

(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 believed 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.

#### *Conditional Status*

Based on the information above and the level and pace of development in the Fargo area, Customs believed that there was sufficient justification for the establishment of Fargo, North Dakota, as a port of entry on a conditional basis.

In the Notice, Customs stated that if it is decided to create a port of entry at Fargo and to terminate Hector International Airport's designation as a user-fee airport, Customs will notify the airport of that determination in accordance with the provisions of 19 CFR 122.15(c). However, it was also noted that the proposal relied on potential, rather than actual, workload figures. Therefore, even if the proposed port of entry designation were adopted as a final rule, Customs would review the actual workload generated within the new port of entry in one year. If that review indicated that the actual workload was below the port of entry criteria established in T.D. 82-37, as revised by T.D. 86-14, procedures may be instituted to revoke the port of entry status. In such case, the airport could reapply to become a user-fee airport under the provisions of 19 U.S.C. 58b.

The public comment period for the proposed amendments closed January 31, 2003.

On March 1, 2003, the U.S. Customs Service was transferred from the Department of the Treasury to the Department of Homeland Security, and was redesignated as the Bureau of Customs and Border Protection (CBP).

#### **Discussion of Comments**

One comment was received that was favorable to the establishment of Fargo as a port of entry.

#### *Comment*

The commenter requested that, should Customs (now CBP) revoke the

port of entry status of Fargo after the one-year conditional status period, Hector International Airport's status should automatically be reverted back to a user-fee airport. The commenter stated that it was concerned that there could be a lapse in Customs services if the reapplication language contained in the Notice was strictly followed. The commenter further stated that Customs and the airport authority could coordinate any transition procedures.

#### *CBP Response*

CBP concurs with this comment. Accordingly, the terms and conditions in the Memorandum of Agreement between CBP and the airport authority will provide for the procedure by which the airport may again be designated as a user fee airport, should its status as a port of entry be terminated.

#### *Comment*

The same commenter stated that the description of the proposed port of entry limits needed to be adjusted to include more of the Fargo-area community in North Dakota and less of the Clay County area in Minnesota. According to the commenter, the revised geographical limits for the new Fargo port of entry would more accurately reflect the area served by Fargo's processing facilities and Customs personnel. Accordingly, the commenter stated that the port of limit boundaries be established as follows:

*Eastern boundary*—The proposed Eastern boundary of the port of entry in Clay County, Minnesota, needs to be moved west from Clay County highway 11 to a north-south line represented by Clay County Road 78 south of U.S. 10 and Clay County Road 90 north of U.S. 10;

*Southern boundary*—The proposed Southern boundary of the port of entry in both North Dakota and Minnesota needs to be extended south from U.S. Interstate 94 to an east-west line that is in accordance with 64th Avenue South in Fargo, North Dakota; and

*Western boundary*—The proposed Western boundary of the port of entry in Cass County, North Dakota, needs to be extended west from U.S. Interstate 29 in Fargo to a north-south line represented by 25th Street south of the intersection of U.S. Interstate 29 and U.S. 10 and 26th Street north of the intersection of U.S. Interstate 29 and U.S. 10 in West Fargo.

#### *CBP Response*

CBP concurs with this comment. Accordingly, the description of the geographical limits of the port of entry is revised as stated by the commenter.

#### **Conclusion**

After further review and consideration of this matter, CBP has determined that a port of entry will be established at Fargo—with the geographical limits of the port of entry modified as discussed in this document—and that Hector International Airport, because it is within the limits of this port of entry, will no longer be designated as a user-fee airport. This document amends the Customs Regulations to reflect this determination. It is noted that the designation of Fargo as a port of entry is on a conditional basis for one year. If, after a year, it is determined that Fargo does not merit port of entry status, a new document will be prepared for the **Federal Register** removing Fargo's designation.

#### **Limits of Port of Entry Limits**

The description of the geographical limits of the Fargo port of entry is as follows:

In Cass County, North Dakota:  
*Northern boundary*, Cass County highway 20,

*Southern boundary*, an east-west line in accordance with 64th Avenue South in Fargo, North Dakota, and

*Western boundary*, a north-south line represented by 25th Street south of the intersection of U.S. Interstate 29 and U.S. 10 and 26th Street north of the intersection of U.S. Interstate 29 and U.S. 10 in West Fargo.

In Clay County, Minnesota:

*Northern boundary*, Clay County highway 22.

*Southern boundary*, an east-west line in accordance with 64th Avenue South in Fargo, Cass County, North Dakota, and

*Eastern boundary*, a north-south line represented by Clay County Road 78 south of U.S. 10 and Clay County Road 90 north of U.S. 10.

#### **Authority**

This amendment is promulgated pursuant to Customs authority under 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

#### **Inapplicability of the Regulatory Flexibility Act and Executive Order 12866**

Although Customs solicited public comments, no notice and public procedure was required pursuant to 5 U.S.C. 553 because this matter 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