

phase of flight when the airport traffic control tower is closed.

**EFFECTIVE DATE:** 0901 UTC, October 8, 1998.

**FOR FURTHER INFORMATION CONTACT:** Dennis Ripley, ANM-520.6, Federal Aviation Administration, Docket No. 98-ANM-05, 1601 Lind Avenue S.W., Renton, Washington, 98055-4056; telephone number: (425) 227-2527.

**SUPPLEMENTARY INFORMATION:**

### History

On May 15, 1998, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by establishing the Moses Lake Class E surface area (63 FR 27012). This establishment of the Class E surface area provides the additional airspace necessary to allow terminal operations to and from the en route environment when the control tower is not in operation. The commissioning of the Automated Surface Observing System (ASOS) qualifies the Grant County Airport for a Class E surface area. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in document will be published subsequently in the Order.

### The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Moses Lake, WA, by providing a Class E surface area around the Grant County airport when the control tower is closed. The intended effect of this rule is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at Grant County Airport and between the terminal and en route transition stages.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the forgoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp. p. 389.

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

*Paragraph 6002 Class E airspace designated as a surface area for an airport.*

\* \* \* \* \*

#### ANM WA E2 Moses Lake, WA [New]

Grant County Airport, Moses Lake, WA (Lat. 47°12'28"N, long. 119°19'13"W)

That airspace extending upward from the surface within a 5.7-mile radius of the Grant County Airport, excluding that airspace within an area bounded by a line beginning at lat. 47°11'31"N, long. 119°10'59"W; to lat. 49°09'59"N, long. 119°14'55"W; to lat. 47°07'34"N, long. 119°14'55"W; thence counterclockwise via a 5.7-mile radius of the Grant County Airport to the point of beginning. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

\* \* \* \* \*

Issued in Seattle, Washington, on July 16, 1998.

#### Glenn A. Adams, III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98-20490 Filed 7-30-98; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Customs Service

#### 19 CFR Part 24

[T.D. 98-64]

RIN 1515-AC31

### Exporters not Liable for Harbor Maintenance Fee

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations to remove the requirement that an exporter of cargo is liable for the payment of the Harbor Maintenance Fee when cargo is loaded for export at a port subject to the Harbor Maintenance Fee. This change is required pursuant to a Supreme Court decision finding that the Harbor Maintenance Fee for exporters was in violation of the Export Clause of the Constitution of the United States.

**EFFECTIVE DATE:** The amendment to 19 CFR 24.24 is effective July 31, 1998. Collection of the Harbor Maintenance Fee on exports was discontinued effective April 25, 1998.

**FOR FURTHER INFORMATION CONTACT:** Patricia Barbare, Operations Management Specialist, Budget Division, U.S. Customs Service, (202) 927-0310.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Harbor Maintenance Fee was created by the Water Resources Development Act of 1986 (Pub. L. 99-662) (26 U.S.C. 4461 *et seq.*) (the Act), and is implemented by § 24.24 of the Customs Regulations (19 CFR 24.24). The fee, pursuant to the Act and as implemented by the regulations, became effective on April 1, 1987, and has been assessed on port use associated with imports, exports, and movements of cargo and passengers between domestic ports. The fee is paid to the U.S. Customs Service. The fee has been imposed at the time of loading for exports and unloading for other shipments. Exporters, importers and domestic shippers have been obligated, pursuant to the statute and regulations, to pay 0.125 percent of the value of the commercial cargo shipped through identified ports. The fee, once collected by Customs, is deposited in the Harbor Maintenance Trust Fund, from which Congress may appropriate amounts to pay for harbor maintenance and development projects and related expenses.

On March 31, 1998, the Supreme Court in *United States v. United States Shoe Corp.*, 118 S. Ct. 1290, No. 97-372 (March 31, 1998), declared that the Harbor Maintenance Fee is unconstitutional as applied to exports. The Court found that the Harbor Maintenance Fee was a tax imposed on an *ad valorem* basis and as such, the fee was not a fair approximation of the services, facilities or benefits furnished to the exporter. Therefore, the Court ruled the Harbor Maintenance Fee does not qualify as a permissible user fee for exporters and is in violation of the Export Clause of the Constitution. By a notice published in the **Federal Register** (63 FR 24209) on May 1, 1998, Customs announced that as of April 25, 1998, it will no longer be collecting the Harbor Maintenance Fee for cargo loaded on board a vessel for export.

This document amends § 24.24 of the Customs Regulations (19 CFR 24.24) to make the regulation consistent with the Supreme Court decision; the document amends the regulation by removing the requirement that an exporter of cargo is liable for the payment of the Harbor Maintenance Fee when cargo is loaded for export at a port subject to the Harbor Maintenance Fee.

#### **Inapplicability of Notice and Delayed Effective Date**

Because the amendment to the Customs Regulations contained in this document removing exporters from having to pay the Harbor Maintenance Fee is being made in response to a Supreme Court decision, pursuant to section 553(a)(1) of the Administrative Procedure Act (5 U.S.C. 553(a)(1)), no notice of proposed rulemaking or public procedure is necessary. For the same reason, a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(3).

#### **Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

#### **Executive Order 12866**

This amendment does not meet the criteria of a "significant regulatory action" as described in E.O. 12866.

#### **Drafting Information**

The principal author of this document was Keith B. Rudich, Esq., Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service.

However, personnel from other offices participated in its development.

#### **List of Subjects in 19 CFR Part 24**

Accounting, Canada, Claims, Customs duties and inspections, Fees, Financial and accounting procedures, Foreign trade statistics, Harbors, Imports, Reporting and recordkeeping requirements, Taxes, Trade Agreements, U.S.-Canada Free-Trade Agreement, User fees, Wages.

#### **Amendment to the Regulations**

Accordingly, § 24.24 of the Customs Regulations (19 CFR 24.24) is amended as follows:

#### **PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURES**

1. The general authority for part 24, Customs Regulations (19 CFR Part 24) and the specific relevant authority citation for § 24.24 Customs Regulations (19 CFR 24.24), continue to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 58a-58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1450, 1624; 31 U.S.C. 9701.

\* \* \* \* \*

Section 24.24 also issued under 19 U.S.C. 4461, 4462;

\* \* \* \* \*

#### **§ 24.24 [Amended]**

2. Section 24.24 is amended by removing paragraph (d)(3)(ii) and redesignating paragraph (d)(3)(iii) as (d)(3)(ii); by removing paragraph (e)(2) and redesignating paragraphs (e)(3), (4) and (5) as paragraphs (e)(2), (3), and (4) respectively; by removing the word "exporter," in paragraph (g); by removing the word "exporter," in paragraph (h)(1); and by removing the words ", exporting" and "the SED," in paragraph (i).

**William F. Riley,**

*Acting Commissioner of Customs.*

Approved: July 8, 1998.

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 98-20456 Filed 7-30-98; 8:45 am]

BILLING CODE 4820-02-P

## **DEPARTMENT OF THE TREASURY**

### **Customs Service**

#### **19 CFR Part 101**

[T.D. 98-65]

#### **Geographical Description of Kodiak, Alaska Customs Port of Entry**

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** Customs published in the **Federal Register** of March 17, 1998, a final rule establishing a Customs port of entry at Kodiak, Alaska. This document corrects the geographical description of the port limits of Kodiak to include the Womens Bay port facilities and Kodiak State Airport as well as the city limits of Kodiak.

**EFFECTIVE DATE:** July 31, 1998.

**FOR FURTHER INFORMATION CONTACT:** Harry Denning, Office of Field Operations, 202-927-0196.

**SUPPLEMENTARY INFORMATION:**

#### **Background**

Section 123 of the Treasury and General Appropriations Act, 1998 (Pub. L. 105-61 of October 10, 1997) provides that the Secretary of the Treasury shall establish the port of Kodiak, Alaska, as a port of entry. In a document published as T. D. 98-24 in the **Federal Register** (63 FR 12994) on March 17, 1998, Customs amended its regulations to designate Kodiak as a port of entry. That document described the port limits of Kodiak as the Kodiak city limits. Since that publication, it has come to Customs attention that the port limits of Kodiak encompass more than the city limits. The port limits encompass both the Womens Bay port facilities and the Kodiak State Airport. This document sets forth the accurate port limits of Kodiak, Alaska.

#### **Port Limits**

The port limits of Kodiak, Alaska are the Kodiak city limits; the adjacent Womens Bay port facilities located approximately 7 miles from downtown Kodiak on Rezanof Drive West which is a state highway; and the Kodiak State Airport located approximately 4.5 miles from downtown Kodiak and 3 miles from the south boundary of the City of Kodiak corporate boundary on the Rezanof Drive West which is a state highway. The Womens Bay port facilities parcel is 5 miles from the south boundary of the corporate city limits of the City of Kodiak. The site includes tidelands and the adjacent