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DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Parts 101 and 122

USCBP-2005-0030 and [CBP Dec. 06-10]

Establishment of Port of Entry at New River Valley, VA, and Termination of the User-Fee Status of New River Valley Airport

AGENCY: Customs and Border Protection, DHS.

ACTION: Final rule.

SUMMARY: This document amends Department of Homeland Security regulations pertaining to the field organization of the Bureau of Customs and Border Protection by conditionally establishing a new port of entry at New River Valley, Virginia, and terminating the user-fee status of New River Valley Airport. The new port of entry consists of all the area surrounded by the continuous outer boundaries of the Montgomery, Pulaski and Roanoke counties in the Commonwealth of Virginia, including New River Valley Airport, which currently is operated as a user-fee airport. These changes will assist the Bureau of Customs and Border Protection in its continuing efforts to provide better service to carriers, importers and the general public.

EFFECTIVE DATE: May 19, 2006.

FOR FURTHER INFORMATION CONTACT: Dennis Dore, Office of Field Operations, 202-344-2776.

SUPPLEMENTARY INFORMATION:

Background

In a Notice of Proposed Rulemaking published in the **Federal Register** (70 FR 38637) on July 5, 2005, the Department of Homeland Security (DHS), Bureau of Customs and Border Protection (CBP), proposed to amend 19 CFR 101.3(b)(1) by conditionally establishing a new port of entry at New River Valley, VA. The new port of entry, as proposed, would include the area surrounded by the continuous outer boundaries of the Montgomery, Pulaski and Roanoke counties in the

Commonwealth of Virginia. This area includes New River Valley Airport, located in the town of Dublin, Virginia, which currently operates and is listed as a user-fee airport at 19 CFR 122.15(b). The change of status for New River Valley Airport, from a user-fee airport to inclusion within the boundaries of a port of entry, would subject the airport to the passenger processing fee provided for at 19 U.S.C. 58c(a)(5)(B).

CBP proposed to establish the new port of entry based on its review of the level and pace of development in the New River Valley area. CBP evaluated whether there is a sufficient volume of import business (actual or potential) to justify the expense of maintaining a new office or expanding service in the New River Valley area based on the criteria for port of entry designations set forth in Treasury Decision (T.D.) 82-37 (Revision of Customs Criteria for Establishing Ports of Entry and Stations, 47 FR 10137), as revised by T.D. 86-14 (51 FR 4559) and T.D. 87-65 (52 FR 16328). New River Valley was proposed to be a conditional port of entry based on the potential of the area. The actual and potential workload statistics of the area were set forth in the Notice of Proposed Rulemaking. See 70 FR at 38637-38.

Analysis of Comments and Conclusion

Several comments were received in response to the Notice of Proposed Rulemaking. All of the comments were favorable to the proposal. Each comment was favorable in the entirety; no alternate courses of action, limitations or possible problems were presented by the commenters. Because CBP continues to believe that the potential volume of import business in New River Valley supports a new port of entry there, and that the establishment of the new port of entry will assist CBP in its continuing efforts to provide better service to carriers, importers and the general public, CBP is conditionally establishing the new port of entry as proposed. In three years, CBP will review the actual workload generated within the new port of entry. If that review indicates that the actual workload is below the criteria set forth under T.D. 82-37 standards (as amended), CBP may institute procedures to revoke the port of entry status. In such case, New River Valley airport may reapply to become a user-fee airport under the provisions of 19 U.S.C. 58b.

Description of the New Port of Entry Limits

The geographical limits of the new New River Valley port of entry are as

follows: The continuous outer boundaries of the Montgomery, Pulaski and Roanoke counties in the Commonwealth of Virginia.

Authority

This change is made under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624, and the Homeland Security Act of 2002, Public Law 107-296 (November 25, 2002).

The Regulatory Flexibility Act and Executive Order 12866

With DHS approval, CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. The Office of Management and Budget has determined that this final rule is not a significant regulatory action under Executive Order 12866. This action also will not have a significant economic impact on a substantial number of small entities. Accordingly, it is certified that this document is not subject to the additional requirements of the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Signing Authority

The signing authority for this document falls under 19 CFR 0.2(a) because the establishment of a new port of entry and the termination of the user-fee status of an airport are not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, this final rule may be signed by the Secretary of Homeland Security or his delegate.

List of Subjects

19 CFR Part 101

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

19 CFR Part 122

Customs duties and inspection, Airports, Imports, Organization and functions (Government agencies).

Amendments to CBP Regulations

■ For the reasons set forth above, part 101, CBP Regulations (19 CFR part 101), and part 122, CBP Regulations (19 CFR part 122), are amended as set forth below.

PART 101—GENERAL PROVISIONS

■ 1. 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]

■ 2. The list of ports in § 101.3(b)(1) is amended by adding, in alphabetical order under the state of Virginia, “New River Valley” in the “Ports of entry” column and “CBP Dec. 06–10” in the “Limits of Port” column.

PART 122—AIR COMMERCE REGULATIONS

■ 1. The general authority for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

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§ 122.15 [Amended]

■ 2. The list of user fee airports at 19 CFR 122.15(b) is amended by removing “Dublin, Virginia” from the “Location” column and, on the same line, “New River Valley Airport” from the “Name” column.

Dated: April 11, 2006.

Michael Chertoff,

Secretary.

[FR Doc. 06–3694 Filed 4–18–06; 8:45 am]

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DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 517

RIN 3141–AA21

Freedom of Information Act Procedures

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Final rule.

SUMMARY: The purpose of this document is to amend the procedures followed by the National Indian Gaming Commission (Commission) when processing a request under the Freedom of Information Act (FOIA), as amended so that the Commission will be in compliance with the provisions of the amendment to FOIA.

DATES: *Effective Date:* These regulations take effect May 19, 2006.

FOR FURTHER INFORMATION CONTACT: Jeannie McCoy, FOIA Officer, 1441 L

Street, NW., Suite 9100, Washington, DC 20005 at (202) 632–7003 or by fax (202) 632–7066 (these numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA), enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). Congress enacted the FOIA in 1966 and last modified it with the Electronic Freedom of Information Act Amendments of 1996. This amendment addresses FOIA reading rooms and those documents available electronically, agency backlogs of requests, change in fees, and preservation of records among other things. The changes will bring the Commission in compliance with the FOIA, as amended.

Regulatory Flexibility Act: The Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The factual basis for this certification is as follows: This rule is procedural in nature and will not impose substantive requirements that could be deemed impacts within the scope of the Act. For this reason, the Commission has concluded that the rule will not have a significant impact on those small entities subject to the rule.

Unfunded Mandates Reform Act: The Commission is an independent regulatory agency, and, as such, is not subject to the Unfunded Mandates Reform Act. Even so, the Commission has determined that this final rule does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, of more than \$100 million per year. Thus, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.* Furthermore, this rule will not have a unique effect on tribal governments.

Small Business Regulatory Enforcement Fairness Act: The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule will not result in an annual effect on the economy of more than \$100 million per year; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises.

Paperwork Reduction Act: The rule does not contain any information collection requirements for which OMB approval under the Paperwork

Reduction Act (44 U.S.C. 3501–3520) would be required.

National Environmental Policy Act: The Commission has determined that this rule does not constitute a major Federal Action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Comments: In response to our Notice of Proposed Rulemaking, published October 18, 2005 (70 FR 60470), we received comments from three separate Tribes. The comments from these three Tribes were identical.

Comment: The commenter casts doubt on the NIGCs status as an independent regulatory agency by arguing that, based on the NIGC’s recent partnership with the Department of Justice, the NIGC might not be an independent regulatory agency. This comment was made in response to the agency’s assertion that it is not subject to the Unfunded Mandates Reform Act.

Response: To the extent you have called into question the independence of the agency, we disagree. Although established “within the Department of the Interior,” Congress deemed the Commission to be an “independent Federal regulatory authority,” 25 U.S.C. 2702(3), and the Courts agree: *Sac and Fox Nation v. Norton*, 240 F.3d 1250, 1265 n.12 (10th Cir. 2001) (“Although the Commission is nominally part of the Department of the Interior, the Secretary conceded at oral argument that the Commission functions as an independent entity.”). Several courts have held as much. *See also United States ex rel. Hall v. Tribal Dev. Corp.*, 49 F.3d 1208 (7th Cir. 1995) (the NIGC is a “three-member independent agency within the Department of the Interior”); *United States ex rel. Mosay v. Buffalo Bros. Management*, 20 F.3d 739 (7th Cir. 1994) (“Congress enacted the Indian Gaming Regulatory Act, which establishes a three-member independent agency within the Department of the Interior, the National Indian Gaming Commission, to supervise Indian gambling.”); *United Keetoowah Band of Cherokee Indians v. Oklahoma*, 927 F.2d 1170 (10th Cir. 1991) (“Gaming over which the federal government holds jurisdiction is subject to the supervision of a[n] * * * independent regulatory authority, the National Indian Gaming Commission”).

Comment: The commenter was concerned that the definition of “Requester” included an, “Indian Tribe” thereby requiring Tribes to pay the same fees as other requestors. Additionally, they inquire if Tribes could be exempt from the FOIA entirely.