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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-2011-0032**

**CBP Dec. No. 12-23**

**RIN 1651-AA90**

**Opening of Boquillas Border Crossing and Update to the Class B Port of Entry**

**Description**

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a border crossing in Big Bend National Park called Boquillas and designates it as a Customs station for customs purposes and a Class B port of entry (POE) for immigration purposes. The Boquillas crossing will be situated between Presidio and Del Rio, Texas. U.S. Customs and Border Protection (CBP) and the National Park Service (NPS) are partnering on the construction of a joint use facility in Big Bend National Park where the border crossing will operate.

This rule also updates the description of a Class B port of entry to reflect current border crossing documentation requirements.

**EFFECTIVE DATE:** [Insert date 30 days after date of publication of this document in the **Federal Register**.]

**FOR FURTHER INFORMATION CONTACT:** Colleen Manaher, Director, Land Border Integration, CBP Office of Field Operations, telephone 202-344-3003.

**SUPPLEMENTARY INFORMATION:**

This rule establishes a border crossing in Big Bend National Park called Boquillas and designates it as a Customs station for customs purposes and a Class B port of entry for immigration purposes.

**Executive Summary**

In 2010, the Presidents of the United States and Mexico issued a joint statement supporting the designation of a region of protected areas on both sides of the Rio Grande, including Big Bend National Park, as a region of binational interest. In support of this, CBP began working with the National Park Service to establish a border crossing to allow authorized travel between the areas in the United States and Mexico. On October 28, 2011, CBP published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (76 FR 66862), which solicited public comment. The NPRM proposed to establish a Class B port of entry/Customs station in Big Bend National Park called Boquillas. Boquillas was proposed to be a Class B port of entry for immigration purposes under 8 CFR 100.4 and a Customs station for customs purposes in 19 CFR 101.4. In the NPRM and in this final rule, the Class B port of entry/Customs station is referred to as a border crossing. The NPRM also proposed to update the description of a Class B port of entry in 8 CFR 101.4 to reflect current border crossing document requirements. The Boquillas border crossing will service only pedestrians visiting Big Bend National Park and Mexican Protected Areas; CBP will not process cargo, commercial entries, or vehicles at Boquillas.

CBP received 47 comments in response to the NPRM, 36 of which favored the opening of the border crossing. Although some commenters were opposed to the opening of a new crossing in this area of the southwest border, saying that it will decrease the security of the border, other commenters thought that the Boquillas crossing would increase security in the region and facilitate legitimate travel. Many commenters were of the view that the Boquillas border crossing would benefit the region, including Big Bend National Park and its visitors, as well as the inhabitants of the village of Boquillas. CBP did not receive any comments regarding the proposed revised Class B port of entry description.

After review of the comments, CBP has concluded that the establishment of the Boquillas border crossing is consistent with the designation of the area as a region of binational interest and that the Boquillas border crossing is needed to fill the long stretch of border between Presidio and Del Rio where there is currently no authorized international border crossing. CBP has also concluded that the addition of a legal crossing facility at the site will enhance security in the area by providing a way for legitimate travelers to identify themselves to CBP and comply with U.S. regulations. Therefore, this final rule establishes the Boquillas border crossing in Big Bend National Park and revises the description of a Class B port of entry. This final rule addresses the relevant comments CBP received regarding the proposed crossing.

### **Background**

On May 19, 2010, President Obama and President Calderón of Mexico issued a joint statement recognizing that the Big Bend National Park and Rio Grande Wild and Scenic River in the United States, along with the Protected Areas of Maderas del Carmen,

Cañon de Santa Elena, Ocampo, and Río Bravo del Norte in Mexico together comprise one of the largest and most significant ecological systems in North America. The Presidents expressed their support for the designation of the region as a natural area of binational interest, and encouraged an increased level of cooperation between the two countries. Based on this joint Presidential statement, the Commissioner of CBP announced plans to establish a border crossing in Big Bend National Park.

NPS, within the U.S. Department of the Interior, has been working with CBP on the border crossing. Efforts to establish this new border crossing were set in motion by discussions between the White House, the U.S. Department of Interior, and the U.S. Department of Homeland Security. NPS planned to construct a facility that could be used by NPS as a visitor center and would accommodate the infrastructure necessary to operate a border crossing.

### **Notice of Proposed Rulemaking**

On October 28, 2011, CBP published a notice of proposed rulemaking (NPRM) in the **Federal Register** (76 FR 66862) proposing to establish a border crossing in Big Bend National Park where U.S. citizens and certain aliens would be able to cross into the United States. Before 2002, a border crossing, called Boquillas, was open in the national park. The NPRM stated that the new border crossing would be located at the site of the historic crossing and would also be called the Boquillas border crossing. The NPRM proposed to designate the Boquillas border crossing as a Class B port of entry and a Customs station under the supervisory port of entry of Presidio, Texas. Presidio, Texas is a Customs port of entry listed in section 101.3 of the CBP regulations (19 CFR 101.3). For ease of reference, the NPRM referred to the proposed Boquillas port of

entry/Customs station in this document as a border crossing; this final rule does likewise. For additional background information, please see the preamble to the NPRM.

### **Traveler Processing at the Boquillas Border Crossing**

As described in the NPRM, the Boquillas border crossing will service only pedestrians visiting Big Bend National Park and Mexican Protected Areas – not import business. Therefore, CBP will not process cargo, commercial entries, or vehicles at Boquillas. Persons using the Boquillas border crossing will only be permitted to bring limited merchandise into the United States; CBP will only process items exempt from duties and taxes under 19 CFR 10.151. This provision generally covers importations that do not exceed \$200 in value.<sup>1</sup> All such items must comply with all applicable regulations, including all relevant Animal and Plant Health Inspection Service restrictions. Persons using the Boquillas crossing must also comply with Federal wildlife protection laws and U.S. Fish and Wildlife Service wildlife import/export regulations.

### **The Public Comment Period**

The NPRM provided a 60-day public comment period, which closed on December 27, 2011. CBP received 47 comments in response to the proposed rule. Thirty-six of these submissions were in support of the proposal, and included submissions from many individuals who live in the vicinity of Big Bend National Park as well as a submission from an environmental conservation association on behalf of over 300,000 members. Eleven of the submissions were opposed to the proposal, and also included submissions from individuals familiar with the park, including a former

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<sup>1</sup> Under 19 CFR 10.151, importations that do not exceed \$200 in value are generally exempt from duty and taxes. Such merchandise shall be entered under the informal entry procedures. See 19 CFR 128.24(d).

superintendent of Big Bend National Park. The following section groups the relevant comments, along with CBP's responses, by issue.

## **Discussion of Comments**

### *A. General security*

#### *Comments*

Several commenters are opposed to the opening of a new crossing in this area of the southwest border, saying that it will decrease the security of the border. One commenter, who was the superintendent of Big Bend National Park from 1994 to 1999 and was familiar with the crossing when it was open, said that, while the crossing served its purpose, illegal activity also took place. The commenter is concerned that due to the increase in illegal activity along the southern border in recent years, drug cartels will view the crossing as a "back-door" to the United States. Another commenter stated that illegal immigration and smuggling of contraband is at an all-time high in the Border Patrol's Big Bend Sector. Finally, one commenter stated that the new border crossing will present a risk to park visitors and NPS rangers.

However, many commenters who support opening the border crossing are of the view that the border crossing will maintain the security of the border while providing a legal access point between the United States and Mexico. Many commenters believe that due to the remoteness of the area, the Big Bend region does not have the same security risks as other parts of the southern border. Several commenters believe that the re-opening of the border crossing with new security measures is likely to increase security in the park, as those participating in illegal activity along the border are unlikely to attempt to enter the United States at a monitored border crossing. These commenters believe that

those seeking to cross illegally are more likely to use any point along the many miles of unmonitored border.

*CBP Response*

CBP disagrees that opening the Boquillas border crossing will decrease security in the area. The proposal to open the Boquillas border crossing was made after extensive CBP analysis and consultation with our Mexican counterparts. CBP firmly believes that the addition of a legal crossing facility at the site will enhance security in the area by providing a way for legitimate travelers to identify themselves to CBP and comply with U.S. regulations. CBP concurs with commenters who believe that the border crossing will support security efforts in Big Bend National Park in that the enhanced security focus at the border crossing will discourage illegal activity in the vicinity of the Boquillas border crossing.

Security concerns are of the utmost importance, and CBP will take all appropriate security measures at the Boquillas border crossing and surrounding areas. CBP continues to take steps to increase security in the area, as we have done all along our borders. CBP already has a strong security presence in place in the Border Patrol's Big Bend Sector, and there are many layers of border security in place to secure the Big Bend region. CBP Border Patrol agents are assigned to the park; NPS enforcement rangers patrol the park; Border Patrol checkpoints are staffed 24 hours per day, 7 days a week, on all public roads leading from the park; and Border Patrol agents patrol the areas around the checkpoints and highways leading from the area. The audio and video surveillance at the new border crossing will further enhance security at this locale.

Regarding the statement that illegal activity is at an all-time high, the commenter does not reference specific data, and CBP data does not support this statement.

According to CBP data, the number of apprehensions in the Big Bend Sector was the highest in the year 2000. Since 2001, CBP has increased the number of Border Patrol agents in the area, and there has been a decrease in the number of apprehensions for illegal activity in the area every year since then.

#### *B. Opportunity for travel*

##### *Comments*

One commenter is opposed to providing more opportunities for travelers from Mexico to enter the United States, and for this reason, objects to the opening of the crossing. Other commenters supporting the opening of the Boquillas border crossing stated that the border crossing will only benefit law-abiding nationals of Mexico and the United States.

##### *CBP Response*

The Boquillas border crossing does not provide any greater opportunity to enter the United States than any other current Port of Entry. Most of the travelers who would use the Boquillas border crossing would be U.S. tourists that visit the Park within the United States, go over to Mexico to visit, and then return to the United States. All Mexican nationals seeking admission to the United States at the Boquillas border crossing will be required to meet all admissibility and document requirements and comply with all relevant U.S. laws and regulations.

CBP supports facilitating legitimate travel between the United States and Mexico. CBP agrees that the border crossing will only benefit law-abiding travelers, including nationals of Mexico, carrying proper documentation.

### *C. Use of remote technology*

#### *Comments*

Several commenters are concerned that the use of remote technology does not provide adequate security at the border. Some of these commenters expressed concern that opening a crossing that is not staffed will provide free access to anyone seeking to enter the country and will cause an increase in the number of illegal entries into the country. One commenter stated that scanning documents is insufficient to keep terrorists, criminals, drugs, or other contraband out of the country.

On the other hand, a few commenters noted that CBP has used remote technology to successfully secure portions of the U.S.-Canada border. Some commenters noted that those using the Boquillas border crossing will be required to present certain border crossing documents and that state of the art technology will be used to verify the identities of travelers.

#### *CBP response*

CBP believes that the technology solution to be used at the Boquillas border crossing will provide adequate security. All travelers seeking admission at the Boquillas border crossing will be required to be admissible to the United States and be in possession of a travel document that complies with the Western Hemisphere Travel Initiative (WHTI). The WHTI document requirements were implemented to enhance security efforts at the borders and to facilitate the movement of legitimate travel within

the Western Hemisphere.<sup>2</sup> Since the full implementation of WHTI in June 2009, CBP has the ability to validate, in real time, a traveler's documents to determine the traveler's true identity and citizenship. The Boquillas border crossing will provide a way for legitimate travelers to identify themselves to CBP and access this area.

As explained in the preamble of the NPRM, CBP intends to use a combination of staffing and technology solutions to operate the border crossing. Remote technology will assist CBP in maintaining security and verifying the identity of those entering the United States, while also ensuring that they possess proper documentation to do so. Kiosks electronically connected to the El Paso port of entry will enable CBP officers in El Paso to remotely process travelers at the Boquillas border crossing.<sup>3</sup> CBP officers in El Paso will be in contact with Border Patrol agents within the park, who will respond when a physical inspection is required. CBP officers will assist onsite as operational needs dictate. CBP will process and clear all persons who use the Boquillas border crossing to enter the United States. CBP will install a 24-hour surveillance camera at the Boquillas crossing to monitor activity. The cameras will be monitored 24 hours a day at CBP's Combined Area Security Center and at the Alpine Border Patrol Station. CBP Border Patrol agents or NPS enforcement rangers stationed in the area will be available to take any necessary law enforcement measures. The 24/7 surveillance at the Boquillas crossing will further enhance security at this locale. Additionally, the Boquillas POE will only be open during daylight hours. While open, the Boquillas facility will also serve as a Park Service visitor's center and will be staffed by the Park Service.

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<sup>2</sup> For more information on WHTI, see the WHTI Land and Sea Final Rule, 73 FR 18384.

<sup>3</sup> Although Boquillas would be under the supervision of the Presidio port of entry, the kiosks would be connected to the El Paso port of entry, because El Paso has the appropriate facilities for remote processing.

In addition, there are already many layers of border security in place to secure the Big Bend region: the CBP Border Patrol agents assigned to the Big Bend National Park Substation; the NPS Enforcement Rangers who patrol the park; Border Patrol checkpoints staffed 24/7 on all public roads leading from Big Bend National Park; and Border Patrol agents from the Alpine station who patrol the areas around the checkpoints and highways leading away from the area. The 24/7 surveillance at the Boquillas border crossing will further enhance security in this locale. Also, it is important to emphasize that the Boquillas border crossing is intended for pedestrian use only, as there are no roads or bridges that cross the international line at this location. Security concerns related to vehicles entering the United States will not apply at the Boquillas border crossing.

CBP agrees fully with those commenters who noted the successful use of remote technology along the U.S.-Canada border. CBP uses remote technology at several northern border crossings. This technology has been very effective in verifying the identity and citizenship of travelers and securing the border.

#### *D. Border Patrol and NPS rangers*

##### *Comments*

Several commenters believe that NPS rangers are not equipped to pursue those who might use an unmanned border crossing to enter the United States illegally once they are in the country. These commenters noted that the terrain in the area is rugged, provides cover, and is difficult to patrol. Other commenters are concerned that Border Patrol agents will not be able to apprehend those who might use the border crossing to enter the United States illegally. Finally, one commenter suggested that it is

inappropriate to open a border crossing utilizing remote technology in an area that has seen increased Border Patrol presence over the past five years.

A few commenters writing in support of the new border crossing noted that there is a good working relationship between CBP and NPS, and that Border Patrol agents stationed in the park work together with the NPS Enforcement Rangers for the security of the park. These commenters are of the view that re-opening the border crossing would facilitate communication between Mexican residents and law enforcement and U.S. law enforcement, which will increase security in the region.

#### *CBP Response*

As mentioned above, CBP does not believe the Boquillas border crossing will cause an increase in the number of illegal entries into the United States. The security in place in Big Bend National Park is already strong, and includes CBP Border Patrol agents and NPS enforcement rangers who patrol the park and are familiar with the terrain. To further combat the threat of illegal immigration and smuggling of contraband, CBP, in collaboration with NPS, is in the process of constructing new residences in Big Bend National Park so that CBP may assign Border Patrol agents to permanently work and live in the park. Upon completion and staffing of these homes, Border Patrol will have the largest contingent of agents ever assigned to Big Bend National Park.

CBP does not agree with the comment that the opening of a border crossing in an area where there has been an increased CBP presence is inappropriate. To the contrary, CBP is of the view that the increased CBP Border Patrol presence has enhanced the security of the area.

CBP agrees that there is a good working relationship between Border Patrol agents and NPS enforcement rangers in the park. CBP also agrees that facilitating communication between and with law enforcement personnel enhances security in the area.

*E. Proximity to other border crossings*

*Comments*

One commenter objects to the opening of an unstaffed crossing, because there is a staffed crossing in Presidio, Texas, which the commenter stated is not far away.

Conversely, comments submitted in support of the border crossing noted that after the crossing was closed, the closest legal border crossing was more than 100 miles from the village of Boquillas, Mexico. One commenter stated that travel to the closest border crossing from the Mexican side required hours of travel on substandard roads, and, as a result, families have become disconnected and the local Texas economy has been negatively affected. Another commenter stated that someone making a living selling inexpensive crafts, as many of the residents of the village of Boquillas do, cannot afford to make a nearly 300 mile roundtrip journey to the nearest legal border crossing.

*CBP Response*

The closest legal border crossing west of the site of the Boquillas border crossing is Presidio, Texas. Presidio is more than 150 miles from the Boquillas site by river and more than 120 miles by road on the U.S. side. On the Mexican side, the town of Boquillas is very isolated. By road, a traveler would have to travel hundreds of miles south to the interior of Mexico to connect to a highway that would bring the traveler back northwest to Presidio, Texas. To the east of the Boquillas border crossing site, the closest

legal border crossing is Del Rio, Texas. Del Rio is more than 250 miles from the Boquillas site by river and more than 260 miles by road on the U.S. side. On the Mexican side, by road, a traveler would have to travel hundreds of miles from the town of Boquillas south into the interior of Mexico to connect to a highway that would bring the traveler back northeast to Del Rio, Texas. Thus, CBP believes the Boquillas border crossing is needed to fill the long stretch of border between Presidio and Del Rio where there is currently no authorized international border crossing.

*F. Effect on the national park and the village of Boquillas*

*Comments*

A few commenters are opposed to opening a border crossing in a national park. One commenter said that there is little in the village of Boquillas to attract park visitors and little in Big Bend National Park to attract the residents of Boquillas, Mexico. Several commenters suggested that increasing commerce to a small Mexican village is an insufficient reason to open a new border crossing.

However, many other commenters are of the view the Boquillas border crossing will benefit Big Bend National Park and its visitors, as well as the inhabitants of the village of Boquillas. Some commenters noted that the resources that make Big Bend National Park worthy of protection are not confined solely within the bounds of the National Park, but include surrounding parks and protected areas in both the United States and Mexico. They are of the view that the legal crossing will allow conservationists to collaborate across the Rio Grande, permitting greater protection efforts for plants and wildlife. One commenter stated that closing the crossing in 2002 had an adverse impact on the ability to protect natural resources, because the long

distances to the closest legal border crossing have complicated cross-border cooperation on issues ranging from firefighting to removal of invasive species.

Some commenters noted that the history and culture of the United States and Mexico are deeply intertwined in this area, and, to fully appreciate this, a visitor to the park needs to be able to interact with those on the other side of the border. Many commenters who are familiar with the Boquillas border crossing before it was closed in 2002 anticipate that the new border crossing will open up many opportunities for residents and travelers in the area. For example, one commenter supports reuniting the protected areas on either side of the Rio Grande for such purposes as observing nature and photography. Another enjoyed crossing into Mexico prior to the closing of the historic crossing to paint landscapes. Other commenters enjoyed visiting the village of Boquillas for the cross-cultural experience. A few commenters also noted that when the crossing was previously open, residents of the village of Boquillas used the crossing to trade goods, buy food, and visit relatives. One commenter estimated that 40 percent of the Rio Grande Village store's revenue, which lies within Big Bend National Park, came from the residents of Boquillas, Mexico, who crossed the river to buy staples unavailable in their village.

A few commenters suggested that allowing for more legal, viable sources of revenue for the residents of Boquillas, who once depended heavily on tourism and trade of handicrafts, will increase security in the region around the Boquillas border crossing. One commenter stated that the border crossing will allow the re-establishment of commercial and cultural ties, providing opportunities for people across the border who currently have no stake in the security of the border, and creating an incentive to keep the

crossing legal and open. Additionally, a few commenters believe that with a legal border crossing, Border Patrol agents will no longer need to spend time and resources pursuing those who may now be crossing illegally merely to buy provisions to take home or those who may have purchased a handicraft made by the residents of Boquillas, Mexico.

*CBP Response*

CBP believes that the Boquillas border crossing will benefit both sides of the border, not only the village of Boquillas. According to the U.S. Department of the Interior, the opening of the Boquillas border crossing will allow for the development of a model of binational cooperation for the conservation and enjoyment of shared ecosystems for current and future generations. With more than 268 river miles and 3 million acres of contiguous parks and protected area on both sides of the border, the border crossing should facilitate research and conservation along the Rio Grande within Big Bend National Park and the Mexican Protected Areas.

NPS anticipates an increase in visitors to Big Bend National Park due to the new border crossing. NPS also anticipates that visitors are likely to increase the length of their stays in the Big Bend region in order to take advantage of the crossing. New visitors and visitors staying longer will have a positive impact on the local economy on the U.S. side. Additionally, there are also a number of river outfitters on the U.S. side who can benefit from the new border crossing by expanding their services and businesses to include trips not only down the Rio Grande but also into Mexico. With the opening of the Boquillas border crossing, river outfitters will be able to lead tours into Mexico and report back to CBP within the park.

### *G. Lack of a bridge*

#### *Comment*

One commenter is concerned that there will not be a bridge or other infrastructure crossing the Rio Grande at this site. The commenter stated that when the border crossing was open previously, those crossing the Rio Grande did so in leaky rowboats, which presented a potential hazard to individuals as well as potential liability to the park and the federal government.

#### *CBP Response*

According to NPS, numerous river outfitters and travelers with their own boats, such as kayaks or canoes, already float the Rio Grande within Big Bend National Park each year. All river outfitters coming into the park are required to meet safety standards and training standards for employees. All commercial boat operations at the Boquillas border crossing will be required to meet the same training and safety standards as the current river outfitters. Additionally, NPS requires that all travelers with their own boats register at park headquarters prior to floating the river.

### *H. Maintenance of the facility*

#### *Comment*

One commenter is concerned that there is insufficient maintenance staff in the park to maintain this new structure along with the many other existing structures in the park.

#### *CBP Response*

NPS does not anticipate any issues with maintenance of the facility. The opening of the Boquillas border crossing requires the construction of a small facility and the

installation of hardware that meets the technical specifications for land border crossings. NPS is constructing a facility large enough to house both a small visitor center and the CBP inspection stations. The small facility is designed to be both energy efficient and low maintenance and will have minimal impact on park maintenance operations.

*I. Opportunity for comment*

*Comment*

One commenter is of the view that the opportunity CBP provided for public comment was too late, as the project was already underway. The commenter also stated that the project is already behind schedule and over budget.

*CBP Response*

Even though there had been discussions about establishing a border crossing in Big Bend National Park after President Obama and President Calderón issued their joint statement in 2010, CBP had not made a final determination to proceed with the project until an environmental assessment was completed and public comment was sought and reviewed. CBP has carefully considered all the comments received before reaching any conclusions about whether to open the border crossing. NPS has not indicated any issues with funding the construction of the facility.

*J. Cost of project*

*Comment*

One commenter is concerned about the cost of the project. The commenter believes federal spending should be reduced, and is concerned that this project will increase the U.S. debt level.

*CBP Response*

The costs and benefits of this rule are discussed in the section entitled, “Executive Order 12866 (Regulatory Planning and Review) and 13563 (Improving Regulations and Regulatory Review)” and elsewhere in this document. CBP is of the view that the societal benefits of this rule outweigh the costs.

### **Revision of Class B Port of Entry Description**

In the NPRM, CBP also proposed to update the description of a Class B port of entry to reflect current border crossing document requirements. The Boquillas border crossing would fit within the proposed new description of a Class B port of entry. CBP received no comments regarding the proposed revision to the Class B port of entry description. For a full explanation of the Class B description amendment, please see the section entitled “Proposed Revision of Class B Port of Entry Description” in the NPRM.

### **Adoption of Proposal**

In view of the foregoing, and after consideration of the comments received, CBP has determined to adopt as final, the proposed rule published in the **Federal Register**, which establishes the Boquillas border crossing and revises the description of a Class B port of entry.

### **Authority**

These regulations are being amended pursuant to 5 U.S.C. 301, 6 U.S.C. 112, 203 and 211, 8 U.S.C. 1103, 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458), and 19 U.S.C. 1, 58b, 66 and 1624.

**Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review).**

This final rule is not an “economically significant” rulemaking action under Executive Order 12866, as supplemented by Executive Order 13563, because it will not result in the expenditure of more than \$100 million in any one year. This final rule, however, is a significant regulatory action under Executive Order 12866; therefore, the Office of Management and Budget has reviewed this rule.

The opening of the Boquillas border crossing will entail constructing a small inspection facility and installing hardware that meets the technical specifications for land ports of entry. NPS is constructing a building large enough to house both a small visitor center and the CBP inspection station. This construction is being funded entirely by NPS and is expected to cost \$2.1 million,<sup>4</sup> which accounts for special construction needed to address the remoteness of the facility. CBP will be responsible for procuring and installing all equipment needed for its operation, which includes inspection kiosks, surveillance equipment, and an agricultural waste disposal system. This equipment will cost \$1,577,000 the first year, which includes installation, hardware, connectivity, and security.<sup>5</sup> We estimate that the facility will cost \$200,000 each year for operation and maintenance; an estimated \$195,000 will be incurred by CBP and \$5,000 by NPS.<sup>6</sup> NPS will also staff the facility with a combination of paid seasonal and volunteer personnel. NPS estimates that 0.5 paid Full-Time Equivalents (FTEs) will be needed to staff the new

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<sup>4</sup> Source: National Park Service Predesign Study – Boquillas Crossing Visitor Contact/Border Station. January 2011.

<sup>5</sup> Source: CBP Office of Information Technology estimate on March 4, 2011.

<sup>6</sup> Sources: CBP Office of Information Technology estimate on March 4, 2011 and National Park Service estimate on March 24, 2011.

facility at a cost of approximately \$17,800 per year.<sup>7</sup> The total cost of opening the Boquillas border crossing is estimated to be \$3.7 million in the first year and \$217,800 in subsequent years, all of which will be incurred by the U.S. government.

NPS anticipates that 15,000 to 20,000 people will use the Boquillas border crossing in the first year.<sup>8</sup> Most of this traffic is expected to be U.S. citizens who will benefit from visiting the town of Boquillas del Carmen on the Mexican side of the border for food, souvenirs, and a unique cultural experience. The number of border crossers may grow over time as NPS continues to work with the Mexican government to develop ecotourism and sports and recreational opportunities. Because of the absence of data on the number of future border crossers and their willingness to pay for these experiences, we are not able to quantify the benefit of the availability of these experiences to the U.S. economy.

In addition to opening a new border crossing at Boquillas, this final rule will revise the definition of a Class B port of entry to make the admissibility documents allowed at a Class B port of entry consistent with WHTI. The costs and benefits of obtaining WHTI-compliant documents were included in the final rule establishing WHTI.<sup>9</sup> This final rule will not result in any additional costs or benefits.

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<sup>7</sup> NPS assumes the facility will be staffed seasonally for approximately half the year with a GS-05 step 5 employee (\$35,489 annual salary). Email communication with Big Bend park management staff on March 24, 2011. Salary information: <http://www.opm.gov/oca/11tables/html/RUS.asp>, accessed March 24, 2011. Calculation: 0.5 FTE x \$35,489 = \$17,745, rounded to \$17,800. This calculation does not include benefits, because the facility will be staffed by part-time seasonal employees.

<sup>8</sup> Source: Telephone communication with Big Bend park management staff on January 10, 2011.

<sup>9</sup> The Regulatory Assessments for the April 2008 Final Rule for WHTI requirements in the land environment can be found at [www.regulations.gov](http://www.regulations.gov), document numbers USCBP-2007-0061-0615 and USCBP-2007-0061-0616.

## **Regulatory Flexibility Act**

This section examines the impact of the final 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).

This final rule does not directly impact small entities, because individuals will be affected by the final rule and individuals are not considered small entities. In the NPRM, we stated that we did not believe the rule would have a significant economic impact on a substantial number of small entities and requested comments regarding that assessment. As we did not receive any comments with information that shows that the rule will have a significant economic impact on a substantial number of small entities, CBP certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

## **Executive Order 13132**

The final 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 final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

## **The National Environmental Policy Act of 1969**

DHS and CBP, in consultation with NPS within the U.S. Department of Interior, have been reviewing the potential environmental and other impacts of this proposed rule in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the regulations of the Council on Environmental Quality (40 CFR part 1500), and DHS Management Directive 023-01, Environmental Planning Program of April 19, 2006.

NPS prepared an environmental assessment (EA) that examines the effects on the natural and human environment associated with the proposed construction and operation of a visitor station and establishment of a Class B port of entry on the Rio Grande between the United States and Mexico within Big Bend National Park. The NPS EA encompasses all components of the Boquillas border crossing, including CBP operations of the port of entry. On June 28, 2011, NPS issued a Finding of No Significant Impact (FONSI) concluding that the proposed activities would not result in a significant impact to the human and natural environment.

In accordance with NEPA, CBP has carefully reviewed the EA developed by NPS and has determined that it considers all potential impacts of the project accurately. Therefore, CBP is adopting the EA developed by NPS and is issuing a FONSI. These documents will be posted on the CBP website at [www.cbp.gov](http://www.cbp.gov) and in the docket for this rulemaking at <http://www.regulations.gov>.

### **Signing Authority**

The signing authority for amending title 19 of the Code of Federal Regulations falls under 19 CFR 0.2(a), because the establishment of this Customs station is 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 her delegate).

## **LIST OF SUBJECTS**

### **8 CFR PART 100**

Organization and functions (Government agencies).

### **19 CFR Part 101**

Customs duties and inspection, Harbors, Organization and functions (Government agencies), Seals and insignia, Vessels.

## **AMENDMENTS TO THE REGULATIONS**

For the reasons stated in the preamble, we amend 8 CFR part 100 and 19 CFR part 101 as set forth below.

### **Title 8—Aliens and Nationality**

#### **CHAPTER I—DEPARTMENT OF HOMELAND SECURITY**

#### **PART 100—STATEMENT OF ORGANIZATION**

1. Revise the authority citation for part 100 to read as follows:

**AUTHORITY:** 8 U.S.C. 1103; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458); 8 CFR part 2

2. Amend § 100.4(a) as follows:

a. Revise the fifth sentence of § 100.4(a) to read as set forth below.

b. Under the heading “District No. 15—El Paso, Texas,” add the subheading, “Class B” and add “Boquillas, TX” under the new “Class B” heading.

**§ 100.4 Field offices.**

(a) \* \* \* Class B means that the port is a designated Port-of-Entry for aliens who at the time of applying for admission are exempt from document requirements by § 212.1(c)(5) of this chapter or who are lawfully in possession of valid Permanent Resident Cards, and nonimmigrant aliens who are citizens of Canada or Bermuda or nationals of Mexico and who at the time of applying for admission are lawfully in possession of all valid documents required for admission as set forth in §§ 212.1(a) and (c) and 235.1(d) and (e) of this chapter and are admissible without further arrival documentation or immigration processing. \* \* \*

\* \* \* \* \*

**Title 19—Customs Duties**

**CHAPTER I—U.S. CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF THE TREASURY**

**PART 101—GENERAL PROVISIONS**

3. The authority citation for part 101, and the sectional authority for §§ 101.3 and 101.4, 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.

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

\* \* \* \* \*

**§ 101.4 [Amended]**

4. In § 101.4(c), under the state of Texas, add “Boquillas” in alphabetical order to the Customs station column and add “Presidio.” to the corresponding Supervisory port of entry column.

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Janet Napolitano,  
Secretary.

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