



## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### 19 CFR Part 101

[CBP Dec. No. 23-05]

RIN 1651-AB44

### Management of Customs Ports of Entry and Customs Stations

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

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Department of Homeland Security clarifies that the Secretary of Homeland Security has the authority to establish, rearrange or consolidate, and discontinue Customs ports of entry and Customs stations and revises the Customs and Border Protection regulations to reflect this clarification.

**DATES:** This rule is effective on [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

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#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

U.S. Customs and Border Protection (CBP), a component of the Department of Homeland Security, operates two types of ports of entry, commonly referred to as immigration ports of entry and Customs ports of entry. Immigration ports of entry are those ports of entry used for the processing of travelers arriving by any means of travel into the United States. *See* title 8 Code of Federal Regulations (CFR) section 235.1 (8 CFR 235.1). Customs ports of entry,

which include customs service ports, are those entry locations authorized to receive entries of merchandise for the collection of duties and for the enforcement of the various provisions of the customs and navigation laws. *See* 19 CFR 101.1. In addition, CBP operates Customs stations, which are locations outside the boundaries of Customs ports of entry, but which, like Customs ports of entry, are authorized to receive entries of merchandise and enforce the various provisions of the customs and navigation laws.<sup>1</sup> *See* 19 CFR 101.1.

In most cases, Customs ports of entry and Customs stations exist within the same physical location as immigration ports and utilize the same CBP personnel for processing travelers and merchandise. Despite the use of the same location and personnel, there are separate regulations governing the authority to establish, rearrange, consolidate, and close the immigration and Customs ports and stations. Authority regarding management of immigration ports is addressed in title 8 of the CFR, while Customs port and Customs station authority is addressed in title 19 of the CFR. *See* 8 CFR 100.4 and 234.4; 19 CFR 101.3 and 101.4.

With regard to customs ports of entry, 19 U.S.C. 2, authorizes the President “to discontinue [customs]<sup>2</sup> ports of entry by abolishing the same or establishing others in their stead.” President Truman delegated this authority to the Secretary of the Treasury in 1951<sup>3</sup>. The Secretary of the Treasury then delegated this authority to the Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement) through the regulation in Section 101.3 of Title 19 of the CFR (19 CFR 101.3). That regulation authorizes the Assistant Secretary to “establish, rearrange or consolidate, and to discontinue customs ports of entry as the needs of the Customs Service may require.” The Homeland Security Act of 2002 (the Act) transferred this authority to

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<sup>1</sup> 19 CFR 101.3 lists both the Customs ports of entry and the Customs service ports. 19 CFR 101.4 lists the Customs stations, all of which are supervised by a Customs port of entry. The supervising port of entry for each Customs station is also listed in 19 CFR 101.4.

<sup>2</sup> The word “customs” added here for clarity. Although the word “customs” does not appear in this section, Title 19 of the U.S. Code specifically deals with customs duties and therefore this section relates to customs ports as defined herein.

<sup>3</sup> Executive Order 10289 (16 FR 9499)

the Secretary of DHS.<sup>4</sup> See Public Law 107-22296, Section 403, 6 U.S.C. 203. Despite this transfer of authority to the Secretary of DHS, the regulation at 19 CFR 101.3 still refers to the Treasury officers.

The authority to establish, rearrange or consolidate, and to discontinue Customs stations is held by the Secretary of DHS pursuant to the Act. *See* Sec. 403, Pub L. 107-296, 6 U.S.C. 203. This authority is not specifically referenced in the title 19 CFR regulations.

Prior to the passage of the Act, the authority to manage immigration ports of entry was held by the Commissioner of the Immigration and Nationality Service (INS). The Act transferred immigration related authorities, including those related to immigration ports of entry, from the Commissioner of the INS to the Secretary of DHS. *See* title IV, Pub L. 107-296, 6 U.S.C. Chapter 1. The applicable regulations, 8 CFR 100.4 and 234.4, specify that the Commissioner of CBP (the Commissioner) has the authority to manage immigration ports of entry.<sup>5</sup>

In this rule, DHS is clarifying that the authority to establish, rearrange or consolidate, and to discontinue Customs ports of entry and Customs stations rests with the Secretary of Homeland Security and not the Secretary of the Treasury. This rule revises the applicable regulations in title 19 of the CFR so that they are consistent with the Act.

Specifically, DHS is amending 19 CFR 101.3 to reflect that the Secretary of DHS has the authority to establish, rearrange or consolidate, and discontinue Customs ports of entry and Customs service ports. DHS is also amending this section to include a reference to “Customs service ports,” which are a type of “Customs port of entry” as noted above. The specific

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<sup>4</sup> In 2006, the Secretary of Homeland Security issued a Delegation Order in which he delegated certain authorities to the Commissioner of CBP but specifically reserved to himself the authority to “discontinue [Customs] ports of entry by abolishing the same and establishing others in their stead.” *See* DHS Delegation Order 7010.3.

<sup>5</sup> 8 CFR 1.2 provides that after March 1, 2003, references to “Commissioner” mean the Director of U.S. Citizenship and Immigration Services, the Commissioner of U.S. Customs and Border Protection, and the Director of U.S. Immigration and Customs Enforcement, as appropriate in the context in which the term appears. In the context of immigration port authority in 8 CFR 100.4 and 234.4, “Commissioner” means the Commissioner of CBP.

reference to “Customs service ports” clarifies that the Secretary has the authority to establish, rearrange or consolidate, and to discontinue all Customs ports of entry, including service ports.

DHS is also amending 19 CFR 101.4 to reflect that the Secretary has the authority to establish, rearrange or consolidate, and discontinue Customs stations as operational needs may require.

## **II. Statutory and Regulatory Requirements**

### **A. Administrative Procedure Act**

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the *Federal Register* and provide interested persons the opportunity to submit comments. 5 U.S.C. 553(b), (c). The APA also generally requires that substantive rules have a 30-day delayed effective date from the date of publication. *See* 5 U.S.C. 553(d).

However, certain exceptions are provided.

The APA provides an exception from notice and comment procedures as well as the requirement for a 30-day delayed effective date when the rule is a matter relating to agency management. *See* 5 U.S.C. 553(a)(2). In this rule DHS is merely updating regulations to reflect that the Secretary of DHS has the authority to establish, rearrange or consolidate, and discontinue Customs ports of entry and Customs service ports. Therefore, this is merely a matter of agency management.

Additionally, the APA provides an exception to notice and comment requirements when the rule is one of “agency organization, procedure, or practice.” *See* 5 U.S.C. 553(b)(A). This exception also applies because this rule merely amends the regulations to accurately reflect the Secretary of DHS’s authority regarding ports and has no effect on the public.

Based on the above considerations, this rule is exempt from the notice and comment and delayed effective date provisions of the APA pursuant to 5 U.S.C. 553(a)(2) and 5 U.S.C. 553(b)(A).

### **B. Executive Orders 13563 and 12866**

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation.

These regulatory changes are being made to reflect the transfer of authority to establish, rearrange and close Customs ports of entry and Customs stations from the Secretary of the Treasury to the Secretary of DHS pursuant to the Act. These changes have no effect on the public as there will be no changes to services at the ports and no economic costs or benefits. Therefore, this rule has no economic impact.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations 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). Since a notice of proposed rulemaking was not necessary, a regulatory flexibility analysis is not required.

### **List of Subjects in 19 CFR Part 101**

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

For reasons set forth in the preamble, part 101 of title 19 of the Code of Federal Regulations is amended as set forth below:

### **PART 101 — GENERAL PROVISIONS**

1. The authority citation for part 101 continues to read as follows:

**Authority:** 5 U.S.C. 301; 6 U.S.C. 101, et. seq.; 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;  
 Section 101.5 also issued under 19 U.S.C. 1629;  
 Section 101.9 also issued under 19 U.S.C. 1411–1414.

2. Amend § 101.3 by revising paragraph (a) to read as follows:

**§ 101.3 Customs service ports and ports of entry.**

(a) *Designation of Customs field organization.* The Secretary of Homeland Security is authorized to establish, rearrange or consolidate, and to discontinue Customs ports of entry and Customs service ports as operational needs may require.

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3. Amend § 101.4 by revising paragraph (c) to read as follows:

**§ 101.4 Entry and clearance of vessels at Customs stations.**

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(c) *Customs stations designated.*

(1) The Secretary of Homeland Security is authorized to establish, rearrange, or consolidate, and to discontinue Customs stations as operational needs may require.

(2) The Customs stations and the ports of entry having supervision thereof are listed below:

<b>Customs station</b>	<b>Supervisory port of entry</b>
<b>Alaska</b>	
Barrow	Fairbanks.
Dutch Harbor	Anchorage.
Eagle	Alcan.
Fort Yukon	Fairbanks.
Haines	Dalton Cache.
Hyder	Ketchikan.
Kaktovik (Barter Island)	Fairbanks.
Kenai (Nikiski)	Anchorage.
Northway	Alcan.
Pelican	Juneau.
Petersburg	Wrangell.
<b>California</b>	

Campo	Tecate.
Otay Mesa	San Diego.
San Ysidro	San Diego.
<b>Colorado</b>	
Colorado Springs	Denver.

<b>Delaware</b>	
Lewes	Philadelphia, PA.
<b>Florida</b>	
Fort Pierce	West Palm Beach.
Green Cove Springs	Jacksonville.
Port St. Joe	Panama City.
<b>Indiana</b>	
Fort Wayne	Indianapolis.
<b>Maine</b>	
Bucksport	Belfast.
Coburn Gore	Jackman.
Daaquam	Jackman.
Easton	Fort Fairfield.
Estcourt	Fort Kent.
Forest City	Houlton.
Hamlin	Van Buren.
<b>Maryland</b>	
Salisbury	Baltimore.
<b>Massachusetts</b>	
Provincetown	Plymouth.
<b>Michigan</b>	
Alpena	Saginaw-Bay City-Flint.
Detour	Sault Ste. Marie.
Escanaba	Sault Ste. Marie.
Grand Haven	Muskegon.
Houghton	Sault Ste. Marie.
Marquette	Sault Ste. Marie.
Rogers City	Saginaw-Bay City-Flint.
<b>Minnesota</b>	
Crane Lake	Duluth, MN-Superior, WI.
Ely	Duluth, MN-Superior, WI.
Lancaster	Noyes.
Oak Island	Warroad.
<b>Mississippi</b>	
Biloxi	Mobile, AL.
<b>Montana</b>	

Wild Horse	Great Falls.
Willow Creek	Great Falls.
<b>New Jersey</b>	
Atlantic City	Philadelphia-Chester, PA and Wilmington, DE.
Port Norris	Philadelphia-Chester, PA and Wilmington, DE.
Tuckerton	Philadelphia-Chester, PA and Wilmington, DE.
<b>New York</b>	
Cannons Corners	Champlain-Rouses Point.
Churubusco	Trout River.
<b>New Hampshire</b>	
Pittsburg	Beecher Falls, VT.
Monticello	Houlton, ME.
Orient	Houlton, ME.
Ste. Aurelie	Jackman, ME.
St. Pamphile	Jackman, ME.
<b>New Mexico</b>	
Antelope Wells (Mail: Hachita, NM)	Columbus, NM.
<b>North Dakota</b>	
Grand Forks	Pembina.
Minot	Pembina.
<b>Ohio</b>	
Akron	Cleveland.
Fairport Harbor	Ashtabula/Conneaut.
Lorain	Sandusky.
Marblehead-Lakeside	Sandusky.
Put-in-Bay	Sandusky.
<b>Oklahoma</b>	
Muskogee	Tulsa.
<b>Texas</b>	
Amistad Dam	Del Rio.
Boquillas	Presidio.
Falcon Dam	Roma.
Fort Hancock	Fabens.
Los Ebanos	Rio Grande City.
Marathon	El Paso.
<b>Vermont</b>	
Beebe Plaine	Derby Line.
Canaan	Beecher Falls.
East Richford	Richford.
Newport	Derby Line.
North Troy	Derby Line.
West Berkshire	Richford

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Alejandro N. Mayorkas,  
Secretary.

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