

- (iii) Schedule/timeliness;
- (iv) Management or business relations; and
- (v) Other (as applicable).

(2) *Responsibility of first-tier small business subcontractors.* A first-tier small business subcontractor must make the request for a performance rating from the prime contractor within 30 days after the completion of the period of performance for the prime contractor's contract with the Government. However, the prime contractor and the first-tier small business subcontractor may negotiate a later deadline for the request for a performance rating, but in no case can the prime contractor impose a deadline earlier than 30 days after the completion of the period of performance for the prime contractor's contract with the Government. The subcontractor may notify the contracting officer in the event that the prime contractor does not comply with its responsibility to submit a timely rating.

(3) *Joint ventures that performed as first-tier subcontractors.* A small business member of a joint venture may request a past performance rating under paragraph (c)(1) of this section, where a joint venture performed as a first-tier subcontractor. The joint venture member may then submit the subcontractor past performance rating to a procuring agency in accordance with paragraph (b) of this section.

(4) *Evaluation.* When evaluating the past performance of a small business concern that elected to use a rating for its offer on a prime contract, a contracting officer shall consider the concern's experience and rating of past performance as a first-tier subcontractor. This includes where the small business concern lacks a past performance rating as a prime contractor in the Contractor Performance Assessment Reporting System (CPARS), or successor system used by the Federal Government to monitor or rate contractor past performance.

#### § 125.28 [Amended]

- 5. Amend § 125.28 in paragraph (a) by removing “§ 125.15(a)” and adding “§ 125.18(a)” in its place.

#### § 125.29 [Amended]

- 6. Amend § 125.29 in paragraph (a) by removing “§ 125.8” and adding “§ 125.12” in its place.

#### § 125.30 [Amended]

- 7. Amend § 125.30 in paragraph (g)(4) by removing “§ 125.8” and adding “§ 125.12” in its place.

**Isabella Casillas Guzman,**  
*Administrator.*

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**BILLING CODE 8026–09–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### 19 CFR Part 122

[CBP Dec. 22–16]

#### Technical Amendment to List of User Fee Airports: Addition of Four Airports, Removal of Two Airports

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This document amends U.S. Customs and Border Protection (CBP) regulations by revising the list of user fee airports. User fee airports are airports that have been approved by CBP to receive, for a fee, the customs services of CBP officers for processing aircraft, passengers, and cargo entering the United States, but do not qualify for designation as international or landing rights airports. Specifically, this technical amendment reflects the designation of user fee status for four additional airports: Coeur d'Alene Airport in Hayden, Idaho; Ithaca Tompkins Regional Airport in Ithaca, New York; University of Illinois-Willard Airport in Savoy, Illinois; and Sheboygan County Memorial Airport in Sheboygan Falls, Wisconsin. This document also amends CBP regulations by removing the designation of user fee status for two airports: Ardmore Industrial Airpark, in Ardmore, Oklahoma, and Decatur Airport in Decatur, Illinois.

**DATES:** Effective July 22, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ryan Flanagan, Director, Alternative Funding Program, Office of Field Operations, U.S. Customs and Border Protection at *Ryan.H.Flanagan@cbp.dhs.gov* or 202–550–9566.

#### SUPPLEMENTARY INFORMATION:

##### Background

Title 19, part 122, of the Code of Federal Regulations (19 CFR part 122) sets forth regulations relating to the entry and clearance of aircraft engaged

in international commerce and the transportation of persons and cargo by aircraft in international commerce.<sup>1</sup> Generally, a civil aircraft arriving from outside the United States must land at an airport designated as an international airport. Alternatively, 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.<sup>2</sup>

Section 236 of the Trade and Tariff Act of 1984 (Pub. L. 98–573, 98 stat. 2948, 2994 (1984)), codified at 19 U.S.C. 58b, created an alternative option for civil aircraft seeking to land at an airport that is neither an international airport nor a landing rights airport. This alternative option allows the Commissioner of U.S. Customs and Border Protection (CBP) to designate an airport, upon request by the airport authority or other sponsoring entity, as a user fee airport.<sup>3</sup> Pursuant to 19 U.S.C. 58b, a requesting airport may be designated as a user fee airport only if CBP determines that the volume or value of business at the airport is insufficient to justify the unreimbursed availability of customs services at the airport and the governor of the state in which the airport is located approves the designation. As the volume or value of business cleared through this type of airport is insufficient to justify the availability of customs services at no cost, customs services provided by CBP at the airport are not funded by appropriations from the general treasury of the United States. Instead, the user fee airport pays for the customs services provided by CBP. The user fee airport must pay the fees charged, which must be in an amount equal to the expenses

<sup>1</sup> For purposes of this technical rule, an “aircraft” is defined as any device used or designed for navigation or flight in air and does not include hovercraft. 19 CFR 122.1(a).

<sup>2</sup> A landing rights airport is “any airport, other than an international airport or user fee airport, at which flights from a foreign area are given permission by Customs to land.” 19 CFR 122.1(f).

<sup>3</sup> Sections 403(1) and 411 of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 stat. 2135, 2178–79 (2002)), codified at 6 U.S.C. 203(1) and 211, transferred certain functions, including the authority to designate user fee facilities, from the U.S. Customs Service of the Department of the Treasury to the U.S. Department of Homeland Security. The Secretary of Homeland Security delegated the authority to designate user fee facilities to the Commissioner of CBP through Department of Homeland Security Delegation, Sec. I.A., No. 7010.3 (May 11, 2006). The Commissioner subsequently delegated this authority to the Executive Assistant Commissioner (EAC) of the Office of Field Operations, on March 23, 2020, to designate new UFFs. On December 23, 2020, the broader authority to withdraw a facility's designation as a UFF, as well as execute, amend, or terminate Memorandum of Agreements, was also delegated to the EAC of the Office of Field Operations.

incurred by CBP in providing customs and related services at the user fee airport, including the salary and expenses of CBP employees to provide such services. See 19 U.S.C. 58b; see also 19 CFR 24.17(a)–(b).

CBP designates airports as user fee airports in accordance with 19 U.S.C. 58b and 19 CFR 122.15 on a case-by-case basis. If CBP decides that the conditions for designation as a user fee airport are satisfied, a Memorandum of Agreement (MOA) is executed between the Commissioner of CBP and the sponsor of the user fee airport. Pursuant to 19 CFR 122.15(c), the designation of an airport as a user fee airport must be withdrawn if either CBP or the airport authority gives 120 days written notice of termination to the other party or if any amounts due to CBP are not paid on a timely basis.

The list of designated user fee airports is set forth in 19 CFR 122.15(b). Periodically, CBP updates the list to include newly designated airports that were not previously on the list, to reflect any changes in the names of the designated user fee airports, and to remove airports that are no longer designated as user fee airports.

**Recent Changes Requiring Updates to the List of User Fee Airports**

This document updates the list of user fee airports in 19 CFR 122.15(b) by adding the following four airports: Coeur d’Alene Airport in Hayden, Idaho; Ithaca Tompkins Regional Airport in Ithaca, New York; University of Illinois-Willard Airport in Savoy, Illinois; and Sheboygan County Memorial Airport in Sheboygan Falls, Wisconsin. CBP has signed MOAs with the respective airport authorities designating each of these four airports as a user fee airport.<sup>4</sup>

Additionally, this document updates the list of user fee airports in 19 CFR 122.15(b) by removing two airports: Ardmore Industrial Airpark in Ardmore, Oklahoma and Decatur Airport in Decatur, Illinois. The airport authority of Ardmore Industrial Airpark requested to terminate its user fee status on March 19, 2020, and the airport authority and CBP mutually agreed to terminate the user fee status of Ardmore Industrial Airpark effective on July 17, 2020. The

<sup>4</sup> The Executive Assistant Commissioner of the Office of Field Operations Pete Flores signed a MOA designating Coeur d’Alene Airport on May 6, 2022. Then-Acting Commissioner Mark A. Morgan signed an MOA designating University of Illinois-Willard Airport on February 25, 2020. Then-Executive Assistant Commissioner of the Office of Field Operations Todd C. Owen signed MOAs designating Ithaca Tompkins Regional Airport on June 26, 2020 and Sheboygan County Memorial Airport on May 21, 2020.

airport authority of Decatur Airport requested to terminate its user fee status on July 17, 2019, and the airport authority and CBP mutually agreed to terminate the user fee status of Decatur Airport effective on November 13, 2019.

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

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency is exempted from the prior public notice and comment procedures if it finds, for good cause, that such procedures are impracticable, unnecessary, or contrary to the public interest. This final rule makes conforming changes by updating the list of user fee airports to add four airports that have already been designated by CBP as user fee airports and by removing two airports for which CBP has withdrawn the user fee airport designation, in accordance with 19 U.S.C. 58b. Because this conforming rule has no substantive impact, is technical in nature, and does not impose additional burdens on or take away any existing rights or privileges from the public, CBP finds for good cause that the prior public notice and comment procedures are impracticable, unnecessary, and contrary to the public interest. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

**Regulatory Flexibility Act and Executive Order 12866**

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. This amendment does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

**Paperwork Reduction Act**

There is no new collection of information required in this document; therefore, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

**Signing Authority**

This document is limited to a technical correction of CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b). Commissioner Chris Magnus, having reviewed and approved this document, is delegating the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

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

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

**Amendments to Regulations**

Part 122 of title 19 of the Code of Federal Regulations (19 CFR part 122) is amended as set forth below:

**PART 122—AIR COMMERCE REGULATIONS**

■ 1. The general authority citation for part 122 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.  
\* \* \* \* \*

■ 2. In § 122.15, amend the table in paragraph (b) as follows:

- a. Remove the entries for “Ardmore, Oklahoma” and “Decatur, Illinois”;
- b. Add entries in alphabetical order for “Hayden, Idaho”, “Ithaca, New York”, “Savoy, Illinois”, and “Sheboygan Falls, Wisconsin”.

The additions read as follows:

**§ 122.15 User fee airports.**

\* \* \* \* \*  
(b) \* \* \*

Location	Name
* * * * *	
Hayden, Idaho .....	Coeur d’Alene Airport.
Ithaca, New York .....	Ithaca Tompkins Regional Airport.
* * * * *	
Savoy, Illinois .....	University of Illinois-Willard Airport.
* * * * *	
Sheboygan Falls, Wisconsin.	Sheboygan County Memorial Airport.
* * * * *	
* * * * *	

Date: July 18, 2022.

**Robert F. Altneu,**  
*Director, Regulations & Disclosure, Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.*  
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