

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.*

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## **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

uplands of Womens Bay and is generally located in Section 21, Township 28 South, Range 20 West, Seward Meridian according to the USGS 1:63360 scale quadrangle maps of Kodiak (C-2 and D-2) Alaska. The Kodiak State Airport site includes the developed and undeveloped lands and is generally located within Section 15, Township 28 South, Range 20 West, Seward Meridian according to the USGS 1:63360 scale quadrangle map of Kodiak (D-2) Alaska.

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

Because this document relates to agency organization and management and merely corrects the geographical description of a port, the establishment of which was directed by Congress, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

**Regulatory Flexibility Act**

Because this document is not subject to the notice and public 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**

Agency organization matters such as this are exempt from consideration under Executive Order 12866.

**List of Subjects in Part 101**

Customs duties and inspection, Customs ports of entry, Exports, Foreign trade, Harbors, Imports, Reporting and recordkeeping requirements, Shipments, Vessels.

**Amendments to the Regulations**

For the reasons set forth in the preamble, Part 101 of the Customs Regulations is amended as follows:

**PART 101—GENERAL PROVISIONS**

1. The general authority citation for part 101 and the specific authority citation for §§ 101.3 and 101.4 continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

\* \* \* \* \*

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

\* \* \* \* \*

**§ 101.3 [Amended]**

2. Section 101.3(b)(1) is amended by removing the reference “T.D. 98-24” in the “Limits of port” column adjacent to the entry for “Kodiak” in the “Ports of entry” column under Alaska and adding in its place the reference “T.D. 98-65.”

Dated: June 10, 1998.

**Samuel H. Banks,**

*Acting Commissioner of Customs.*

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 98-20455 Filed 7-30-98; 8:45 am]

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 558**

**New Animal Drugs for Use in Animal Feeds; Bacitracin Methylene Disalicylate**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Alpharma Inc. The supplemental NADA provides for using approved bacitracin methylene disalicylate (BMD) Type A medicated articles to make a Type C medicated feed for replacement chickens.

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

**FOR FURTHER INFORMATION CONTACT:** William T. Flynn, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1652.

**SUPPLEMENTARY INFORMATION:** Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed supplemental NADA 46-592 that provides for using approved BMD® (10, 25, 30, 40, 50, 60, or 75 grams (g) per pound BMD) Type A medicated articles to make Type C medicated replacement chicken feed. A Type C feed containing 50 g per ton (/ t) BMD is fed continuously as an aid in

the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to BMD. A Type C feed containing 100 to 200 g/t BMD is fed for 5 to 7 days, or as long as clinical signs persist, as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to BMD. The supplemental NADA is approved as of June 22, 1998, and the regulations in 21 CFR 558.76(d)(1) are amended in the table in items (vi) and (ix) to add new entries to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of the application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

**PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS**

1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

2. Section 558.76 is amended in paragraph (d)(1) in the table in items (vi) and (ix) by adding new entries to read as follows:

**§ 558.76 Bacitracin methylene disalicylate.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*