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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:* January 25, 2013.

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;

* * * * *

§ 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.

[FR Doc. 2012–31105 Filed 12–21–12; 4:15 pm]

BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0934; Directorate Identifier 2011–NM–260–AD; Amendment 39–17293; AD 2012–25–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A330–200 and –300 series airplanes. This AD was prompted by a report of a prematurely fractured main landing gear (MLG) bogie beam. This AD requires replacing certain MLG bogie beams before reaching new reduced life limits. We are issuing this AD to prevent fracture of the MLG bogie beam, which, under high speed, could ultimately result in the airplane departing the runway, the bogie beam detaching from the airplane, or collapse of the MLG; and consequent structural damage to the airplane and injury to the occupants.

DATES: This AD becomes effective January 30, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 30, 2013.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR

part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 12, 2012 (77 FR 56172). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

During ground load test cycles on an A340–600 aeroplane, the MLG bogie beam has prematurely fractured.

The results of the investigation identified that this premature fracture was due to high tensile standing stress, resulting from dry fit axle assembly method. Improvement has been introduced subsequently with a grease fit axle assembly method.

Fatigue and damage tolerance analyses were performed, whose results demonstrated that the current life limit of certain MLG bogie beams with dry fit axles installed on A330 aeroplanes only must be reduced compared to the life limit stated in the A330 Airworthiness Limitations Section (ALS) Part 1–Safe Life Airworthiness Limitation Items revision 05 approved by EASA [European Aviation Safety Agency] on 29 July 2010.

Failure to comply with the reduced life limit of the MLG bogie beam with dry fit axle might jeopardize the MLG structural integrity.

For the reasons described above, this [EASA] AD requires the replacement of the affected MLG bogie beams before reaching the new reduced life limit.

The unsafe condition is a possible fracture of the MLG bogie beam, which, under high speed, could ultimately result in the airplane departing the runway, the bogie beam detaching from the airplane, or collapse of the MLG; and consequent structural damage to the airplane and injury to the occupants. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 56172, September 12, 2012) or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 56172, September 12, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 56172, September 12, 2012).

Costs of Compliance

We estimate that this AD will affect 53 products of U.S. registry. We also estimate that it will take about 16 work-hours per MLG bogie beam (2 MLG bogie beams per airplane) to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour. Required parts will cost about \$255,000 per MLG bogie beam. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be up to \$27,174,160, or \$256,360 per MLG bogie beam.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect 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.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative,