iii) of this section) and one copy of the</p>	<p>(e) * * *</p> <p>(3) Appropriate information regarding usage-driven sites or ASF subzones.          (h) <b>Drafts.</b> Applicants are encouraged to submit a draft application to the Executive Secretary for review. A draft application must be complete with the possible exception of the application letter and/or resolution from the applicant.          (i) <b>Submission of completed application.</b> The applicant shall submit the complete application, including all attachments, via email or by the method prescribed by the Executive Secretary pursuant to § 400.4(m).</p>	<p>This is consistent with other changes.</p> <p>At the time of submission of an application the Grantee does not yet exist.</p>

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<p>application, both on 8 1/2 " × 11" (216 × 279 mm) paper, and an electronic copy.</p> <p><b>(j) Where to submit an application:</b> Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230. Options for submission of electronic copies are described on the FTZ Board's Web site.</p>		<p>This change reflects the general Public Agency movement towards electronic submission of documents.</p>
<p><a href="#"><u>§ 400.24 Application for expansion or other modification to zone.</u></a></p>	<p>9. In § 400.24, revise paragraphs (a)(1), (c), and (d) to read as follows:</p> <p><b>§ 400.24 Application for expansion or other modification to zone.</b></p>	
<p><b>(a) In general.</b>                  (1) A grantee may apply to the Board for authority to expand or otherwise modify its zone (including pursuant to the ASF procedures adopted by the Board; see <a href="#"><u>74 FR 1170</u></a>, Jan. 12, 2009, <a href="#"><u>74 FR 3987</u></a>, Jan. 22, 2009, and <a href="#"><u>75 FR 71069</u></a>, Nov. 22, 2010).</p> <p><b>(c) Minor modification to zone.</b> Other applications or requests under this subpart 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 <a href="#"><u>paragraph (c)</u></a> instead of <a href="#"><u>paragraph (b)</u></a> of this section (see <a href="#"><u>§ 400.38</u></a>). Such applications or requests include those for minor revisions of <b>general-purpose</b> zone or subzone</p>	<p><b>(a) In general.</b>                  (1) A grantee may apply to the Board for authority to expand or otherwise modify its zone (including pursuant to the ASF procedures adopted by the Board (<a href="#"><u>§ 400.2(c)</u></a>).</p> <p><b>(c) Minor modification to zone.</b> Other applications or requests under this subpart 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 <a href="#"><u>paragraph (c)</u></a> instead of <a href="#"><u>paragraph (b)</u></a> of this section (see <a href="#"><u>§ 400.38</u></a>). Such applications or requests include those for minor revisions of zone or subzone boundaries based on</p>	<p>As discussed above, this change is insignificant.</p> <p>This change is consistent with prior changes.</p>

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<p>boundaries based on immediate need, as well as for designation as a subzone of all or part of an existing zone site(s) (or site(s) that qualifies for usage-driven status), where warranted by the circumstances and so long as the subzone <b>activity</b> remains subject to the activation limit (see <a href="#">§ 400.2(b)</a>) for the zone in question.</p> <p><b>(d) Applications for other revisions to authority.</b> Applications or requests for other revisions to authority, such as for Board action to establish or modify an activation limit for a zone, modification of a restriction <b>or</b> reissuance of a grant of authority, shall be submitted in letter form with information and documentation necessary for analysis, as determined by the Executive Secretary. If the change involves the removal or significant modification of a restriction included by the Board in its approval of authority or the reissuance of a grant of authority, the review procedures of <a href="#">§§ 400.31–400.34</a> and <a href="#">400.36</a> shall be followed, where relevant. If not, the procedure set forth in <a href="#">§ 400.38</a> shall generally apply (although the Executive Secretary may elect to follow the procedures of <a href="#">§§ 400.31–400.34</a> and <a href="#">400.36</a> when warranted).</p>	<p>immediate need, as well as for designation as a subzone of all or part of an existing zone site(s) (or site(s) that qualifies for usage-driven status), where warranted by the circumstances and so long as the subzone remains subject to the activation limit (see <a href="#">§ 400.2(b)</a>) for the zone in question.</p> <p><b>(d) Applications for other revisions to authority.</b> Applications or requests for other revisions to authority, such as for Board action to establish or modify an activation limit for a zone, modification of a restriction, reissuance of a grant of authority <b>or request for a voluntary termination</b> shall be submitted in letter form with information and documentation necessary for analysis, as determined by the Executive Secretary. If the change involves the removal or significant modification of a restriction included by the Board in its approval of authority or the reissuance of a grant of authority, the review procedures of <a href="#">§§ 400.31 through 400.34</a> and <a href="#">400.36</a> shall be followed, where relevant. If not, the procedure set forth in <a href="#">§ 400.38</a> shall generally apply (although the Executive Secretary may elect to follow the procedures of <a href="#">§§ 400.31 through 400.34</a> and <a href="#">400.36</a> when warranted).</p>	<p>Note the modifier “general-purpose” is eliminated, but the meaning is unchanged.</p> <p>This text simply adds “voluntary termination” as one other type of revision that can be applied for.</p>

<p><a href="#"><u>§ 400.26 Criteria for evaluation of applications for expansions, subzones or other modifications of zones.</u></a></p>	<p>10. In §400.26:  a. Revise the section heading;  b. In paragraph (d), add the word “and” following the semicolon;  c. In paragraph (e), remove “; and” and add a period in its place; and  d. Remove paragraph (f).  The revision reads as follows:  <b>§ 400.26 Criteria for evaluation of proposals, including for zones, expansions, subzones, or other modifications of zones.</b></p>	
<p>The Board shall consider the following factors in determining whether to approve an application pertaining to a zone:  (d) The extent of state and local government support, as indicated by the compatibility of the zone project with the community's master plan or stated goals for economic development and the views of state and local public officials involved in economic development. Such officials shall avoid commitments that anticipate the outcome of Board decisions;  (e) The views of persons likely to be materially affected by proposed zone activity;  and  (f) If the application involves production activity, the criteria in <a href="#"><u>§ 400.27</u></a>.</p>	<p>The Board shall consider the following factors in determining whether to approve an application pertaining to a zone:  (d) The extent of state and local government support, as indicated by the compatibility of the zone project with the community's master plan or stated goals for economic development and the views of state and local public officials involved in economic development. Such officials shall avoid commitments that anticipate the outcome of Board decisions; and  (e) The views of persons likely to be materially affected by proposed zone activity.</p>	<p>As with applications for Grants of Authority, we believe the FTZ Board views the production notification process as separate from other types of proposals.</p>
<p><a href="#"><u>§ 400.27 Criteria applicable to evaluation of applications for production authority.</u></a></p>	<p>11. In § 400.27, revise the introductory text to read as follows:  <b>§ 400.27 Criteria applicable to evaluation of applications for production authority.</b></p>	

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<p>The Board shall apply the criteria set forth in this section in determining whether to approve an application for authority to conduct production activity pursuant to <a href="#">§ 400.23</a>. The Board's evaluation shall take into account <b>such factors as</b> market conditions, price sensitivity, degree and nature of foreign competition, intra-industry and intra-firm trade, effect on exports and imports, ability to conduct the proposed activity outside the United States with the same U.S. tariff impact, analyses conducted in connection with prior Board actions, and net effect on U.S. employment and the U.S. economy:</p>	<p>The Board shall apply the criteria set forth in this section in determining whether to approve an application for authority to conduct production activity pursuant to § 400.23. The Board's evaluation shall take into account <b>information such as pertains to</b> market conditions, price sensitivity, degree and nature of foreign competition, intra-industry and intra-firm trade, effect on exports and imports, ability to conduct the proposed activity outside the United States with the same U.S. tariff impact, analyses conducted in connection with prior Board actions, and net effect on U.S. employment and the U.S. economy:</p>	<p>This is a new change in wording only.</p>
<p><a href="#">§ 400.29 Application fees.</a></p>	<p><b>12. In § 400.29:</b>  <b>a. Revise paragraphs (b) and (c); and</b>  <b>b. Remove paragraph (d).</b>  <b>The revisions read as follows:</b></p> <p><b>§ 400.29 Application fees.</b></p>	
<p>(b) <b>Uniform system of user fee charges.</b> The following fee schedule establishes fees for certain types of applications and requests for authority on the basis of their estimated average processing time. <b>Applications combining requests for more than one type of approval are subject to the fee for each category.</b></p> <p>(1) Additional <b>general-purpose</b> zones (<a href="#">§ 400.21</a>; <a href="#">§ 400.11(a)(2)</a>)—\$3,200  (2) <b>Special-purpose</b> subzones (<a href="#">§ 400.25</a>):</p>	<p>(b) <i>Uniform system of user fee charges.</i> The following fee schedule establishes fees for certain types of applications and requests for authority on the basis of their estimated average processing time.</p> <p>(1) Additional zones (§ 400.21; § 400.11(a)(2))—\$3,200.  (2) <b>S</b>ubzones (§ 400.25):</p>	<p>We believe this language is being deleted because it only states the obvious.</p> <p>Minor, clarifying changes that are consistent with other revisions to the regulations.</p>

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<p>(i) Not involving production activity or involving production activity with fewer than three products—\$4,000  (ii) Production activity with three or more products—\$6,500  (3) Expansions (§ 400.24(b))—\$1,600  (c) Applications submitted to the Board shall include a currently dated check drawn on a national or state bank or trust company of the United States or Puerto Rico in the amount called for in paragraph (b) of this section. Uncertified checks must be acceptable for deposit by the Board in a Federal Reserve bank or branch.  (d) Applicants shall make their checks payable to the U.S. Department of Commerce ITA. The checks will be deposited by ITA into the Treasury receipts account. If applications are found deficient under § 400.31(b), or are withdrawn by applicants prior to formal docketing, refunds will be made.</p>	<p>(i) Not involving production activity or involving production activity with fewer than three products—\$4,000.  (ii) Production activity with three or more products—\$6,500.  (3) Expansions (§ 400.24(b))—\$1,600.  (c) <i>Timing and manner of payment.</i>  Application fees shall be paid prior to the FTZ Board docketing an application and, in a manner, specified by the Executive Secretary.</p>	<p>This is part of the Public Agency trend to move away from paper to electronic submissions.</p>
<p><b><u>§ 400.31 General application provisions and pre-docketing review.</u></b></p>	<p>13. In § 400.31, revise paragraph (b) to read as follows:   <b>§ 400.31 General application provisions and pre-docketing review.</b></p>	
<p>(b) <i>Pre-docketing review.</i> The grantee shall submit a single complete copy of an application for pre-docketing review. (For requests relating to production in already approved zone or subzone space, the request may be submitted by the operator, provided the operator at the same time furnishes a</p>	<p>(b) Pre-docketing review. The applicant shall submit a complete copy of an application for pre-docketing review. The Executive Secretary shall determine whether the application satisfies the requirements of §§ 400.12, 400.21, and 400.23 through 400.25 and other applicable provisions of this part such that</p>	<p>Simple clarifications or deletions of unnecessary information, all consistent with the revisions.</p>

<p>copy of the request to the grantee.) The Executive Secretary shall determine whether the application satisfies the requirements of §§ 400.12, 400.21, 400.23, 400.25, and other applicable provisions of this part such that the application is sufficient for docketing. If the pre-docketing copy of the application is deficient, the Executive Secretary shall notify the applicant within 30 days of receipt of the pre-docketing copy, specifying the deficiencies. An affected zone participant may also be contacted regarding relevant application elements requiring additional information or clarification. If the applicant does not correct the deficiencies and submit a corrected pre-docketing application copy within 30 days of notification, the pre-docketing application (single copy) shall be discarded.</p>	<p>the application is sufficient for docketing. The applicant shall be notified within 30 days whether the pre-docketing copy of the application is sufficient. If the application is not sufficient, the applicant will be notified of the specific deficiencies. An affected zone participant may also be contacted regarding relevant application elements requiring additional information or clarification. If the applicant does not correct the deficiencies and submit a corrected pre-docketing application copy within 30 days of notification, the pre-docketing application shall be discarded. For applications subject to § 400.29, the fees shall be paid in accordance with § 400.29 once the application is determined to be sufficient.</p>	
<p><u><a href="#">§ 400.32 Procedures for docketing applications and commencement of case review.</a></u></p> <p>(a) Once the pre-docketing copy of the application is determined to be sufficient, the Executive Secretary shall notify the applicant within 15 days so that the applicant may then submit the original and requisite number of copies (which shall be dated upon receipt at the headquarters of the Board) for docketing by the Board. For applications subject to §</p>	<p>14. Revise § 400.32 to read as follows:</p> <p><b>§ 400.32 Procedures for docketing applications and commencement of case review.</b></p> <p>(a) Once the pre-docketing copy of the application is determined to be sufficient and any fees under § 400.29 have been paid, the Executive Secretary shall within 15 days:</p>	<p>Several minor clarifying changes.</p> <p>The revisions between Sections 400.31 and 400.32 would remove a 15-day period for the Board to notify an applicant to submit the original application after the Board determines pre-docketing review is sufficient.</p>

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<p><a href="#">400.29</a>, the original shall be accompanied with a check in accordance with that section.</p> <p>(b) After the procedures described in <a href="#">paragraph (a)</a> of this section are completed, the Executive Secretary shall within 15 days of receipt of the original and required number of copies of the application:</p> <p>(1) Formally docket the application, thereby initiating the proceeding or review;</p> <p>(2) Assign a case-docket number; and</p> <p>(3) Notify the applicant of the formal docketing action.</p> <p>(e) After initiating a proceeding based on an application under <a href="#">§§ 400.21</a> and <a href="#">400.23–400.25</a>, the Executive Secretary shall:</p> <p>(1) Designate an examiner to conduct a review and prepare a report or memorandum with recommendations for the Board;</p> <p>(2) Publish in the Federal Register a notice of the formal docketing of the application and initiation of the review. The notice shall include the name of the applicant, a description of the proposal, and an invitation for public comment. If the application requests authority for production activity and indicates that a component to be used in the activity is subject to a trade-related measure or proceeding (e.g., AD/CVD order or proceeding, suspension of liquidation under AD/CVD procedures), the notice shall include that information.</p> <p>***</p>	<p>(1) Formally docket the application, thereby initiating the proceeding or review;</p> <p>(2) Assign a case-docket number; and</p> <p>(3) Notify the applicant of the formal docketing action.</p> <p>(b) After initiating a proceeding based on an application under §§ 400.21 and 400.23 through 400.25, the Executive Secretary shall:</p> <p>***</p> <p>(1) Designate an examiner to conduct a review and prepare a report or memorandum with recommendations for the Board;</p> <p>(2) Publish in the Federal Register a notice of the formal docketing of the application and initiation of the review. The notice shall include the name of the applicant, a description of the proposal, and an invitation for public comment. If the application requests authority for production activity and indicates that a component to be used in the activity is subject to a trade related measure or proceeding (e.g., AD/CVD order or proceeding, suspension of liquidation under AD/CVD procedures), the notice shall include that information.</p> <p>***</p>	<p>Coupled with no proposed changes to Section 400.31 pre-docketing time deadlines, this may speed up Board action.</p> <p>We are considering adding comments concerning Trade Remedies to clarify the “trade related measures” applicable.</p>
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<p><b>(d) CBP review.</b> Any comments by CBP pertaining to the application shall be submitted to the Executive Secretary by the conclusion of the public comment period described in <b>paragraph (c)(2)</b> of this section.</p>	<p><b>(c)</b> Any comments by CBP pertaining to the application shall be submitted to the Executive Secretary by the conclusion of the public comment period described in paragraph <b>(b)(2)</b> of this section.</p>	
<p><b><u><a href="#">§ 400.33 Examiner's review—application to establish or modify a zone.</a></u></b></p>	<p><b>15. In § 400.33, revise paragraph (e)(3) to read as follows:</b></p> <p><b>§ 400.33 Examiner's review - application to establish or modify a zone.</b></p>	
<p>(e) Developing recommendations to the Board and submitting a report to the Executive Secretary, generally within 150 days of the close of the period for public comment (75 days for reorganizations under the ASF) (see § 400.32):</p> <p>(3) If the <b>bases</b> for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of <b>§§ 400.33(e)(1) and (2)</b> shall be followed.</p>	<p>(e) * * *</p> <p>(3) If the <b>factors considered</b> for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of <b>paragraphs (e)(1) and (2) of this section</b> shall be followed.</p>	<p>Minor changes in wording.</p>
<p><b><u><a href="#">§ 400.34 Examiner's review—application for production authority.</a></u></b></p>	<p><b>16. In § 400.34, revise paragraph (a)(5)(iv)(C) to read as follows:</b></p> <p><b>§ 400.34 Examiner's review - application for production authority.</b></p>	
<p>(a) The examiner shall conduct a review taking into account the factors enumerated in this section, § 400.27, and other appropriate sections of this part, which shall include:</p>	<p>(a) * * *</p>	

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<p>(5) Conducting an analysis to include:</p> <p>(iv) Developing recommendations to the Board and submitting a report to the Executive Secretary, generally within 150 days of the close of the period for public comment (although additional time may be required in circumstances such as when the applicant or other party has obtained a time extension for a particular procedural step):</p> <p>(C) If the <b>bases</b> for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of §§ <b>400.34(a)(5)(iv)(A) and (B)</b> shall be followed.</p>	<p>(5) * * *</p> <p>(iv) * * *</p> <p>(C) If the <b>factors considered</b> for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of <b>paragraphs (a)(5)(iv)(A) and (B) of this section</b> shall be followed.</p>	<p>Minor changes in wording.</p>
<p><a href="#"><b>§ 400.35 Examiner's review—application for subzone designation.</b></a></p>	<p><b>17. In § 400.35, revise paragraph (c) to read as follows:</b></p> <p><b>§ 400.35 Examiner's review - application for subzone designation.</b></p>	
<p>The examiner shall develop a memorandum with a recommendation on whether to approve the application, taking into account the criteria enumerated in § 400.26. To develop that memorandum, the examiner shall review the case records including public comments, and may request information and evidence from parties of record, as necessary. The examiner's memorandum shall generally be submitted to the Board within 30 days of the close of the period for public comment. However, additional time may be taken as necessary for analysis of any public comment</p>	<p>***</p>	

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<p>in opposition to the application or if other complicating factors arise.</p> <p>(c) If the <b>bases</b> for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of §§ <b>400.35(a)</b> and (b) shall be followed.</p>	<p>(c) If the <b>factors considered</b> for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of <b>paragraphs (a) and (b) of this section</b> shall be followed.</p>	<p>Minor changes in wording.</p>
<p><b>§ 400.36 Completion of case review.</b></p>	<p><b>18. In § 400.36:</b></p> <p><b>a. Revise paragraphs (b) and (e); and</b>  <b>b. Remove the paragraph heading from paragraph (f).</b>  <b>The revisions read as follows:</b></p> <p><b>§ 400.36 Completion of case review.</b></p>	
<p>(b) In its advisory role to the Board, CBP headquarters staff shall provide any comments within 15 days.</p> <p>(e) If the Board is unable to reach a unanimous decision, the <b>grantee</b> shall be notified and provided an opportunity to meet with the Board members or their delegates.</p> <p>(f) <b>Delegation of authority to approve subzone designation.</b> The Board delegates to the Executive Secretary authority to approve applications requesting subzone designation, on the condition that such approved subzones will be subject to the activation limit for the zone in question.</p>	<p>(b) In its advisory role to the Board, CBP headquarters staff shall provide any comments within 15 days <b>for applications under § 400.25 and within 30 days for all other applications.</b></p> <p>(e) If the Board is unable to reach a unanimous decision, the <b>applicant</b> shall be notified and provided an opportunity to meet with the Board members or their delegates.</p> <p>(f) The Board delegates to the Executive Secretary authority to approve applications requesting subzone designation, on the condition that such approved subzones will be subject to the activation limit for the zone in question.</p>	<p>We do not think the extension from 15 to 30 days for non TSF-subzone applications will have a significant impact on FTZ clients and is probably being added because of the FTZ Board's heavy workload.</p> <p>Change to make the regulations consistent: other subparagraphs are not titled.</p>

<p><a href="#"><u>§ 400.37 Procedure for notification of proposed production activity.</u></a></p>	<p>19. In § 400.37, revise paragraph (a) to read as follows:</p> <p><b>§ 400.37 Procedure for notification of proposed production activity.</b></p>	
<p>(a) <i>Submission of notification.</i> A notification for production authority pursuant to §§ 400.14(a) and 400.22 shall be submitted simultaneously to the Board's Executive Secretary and to CBP (as well as to the grantee of the zone, if the grantee is not the party making the submission).</p>	<p>(a) <i>Submission of notification.</i> A notification for production authority pursuant to §§ 400.14(a) and 400.22 shall be submitted simultaneously to the Board's Executive Secretary and to CBP.</p>	
<p><a href="#"><u>§ 400.38 Procedure for application for minor modification of zone.</u></a></p>	<p>20. Revise § 400.38 to read as follows:</p> <p><b>§ 400.38 Procedure for request for minor modification of zone.</b></p>	
<p>(a) The Executive Secretary shall make a determination in cases under § 400.24(c) involving minor modifications of zones that do not require Board action, such as boundary modifications, including certain relocations, and shall notify the applicant in writing of the decision within 30 days of the determination that the application or request can be processed under § 400.24(c). The applicant shall submit a copy of its application/request to CBP no later than the time of the applicant's submission of the application/request to the Executive Secretary.</p>	<p>(a) The Executive Secretary shall make a determination in cases under § 400.24(c) involving minor modifications of zones that do not require Board action, such as boundary modifications, including certain relocations, and shall notify the requestor in writing of the decision on the request within 30 days of the Executive Secretary's receipt of the complete request and the CBP comments under paragraph (b) of this section. Depending on the specific request, the decision could be that the request cannot be processed under § 400.24(c). The requestor shall submit a copy of its request to CBP no later than the time of the requestor's submission of the request to the Executive Secretary.</p>	<p>Minor changes in wording.</p>

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<p>(b) If not previously provided to the <b>applicant</b> for inclusion with the <b>applicant's</b> submission of the <b>application/request</b> to the Executive Secretary, any CBP comments on the application/request shall be provided to the Executive Secretary within 20 days of the <b>applicant's</b> submission of the <b>application/request</b> to the Executive Secretary.</p>	<p>(b) If not previously provided to the <b>requestor</b> for inclusion with the <b>requestor's</b> submission of the request to the Executive Secretary, any CBP comments on the request shall be provided to the Executive Secretary within 20 days of the <b>requestor's</b> submission of the request to the Executive Secretary.</p>	
<p><b><u>§ 400.42 Operation as public utility.</u></b></p> <p>(b) <b>Delayed compliance date.</b> The compliance date for the requirements of paragraph (a) of this section shall be February 28, 2014.</p>	<p><b>§ 400.42 [Amended]</b></p> <p>21. In § 400.42, remove and reserve paragraph (b).</p> <p>(b)</p>	
<p><b><u>§ 400.43 Uniform treatment.</u></b></p> <p>Pursuant to Section 14 of the FTZ Act (19 U.S.C. 81n), a grantee shall afford to all who may apply to make use of or participate in the zone uniform treatment under like conditions. Treatment of zone participants within a zone (including application of rates and charges) shall not vary depending on whether a zone participant has procured any zone-related product or service or engaged a particular supplier to provide any such product or service.</p> <p>(i) <b>Delayed compliance date.</b> If, as of April 30, 2012, existing business arrangements do not comply with the requirements of paragraphs (a) and (d) of this section, such existing arrangements shall be terminated or brought</p>	<p><b>§ 400.43 [Amended]</b></p> <p>22. In § 400.43, remove paragraph (i).</p>	

<p>into compliance no later than February 28, 2014.</p>		
<p><b>§ 400.44 Zone schedule.</b></p>	<p>23. In § 400.44:  a. Revise paragraphs (a), (b)(5), and (e); and  b. Remove paragraph (f).  The revisions read as follows:  <b>§ 400.44 Zone schedule</b></p>	
<p>(a) <i>In general.</i> The zone grantee shall submit to the Executive Secretary (in both paper and electronic copies) a zone schedule which sets forth the elements required in this section. No element of a zone schedule (including any amendment to the zone schedule) may be considered to be in effect until such submission has occurred. If warranted, the Board may subsequently amend the requirements of this section by Board Order.</p> <p>(b) Each zone schedule shall include:</p> <p>(5) Information regarding any operator which has an agreement with the grantee to offer services to the public, including the operator's rates or charges for all zone-specific services offered; and</p> <p>(e) <i>Availability of zone schedule.</i> A complete copy of the zone schedule shall be freely available for public inspection at the offices of the zone grantee and any operator offering FTZ services to the user community. The Board shall make copies of zone schedules available on its Web site.</p>	<p>(a) The zone grantee shall submit to the Executive Secretary (electronic copy or as specified by the Executive Secretary) a zone schedule which sets forth the elements required in this section. No element of a zone schedule (including any amendment to the zone schedule) may be considered to be in effect until such submission has occurred. If warranted, the Board may subsequently amend the requirements of this section by Board Order.</p> <p>(b) * * *</p> <p>(5) Information identifying any operator which offers services to the public and which has requested that its information be included in the zone schedule; and</p> <p>(e) A complete copy of the zone schedule shall be freely available for public inspection at the offices of the zone grantee. The Board shall make copies of zone schedules available on its website.</p>	<p>We will propose to the Board that the information in the parenthetical be added after "zone schedule."</p> <p>Note the 3PL and Public Warehouse Fees will no longer be required to be published in the zone schedule.</p>

<p>(f) <i>Delayed compliance date.</i> The compliance date for the requirements of this section shall be February 28, 2014.</p>		
<p><u><a href="#">§ 400.45 Complaints related to public utility and uniform treatment.</a></u></p>	<p>24. In § 400.45, revise paragraph (b) to read as follows:</p> <p><b>§ 400.45 Complaints related to public utility and uniform treatment.</b></p>	
<p>(b) Objections to rates and charges. A zone participant showing good cause may object to any rate or charge related to the zone on the basis that it is not fair and reasonable by submitting to the Executive Secretary a complaint in writing with supporting information. If necessary, such a complaint may be made on a confidential basis pursuant to § 400.45(a). The Executive Secretary shall review the complaint and issue a report and decision, which shall be final unless appealed to the Board within 30 days. The Board or the Executive Secretary may otherwise initiate a review for cause. The primary factor considered in reviewing fairness and reasonableness is the cost of the specific services rendered. Where those costs incorporate charges to the grantee by one or more parties undertaking functions on behalf of the grantee, the Board may consider the costs incurred by those parties (using best estimates, as necessary). The Board will also give consideration to any extra costs incurred relative to non-zone operations, including return on investment and reasonable out-of-pocket expenses.</p>	<p>(b) Objections to rates and charges. A zone participant showing good cause may object to any rate or charge related to the zone on the basis that it is not fair and reasonable by submitting to the Executive Secretary a complaint in writing with supporting information. If necessary, such a complaint may be made on a confidential basis pursuant to paragraph (a) of this section. The Executive Secretary shall review the complaint and issue a report and decision, which shall be final unless appealed to the Board within 30 days. The Board or the Executive Secretary may otherwise initiate a review for cause. The primary factor considered in reviewing fairness and reasonableness is the cost of the specific services rendered. Where those costs incorporate charges to the grantee by one or more parties undertaking functions on behalf of the grantee, the Board may consider the costs incurred by those parties or evidence regarding market rates for the undertaking of those functions. The Board may rely on best estimates, as necessary. The Board will also give consideration to any extra costs incurred relative to non-zone operations, including</p>	<p>Minor change.</p> <p>This provision adds additional information that may be considered by the Board when considering complaints related to public utility and uniform treatment.</p>

	return on investment and reasonable out-of-pocket expenses.	
		<p><b>New § 400.50</b></p> <p>We will propose that products produced in a zone should not be subject to Chapter 99 duties in the HTSUS as follows:</p> <p><b>Sec. 400.50 Chapter 99 of the Harmonized Tariff Schedule of the U.S. Temporary Duties. No entered article produced or manufactured in a zone shall be considered foreign merchandise for the purposes of the imposition of a temporary duty under Chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS).</b></p>
	<p>25. In § 400.52, revise paragraph (b)(2) to read as follows:</p> <p><b>§ 400.52 Notices and hearings.</b></p>	
<p><b>§ 400.52 Notices and hearings.</b></p> <p>(b) Requests for hearings.</p> <p>(2) The request must be made within 30 days of the beginning of the period for public comment (see § 400.32) and must be accompanied by information establishing the need for the hearing and the basis for the requesting party's interest in the matter.</p>	<p>(b) * * *</p> <p>(2) The request must be made within 30 days of the beginning of the <b>initial</b> period for public comment (see § 400.32) and must be accompanied by information establishing the need for the hearing and the basis for the requesting party's interest in the matter.</p>	<p>Minor change in wording.</p>



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<p><b><u>§ 400.61 Revocation of authority.</u></b></p>	<p><b>26. In § 400.61, revise paragraphs (a) and (c) to read as follows:</b></p> <p><b>§ 400.61 Revocation of authority.</b></p>	
<p>(a) <i>In general.</i> As provided in this section, the Board can revoke in whole or in part authority for a zone <b>or subzone</b> whenever it determines that the zone grantee has violated, repeatedly and willfully, the provisions of the Act.</p> <p>(c) As provided in section 18 of the Act (19 U.S.C. 81r(c)), the grantee of the <b>zone or subzone</b> in question may appeal an order of the Board revoking authority.</p>	<p>(a) <i>In general.</i> As provided in this section, the Board can revoke in whole or in part authority for a zone <b>(see § 400.2(h))</b> whenever it determines that the zone grantee has violated, repeatedly and willfully, the provisions of the Act.</p> <p>(c) <b>Appeals.</b> As provided in section 18 of the Act (19 U.S.C. 81r(c)), the grantee of the zone in question may appeal an order of the Board revoking authority.</p>	<p>This is consistent with the revisions because “subzone” is now defined within “zone.”</p>