



This document is scheduled to be published in the Federal Register on 12/10/2012 and available online at <http://federalregister.gov/a/2012-29752>, and on [FDsys.gov](http://FDsys.gov)

9111-14

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### 19 CFR Part 122

#### CBP Dec. 12-20

### Technical Amendment to List of User Fee Airports: Addition of Bozeman Yellowstone International Airport, Belgrade, Montana

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

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

**SUMMARY:** This document amends the U.S. Customs and Border Protection (CBP) regulations by revising the list of user fee airports to reflect the recent user fee airport designation for Bozeman Yellowstone International Airport in Belgrade, Montana. User fee airports are those airports which, while not qualifying for designation as international or landing rights airports, have been approved by the Commissioner of CBP to receive, for a fee, the services of CBP officers for the processing of aircraft entering the United States, and the passengers and cargo of those aircraft.

**DATES:** *Effective Date:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Roger Kaplan, Office of Field Operations, [Roger.Kaplan@dhs.gov](mailto:Roger.Kaplan@dhs.gov) or 202-325-4543.

**SUPPLEMENTARY INFORMATION:**

## **I. BACKGROUND**

Title 19, Part 122, Code of Federal Regulations (CFR), sets forth regulations relating to the entry and clearance of aircraft in international commerce and the transportation of persons and cargo by aircraft in international commerce.

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 airport or a 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 Homeland Security as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Commissioner of CBP as delegated by the Secretary of Homeland Security determines that the volume of business at the airport is insufficient to justify customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of airport 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 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 Commissioner of CBP in providing customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Commissioner of CBP 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.

The Commissioner of CBP designates airports as user fee airports pursuant to 19 U.S.C. 58b. If the Commissioner 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 local responsible official signing on behalf of the state, city or municipality in which the airport is located. In this manner, user fee airports are designated on a case-by-case basis. The regulation pertaining to user fee airports is 19 CFR 122.15. It addresses the procedures for obtaining permission to land at a user fee airport, the grounds for withdrawal of a user fee designation and includes the list of user fee airports designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b.

Periodically, CBP updates the list of user fee airports at 19 CFR 122.15(b) to reflect those that have been recently designated by the Commissioner. A MOA approving the designation of user fee status for Bozeman Yellowstone International

Airport was signed on March 16, 2012. This document updates the list of user fee airports by adding Bozeman Yellowstone International Airport, in Belgrade, Montana to the list.

## **II. STATUTORY AND REGULATORY REQUIREMENTS**

### **A. Inapplicability of Public Notice and Delayed Effective Date Requirements**

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. The final rule lists an airport already designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b as a user fee airport. This amendment is a conforming change to update the list of user fee airports. Notice and comment for this rule is unnecessary and contrary to the public interest, because the rule merely conforms the regulatory text to reflect the Commissioners' designation of this airport as a user fee airport; it is technical in nature; and it relates only to management, organization, procedure, and practice. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

### **B. The 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, as supplemented by Executive Order 13563.

### **C. Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it

will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**D. Executive Order 13132**

The rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13123, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

**E. Signing Authority**

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

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

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

**AMENDMENTS TO REGULATIONS**

For the reasons set forth above, part 122, Code of Federal Regulations (19 CFR part 122) is amended as set forth below:

**PART 122--AIR COMMERCE REGULATIONS**

1. The 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.

**§ 122.15 [Amended]**

2. The listing of user fee airports in § 122.15(b) is amended by adding, in alphabetical order, in the “Location” column “Belgrade, Montana” and on the same line, in the “Name” column “Bozeman Yellowstone International Airport.”

Date: December 5, 2012

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David V. Aguilar  
Deputy Commissioner  
U.S. Customs and Border Protection

[FR Doc. 2012-29752 Filed 12/07/2012 at 8:45 am; Publication Date: 12/10/2012]