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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 100

U.S. Customs and Border Protection

19 CFR Part 101

Docket No. USCBP-2011-0017

CBP Dec. 12-22

RIN 1651-AA93

Closing of the Port of Whitetail, MT

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Final rule.

SUMMARY: This document amends the Department of Homeland Security (DHS) regulations pertaining to the field organization of U.S. Customs and Border Protection (CBP) to reflect the closure of the port of entry of Whitetail, Montana. The change is part of CBP's continuing program to more efficiently utilize its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

DATES: Effective Date: [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Roger Kaplan, Office of Field Operations, U.S. Customs and Border Protection, (202) 325-4543, or by email at Roger.Kaplan@dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 24, 2011, CBP published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (76 FR 52890), proposing to close the port of entry of Whitetail, Montana, and amend the lists of CBP ports of entry to reflect the change. The primary reason for the proposed closure was the Canada Border Services Agency's (CBSA) closure of its adjacent port of entry of Big Beaver, Saskatchewan, Canada, on April 1, 2011. As set forth in the NPRM, other factors were the limited usage of the port; the locations of the alternative ports of entry of Raymond, Montana, and Scobey, Montana; and the analysis of the net benefit of the port closure, including the cost of necessary renovations were the port to remain open.

II. Analysis of Comments

A. Comments Received

CBP received four public comments in response to the NPRM. One commenter supports the closure of Whitetail and three commenters are opposed.

The commenter who supports the proposed closure of the port of Whitetail believes that the costs of operating the port and maintaining the surrounding area are too high considering the low usage. This commenter points out that, using the figures provided in the NPRM for 2007 to 2009, with the annual crossing average of 1,261 cars and 57 trucks and the port's total annual operating cost of $492,000, it currently costs the taxpayers of the United States in excess of $373 for each vehicle to cross at Whitetail. This commenter thinks that these costs are not warranted considering the limited increase in time and mileage that crossers would incur if the port of Whitetail were closed.

Additionally, this commenter claims the closure of the port would have no effect on cross border commerce because there are currently no commercial carriers processed at the port. This commenter also asserts that basing any increase in travel time resulting from the proposed closure on the distance from the port of Whitetail to the alternate ports of Raymond and Scobey was not realistic, as the actual increase in mileage would be much less considering the more likely points of origin and destination.

The other three commenters opposed the proposed closure, citing the disruptions the closure would cause them. Two commenters said that the increased travel time would cause them to discontinue their frequent trips from Canada to the United States to buy goods and visit shops and restaurants. Another commenter stated that the closure would increase the cost to the commenter to move hay bales between the commenter's farms in Canada and Montana. This commenter also surmised that the closure could be detrimental to other Canadian and Montanan agricultural producers.

B. CBP Response

With regard to the comment about increased travel time, CBP acknowledged in the NPRM that using the distance between the ports may overstate the cost of the closure to travelers. However, CBP does not collect data on these travelers' points of origin and destination. Thus, CBP based the analysis on the assumption that the closure would create a detour adding 1 hour and 40 miles to each crosser's trip. The actual additional time and mileage U.S. travelers may incur to drive to an alternate port may be less.

With regard to the comments about usage and cost, as discussed in the NPRM, the port of Whitetail is one of CBP's least trafficked ports and has processed an average of less than 4 vehicles per day for the last 4 years. From 2007 to 2009, Whitetail averaged only 1,318 cars and trucks a year. More recently, in fiscal year 2011, southbound traffic dropped to less than 960 vehicles, with almost all of the decrease in southbound traffic occurring after CBSA closed the port of Big Beaver to northbound traffic in April 2011. The commercial traffic is even lower. In fiscal year 2011 CBP processed only 24 commercial vehicles at the port of Whitetail. This was a significant decrease from the already low annual average of about 60 commercial vehicles between 2007 and 2009. Notwithstanding this very low usage, as explained in the NPRM, CBP would incur substantial costs in order to keep the port open. In addition to the nearly $500,000 annual operational budget, CBP would need to construct a replacement facility, an estimated $8 million cost, because the current facility does not have the infrastructure to meet modern operational, safety, and technological demands for ports of entry. Although CBP regrets the disruptions to personal and business routines that some individuals will experience due to the closure of Whitetail, CBP cannot justify the above-referenced costs for so few vehicles.

III. Conclusion

After consideration of the comments received, the low usage of the port, the locations of the alternative ports of entry, and the analysis of the net benefit of the port closure, including the cost of necessary renovations were the port to remain open, CBP is closing the port of entry of Whitetail, Montana. The lists of CBP ports of entry at 8 CFR 100.4(a) and 19 CFR 101.3(b)(1) are being amended to reflect the change.

CBP is working with the Montana Department of Transportation and CBSA to identify the permanent barrier and signage necessary to prevent entry and reroute traffic to nearby ports of entry. CBP expects that any impact on the environment and any costs incurred for this purpose will be minimal. If necessary, CBP will conduct appropriate environmental studies in the course of decommissioning and prior to facility demolition.

IV. Congressional Notification

On September 28, 2010, the Commissioner of CBP notified Congress of CBP's intention to close the port of entry at Whitetail, Montana, fulfilling the congressional notification requirements of 19 U.S.C. 2075(g)(2) and section 417 of the Homeland Security Act (6 U.S.C. 217).

V. Regulatory Requirements

A. Signing Authority

The signing authority for this document falls under 19 CFR 0.2(a). Accordingly, this final rule is signed by the Secretary of Homeland Security.

B. Executive Orders 12866 and 13563

This rule is not a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563, and has not been reviewed by the Office of Management and Budget under that order. Nevertheless, CBP provided its assessment of the benefits and costs of this regulatory action in the NPRM and CBP adopts the NPRM's economic analysis for this final rule without any change.

In summary, if the port of entry of Whitetail, Montana remained open, it would need significant renovation to meet current safety and security standards, which CBP estimates would cost approximately $8 million. Whitetail also costs CBP approximately $500,000 in yearly operating expenses to pay for staff and utilities. If Whitetail closed, travelers would need to find an alternative crossing. As alternative crossings would require travelers to travel additional miles, CBP estimates travelers would incur an additional $104,000 annually in additional driving time and mileage costs if the Whitetail crossing was not available. In addition, if Whitetail was closed, CBP would incur a onetime cost of $158,000 in closure expenses. Thus, the net benefit of the Whitetail closure is about $8.2 million the first year and $396,000 each year after that.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires federal agencies to examine the impact a rule would have on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

Because CBP does not collect data on the number of small businesses that use the port of Whitetail, we cannot estimate how many would be affected by this rule. However, an average of less than four vehicles crossed into the United States at Whitetail each day even before closure of the Canadian port of Big Beaver further reduced traffic. Commercial traffic is even lower – an average of fewer than 60 commercial vehicles crossed at Whitetail each year from 2007 to 2009, with only 24 commercial vehicles crossing in fiscal year 2011. The assessment of the benefits and costs of this regulatory action included in the NPRM concluded that the total cost of the rule to the public is about $104,000 a year, even assuming the longest possible detour for all traffic. DHS does not believe that this cost rises to the level of a significant economic impact. DHS thus believes that this rule will not have a significant economic impact on a substantial number of small entities. DHS did not receive any comments contradicting this finding.

Accordingly, DHS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

E. Executive Order 13132

The rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

List of Subjects

8 CFR Part 100

Organization and functions (Government agencies).

19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government agencies).

Amendments to DHS Regulations

For the reasons set forth above, DHS amends part 100 of title 8 of the Code of Federal Regulations and part 101 of title 19 of the Code of Federal Regulations as set forth below.

8 CFR CHAPTER 1—AMENDMENTS

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for part 100 continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

§ 100.4 [Amended]

2. The list of ports in § 100.4(a) is amended by removing "Whitetail, MT" from the list of Class A ports of entry under District No. 30—Helena, Montana.

19 CFR CHAPTER 1—AMENDMENTS

PART 101—GENERAL PROVISIONS

3. The general authority citation for part 101 and the specific authority citation for section 101.3 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

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§ 101.3 [Amended]

4. The list of ports in § 101.3(b)(1) is amended by removing, under the state of Montana, the entry "Whitetail" from the "Ports of entry" column and removing the corresponding entry "E.O. 7632, June 15, 1937 (2 FR 1245)." from the "Limits of port" column.

Dated: December 20, 2012

Janet Napolitano,
Secretary of Homeland Security.

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