

**SUMMARY:** This document amends the Customs and Border Protection (CBP) Regulations to reflect the withdrawal of the user fee airport designation at Ocala International Airport in Ocala, Florida. A user fee airport is one which, while not qualifying for designation as an international or landing rights airport, has been approved by the Commissioner of Customs and Border Protection (CBP) to receive, for a fee, the services of a CBP officer for the processing of aircraft entering the United States and their passengers and cargo.

**DATES:** *Effective Date:* May 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Dennis Dore, Office of Field Operations, 202-344-2776.

**SUPPLEMENTARY INFORMATION:**

**Background**

Generally, a civil aircraft arriving from a place outside of the United States is required to land at an airport designated as an international airport. Alternatively, the pilot of a civil aircraft may request permission to land at a specific airport and if landing rights are granted, the civil aircraft may land at that landing rights airport.

Section 236 of Pub. L. 98-573 (the Trade and Tariff Act of 1984), codified at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international or landing rights airport. A civil aircraft arriving from a place outside of the United States may ask for permission to land at an airport designated by the Secretary of the Treasury as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Secretary of the Treasury determines that the volume of business at the airport is insufficient to justify the availability of customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of aircraft that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

As the volume of business anticipated at this type of airport is insufficient to justify its designation as an international or landing rights airport, the availability of customs services is not paid for out of appropriations from the general treasury of the United States. Instead, customs services are provided on a fully reimbursable basis to be paid for by the user fee airport on behalf of the recipients of the services.

The fees which are to be charged at user fee airports, according to the

statute, shall be paid by each person using the customs services at the airport and shall be in the amount equal to the expenses incurred by the Secretary of the Treasury in providing customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Secretary of the Treasury to provide the customs services. To implement this provision, generally, the airport seeking the designation as a user fee airport or that airport's authority agrees to pay a flat fee for which the users of the airport are to reimburse the airport/airport authority. The airport/airport authority agrees to set and periodically review the charges to ensure that they are in accord with the airport's expenses.

Sections 403(1) and 411 of the Homeland Security Act of 2002 ("the Act," Pub. L. 107-296) transferred the United States Customs Service and certain of its functions from the Department of the Treasury to the Department of Homeland Security; pursuant to section 1502 of the Act, the President renamed the "Customs Service" as the "Bureau of Customs and Border Protection," also referred to as "CBP."

The Commissioner of CBP, pursuant to § 122.15, CBP Regulations (19 CFR 122.15) designates airports as user fee airports pursuant to 19 U.S.C. 58b. Section 122.15 also sets forth the grounds for withdrawal of a user fee designation and sets forth the list of user fee airports as designated by the Commissioner.

This document revises the list of user fee airports in § 122.15(b) by removing Ocala International Airport. The Commissioner approved the termination of the User Fee Agreement between the airport and CBP on June 22, 2004. The airport had requested that the User Fee Agreement be terminated.

This document is limited to technical corrections of CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b).

**Regulatory Flexibility Act and Executive Order 12866**

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Agency organization matters such as this amendment are exempt from consideration under Executive Order 12866.

**Inapplicability of Public Notice and Delayed Effective Date Requirements**

This amendment merely updates and corrects the list of user fee airports

already designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b. Accordingly, this document neither imposes any additional burdens on, nor takes away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B). Thus, notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3) a delayed effective date is not required.

**Drafting Information**

The principal author of this document was Steven Bratcher, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 122**

Air carriers, Aircraft, Airports, Customs Duties and Inspection, Freight.

**Amendments to the Regulations**

■ Part 122, CBP Regulations (19 CFR Part 122) is amended as set forth below.

**PART 122—AIR COMMERCE REGULATIONS**

■ 1. The general authority citation for Part 122, CBP Regulations, continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

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■ 2. The listing of user fee airports in § 122.15(b) is amended by removing, in the "Location" column, "Ocala, Florida" and by removing, on the same line, in the "Name" column, "Ocala International Airport."

Dated: April 27, 2005.

**Robert C. Bonner,**  
*Commissioner, Customs and Border Protection.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Bureau of Customs and Border Protection**

**19 CFR Part 122**

[CBP Dec. 05-15]

**Technical Amendment to List of User Fee Airports**

**AGENCY:** Customs and Border Protection, Department of Homeland Security.

**ACTION:** Technical amendment.

**SUMMARY:** This document amends the Customs and Border Protection (CBP) Regulations to reflect that the following airports have been designated by the Commissioner of CBP as user fee facilities: Hanscom Field in Bedford, Massachusetts; Eagle County Regional Airport in Eagle, Colorado; and Rogers Municipal Airport in Rogers, Arkansas. This document also amends the CBP Regulations to reflect the withdrawal of user fee airport designations at Rogue Valley International Airport in Medford, Oregon and Hulman Regional Airport in Terre Haute, Indiana. A user fee airport is one which, while not qualifying for designation as an international or landing rights airport, has been approved by the Commissioner of the Bureau of Customs and Border Protection (CBP) to receive, for a fee, the services of a CBP officer for the processing of aircraft entering the United States and their passengers and cargo.

**EFFECTIVE DATE:** May 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Dennis Dore, Office of Field Operations, 202-344-2776.

**SUPPLEMENTARY INFORMATION:**

#### Background

Generally, a civil aircraft arriving from a place outside of the United States is required to land at an airport designated as an international airport. Alternatively, the pilot of a civil aircraft may request permission to land at a specific airport and if landing rights are granted, the civil aircraft may land at that landing rights airport.

Section 236 of Public Law 98-573 (the Trade and Tariff Act of 1984), codified at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international or landing rights airport. A civil aircraft arriving from a place outside of the United States may ask for permission to land at an airport designated by the Secretary of the Treasury as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Secretary of the Treasury determines that the volume of business at the airport is insufficient to justify the availability of customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of aircraft that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

As the volume of business anticipated at this type of airport is insufficient to

justify its designation as an international or landing rights airport, the availability of customs services is not paid for out of appropriations from the general treasury of the United States. Instead, customs services are provided on a fully reimbursable basis to be paid for by the user fee airport on behalf of the recipients of the services.

The fees which are to be charged at user fee airports, according to the statute, shall be paid by each person using the customs services at the airport and shall be in the amount equal to the expenses incurred by the Secretary of the Treasury in providing customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Secretary of the Treasury to provide the customs services. To implement this provision, generally, the airport seeking the designation as a user fee airport or that airport's authority agrees to pay a flat fee for which the users of the airport are to reimburse the airport/airport authority. The airport/airport authority agrees to set and periodically review the charges to ensure that they are in accord with the airport's expenses.

Sections 403(1) and 411 of the Homeland Security Act of 2002 ("the Act," Pub. L. 107-296) transferred the United States Customs Service and certain of its functions from the Department of the Treasury to the Department of Homeland Security; pursuant to section 1502 of the Act, the President renamed the "Customs Service" as the "Bureau of Customs and Border Protection," also referred to as the "CBP."

The Commissioner of CBP, pursuant to § 122.15, CBP Regulations (19 CFR 122.15) designates airports as user fee airports pursuant to 19 U.S.C. 58b. Section 122.15 also sets forth the grounds for withdrawal of a user fee designation and sets forth the list of designated user fee airports.

This document revises the list of user fee airports in § 122.15(b). It adds Hanscom Field in Bedford, Massachusetts; Eagle County Regional Airport in Eagle, Colorado; and Rogers Municipal Airport in Rogers, Arkansas to this listing of designated user fee airports. This document also removes Rogue Valley International Airport in Medford, Oregon and Hulman Regional Airport in Terre Haute, Indiana.

This document is limited to technical corrections of CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b).

#### Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Agency organization matters such as this amendment are exempt from consideration under Executive Order 12866.

#### Inapplicability of Public Notice and Delayed Effective Date Requirements

This amendment merely updates and corrects the list of user fee airports already designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b. Accordingly, this document neither imposes any additional burdens on, nor takes away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B). Thus, notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3) a delayed effective date is not required.

#### Drafting Information

The principal author of this document was Christopher W. Pappas, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

#### List of Subjects in 19 CFR Part 122

Air carriers, Aircraft, Airports, Customs duties and inspection, Freight.

#### Amendments to the Regulations

■ Part 122, Customs Regulations (19 CFR part 122) is amended as set forth below.

#### PART 122—AIR COMMERCE REGULATIONS

■ 1. The general authority citation for part 122, Customs Regulations, continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

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#### § 122.15 [Amended]

■ 2. The listing of user fee airports in § 122.15(b) is amended:

a. By adding, in alphabetical order, in the "Location" column, "Bedford, Massachusetts" and by adding on the same line, in the "Name" column, "Hanscom Field.;"

b. By adding, in alphabetical order, in the "Location" column, "Eagle, Colorado" and by adding on the same line, in the "Name" column, "Eagle County Regional Airport.;"

c. By adding, in alphabetical order, in the "Location" column, "Rogers,

Arkansas” and by adding on the same line, in the “Name” column, “Rogers Municipal Airport.”;

d. By removing, in the “Location” column, “Medford, Oregon” and by removing on the same line, in the “Name” column, “Rogue Valley International Airport.”; and

e. By removing, in the “Location” column, “Terre Haute, Indiana” and by removing on the same line, in the “Name” column, “Hulman Regional Airport.”.

Dated: April 27, 2005.

**Robert C. Bonner,**

*Commissioner, Bureau of Customs and Border Protection.*

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## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

### 29 CFR Parts 2200 and 2204

#### Revisions to Procedural Rules Governing Practice Before the Occupational Safety and Health Review Commission

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Final rule.

**SUMMARY:** This document makes several revisions to the procedural rules governing practice before the Occupational Safety and Health Review Commission.

**DATES:** These revised rules will effect on August 1, 2005. They apply to all cases docketed on or after that date. They also apply to further proceedings in cases then pending, except to the extent that their application would be infeasible or would work an injustice, in which event the present rules apply.

**FOR FURTHER INFORMATION CONTACT:** Patrick Moran, Deputy General Counsel, Occupational Safety and Health Review Commission, 1120 20th St. NW., Ninth Floor, Washington, DC 20036-3457, Phone Number: (202) 606-5410.

**SUPPLEMENTARY INFORMATION:** On March 4, 2005, the Commission published in the **Federal Register** several proposed changes to its rules of procedure. 70 FR 10574 (March 4, 2005). The Commission found the comments it received in response to that proposal to be very helpful. As a result, several proposed changes have been modified and one proposed change has been deleted. The Commission thanks those who responded for their time and interest, and the quality of their comments.

### 1. Service, Filing and Notice

The Commission proposed revising section 2200.5 to give its Judges the discretion to require a party to respond more quickly to a motion or order filed shortly before the hearing where the normal response time would not expire until after the hearing has commenced. The Commission has modified its original proposal to make it clear that the Judge may enlarge or shorten any time period contained in the rules upon motion of a party with good cause shown or upon the Judge’s own motion. One commentator suggested that the rule be further amended to give a Judge the discretion to dispense with written follow-ups to oral motions for extensions of time. The Commission declines to follow this suggestion. The Commission believes that it is important for the record to thoroughly document the motions and the Judge’s disposition of the motions. The small burden imposed on the parties by requiring such follow-up written motions is outweighed by the interest in maintaining a complete record of the proceedings.

The Commission also proposed amending section 2200.7 to allow for the electronic service of documents when all parties consent in writing and the certificate of service of the electronic transmission states such consent and the method of transmission. It proposed amending section 2200.8 to allow for the electronic filing of documents. These proposals were well received by the commentators, although one commentator suggested that electronic filing not be made mandatory since access to computers and the Internet is not yet universal. The Commission agrees and, while encouraging the use of electronic filing, will continue to leave it optional for the foreseeable future.

In response to a commentator’s request, the Commission would clarify that, even where the parties have not consented to the electronic filing of all documents, they may still consent to the electronic filing of individual documents.

Another commentator noted that section 2200.8 did not specifically contemplate that electronically filed documents would be made available on-line and that, if such documents are not electronically available, there was no purpose for the redaction of certain information set forth in section 2200.8(g)(5). The Commission has decided against making electronically filed documents available on-line at this time, as the Commission does not have the equipment or resources to make such documents available on-line.

Moreover, because electronic filing remains optional, and only certain documents may be electronically filed, the limited on-line availability of documents could confuse and even mislead interested parties. Regarding the need to redact certain information, the Commission recognizes that despite the resources it has devoted to closing all known security gaps within its own systems, the security of documents filed through the Internet remains a concern. Therefore, it believes that good practice dictates that potentially sensitive information be redacted from electronically filed documents.

That same commentator also opined that section 2200.8(g)(6) had a typographical error in that the rule should list those items that the Commission wanted to receive with electronic filings, rather than suggesting, as the proposed rule did, that it specifically did not want those items. The Commission stresses that this was not a typographical error and that, indeed, the Commission wants to underscore that those items listed in the rule should not be sent with any electronic filing.

The commentator also suggested that section 2200.8(g)(7) be revised to eliminate the requirement for an /s/ if a graphical duplicate of a signature is included. The Commission fails to see how the requirement imposes any sort of burden on the parties and will adopt the rule as proposed.

The Commission also proposed to amend section 2200.8(f) by eliminating the 3-day grace period for mailing documents after they have been faxed. The Commission has reconsidered the rule and now is of the view that a faxed document can serve as an original and that a follow-up mailing is unnecessary. Technology has advanced to the point where faxed documents are generally much clearer than they were just a few years ago. Where there is a problem with the clarity of a tax, the Commission will contact the sending party and request that the document be re-faxed, mailed, or electronically filed.

### 2. Practice Before the Commission

The Commission received a number of comments regarding its proposal to amend section 2200.22 to restrict practice before the Commission to attorneys. Based on the responses received from those commenting, the Commission has decided to withdraw the proposal. Nevertheless, the Commission remains concerned about the quality of representation provided by non-legal representatives. It will continue to monitor the situation and explore different methods to help small