

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### 8 CFR Part 100

#### 19 CFR Part 101

[Docket No. USCBP-2011-0017]

#### Closing of the Port of Whitetail, MT

**AGENCY:** U.S. Customs and Border Protection; DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** U.S. Customs and Border Protection (CBP) is proposing to close the port of entry of Whitetail, Montana. The proposed 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:** Comments must be received on or before October 24, 2011.

**ADDRESSES:** You may submit comments, identified by docket number USCBP-2011-0017, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Border Security Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC 20229-1179.

*Instructions:* All submissions received must include the agency name and docket title for this rulemaking, and must reference docket number USCBP-2011-0017. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger Kaplan, Acting Director, Office of Field Operations, Audits and Self-Inspection, (202) 325-4543 (not a toll-free number) or by e-mail at [Roger.Kaplan@dhs.gov](mailto:Roger.Kaplan@dhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

##### II. Background

CBP ports of entry are locations where CBP officers and employees are assigned to accept entries of merchandise, clear passengers, collect duties, and enforce the various provisions of customs, immigration, agriculture and related U.S. laws at the border. The term "port of entry" is used in the Code of Federal Regulations (CFR) in title 8 for immigration purposes and in title 19 for customs purposes. For customs purposes, CBP regulations list designated CBP ports of entry in section 101.3(b)(1) of title 19. 19 CFR 101.3(b)(1).

For immigration purposes, CBP regulations list ports of entry for aliens arriving by vessel and land transportation in section 100.4(a) of title 8. 8 CFR 100.4(a). These ports are listed according to location by districts and

are designated as Class A, B, or C. Whitetail, Montana is included in this list, in District No. 30, as a Class A port of entry, meaning a port that is designated as a port of entry for all aliens arriving by vessel and land transportation.<sup>1</sup>

On July 20, 2010, the Canada Border Services Agency (CBSA) notified CBP of its intent to close the Big Beaver port of entry in Saskatchewan, Canada. The port of Big Beaver is located approximately 100 yards to the north of the CBP port of Whitetail, Montana. The factors influencing CBSA's decision to close the port of Big Beaver include the low volume of traffic at that port and the close proximity of alternate Canadian ports of entry at Regway and Coronach. Based on these factors, CBSA determined that closing the Big Beaver port would allow for a more efficient use of Canadian funds and resources.

CBSA closed the Big Beaver port on April 1, 2011. Big Beaver's closure has created a situation where travelers from Canada may continue to enter the United States at Whitetail but travelers leaving the United States for Canada must do so at a port other than Big Beaver.

The port of Whitetail is one of CBP's least trafficked ports. The port has processed an average of less than 4 privately owned vehicles per day for the last 4 years. Whitetail currently operates only from morning until evening (8 a.m. through 9 p.m. during the months of June through September; 9 a.m. through 6 pm during the months of September through May). The facility was built in 1964 and has undergone little renovation since that time. CBP has determined that the facility does not have the infrastructure to meet modern operational, safety, and technological demands for ports of entry and that major renovations would be required if Whitetail were to continue operations. The costs of such renovations are discussed in Section IV of this document.

The two ports of entry closest to Whitetail are the ports of Raymond,

<sup>1</sup> Class B ports are designated ports of entry for aliens arriving by vessel or land transportation, who, at the time of applying for admission, are in possession of certain, specified documentation or admissible under a certain documentary waiver. Class C ports are designated ports of entry only for aliens arriving by vessel transportation as crewmen, as the term is defined by the Immigration and Nationality Act with respect to vessels.

Montana and Scobey, Montana. Raymond is located about 60 miles east of Whitetail, and Scobey is located about 40 miles west of Whitetail. If the port of entry at Whitetail is closed, the traffic normally seen at that port will be processed at these two ports. The port of Raymond operates 24 hours, providing additional convenience to those normally crossing at the port of Whitetail.

In view of the closure of the adjacent Canadian port of Big Beaver, the limited usage of the port of Whitetail, the location of the alternative ports, and the analysis of the net benefit of the port closure discussed in Section IV of this document (including the cost of necessary renovations were the port to remain open), CBP is proposing to close the Whitetail, Montana, port of entry to better utilize CBP funds and resources. This action would further CBP's ongoing goal of more efficiently utilizing its personnel, facilities, and resources.

#### *Consultations/Assessments*

CBP will conduct further assessments focusing on how to secure the area, reroute traffic to the closest ports, and calculate any additional costs associated with the potential port closure. CBP also will consult and coordinate with CBSA and the Montana Department of Transportation regarding the planned closure. CBP is currently conducting the initial phases of an environmental study to ensure that the proposed port closure complies with applicable environmental laws such as the National Environmental Policy Act of 1969 (NEPA).

### **III. 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).

### **IV. Regulatory Requirements**

#### *A. Signing Authority*

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

#### *B. Executive Order 12866: Regulatory Planning and Review*

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 (OMB) under that order. Below is CBP's assessment of the benefits and costs of this regulatory action.

#### **1. Baseline Conditions**

Whitetail averaged 1,261 cars and 57 trucks a year from 2007 to 2009. CBP assigns four full time staff to the crossing, costing about \$457,000 per year, including benefits. In addition, CBP spends about \$35,000 a year on operating expenses such as utilities and maintenance. The total annual cost of operating the crossing is about \$492,000. DHS has determined that the Whitetail port of entry requires significant renovation and expansion, requiring an estimated \$8 million to build facilities that meet all current safety and security standards. Since this construction is the only alternative to closing the crossing, CBP would spend about \$8.5 million the first year (construction plus operating costs) and \$0.5 million each subsequent year if the crossing were to remain open.

#### **2. Costs of Closing the Port**

The costs of the proposed closure fall into three categories—the cost to CBP to physically close the port, the cost to U.S. travelers entering the United States to drive to the next nearest port, and the cost to the economy of lost revenue resulting from potential decreased Canadian travel. CBP estimates that it will cost approximately \$158,000 to physically close the port, which involves building road barricades, boarding up the building, and managing asbestos.

In addition to the cost to the government of closing the port, we must examine the impact of this proposed closing on U.S. travelers (per guidance provided in OMB Circular A-4, this analysis is focused on costs and benefits to U.S. entities). Approximately 1,318 vehicles and 2,571 passengers cross from Canada into the United States each year at Whitetail. If the port is closed, these travelers would need to travel to an alternate port, which could cost them both time and money.

As noted, the two ports closest to Whitetail are Raymond, which is about 60 miles east, and Scobey, which is about 40 miles west. The alternate port travelers choose to use will depend on their point of origin and their destination. In general, the closer the point of origin or destination to Whitetail, the more the traveler will be affected by the closure. Because CBP does not collect data on either of these points, for the purposes of this analysis we will assume the worst case scenario—that all crossers begin their trip at a point just across the border

from Whitetail and travel to a point just on the U.S. side of the border. We estimate that such a detour would add 1 hour and 40 miles to the crossers' trip. Since it is unlikely that all crossings at Whitetail originate and end immediately at the border, this methodology likely overstates the cost to travelers.

In 2007, Industrial Economics, Inc. (IEc) conducted a study for CBP to develop "an approach for estimating the monetary value of changes in time use for application in [CBP's] analyses of the benefits and costs of major regulations."<sup>2</sup> We follow the three-step approach detailed in IEc's 2007 analysis to monetize the increase in travel time resulting from the closure of Whitetail: (1) Determine the local wage rate, (2) determine the purpose of the trip, and (3) determine the value of the travel delay as a result of this rule. We start using the median hourly wage rate for Montana of \$13.65 per hour, as the effects of the rule are local.<sup>3</sup> We next determine the purpose of the trip. For the purposes of this analysis, we assume this travel will be personal travel and will be local travel. We identify the value of time multiplier recommended by the U.S. Department of Transportation (DOT) for personal, local travel, as 0.5.<sup>4</sup> Finally, we account for the value of the travel delay. Since the added time spent traveling is considered more inconvenient than the baseline travel, we account for this by using a factor that weighs time inconvenienced more heavily than baseline travel time. This factor, 1.47, is multiplied by the average wage rate and the DOT value of time multiplier for personal, local travel for a travel time value of \$10.04 per traveler ( $\$13.65 \times 0.5 \times 1.47$ ).<sup>5</sup>

We next multiply the estimated number of travelers entering the U.S. through Whitetail in a year (2,571) by the average delay (1 hour) to arrive at the number of additional hours travelers would be delayed as a result of this rule—2,571 hours. We multiply this by

<sup>2</sup> Robinson, Lisa A. 2007. "Value of Time." Submitted to US Customs and Border Protection on February 15, 2007. The paper is contained in its entirety as Appendix D in the Regulatory Assessment for the April 2008 final rule for the Western Hemisphere Travel Initiative requirements in the land environment (73 FR 18384; April 3, 2008). See <http://www.regulations.gov> document numbers USCBP-2007-0061-0615 and USCBP-2007-0061-0616.

<sup>3</sup> Bureau of Labor Statistics, May 2009. [http://www.bls.gov/oes/current/oes\\_mt.htm#00-0000](http://www.bls.gov/oes/current/oes_mt.htm#00-0000).

<sup>4</sup> U.S. Department of Transportation (DOT), *Revised Departmental Guidance, Valuation of Travel Time in Economic Analysis*, (Memorandum from E. H. Frankel), February 2003, Tables 1.

<sup>5</sup> Wardman, M., "A Review of British Evidence on Time and Service Quality Valuations," *Transportation Research Part E*, Vol. 37, 2001, pp. 107-128.

the value of wait time (\$10.04) to arrive at the value of the additional driving time travelers arriving in the United States once Whitetail is closed. Finally, we double this to account for round trip costs to reach a total time cost of \$51,626.

Besides the cost of additional travel time, we must consider the vehicle costs of a longer trip. We must first estimate the number of miles the closure of Whitetail would add to travelers' trips. The annual traffic arriving at Whitetail is 1,300 vehicles. Since we assume that the closure will add 40 miles to each crossing, the closure will add a total of 52,000 miles to travelers' trips each year. We next monetize the delay by applying the IRS's standard mileage rate for business travel of \$0.50 to these vehicles, which includes fuel costs, wear-and-tear, and depreciation of the vehicle. Because this is an estimate for business travel, it may overstate slightly costs for leisure travelers using their vehicles on leisure activities. Finally, we double the costs to account for the return trip. We estimate that a closure of Whitetail will cost U.S. citizens \$52,000 in additional vehicular costs.

The final cost we must consider is the cost to the economy of lost revenue resulting from potential decreased Canadian travel. Because of the lack of data on the nature of travel through Whitetail and its effect on the local economy, we are unable to monetize or quantify these costs. We therefore discuss this qualitatively.

Since both U.S. and foreign travelers will be inconvenienced by the closure of the port of Whitetail, it is possible that fewer foreign travelers will choose to cross the border into the United States. To the extent that these visitors were spending money in the United States, local businesses would lose revenue. Since fewer than four vehicles a day enter the United States at Whitetail, this effect is likely to be very small. Also, these revenue losses could be mitigated by those U.S. citizens who would now choose to remain in the United States. We believe that the total impacts on the economy due to decreased travel to the United States are negligible.

In summary, the closure of the port of Whitetail would cost CBP \$158,000 in direct closure costs in the first year, and U.S. travelers \$51,626 in time costs and \$52,000 in vehicle costs annually. Total costs to close the port are thus approximately \$262,000 in the first year and \$104,000 each following year.

### 3. Net Effect of Closure

The costs to CBP of leaving the port of Whitetail open are \$8.5 million the first year and \$500,000 each following

year. The cost of closing the port are \$262,000 the first year and \$104,000 each following year. 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

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 603), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. 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 only four vehicles cross into the United States at Whitetail each day, and the total cost of the rule to the public is only 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 welcomes any comments regarding this assessment. If it does not receive any comments contradicting this finding, DHS will certify that this rule will not have a significant economic impact on a substantial number of small entities at the final rule stage.

### 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.

### V. Authority

This change is proposed under the authority of 5 U.S.C. 301, 6 U.S.C. 112, 203 and 211, 8 U.S.C. 1103 and 19 U.S.C. 2, 66 and 1624.

### VI. Proposed Amendment to Regulations

If the proposed closure of the port of Whitetail, Montana, is adopted, CBP will amend the lists of CBP ports of entry at 19 CFR 101.3(b)(1) and 8 CFR 100.4(a) to reflect this change.

Janet Napolitano,

Secretary.

[FR Doc. 2011-21624 Filed 8-23-11; 8:45 am]

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## DEPARTMENT OF ENERGY

### 10 CFR Part 430

[Docket No. EERE-2007-BT-STD-0016]

RIN 1904-AB50

### Energy Conservation Program: Energy Conservation Standards for Fluorescent Lamp Ballasts

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of data availability and request for public comment.

**SUMMARY:** On April 11, 2011, the U.S. Department of Energy (DOE) published a notice of proposed rulemaking (NPR) proposing new and amended standards for fluorescent lamp ballasts (ballasts) pursuant to the Energy Policy and Conservation Act of 1975 (EPCA). During the subsequent public meeting and in written comments, stakeholders provided additional data and raised concerns regarding the test data DOE used in support of the NPR and DOE's approach to accounting for measurement variation and compliance certification requirements. In response to several of those comments, DOE conducted additional testing and is publishing this notice to: announce the availability of additional data provided by the National Electrical Manufacturers Association (NEMA) and additional DOE test data; address the differences between the DOE test data and the data submitted by NEMA; describe the methodological changes DOE is considering based on the additional data and present efficiency levels developed using the revised methodology and all available test data; and request public comment on the updated analyses, as