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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

15 CFR Part 400

[Docket No. 240111–0015; Order No. 2157]

RIN 0625–AB22

Foreign-Trade Zones Board Proceedings

AGENCY: Foreign-Trade Zones Board, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This action adopts minor modifications to the regulations of the Foreign-Trade Zones Board (the Board). The primary purpose for these modifications is to provide flexibility on the method to submit application fees. The prior regulations required submitting application fees by check. The changes allow for the submission of multiple forms of electronic payments in addition to paper checks. Other revisions in this rulemaking update the regulatory language to provide clarification and to reflect current practices. The Board is also confirming it has met the information collection requirements from a 2012 final rule.

DATES:

Effective dates: This final rule is effective March 11, 2024.

The amendments to 15 CFR 400.21 through 400.23, 400.25, and 400.43(f), published at 77 FR 12139 (Feb. 28, 2012), are effective February 8, 2024.

Applicability date: The amendments to 15 CFR 400.21 through 400.23, 400.25, and 400.43(f), published at 77 FR 12139 (Feb. 28, 2012), were applicable beginning March 25, 2013.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

Foreign-Trade Zones (FTZs or zones) are restricted-access sites in or near U.S. Customs and Border Protection (CBP) ports of entry. Zones are licensed by the Board and operated under the supervision of CBP (*see* 19 CFR part 146). Specifically, zones are physical areas into which foreign and domestic merchandise may be moved for operations involving storage, exhibition, assembly, manufacture or other processing not otherwise prohibited by law. Zone areas “activated” by CBP are considered outside of U.S. customs territory for purposes of CBP entry procedures. Therefore, the usual formal CBP entry procedure and payment of duties is not required on the foreign merchandise in FTZs unless and until it enters U.S. customs territory for U.S. domestic consumption. In fact, U.S. duties can be avoided on foreign merchandise re-exported from an FTZ, including after incorporation into a downstream product through activity in the FTZ. Zones have as their public policy objective the creation and maintenance of employment through the encouragement of operations in the United States which, for customs reasons, might otherwise have been carried on abroad.

On June 9, 2023, the Board published proposed updates to the rules for FTZs and requested public comment (88 FR 37815). This final rule adopts edits to the regulations as described further below. The key revision in the regulations pertains to providing flexibility on the method to submit application fees. The prior regulations required that application fees be submitted by check. While the Board has begun accepting “eChecks”, the revisions here will allow for the submission of additional forms of electronic payment.

This action will move the existing requirement to admit merchandise subject to antidumping duty and countervailing duty (AD/CVD) actions in “privileged foreign” (PF) status to the “General conditions, prohibitions and restrictions applicable to authorized zones” section. This move of the existing language is intended to clarify that the provision applies to all merchandise that is admitted to FTZs.

Other revisions in this rulemaking update the language used to provide

clarification and to reflect current practices.

On February 28, 2012, a final rule was published revising the regulations of the Foreign-Trade Zones Board (77 FR 12112). That rule was published with an effective date of April 30, 2012, except for sections 400.21–400.23, 400.25 and 400.43(f). These sections contained information collection requirements and could not become effective until the Office of Management and Budget (OMB) approved these information collection requests pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35). On March 25, 2013, OMB approved the information collections under control number 0625–0139, and the FTZ Board then began to use the new applications under sections 400.21–400.23, 400.25 and 400.43(f). This rulemaking also confirms the information collection requirements from the 2012 final rule were met.

Comments and Responses

We received nine comments on the proposed rule from five companies operating FTZs, two zone grantees, a law firm and a trade association. The comments involved several of the edits described in the proposed rulemaking and also suggested additional edits to the regulations. The comments received in response to the notice and the Board’s responses on the points raised in the comments are summarized below.

Comment 1: §§ 400.1(c) and 400.16. One comment stated that the word “production” should be added to the list of activities in §§ 400.1(c) and 400.16.

Response: The Board adopted the word “production” in its 2012 regulations to encompass various activities that require prior authorization from the Board. By using the word production, the Board was not creating a new type of activity that could occur within FTZs. The summary lists in both §§ 400.1(c) and 400.16 use common terminology to describe the types of activity that can occur within FTZs. Instead of creating a new type of activity to be added to these lists, “production” as defined in the regulations (§ 400.2(o)) could include any of the listed activities if they meet the criteria included in the definition. Inclusion of the word production in the lists in these sections could provide the mistaken impression that “production” is a separate activity from the other

items listed. As a result, this change has not been adopted.

Comment 2: § 400.2. One comment suggested that a definition be included for “Traditional Site Framework”.

Response: While we agree that a definition for the Traditional Site Framework should be included in the regulations in the future, any definition should provide substance. Creating a definition that is both meaningful and substantive will require additional time and is best suited for another rulemaking.

Comment 3: § 400.11(b)(2)(i). One comment requested confirmation that removing the phrase “general purpose” from the description of zone sites in § 400.11(b)(2)(i) would not impact the adjacency requirement for subzones in § 400.11(b)(2)(ii).

Response: We can confirm that removal of the phrase “general purpose” from § 400.11(b)(2)(i) will not impact § 400.11(b)(2)(ii).

Comment 4: § 400.13(a)(8). One comment requested confirmation that the proposed edits to § 400.13(a)(8) would continue to require that grantees maintain a level of control while providing discretion to the grantee on how to maintain that control over FTZ designated locations.

Response: We can confirm that the edit proposed here would continue to require that the grantee maintain control over FTZ designated sites and subzones but that a grantee will have flexibility and discretion as to how control is maintained. The regulations will no longer require that a grantee maintain an agreement with a property owner.

Comment 5: § 400.13(c). One comment stated that moving prior § 400.14(e) to § 400.13(c) could have an adverse effect on warehouse operations, not be consistent with 19 U.S.C. 81(c)(e) and should only be considered through a more involved process.

Response: This comment did not supply any evidence in support of the statements made. The language to be moved from § 400.14(e) to § 400.13(c) has been included as part of the FTZ Board’s regulations since 1991. Since 1991, merchandise admitted to FTZs that is subject to AD/CVD orders or suspension of liquidation under AD/CVD procedures has been required to be placed in PF status (19 CFR 146.41) regardless of the ultimate use of the merchandise in production or warehousing operations. As a result, moving the language from § 400.14(e) to § 400.13(c) will have no impact on warehouse operators or any existing zone operations. While the production equipment provision of the FTZ Act (19 U.S.C. 81(c)(e)) generally allows for

duties on eligible merchandise to be paid in its condition upon entry, the Act first requires that all other applicable customs and other laws be applied. The Act does not provide for unconditional use of the production equipment provision in 19 U.S.C. 81(c)(e).

The change proposed here simply moves the existing language from one section of the regulations to the prior section. The change is being made since including the language in § 400.13(c) better reflects the existing interpretation of the requirement. The PF status requirement for merchandise that is subject to AD/CVD orders or suspension of liquidation under AD/CVD procedures when admitted to a zone for warehousing or for use under the production equipment provision has been consistently maintained. As an example, a memo from the Acting Executive Secretary to FTZ grantees on February 14, 2000 (<https://www.trade.gov/policy-guidance?anchor=content-node-t14-field-lp-region-1-3>) regarding the treatment of production equipment includes the following: “The equipment should be evaluated for Customs duty purposes in its condition when it goes into production (*i.e.*, as complete production equipment), keeping in mind the requirements for evaluating incoming articles subject to antidumping/countervailing (AD/CVD) orders. The FTZ regulations require the election of privileged foreign status, upon admission to the zone, on any incoming merchandise that is subject to AD/CVD orders When such merchandise leaves the zone for U.S. commerce, it will be subject to AD/CVD procedures based on its condition when it arrived at the zone.”

Since this proposed edit does not change the enforcement or meaning of the language; this action merely moves the existing language from § 400.14(e) to § 400.13(c).

Comment 6: § 400.13(c) and § 400.32(c)(2). One comment suggested including reference to Chapter 99 (trade remedy) duty rates in § 400.13(c) and § 400.32(c)(2) and specifying the duty rate that would be applicable for such merchandise at the time of entry from a zone. This comment also suggested including a new section of the regulations regarding merchandise processed in a zone and subject to Chapter 99 duties.

Response: Although it is understood that the intention of this comment is to provide predictability to companies operating and using FTZs, this proposed edit could impact multiple laws involving trade remedies. Inclusion of this language would remove the relevant

authorities regarding trade remedies from decisions on the applicability of duties as merchandise leaves FTZs, potentially having policy implications and impacting various trade remedy actions. While the comment noted that inclusion of the proposed language would be consistent with certain presidential proclamations regarding trade remedies, the proposed language would not be consistent with all proclamations regarding current trade remedies. As a result, the proposed edits related to Chapter 99 duties would require further review and discussion and therefore are not appropriate for this process.

Comment 7: § 400.16. Several comments argued that the proposed addition of the phrase “in foreign status” to § 400.16 would be inconsistent with the statutory language of 19 U.S.C. 81(o)(e) and that a similar proposed regulatory change in 1990 resulted in the FTZ Board revising its final regulations. One comment also requested clarification on the practical implications of including the phrase “in the activated area” in this section. Other comments supported inclusion of the phrase “in the activated area” in this section.

Response: In response to the comments received, this action replaces the proposed phrase “in foreign status” with a reference to “foreign merchandise”. Use of the modifier “foreign” to describe merchandise in this section is consistent with the language adopted by the Board in 1991 and currently used in § 400.1(c) as well.

While the substance of the comments is not being analyzed through this process, the discussion and outcome of the regulatory edits in 1991 does not appear to be as settled as implied in the comments. In 1990, the Board proposed including language to § 400.1(c) stating that merchandise should be in the zone for a *bona fide* customs reason to be eligible for the exemption on state and local *ad valorem* taxes. While the language was ultimately removed from the final rule in 1991, the preamble to the 1991 regulations included the following reference to language in the House report accompanying Public Law 98–873: “. . . this exemption should apply only to goods in zones for *bona fide* Customs reasons.” This action continues use of the reference to merchandise eligible for the exemption on state and local *ad valorem* taxes as “foreign”. Further edits or changes to this language would only be considered as part of more comprehensive regulatory revisions that would provide for further comment and analysis.

In terms of the reference to “in the activated area” in this section, we can confirm that this would clarify that FTZ designated space would need to be in operation and activated under CBP procedures for the merchandise to be exempt from state and local *ad valorem* taxes. Inclusion of this language provides clarification on the long-standing Board interpretation and is not a new requirement or limitation on this section. Apart from one comment requesting clarification, all other comments supported inclusion of this phrase.

Changes From the Proposed Rule

The sole change to the regulatory text from the proposed rule is replacing the proposed phrase “foreign status” with “foreign” in § 400.16. The change to this text is consistent with the language adopted by the Board in 1991 and currently used in § 400.1(c). As a result, this change does not require additional public comment.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no new information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 15 CFR Part 400

Administrative practice and procedure, Confidential business information, Customs duties and inspection, Foreign-trade zones, Harbors, Imports, Reporting and recordkeeping requirements.

Dated: January 26, 2024.

Dawn Shackelford,

Executive Director of Trade Agreements Policy & Negotiations, Alternate Chairman, Foreign-Trade Zones Board.

For the reasons set out in the preamble, 15 CFR part 400 is amended as follows:

PART 400—REGULATIONS OF THE FOREIGN-TRADE ZONES BOARD

- 1. The authority citation for part 400 continues to read as follows:

Authority: Foreign-Trade Zones Act of June 18, 1934, as amended (Pub. L. 73–397, 48 Stat. 998–1003 (19 U.S.C. 81a–81u)).

- 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:

§ 400.2 Definitions.

* * * * *

(h) *Foreign-trade zone* (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.

* * * * *

(t) *Usage-driven site* means a site established for a single operator or user under the ASF.

* * * * *

- 3. In § 400.4, revise paragraphs (m) and (t) to read as follows:

§ 400.4 Authority and responsibilities of the Executive Secretary.

* * * * *

(m) Issue instructions, guidelines, forms and related documents specifying time, place, manner and formats for applications, notifications, application fees and zone schedules in various sections of this part, including §§ 400.21(b), 400.29, 400.43(f), and 400.44;

* * * * *

(t) Review zone schedules and determine their sufficiency under § 400.44(c);

* * * * *

- 4. In § 400.11, revise paragraph (b)(2)(i) to read as follows:

§ 400.11 Number and location of zones and subzones.

* * * * *

(b) * * *

(2) * * *

(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.

* * * * *

- 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:

§ 400.13 General conditions, prohibitions and restrictions applicable to authorized zones.

(a) * * *

(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. Grantees shall retain 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).

* * * * *

(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.

(2) *Admission of items subject to AD/CVD actions.* 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 (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.

* * * * *

- 6. In § 400.14:

- a. Revise the section heading and paragraph (a); and

- b. Remove paragraph (e).

The revisions read as follows:

§ 400.14 Production—requirement for prior authorization.

(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 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).

* * * * *

■ 7. Revise § 400.16 to read as follows:

§ 400.16 Exemption from state and local ad valorem taxation of tangible personal property.

Foreign merchandise (tangible personal property) imported from outside the United States and held in the activated area of 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 States and held in the activated area of a zone for exportation, either in its original form or as altered by any of the processes set out in this section, shall be exempt from state and local ad valorem taxation.

■ 8. In § 400.21:

- a. Revise paragraphs (a) and (c)(1);
- b. In paragraph (c)(5), add the word "and" following the semicolon;
- c. Remove paragraph (c)(6) and redesignate paragraph (c)(7) as paragraph (c)(6);
- d. Remove paragraph (d)(2)(vi);
- e. Redesignate paragraphs (d)(2)(vii) and (ix) as paragraphs (d)(2)(vi) through (viii);
- f. Revise paragraphs (e)(3), (h), and (i); and
- g. Remove paragraph (j).

The revisions read as follows:

§ 400.21 Application to establish a zone.

(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.

* * * * *

(c) * * *

(1) The relationship of the proposal to the state enabling legislation and the applicant's charter;

* * * * *

(e) * * *

(3) Appropriate information regarding usage-driven sites or ASF subzones.

* * * * *

(h) *Drafts.* 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) *Submission of completed application.* 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).

■ 9. In § 400.24, revise paragraphs (a)(1), (c), and (d) to read as follows:

§ 400.24 Application for expansion or other modification to zone.

(a) * * *

(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 (§ 400.2(c))).

* * * * *

(c) *Minor modification to zone.* 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 paragraph (c) instead of paragraph (b) of this section (*see* § 400.38). Such applications or requests include those for minor revisions of zone or subzone 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 remains subject to the activation limit (*see* § 400.2(b)) for the zone in question.

(d) *Applications for other revisions to authority.* 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 or request for a voluntary termination 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 §§ 400.31 through 400.34 and 400.36 shall be followed, where relevant. If not, the procedure set forth in § 400.38 shall generally apply (although the Executive Secretary may elect to follow the procedures of §§ 400.31 through 400.34 and 400.36 when warranted).

■ 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 add a period in its place; and
- d. Remove paragraph (f).

The revision reads as follows:

§ 400.26 Criteria for evaluation of proposals, including for zones, expansions, subzones, or other modifications of zones.

* * * * *

■ 11. In § 400.27, revise the introductory text to read as follows:

§ 400.27 Criteria applicable to evaluation of applications for production authority.

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 information such as pertains to 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:

* * * * *

■ 12. In § 400.29:

- a. Revise paragraphs (b) and (c); and
- b. Remove paragraph (d).

The revisions read as follows:

§ 400.29 Application fees.

* * * * *

(b) *Uniform system of user fee charges.* The following fee schedule establishes fees for certain types of applications and requests for authority on the basis of their estimated average processing time.

(1) Additional zones (§ 400.21;

§ 400.11(a)(2))—\$3,200.

(2) Subzones (§ 400.25):

(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) *Timing and manner of payment.* Application fees shall be paid prior to the FTZ Board docketing an application and in a manner specified by the Executive Secretary.

■ 13. In § 400.31, revise paragraph (b) to read as follows:

§ 400.31 General application provisions and pre-docketing review.

* * * * *

(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 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.

■ 14. Revise § 400.32 to read as follows:

§ 400.32 Procedures for docketing applications and commencement of case review.

(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:

- (1) Formally docket the application, thereby initiating the proceeding or review;
- (2) Assign a case-docket number; and
- (3) Notify the applicant of the formal docketing action.

(b) After initiating a proceeding based on an application under §§ 400.21 and 400.23 through 400.25, the Executive Secretary shall:

(1) Designate an examiner to conduct a review and prepare a report or memorandum with recommendations for the Board;

(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. For applications to establish or expand a zone or for production authority, the comment period shall normally close 60 days after the date the notice appears. For applications for subzone

designation, the comment period shall normally close 40 days after the date the notice appears. However, if a hearing is held (see § 400.52), the comment period shall not close prior to 15 days after the date of the hearing. The closing date for general comments shall ordinarily be followed by an additional 15-day period for rebuttal comments. Requests for extensions of a comment period will be considered, subject to the standards of § 400.28(c). Submissions must meet the requirements of § 400.28(b). With the exception of submissions by the applicant, any new evidence or new factual information and any written arguments submitted after the deadlines for comments shall not be considered by the examiner or the Board. Submission by the applicant of new evidence or new factual information may result in the (re)opening of a comment period. A comment period may otherwise be opened or reopened for cause;

(3) Transmit or otherwise make available copies of the docketing notice and the application to CBP;

(4) Arrange for hearings, as appropriate;

(5) Transmit the report and recommendations of the examiner and any comments by CBP to the Board for appropriate action; and

(6) Notify the applicant in writing (via electronic means, where appropriate) and publish notice in the **Federal Register** of the Board's determination.

(c) 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)(2) of this section.

■ 15. In § 400.33, revise paragraph (e)(3) to read as follows:

§ 400.33 Examiner's review—application to establish or modify a zone.

* * * * *

(e) * * *

(3) If the factors considered for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of paragraphs (e)(1) and (2) of this section shall be followed.

* * * * *

■ 16. In § 400.34, revise paragraph (a)(5)(iv)(C) to read as follows:

§ 400.34 Examiner's review—application for production authority.

(a) * * *

(5) * * *

(iv) * * *

(C) If the factors considered for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of paragraphs

(a)(5)(iv)(A) and (B) of this section shall be followed.

* * * * *

■ 17. In § 400.35, revise paragraph (c) to read as follows:

§ 400.35 Examiner's review—application for subzone designation.

* * * * *

(c) If the factors considered for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of paragraphs (a) and (b) of this section shall be followed.

* * * * *

■ 18. In § 400.36:

- a. Revise paragraphs (b) and (e); and
- b. Remove the paragraph heading from paragraph (f).

The revisions read as follows:

§ 400.36 Completion of case review.

* * * * *

(b) In its advisory role to the Board, CBP headquarters staff shall provide any comments within 15 days for applications under § 400.25 and within 30 days for all other applications.

* * * * *

(e) If the Board is unable to reach a unanimous decision, the applicant shall be notified and provided an opportunity to meet with the Board members or their delegates.

* * * * *

■ 19. In § 400.37, revise paragraph (a) to read as follows:

§ 400.37 Procedure for notification of proposed production activity.

(a) *Submission of notification.* 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.

* * * * *

■ 20. Revise § 400.38 to read as follows:

§ 400.38 Procedure for request for minor modification of zone.

(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.

(b) If not previously provided to the requestor for inclusion with the requestor's 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 requestor's submission of the request to the Executive Secretary.

§ 400.42 [Amended]

■ 21. In § 400.42, remove and reserve paragraph (b).

§ 400.43 [Amended]

■ 22. In § 400.43, remove paragraph (i).

■ 23. In § 400.44:

■ a. Revise paragraphs (a), (b)(5), and (e); and

■ b. Remove paragraph (f).

The revisions read as follows:

§ 400.44 Zone schedule.

(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.

(b) * * *

(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

* * * * *

(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.

■ 24. In § 400.45, revise paragraph (b) to read as follows:

§ 400.45 Complaints related to public utility and uniform treatment.

* * * * *

(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 return on investment and reasonable out-of-pocket expenses.

■ 25. In § 400.52, revise paragraph (b)(2) to read as follows:

§ 400.52 Notices and hearings.

* * * * *

(b) * * *

(2) The request must be made within 30 days of the beginning of the initial 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.

* * * * *

■ 26. In § 400.61, revise paragraphs (a) and (c) to read as follows:

§ 400.61 Revocation of authority.

(a) *In general.* As provided in this section, the Board can revoke in whole or in part authority for a zone (*see* § 400.2(h)) whenever it determines that the zone grantee has violated, repeatedly and willfully, the provisions of the Act.

* * * * *

(c) *Appeals.* 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.

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FEDERAL TRADE COMMISSION

16 CFR Part 1

RIN 3084-AB79

Procedures for Oversight of the Horseracing Integrity and Safety Authority's Annual Budget

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") is amending its rules pursuant to the Horseracing Integrity and Safety Act

("Act") regarding the Commission's procedures for its oversight of the annual budget of the Horseracing Integrity and Safety Authority ("Authority"). The amendments to the Authority's budget oversight rules will streamline and improve the process for approving or disapproving the Authority's annual budget.

DATES: This rule is effective on February 8, 2024.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

The Horseracing Integrity and Safety Act of 2020, Public Law 116-260, Title XII, 134 Stat 1182, 3252 (2020) (codified as amended at 15 U.S.C. 3051-3060), recognizes the Authority as a self-regulatory nonprofit organization charged with developing and enforcing rules relating to racetrack safety, anti-doping, and medication control. *See* 15 U.S.C. 3052. The Act expressly provides for Commission oversight of several aspects of the Authority's operations. For example, the Commission must approve any proposed rule or rule modification by the Authority relating to the Authority's bylaws, racetrack safety standards, anti-doping and medication control, and the formula or methodology for determining assessments. *See id.* In December 2022, Congress amended HISA to expand the Commission's oversight role over the Authority. *See* Consolidated Appropriations Act, 2023, Public Law 117-328, Sec. 701, 136 Stat. 4459, 5231 (2022). As amended, the Act gives the Commission the power to issue rules under the procedures set forth in the Administrative Procedure Act, 5 U.S.C. 553, "as the Commission finds necessary or appropriate to ensure the fair administration of the Authority . . . or otherwise in furtherance of the purposes of this Act." 15 U.S.C. 3053(e).

In March 2023, relying in part on the new amendment, the Commission promulgated rules relating to the Authority's budget ("Budget Rule"). *See* 88 FR 18034 (Mar. 27, 2023). The Budget Rule, codified at 16 CFR 1.150 through 1.152, sets forth the process whereby the Authority submits each year's proposed budget to the Commission for approval. Under the Budget Rule, after the Authority submits its proposed annual budget to the Commission, the Commission publishes the proposed budget in the **Federal Register** and the public is given an opportunity to comment. *See* 16 CFR