

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

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

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

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

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

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

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

**FOR FURTHER INFORMATION CONTACT:**  
Elizabeth Whiteman at  
[Elizabeth\\_Whiteman@ita.doc.gov](mailto:Elizabeth_Whiteman@ita.doc.gov) or  
(202) 482-0473.

Dated: September 3, 2008.

**Andrew McGilvray,**  
*Executive Secretary.*

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**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

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

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

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

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

#### Comments Received

##### *Comments on Overall Framework and Application Process*

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

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

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

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

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

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

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

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

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

#### *Response on Overall Framework and Application Process*

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

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

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

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

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

#### *Comments on “Service Area” Concept*

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

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

#### *Response on “Service Area” Concept*

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

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

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

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

perspectives can be presented for consideration.

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

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

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

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

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

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

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

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

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

#### *Comments on "Anchor" Site Concept*

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

#### *Response on "Anchor" Site Concept*

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

#### *Comments on "Magnet" Site Concept*

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

#### *Response on "Magnet" Site Concept*

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

#### *Comments on "User-Driven" Site Concept*

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

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

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

#### *Response on "User-Driven" Site Concept*

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

#### *Comments on Numbers of Sites*

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

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

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

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

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

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

#### *Response on Numbers of Sites*

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

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

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

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

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

#### *Comments on Sunset Limits*

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

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

#### *Response on Sunset Limits*

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

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

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

#### *Comment on Site Numbering*

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

#### *Response on Site Numbering*

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

#### *Comment on Tracking of Sites*

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

#### *Response on Tracking of Sites*

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

#### *Comment on Procedures for Minor Boundary Modifications*

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

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

#### *Response on Procedures for Minor Boundary Modifications*

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

#### **Revised Proposal**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: September 8, 2008.

**Andrew McGilvray,**

*Executive Secretary.*

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### Action Affecting Export Privileges; Ralph Michel

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

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