

U.S. Customs Service

Proposed Rulemaking

19 CFR Parts 101 and 122

CUSTOMS SERVICE FIELD ORGANIZATION;
FARGO, NORTH DAKOTA

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to Customs field organization by establishing a new port of entry at Fargo, North Dakota. The new port of entry would include Hector International Airport, located in the city of Fargo, Cass County, North Dakota, which is currently operated as a user-fee airport, and a portion of Clay County in Minnesota. This change will assist the Customs Service in its continuing efforts to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before January 31, 2003.

ADDRESSES: Written comments may be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Richard L. Balaban, Mission Support, Office of Field Operations, (202) 927-0031.

SUPPLEMENTAL INFORMATION:

BACKGROUND

As part of its continuing efforts to provide better service to carriers, importers, and the general public, Customs is proposing to amend § 101.3(b)(1) of the Customs Regulations (19 CFR 101.3(b)(1)) by establishing a new port of entry at Fargo, North Dakota. The new port of entry would include Hector International Airport, located in the city of Fargo, Cass County, North Dakota, which currently operates and is

listed as a user-fee airport at § 122.15(b) of the Customs Regulations (19 CFR 122.15(b)). A portion of Clay County in Minnesota would also be part of the proposed port. This proposed change of status for Hector International Airport from a user fee airport to being included 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).

Port of Entry Criteria

The criteria considered by Customs in determining whether to establish a port of entry are found in T.D. 82-37 (47 FR 10137), as revised by T.D. 86-14 (51 FR 4559) and T.D. 87-65 (52 FR 16328). Under these criteria, Customs will evaluate whether there is a sufficient volume of import business (actual or potential) to justify the expense of maintaining a new office or expanding service at an existing location. Specifically, Customs will consider if the proposed port of entry location can:

- (1) Demonstrate that the benefits to be derived justify the Federal Government expense involved;
- (2) Except in the case of land border ports, be serviced by at least two major modes of transportation (rail, air, water, or highway); and
- (3) Except in the case of land border ports, have a minimum population of 300,000 within the immediate service area (approximately a 70-mile radius).

In addition, at least one of the following actual or potential workload criteria (minimum number of transactions per year) must be met in the area to be serviced by the proposed port of entry:

- (1) 15,000 international air passengers;
- (2) 2,500 (formal) consumption entries, with the applicant location committing to optimal use of electronic data input means to permit integration with any Customs system for electronic processing of entries, with no more than half of the 2,500 entries being attributed to one private party;
- (3) For land border ports, 150,000 vehicles;
- (4) 2,000 scheduled international aircraft arrivals (passengers and/or crew);
- (5) 350 cargo vessel arrivals; or
- (6) Any appropriate combination of the above.

Finally, facilities at the proposed port of entry must include, where appropriate, wharfage and anchorage adequate for oceangoing vessels in the case of a water port, cargo and passenger facilities, warehouse space for the secure storage of imported cargo pending final Customs inspection and release, and administrative office space, inspection areas, storage areas, and other space as necessary for regular Customs operations.

In certain cases, where the potential workload at a given location shows pronounced growth, Customs will consider granting conditional port-of-entry status to the location, pending further review of the actual workload generated within the new port of entry. See T.D. 96-3 and 97-64.

Fargo's workload statistics

The proposal in this document to establish Fargo, North Dakota as a port of entry is based on Customs analysis of the following information:

1. Fargo is serviced by three modes of transportation:
 - a) rail (the Burlington Northern Santa Fe railroad);
 - b) air (at Hector International Airport, two passenger carriers (Northwest and United Express) and five courier-delivery carriers (Air Bourne Express, Corporate Express, DHL, FED EX, and UPS); and
 - c) highway (two U.S. interstate highways: I-29 and I-94);
2. The Fargo, North Dakota area has a population of approximately 175,000, with the potential to increase even further;
3. Regarding the five actual or potential workload criteria:
 - a) Hector International Airport had 2,911 international air passengers for FY 2001, an increase of 61% over FY 2000;
 - b) Hector International Airport had 151 formal consumption entries for FY 2001, with no single company accounting for more than half of the projected entries; and
 - c) Hector International Airport had 814 scheduled international aircraft arrivals for FY 2001, an increase of 65% over FY 2000.

Customs believes that significant benefits would be provided to the North Dakota business community by creating a port of entry at Fargo and that the cost of providing the services of one full-time and one part-time Customs official would be minimal to the Federal Government.

Customs believes that the Fargo-area community is committed to making optimal use of electronic data transfer capability to permit integration with the Customs Automated Commercial System for processing entries. In addition, Customs has been informed that the Fargo-area community is developing adequate cargo and passenger facilities, that passenger areas can be secured to accommodate international arrival passenger clearance, and that there are several warehouse facilities in close proximity to Hector International Airport that are being developed for the secure storage of cargo pending inspection and release by Customs. The Fargo-area community is also committed to providing administrative office space, inspection areas, storage areas, and other space necessary for regular Customs operations and will also furnish the Customs office with necessary communications equipment such as a computer, a telephone, a facsimile machine, and computer lines as well as access to photocopiers.

Conditional Status

Based on the information above and the level and pace of development in the Fargo area, Customs believes that there is sufficient justification for the establishment of Fargo, North Dakota, as a port of entry on a conditional basis. If, after reviewing the public comments, Customs decides to create a port of entry at Fargo and terminate Hector International Airport's designation as a user-fee airport, then Customs will notify the

airport of that determination in accordance with the provisions of 19 CFR 122.15(c). However, it is noted that this proposal relies on potential, rather than actual, workload figures. Therefore, even if the proposed port of entry designation is adopted as a final rule, in 1 year Customs will review the actual workload generated within the new port of entry. If that review indicates that the actual workload is below the T.D. 82-37 standards, as amended, procedures may be instituted to revoke the port of entry status. In such case, the airport may reapply to become a user-fee airport under the provisions of 19 U.S.C. 58b.

Description of Proposed Port of Entry Limits

The geographical limits of the proposed Fargo port of entry would be as follows:

In Cass County, North Dakota:

Northern boundary Cass County highway 20

Southern boundary U.S. Interstate 94

Western boundary U.S. Interstate 29

In Clay County, Minnesota:

Northern boundary Clay County highway 22

Southern boundary U.S. Interstate 94

Eastern boundary Clay County highway 11

PROPOSED AMENDMENTS

If the proposed port of entry designation is adopted, the list of Customs ports of entry at § 101.3(b)(1) will be amended to add Fargo as a port of entry in North Dakota, and Hector International Airport will be deleted from the list of user-fee airports at § 122.15(b).

COMMENTS

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.5 of the Treasury Department Regulations (31 CFR 1.5), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

AUTHORITY

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume

of Customs-related activity in various parts of the country. Although this document is being issued with notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*). Further, matters involving agency management and organization are not subject to Executive Order 12866.

DRAFTING INFORMATION

The principal author of this document was Gregory R. Vilders, Attorney, Office of Regulations and Rulings, Regulations Branch. However, personnel from other offices participated in its development.

ROBERT C. BONNER,
Commissioner of Customs.

Approved: November 25, 2002.

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

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