

Client Alert

International Trade & Litigation Practice Group

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Commerce Publishes Final Rule Revising Regulations Issued Pursuant to the Foreign-Trade Zones Act

The Department of Commerce Foreign Trade Zones Board has published a Final Rule in the *Federal Register* that will change its regulations governing Foreign Trade Zones (FTZs). Most of the regulations contained in the Final Rule will become effective on April 30, 2012. The Final Rule is the culmination of a rulemaking process that began in December 2010, and which was summarized in a January 13, 2011 King & Spalding Client Alert, available by clicking [here](#).

FTZs are designated locations within the United States where foreign and domestic merchandise may be entered for storage, exhibition, assembly, manufacture, or other processing prior to formal “entry” into the U.S. customs territory. As a result, payment of duties is not required until the merchandise leaves the FTZ and enters the U.S. customs territory for domestic consumption. In many instances, U.S. duties can be reduced or avoided on foreign merchandise released from an FTZ if the merchandise is incorporated into a downstream product that is subject to a reduced or zero duty rate. The Department of Commerce Foreign Trade Zones Board approves applications for FTZ status and maintains regulations governing the operation of FTZs. U.S. Customs and Border Protection (CBP) separately approves “activation” of the FTZ, and zone activity remains under the supervision of CBP.

The Final Rule is comprehensive and constitutes a complete revision, replacing the present version of 15 CFR part 400. The Final Rule is intended to simplify many of the FTZ Board’s procedures, including those for users to obtain authority related to manufacturing and value-added activity; improve flexibility for U.S.-based operations, particularly for circumstances involving exports; enhance clarity; and strengthen compliance and enforcement. The Final Rule also reorganizes the regulations in the interests of ease-of-use and transparency.

Key Provisions

The Final Rule, like the Proposed Rule, replaces the definitions of “manufacturing” and “processing” with a single unified concept of “production,” which is covered by a new set of streamlined procedures. Importantly, the Final Rule confirms that entities engaged in manufacturing activity that was authorized under the prior FTZ Board regulations will not need to request new authority.

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The Final Rule requires authorization from the FTZ Board before any new production activity in an FTZ may begin, and it establishes a new standard notification process for all proposed production. The same requirements apply for changes in production at previously approved FTZs. The Final Rule allows for a 40-day public comment period for all submitted notifications, and the rule requires that the FTZ Board either determine whether to allow the proposed activity within 120 days from receipt of notification or determine that a more extensive “application” is required for the Board to evaluate the proposed activity. The application process normally has a 12-month processing time. The FTZ Board’s Executive Secretary may allow certain time-sensitive production to begin on an interim basis during the FTZ Board’s evaluation of a pending notification.

This requirement to obtain authorization from the FTZ Board before any new or changed production activity may begin contrasts with the equivalent provision that had been included in the Proposed Rule, which would have allowed for retrospective approval in many instances. The FTZ Board noted that this change is intended to simplify and increase the certainty of its procedures.

The Final Rule provides detailed regulations regarding the statutory requirements for FTZs to act as public utilities and provide uniform treatment. The Final Rule also allows confidential complaints about alleged public utility or uniform treatment violations.

The Final Rule also modifies provisions related to the issuance of fines for violations of the FTZ Act or the FTZ Regulations. The Final Rule provides for fines as a result of late annual reports or uniform-treatment violations. The Proposed Rule included broader provisions for fines and penalties, and also included a “prior disclosure” provision that was not included in the Final Rule.

The Final Rule, a summary of the key provisions of the Final Rule, and a side-by-side comparison of the Final Rule versus the December 2010 Proposed Regulations and the prior regulations is available at <http://ia.ita.doc.gov/ftzpage/letters/newregs.html>.

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