

# 15th Term Commercial Customs Operations Advisory Committee Term to Date Recommendations

October 03, 2018

The logo for the Commercial Customs Operations Advisory Committee (COAC) features the acronym 'COAC' in a bold, serif font. The letters 'C', 'A', and 'C' are blue, while the 'O' is red. The letters are positioned above two horizontal lines, the top one being blue and the bottom one red.

COMMERCIAL CUSTOMS OPERATIONS  
ADVISORY COMMITTEE

## **FOREIGN TRADE ZONE REGULATORY REFORM WORKING GROUP**

### **Introduction**

Foreign-Trade Zones (FTZ) are secure areas under U.S. Customs and Border Protection (CBP) supervision that are generally considered outside CBP territory upon activation. Located in or near CBP ports of entry, they are the United States' version of what are known internationally as free-trade zones.

Authority for establishing these facilities is granted by the Foreign-Trade Zones Board under the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a-81u). The Foreign-Trade Zones Act is administered through two sets of regulations, the FTZ Regulations (15 CFR Part 400) and CBP Regulations (19 CFR Part 146).

Foreign and domestic merchandise may be moved into zones for operations, not otherwise prohibited by law, including storage, exhibition, assembly, manufacturing, and processing. Foreign-trade zone sites are subject to the laws and regulations of the United States as well as those of the states and communities in which they are located.

Under zone procedures, the usual formal CBP entry procedures and payments of duties are not required on the foreign merchandise unless and until it enters CBP territory for domestic consumption, at which point the importer generally has the choice of paying duties at the rate of either the original foreign materials or the finished product. Domestic goods moved into the zone for export may be considered exported upon admission to the zone for purposes of excise tax rebates and drawback.

### **Role of CBP**

CBP is responsible for the transfer of merchandise into and out of the FTZ and for matters involving the collection of revenue. The Office of Regulations and Rulings at CBP Headquarters provides legal interpretations of the applicable statute, CBP Regulations and procedures.

The Port Director of CBP, in whose port a zone is located, is charged with overseeing zone activity as the local representative of the Foreign-Trade Zones Board. He or she controls the admission of merchandise into the zone, the handling and disposition of merchandise in the zone, and the removal of merchandise from the zone. In addition to the Foreign-Trade Zones Act, he or she enforces all laws normally enforced by CBP that are relevant to foreign-trade zones.

Zones are supervised by FTZ Coordinators (i.e., CBP Officers, Import Specialists, Entry Specialists or Agricultural Specialists, etc.) through compliance reviews and visits; the security of the zone must meet certain requirements.

### **COAC FTZ Working Group**

With over 230 general purpose zones and nearly 400 subzones in the United States, the FTZ industry is vital to the U.S. economy and provides many benefits to U.S. companies in order to help maintain and grow American jobs and associated U.S. investment through Customs duty mitigation strategies. With the modernization of the Automated Commercial Environment (ACE), CBP recognized the need to establish a COAC FTZ Working Group (WG) under the Trade Modernization Subcommittee. The goal of the FTZ WG is to collaborate on a regulatory rewrite of 19 CFR 146, modernize policies, and consider technology solutions in ACE to create a paperless and auditable environment for FTZ operations.

In accordance with the COAC charter, the FTZ WG was established on March 14, 2018, and has over 40 members representing all trade sectors including U.S. manufacturers, general purpose zones, subzones, importers, exporters, customs brokers, attorneys, FTZ consultants, sureties, and various trade associations including the National Association of Foreign Trade Zones (NAFTZ) and the National Customs Brokers and Forwarders of America (NCBFAA). The FTZ WG also includes representation from the FTZ Board on behalf of the Department of Commerce (DOC) and CBP's Office of Trade Relations (OTR), Office of Trade (OT), Regulations and Rulings Directorate, and Office of Field Operations (OFO).

To tackle the monumental task of a regulatory rewrite for 19 CFR 146, the FTZ WG established three (3) teams each participating in weekly conference calls from March through July. Team 1 reviewed Subpart A-B, Team 2 Subparts C-E, and Team 3 Subparts F-G. The entire FTZ WG also had monthly calls and in-person meetings on July 18-19. During this meeting, the FTZ WG developed the below recommendations as well as a red-lined version of 19 CFR 146 that began in 2015 and culminated in a regulatory draft package that shall become a formal part of these COAC recommendations.

### **Modernization of Language**

- 1) **Regulatory Reform:** As outlined in the red-lined version of 19 CFR 146 to support these recommendations, COAC recommends that CBP modernize and streamline FTZ Regulations to:
  - conform with the FTZ Board regulations modified in 2012 and reference FTZ board production authority scope of approval and restrictions;
  - reflect a paperless environment in ACE;
  - eliminate and/or automate certain forms, seals, and processes that are antiquated;
  - distinguish authority of CBP Centers of Excellence and Expertise for post entry work;
  - revise to meet the new in-bond regulations implemented in 2018;
  - update and move all definitions to Subpart A to provide a central location for clarity;
  - reorder regulatory sections to provide clarity and logical order of content;
  - clarify language concerning valuation and quantity reporting;
  - modify the five (5) day removal rule
  
- 2) **Update Regulations:** As outlined in the red-lined version of 19 CFR 146 in support of these recommendations, COAC recommends that CBP draft language for:
  - “Zone Status Changes” in 19 CFR 146.12(e).
  - “Voluntary Cessation of Zone Activities” in Subpart C
  - Free Trade Agreements with Duty Deferral restrictions (create 19 CFR 145.64 for NAFTA and 19 CFR 145.65 for U.S. Chile).
  - Expanded language for 19 CFR 146.15 to distinguish dutiable status of the goods or consider consolidating with Subpart E.
  - Title transfer in an FTZ.
  - Temporary removal provisions.
  
- 3) **Trade Remedies:** COAC recommends that CBP adopt changes to 19 CFR 146.13 and throughout 19 CFR 146 as applicable to include regulatory language that merchandise subject

to Anti-Dumping/Countervailing Duties (AD/CVD) and trade remedies such as Section 201, 232, and 301 must be as admitted in Privileged Foreign Status. The regulatory changes should clarify that any applicable AD/CVD duties would apply regardless of the processing conducted in the FTZ, but as applicable trade remedy duties may not apply based on the FTZ processing. However, in all cases the rate of duty in force on the date of removal from the FTZ would apply. Further, CBP should provide clarification regarding the appropriate country of origin for duty purposes due to Census' requirement, inconsistent with CBP origin determinations, to report the country of origin based on the foreign status merchandise and in cases of components from more than one country, the country with the greatest aggregate value.

- 4) **Zone Activation Process:** COAC recommends that CBP revise 19CFR146.6 to provide a more formal and streamlined process for the zone application, denial and appeal process so activations are handled in a timely and uniform manner.
- 5) **ACE Policy:** As FTZ admissions fully migrate to ACE, the regulations should be updated to clarify the different admission types, the timing associated with each, and the specific data elements required in ACE, including the same for regular and weekly entries.

### **Policy Changes**

- 6) **Direct Delivery:** COAC recommends that CBP develop and publicly disseminate a risk assessment methodology that is both company-based and product-based to allow CBP to establish known parameters for approvals and also allow related parties to FTZ Operator firms to qualify for direct delivery. COAC also recommends that 19 CFR 146.39 be updated to require the ACE data elements for CBP Form 214 as outlined in the ACE CATAIR.
- 7) **Production Equipment:** COAC recommends that CBP create a new admission type or flag in ACE for Production Equipment and modify the regulations at 19 CFR 146.16 to accommodate this revised process and any applicable requirements within the FTZ Manual.
- 8) **FTZ Bonding:** COAC recommends that CBP review how the FTZ bond amount (Activity Code 4) is determined with the COAC Bond Working Group to ensure it contemplates the custodial obligation of an FTZ based on duty of average inventory rather than value within the FTZ. This review should ensure the FTZ bond amounts are sufficient to protect the revenue of the U.S. and calculated in a uniform manner to avoid unnecessary hardship on the trade. COAC further recommends that CBP modernize the FTZ regulations to align with the eBond environment implemented in January 2015.
- 9) **FTZ Manual:** In support of the final regulatory and policy changes made to 19 CFR 146, COAC recommends that CBP modernize and streamline the FTZ Manual to ensure it aligns with all regulatory reform, policy changes, and automation capabilities.
- 10) **Section 321 De Minimis:** In light of recent CBP rulings restricting section 321 de minimis shipments through FTZs and the increasing flow of such shipments from warehouses abroad located in Mexico and Canada, COAC recommends that CBP consult with COAC to

examine the economic impact such restrictions are having on the domestic FTZ industry and the efficacy of a regulatory or statutory change to enable such operations to occur in the U.S.

### **PGA Capabilities and Collaboration**

**11) Partner Government Agencies (PGA):** COAC recommends that CBP incorporate into the regulatory rewrite of 19 CFR 146 any reference to PGA jurisdiction where CBP has enforcement authority to hold or detain merchandise. COAC also recommends that CBP engage with the Border Interagency Executive Council (BIEC) to solidify PGA Policy to incorporate into the regulatory rewrite for admissions.

### **Technology and Automation Solutions**

**12) CBP Form 216 and Exceptions:** COAC recommends that CBP create functionality in ACE that provides a mechanism to electronically report CBF Form 216 and all exceptions for overages, shortages, destructions, etc.

### **FTZ Enforcement**

**13) Penalties and Liquidated Damages:** COAC recommends that CBP modify 19 CFR 146.81 to clarify and reference potential for liquidated damages under 19 CFR 113.73 and penalties under 19 USC 1592 for clearer transparency to the trade.

**14) Suspension:** COAC recommends that CBP modify 19 CFR 146.82 to provide an opportunity to appeal to the Office of Field Operations (OFO) at CBP Headquarters to be consistent with OFO's review of any cause for suspension.