

and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Eastsound, WA. Controlled airspace is necessary to accommodate IFR aircraft executing a new RNAV (GPS) approach procedure at Eastsound Orcas Island Airport, Eastsound, WA.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (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, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Eastsound Orcas Island Airport, Eastsound, WA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE 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 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM WA E2 Eastsound, WA [New]

Eastsound Orcas Island Airport, WA
(Lat. 48°42'29" N., long. 122°54'38" W.)

Within a 3.8-mile radius of the Eastsound Orcas Island Airport, and within 3.7 miles each side of the 163° bearing extending from the 3.8-mile radius to 9.2 miles south of the Eastsound Orcas Island Airport. 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.

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Issued in Seattle, Washington, on September 30, 2009.

Robert E. Henry,

*Acting Manager, Operations Support Group,
Western Service Center.*

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DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 111

[CBP Dec. 09–38]

Customs Broker License Examination Appeals

AGENCY: Customs and Border Protection, DHS.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Customs and Border Protection (CBP) regulations, which govern the licensing and conduct of customs brokers. The rule specifies the proper CBP official who is authorized to decide the final administrative appeal of a

failing grade on the customs broker written examination. The current regulations provide that the final administrative appeal on a failing grade on the broker's exam should be sent in writing to the Secretary of Homeland Security, or her designee. This final rule amends the CBP regulations to specify that examinees should submit final administrative appeals to the Assistant Commissioner, Office of International Trade.

DATES: This final rule is effective on October 13, 2009.

FOR FURTHER INFORMATION CONTACT: Russell Morris, Broker Compliance Branch, Trade Policy and Programs, Office of International Trade, (202) 863–6543.

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930 (Tariff Act), as amended (19 U.S.C. 1641) authorizes the Secretary of the Treasury to prescribe rules and regulations relating to the customs business of brokers as necessary to protect importers and the revenue of the United States. Specifically, section 641 provides that a person (an individual, corporation, association, or partnership) must hold a valid customs broker's license and permit in order to transact customs business on behalf of others. In the case of an applicant for an individual broker's license, section 641 states that the Secretary of the Treasury may conduct an examination to determine an applicant's qualifications for a license.

The Homeland Security Act of 2002 (Homeland Security Act) generally transferred the functions of the U.S. Customs Service from the Treasury Department to the Secretary of Homeland Security. 6 U.S.C. 101 *et seq.* Section 412 of the Homeland Security Act (6 U.S.C. 212) provides that the Secretary of the Treasury retains customs revenue functions unless the Secretary of the Treasury delegates the authority to the Secretary of Homeland Security. The regulation of customs brokers is encompassed within the customs revenue functions set forth in section 412 of the Homeland Security Act. On May 15, 2003, the Secretary of the Treasury delegated authority related to the customs revenue functions to the Secretary of Homeland Security subject to certain exceptions. *See* Treasury Order No. 100–16 (Appendix to 19 CFR Part 0). Since the authority to prescribe the rules and regulations related to customs brokers is not listed as one of the exceptions, this authority now

resides with the Secretary of Homeland Security.

Pursuant to section 641 of the Tariff Act, part 111 of title 19 of the Code of Federal Regulations sets forth the conduct and licensing requirements for customs brokers. Section 111.11 sets forth the basic requirements for obtaining a broker's license, including the requirement that the applicant must obtain a passing grade on the written examination within a 3-year period before submitting the application for a broker's license. 19 CFR 111.11.

Section 111.13(f) provides that an examinee can appeal a failing grade on the written examination by first filing a written appeal with Trade Policy and Programs, Office of International Trade, U.S. Customs and Border Protection (CBP), within 60 calendar days after the date of the written notice of the examination results. 19 CFR 111.13(f). After reviewing the submission, CBP provides the examinee with a written notice setting forth the decision on the appeal. If CBP's decision on the appeal reaffirms the result of the examination, the examinee may subsequently request review of CBP's decision on the appeal by writing to the Secretary of Homeland Security, or her designee, within 60 calendar days after the date of the notice from CBP.

Explanation of Amendment

As noted above, the Secretary of the Treasury delegated to the Secretary of Homeland Security the authority to prescribe rules and regulations relating to customs brokers. The Secretary of Homeland Security, in turn, delegated some of this authority to the Commissioner of CBP including the authority to regulate brokers. *See* Delegation Number 7010.3, dated May 11, 2006.

On October 19, 2007, CBP published a final rule in the **Federal Register**, at 72 FR 59166, setting forth technical corrections to the CBP regulations to reflect changes in CBP's organizational structure. Among the many technical changes in that document, consistent with the Homeland Security Act and Treasury Delegation 100-16, CBP amended 19 CFR 111.13(f) to remove the Secretary of the Treasury as the official with the authority to issue the final administrative appeal on a failing grade on the broker's exam and gave the Secretary of Homeland Security or her designee that authority.

Since the publication of the final rule regarding this particular technical amendment, CBP has determined that the Assistant Commissioner in CBP's Office of International Trade is the most appropriate official to issue the final

administrative appeal on a failing grade on the written customs broker's exam. This designation is consistent with DHS Delegation Number 7010.3, which delegates the authority to regulate customs brokers to the Commissioner of CBP. In addition, CBP notes that the Office of International Trade is staffed with examination subject matter experts and is uniquely positioned to independently and expeditiously review examination appeals. Accordingly, § 111.13(f) is being amended in this document by removing "Secretary of Homeland Security, or his designee" and adding, in its place, "Assistant Commissioner, Office of International Trade, U.S. Customs and Border Protection."

Administrative Procedure Act

Since this rule pertains to matters relating to rules of agency organization, procedure, or practice, this rule is not a substantive rule and is exempt from the notice and comment rulemaking requirements under the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(A). In addition, the delayed effective date requirement of 5 U.S.C. 553(d) does not apply to this rule for these same reasons.

Regulatory Flexibility Act

Because this rule is not subject to the notice and public comment procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12866

These amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule.

Signing Authority

This document is being issued by CBP in accordance with § 0.1(b)(1) of the CBP regulations (19 CFR 0.1(b)(1)).

List of Subjects in 19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

■ For the reasons set forth above, part 111 of title 19 of the Code of Federal Regulations (19 CFR part 111) is amended as follows:

PART 111—CUSTOMS BROKERS

■ 1. The general authority citation for Part 111 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 1641.

■ 2. In § 111.13, paragraph (f) is revised to read as follows:

§ 111.13 Written examination for individual license.

* * * * *

(f) *Appeal of failing grade on examination.* If an examinee fails to attain a passing grade on the examination taken under this section, the examinee may challenge that result by filing a written appeal with Trade Policy and Programs, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20005 within 60 calendar days after the date of the written notice provided for in paragraph (e) of this section. CBP will provide to the examinee written notice of the decision on the appeal. If the CBP decision on the appeal affirms the result of the examination, the examinee may request review of the decision on the appeal by writing to the Assistant Commissioner, Office of International Trade, U.S. Customs and Border Protection, within 60 calendar days after the date of the notice on that decision.

Dated: September 21, 2009.

Janet Napolitano,

Secretary.

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DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Parts 403 and 408

RIN 1215-AB62

Labor Organization Annual Financial Reports

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Department of Labor.

ACTION: Final Rule; Rescission of January 21, 2009 rule.

SUMMARY: This final rule withdraws a rule published in the **Federal Register** on January 21, 2009, which revised the Form LM-2, an annual financial report required by the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), and established standards and procedures by which the Department can revoke, when