

**DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection**

Announcement of Foreign-Trade Zones Test

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice announces U.S. Customs and Border Protection's ("CBP's") plan to conduct a voluntary general test regarding certain foreign-trade zone ("FTZ" or "zone") activities. Pursuant to the FTZ test, under prescribed conditions, zone operators will be permitted liberalized procedures for certain zone activities. Specifically, zone operators approved for participation in the test will not be required to submit a CBP Form 216 ("Application for Foreign-Trade Zones Activity Permit") for the manipulation, manufacture, or exhibition of merchandise within an FTZ where such activity has been previously approved in that zone's Grant of Authority by the FTZ Board. In addition, zone operators approved for participation in the test will have the option of allowing duty-paid merchandise that has been entered for consumption to remain in an activated zone area for up to 90 calendar days after CBP releases the merchandise, so long as the merchandise remains segregated, does not undergo further manufacturing, and is accurately recorded in the Inventory Control and Recordkeeping system within five (5) business days of release.

The FTZ test is intended to evaluate whether liberalizing certain FTZ operational procedures will impact CBP's supervision and control over the zone, as well as the agency's ability to enforce applicable laws. This notice invites public comment

concerning any aspect of the planned test, describes the eligibility, procedural and documentation requirements for voluntary participation in the test, and outlines the development and evaluation methodology to be used in the test.

DATES: A zone operator interested in voluntary participation in the FTZ test must submit an email to CBP establishing that he or she meets the eligibility criteria for participation in the test by [INSERT DATE 30 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE **FEDERAL REGISTER**]. CBP will notify interested parties of their test participation status within 10 calendar days of receipt of the email requesting participation in the test. The initial phase of the FTZ test will commence [INSERT DATE 40 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE **FEDERAL REGISTER**], and will run for approximately two years. CBP will begin an evaluation of this test approximately 90 days after the test's commencement.

ADDRESSES: Comments concerning this notice or any aspect of the test may be submitted via email, with a subject line identifier reading "Comment on FTZ Test," to FTZtest@cbp.dhs.gov. An email expressing interest in participating in the FTZ test should be sent to FTZtest@cbp.dhs.gov, with a subject line identifier reading "Participation in FTZ Test."

FOR FURTHER INFORMATION CONTACT: Alyce Modesto, Acting Director, Cargo Security and Control, Office of Field Operations, (202) 344-2549 or via email at alyce.m.modesto@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

General

A Foreign-Trade Zone (“FTZ” or “zone”) is a secure area under U.S. Customs and Border Protection (“CBP”) control and supervision that is within the United States, but considered to be outside the customs territory of the United States. Formal CBP entry procedures and payments of duties are not required on foreign merchandise lawfully within the FTZ until the merchandise enters the U.S. customs territory for domestic consumption. Merchandise that is lawfully admitted to an FTZ may undergo prescribed activities, such as storage, manipulation, manufacture, exhibition and destruction.

The Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a-81u), created the Foreign-Trade Zones Board (“FTZ Board”), which is responsible for the review and approval of applications to establish, operate and maintain FTZs. Upon approval, the FTZ Board issues a Grant of Authority to the zone grantee (the corporate recipient of the grant of authority for the establishment, operation, and maintenance of a zone project) to permit specified operations within the zone. Daily management of the zone is typically delegated to a zone operator (a CBP-approved entity that operates a zone under the terms of the Grant of Authority on behalf of the Zone grantee).

Before merchandise may be admitted into a zone, CBP must approve activation of the FTZ. CBP is responsible for the transfer of merchandise into and out of the zone and for matters involving revenue collection. The CBP port director, in whose port a zone is located, is charged with enforcing applicable laws and overseeing zone activity as the local representative of the FTZ Board. The port director controls the admission,

handling, and disposition of merchandise within the zone, and the removal of merchandise from the zone.

The Foreign-Trade Zones Act is administered through two sets of regulations, the FTZ Board regulations (15 CFR Part 400) and CBP regulations (19 CFR Part 146). FTZs are also subject to the laws and regulations of the United States, as well as those of the states and communities in which they are located.

Description of the Foreign-Trade Zones Test

Under this FTZ test, zone operators who are approved FTZ test participants will be permitted liberalized procedures for two zone activities under prescribed circumstances. This test is intended to increase efficiencies and reduce administrative burdens for both CBP and the trade without compromising CBP's obligation to supervise and exercise control over the zone and enforce applicable laws. This test will evaluate whether liberalizing certain FTZ operational procedures will impact CBP's obligations.

I. CBP Form 216 Not Required for Manipulation, Manufacture, or Exhibition of Goods within an FTZ when the Subject Activity Has Already Been Approved in the Zone's Grant of Authority.

Section 146.52(a), within subpart E of part 146 of the CBP regulations (19 CFR 146.52(a)), provides that a zone operator, prior to any action being taken, must apply for a permit on the CBP Form 216 ("Application for Foreign-Trade Zones Activity Permit") to manipulate, manufacture, exhibit, or destroy merchandise in a zone or transfer merchandise for any purpose from a zone. The CBP Form 216 pertains to both individual and blanket permits. The blanket permit covers continuous or repetitive activity for up to a one-year period.

Under this FTZ test, approved test operators will not be required to submit a CBP Form 216 for permission to manipulate or manufacture goods, or exhibit goods under certain circumstances, within an FTZ if the subject activity has already been approved in the zone's Grant of Authority. In the case of exhibition of merchandise within a zone, a CBP Form 216 will not be required if the test operators can demonstrate that the conditions designated for exhibition are suitable for preventing confusion of the identity or status of the merchandise and that the approved test operator exercises adequate oversight of individuals granted access to the FTZ, including those present for purposes of the exhibition.

In these circumstances, CBP views the permit function served by the CBP Form 216 as duplicative and unnecessary inasmuch as the subject activities have already been permitted by the FTZ Board with CBP's concurrence. As the CBP port director has access to the zone's Grant of Authority, the elimination of the requirement to submit a CBP Form 216 that describes a manipulation, manufacturing, or exhibition activity that has already been authorized in the zone's Grant of Authority is intended to simplify paperwork and administrative burdens for both CBP and the FTZ trade without impacting security controls and revenue collection functions.

It is noted that submission of a CBP 216 remains a requirement for approved test operators for the following zone activities:

- Destruction of goods.
- Sampling.
- Temporary removal of goods (including temporary removal for purposes of exhibition outside of the FTZ).

- Manipulation or manufacture (including processing and production) of goods when the subject activity is not within the scope of the grant of authority for the FTZ operation.

II. Elimination of 5-Day Time Limit on Merchandise Remaining in a Zone after Issuance of CBP Permit for Transfer to U.S. Customs Territory.

Section 146.71, within subpart F of part 146 of the CBP regulations (19 CFR 146.71), prescribes the release and removal of merchandise from a zone. Paragraph (a) states that, except as provided for in § 146.43, no merchandise will be transferred from a zone without a CBP permit on the appropriate entry or withdrawal form or other document as required in this part. Section 146.71(c) provides that, except in the case of articles for use in a zone, merchandise for which a CBP permit for transfer to U.S. customs territory has been issued must be physically removed from the zone within five (5) working days of issuance of that permit and that merchandise awaiting removal within the required time limit will not be further manipulated or manufactured in the zone, but will be segregated or otherwise identified by the operator as merchandise that has been constructively transferred to the U.S. customs territory.

Pursuant to this FTZ test, an approved test operator will have the option of allowing duty-paid merchandise that has been entered for consumption to remain in an activated zone area for up to 90 calendar days after CBP releases the merchandise, so long as the merchandise remains segregated, does not undergo further manufacturing, and is accurately recorded in the Inventory Control and Recordkeeping (“ICR”) system within five (5) business days of release. Such merchandise is considered to be constructively transferred to the customs territory of the United States and, while remaining in the zone, will have no zone status. See 19 CFR Part 146, Subpart D. Approved test operators are reminded that the procedures manual required by 19 CFR

146.21(b) should be updated to reflect changes in their procedures to comply with the FTZ test, including which status indicator is being used to describe the merchandise. The 5-day ICR system requirement is intended to ensure timely inventory control and to enable CBP to ascertain the status of merchandise within a zone without hindering CBP's supervision and control over the zone, and its ability to enforce applicable laws. It is noted that merchandise that is constructively transferred to the customs territory of the United States, which is removed from a zone but does not enter the commerce of the United States, may not be readmitted to a zone in domestic status.

Elimination of the requirement, for purposes of this FTZ test, to remove merchandise from a zone within the prescribed 5-day period after release is intended to benefit the trade by permitting them to focus on production and accurate maintenance of their ICR system, rather than the timing of merchandise moving in and out of the zone. In addition, in situations where data or documentation from other government agencies is required, elimination of the 5-day zone removal requirement is intended to simplify logistics in that merchandise will not have to be moved from a secured FTZ location pending receipt of that information.

FTZ Test Participant Eligibility

Participation in this FTZ test is voluntary and open to all FTZ operators who timely notify CBP of their interest in participating in the test and establish, to CBP's satisfaction, that they: (1) are authorized and approved in an activated FTZ; (2) have an approved FTZ operator bond on file with CBP; and (3) can demonstrate the ability to comply with the requirements of the test.

Authorization for the Test

This FTZ test is being conducted in accordance with §101.9(a) of the CBP regulations (19 CFR 101.9(a)), which prescribes general test requirements.

Regulatory Provisions Suspended

The following regulatory provisions will be suspended to the extent that they conflict with the terms of this FTZ test. The regulatory suspensions will remain in effect for the duration of this test and will apply to approved test participants only; the regulatory provisions remain in effect for all non-test participants:

- Section 146.51, which requires that no merchandise, other than domestic status merchandise provided for in § 146.43, will be manipulated, manufactured, exhibited, destroyed or transferred from a zone in any manner or for any purpose, except under CBP permit.
- Section 146.52(a), to the extent that it requires a zone operator, prior to any action being taken, to apply for a blanket permit on the CBP Form 216 to manipulate, manufacture, or exhibit merchandise in a zone.
- Section 146.71(c), which requires that merchandise for which a CBP permit for transfer to the U.S. customs territory has been issued must be physically removed from the zone within five (5) working days of issuance of that permit, except in the case of articles for use in a zone.

Test Dates

This FTZ test will commence no earlier than [INSERT DATE 40 DAYS AFTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE **FEDERAL REGISTER**], and will run for approximately two years from that date with a final evaluation to take place at the end of the test period. CBP may extend, terminate, or change the terms of the test at any time, by way of announcement in the **Federal Register**.

Test Evaluation

CBP will begin an evaluation of the FTZ test approximately 90 days after its commencement.

Misconduct under the Test

An FTZ test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, and/or discontinuance from participation in this test for any of the following:

- Failure to follow the terms and conditions of this test.
- Failure to exercise reasonable care in the execution of participant obligations.
- Failure to abide by applicable laws and regulations that have not been waived.

The Director, Cargo Security and Control, Office of Field Operations, CBP Headquarters, will administer the suspension or revocation of participation privileges for misconduct under the test. CBP will issue a written notice to the test participant that describes the proposed action and includes a description of the facts or conduct warranting the action. The test participant may appeal the decision, in writing, within ten (10) calendar days of receipt of the written notice. The appeal must be submitted to U.S. Customs and Border Protection, Office of Field Operations, Cargo and Conveyance Security (“CCS”), 1300 Pennsylvania Ave., N.W., Suite 2.3D, Washington, D.C. 20229-1015 or by email to FTZtest@cbp.dhs.gov. The Executive Director, CCS, will issue a written decision on the proposed action within 30 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the proposed notice becomes the final decision of the agency as of the date that the appeal period expires.

Except in the case of willful misconduct, or where a test participant's conduct may cause immediate harm to the public health, interest, or safety, a proposed discontinuance of a test participant's participation privileges will not take effect until the time to file an appeal has expired. In the case of willful misconduct, or where a test participant's conduct may cause immediate harm to the public health, interest, or safety, the Director, Cargo Security and Control, OFO, may immediately discontinue a participant's test privileges upon written notice to the test participant. The notice will contain a description of the facts or conduct warranting the immediate action. The test participant will be offered the opportunity to appeal the decision within ten (10) calendar days of receipt of the written notice providing for immediate discontinuance. The appeal must be submitted to U.S. Customs and Border Protection, Office of Field Operations, CCS, 1300 Pennsylvania Ave., N.W., Suite 2.3D, Washington, D.C. 20229-1015 or by email to FTZtest@cbp.dhs.gov. The immediate discontinuance will remain in effect during the appeal period. The Executive Director, CCS, will issue a decision in writing on the discontinuance within 15 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

Test Evaluation Criteria

The following is a non-exhaustive list of evaluation factors that CBP may use to assess the merits of the FTZ test:

1. Workload impact;
2. Policy and procedure accommodations;

3. Cost savings;
4. Trade compliance impact;
5. System efficiency;
6. Operational efficiency; or
7. Other issues raised by public comment or by the test participants.

Results of the FTZ test will be formulated at the conclusion of the test and will be made available to the public upon request.

Dated: June 3, 2013

David A. Murphy
Acting Assistant Commissioner,
Office of Field Operations

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