which milk from dairy farmers is received if the total of fluid milk products (except filled milk) transferred from such cooperative association plant(s) to, and the milk of member producers physically received at, pool plants pursuant to § 1004.7(a) is not less than 25 percent of the total milk of member producers during the month.

* * * * *

(g) The applicable shipping percentage of paragraphs (a) and (b) or (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views and arguments. Any request for revision of shipping percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective.

3. Section 1004.12 is amended by revising paragraphs (d)(2)(i) and (d)(2)(ii); and by adding a new paragraph (g), to read as follows:

§ 1004.12 Producer.

* * * * *

(d) * * *

(2) * * *

(i) All of the diversions of milk of members of a cooperative association or a federation of cooperative associations to nonpool plants are for the account of such cooperative association or federation, and the amount of member milk so diverted does not exceed 55 percent of the volume of milk of all members of such cooperative association or federation delivered to or diverted from pool plants during the month.

(ii) All of the diversions of milk of dairy farmers who are not members of a cooperative association diverting milk for its own account during the month are diversions by a handler in his capacity as the operator of a pool plant from which the quantity of such nonmember milk so diverted does not exceed 45 percent of the total of such nonmember milk for which the pool plant operator is the handler during the month.

* * * * *

(g) The applicable percentages in paragraphs (d)(2)(i) and (d)(2)(ii) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the diversion limit percentages might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views and arguments. Any request for revision of the diversion limit percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective.

Dated: July 10, 1995.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

[FR Doc. 95–17282 Filed 7–13–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 133

RIN 1515–AB28

Copyright/Trademark/Trade Name Protection; Disclosure of Information

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to revise a previous proposal to amend the Customs Regulations to allow Customs to disclose to intellectual property rights owners sample merchandise and certain information regarding the identity of persons involved with importing merchandise that is detained or seized for suspected infringement of registered copyright, trademark, or trade name rights. The initial proposal is revised in response to comments received and to make the proposed regulatory amendments consistent with provisions of the North American Free-Trade Agreement (NAFTA) and the Uruguay Round Agreements Act relating to the disclosure of information to intellectual property rights owners. This document solicits comments regarding the revised proposal.

DATES: Comments must be received on or before September 12, 1995.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue NW., Washington, DC 20229. Comments submitted may be inspected at Franklin Court, 1099 14th Street NW—Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Wm. Means, Intellectual Property Rights Branch, (202) 482–6957.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1993, the Customs Service published a Notice of Proposed Rulemaking in the **Federal Register** (58 FR 44476) regarding the disclosure to intellectual property rights (IPR) owners of sample merchandise and certain identifying information regarding the persons involved with importing merchandise that is either detained or seized for suspected infringement of registered copyright, trademark, or trade name rights. Thereafter, the United States, Canada, and Mexico entered into the North American Free-Trade Agreement (NAFTA) and, on December 8, 1994, the President signed the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, 108 Stat. 4809), both of which contain provisions pertaining to the protection of IPR.

Chapter 17, Article 1718 of the NAFTA provides for the enforcement of IPR at the border and contains a provision concerning notification of trademark or copyright owners when Customs suspends the release of merchandise for suspected infringement. The provisions of Article 1718 were not addressed by the North American Free Trade Implementation Act (NAFTA Implementation Act) (December 8, 1993) (Pub. L. 103–182, 107 Stat. 2057) because, as stated in the Statement of Administrative Action (House Document 103–159, vol. 1, pp. 637–638, 103d Cong., 1st Sess.), the United States was obligated to make changes in statute or regulation in only five limited areas. The notification provision of Article 1718 was not one of those areas. Accordingly, while the Customs Service does not consider the regulatory changes proposed in this document to be specifically mandated by Article 1718 of the NAFTA or by the NAFTA Implementation Act, their inclusion in this proposal supports the enforcement principles reflected in Chapter 17 of the NAFTA.

The URAA implements the Uruguay Round multilateral trade agreements

negotiated under the General Agreement on Tariffs and Trade (GATT)—now the World Trade Organization (WTO). The GATT Agreement on Trade-Related Aspects of Intellectual Property Rights, as adopted by Congress (section 101(d)(15) of the URAA, 19 U.S.C. 3511), establishes comprehensive standards for the protection of intellectual property and the enforcement of IPR in signatory countries; article 57 of this Agreement confers a right of inspection and information on IPR holders.

Because the proposed rule of August 23, 1993, did not consider the expanded IPR owners notification requirements contained in article 1718 of the NAFTA and article 57 of the GATT Agreement on Trade-Related Aspects of Intellectual Property Rights, Customs is publishing a revised notice of proposed rulemaking and solicits public comments. As the background information previously published in the August 23, 1993, proposed rule continues to be applicable to this revised proposed rule, it is incorporated herein by reference. In summary, the background stated that certain changes to part 133 of the Customs Regulations (19 CFR part 133) were being proposed to codify the rules for disclosure of information to certain parties at interest in import transactions involving infringement of trademarks and copyrights. Among the reasons stated for the proposed rule were the current haphazard availability of such information to parties at interest through the lengthy and cumbersome Freedom of Information Act (FOIA) process; Customs interest in facilitating the parties' private remedies for trademark and copyright infringement; and, the disparity among the current regulations for notification in situations of detention or seizure of trademark and copyright infringing merchandise.

In addition to the changes required because of provisions contained in the NAFTA and GATT Agreement, Customs has revised the language of the proposed regulations in an effort to improve their clarity.

Analysis of Comments

In response to the August 23, 1993 rulemaking proposal, Customs received 65 comments: 53 in favor of the proposal, 5 against the proposal, 5 in favor with a specific qualification or suggestion, and 2 suggested changes to the proposal without taking a position either for or against it.

Each of the 53 responses in favor of the proposal had several elements in common. Most commenters noted the losses to private business each year due to the importation of infringing merchandise, and the private litigation required to deter such infringement. These commenters further noted the lack of information which is provided to IPR owners under the current regulations, and were in favor of additional information being disclosed to facilitate private enforcement actions. Commenters also noted that the proposal would facilitate communication between IPR owners and Customs personnel when the assistance of the IPR owner is required to determine whether or not an imported article is genuine.

Specific qualifications, suggestions and/or concerns are addressed below.

Comment: One commenter requested that in addition to information provided when importers deny piracy of a recorded copyright (19 CFR 133.43), Customs disclose information when an importer does not deny piracy.

Response: In those cases where an importer does not deny infringement under the procedures provided for in § 133.43 of the Customs Regulations (19 CFR 133.43) the merchandise is seized. As set forth in this revised proposal, § 133.42 would be amended to make mandatory the disclosure of the requested information to the IPR owner in such a seizure circumstance.

Comment: One commenter was in favor of disclosure only when a seizure action is indicated, and opposed to disclosure when merchandise is merely ''suspected'' of infringement. In contrast, another commenter requested that an importer's identity be released when goods are detained as well as seized.

Response: Customs only detains that merchandise for which there are reasonable grounds to believe that an infringement of IPR has occurred, or when in the words of the commenter ''firm evidence'' is present to suspect infringement. At the time of detention, Customs tries to determine whether sufficient grounds exist to believe that a substantive violation has occurred such that further action is warranted. In many cases Customs cannot without the assistance of the IPR owner determine whether or not the imported article in fact bears genuine or infringing marks. Customs expects that the proposed regulations will provide Customs personnel with the authority to consult IPR owners, thereby resulting in more accurate decisions regarding infringement. Further, given that, at the time of detention, Customs has not yet determined whether a violation has occurred, Customs believes that the premature release of an importer's identity would be inappropriate. In addition, the constraints of the disclosure laws suggest that the importer's rights against the release of such information make disclosure inappropriate. The proposal is structured to limit the disclosure of information in instances of detention in order to protect the rights of importers.

Comment: Several commenters suggested that more information should be released than was proposed. Specifically, various commenters requested that information pertaining to the country of origin, the identity of the shipper, the means of transport, the identity of the broker (if any), dates of export/import, the port(s) of entry, and a description of the goods all be made available.

Response: Regarding country of origin information, Customs agrees that this information, when available, should be disclosed to IPR owners. Accordingly, to the extent that country of origin information is available from the documents submitted to Customs in the normal course of business, that information will be disclosed. For the purposes of the proposed regulation, country of origin is defined at 19 CFR 134.1(b). Also, the latter three types of information (dates of importation, the port of entry, and a description of the merchandise) will be included in every detention and seizure notification as a matter of course.

However, regarding the other types of information (the identity of the shipper, the means of transport, and the date of export), in balancing the desires of the IPR owner against the disclosure limitations of the Freedom of Information Act (5 U.S.C. 552) and the Trade Secrets Act (18 U.S.C. 1905) and the potential workload of Customs personnel in providing such additional information, Customs considers such disclosure inappropriate.

Regarding disclosure of the identity of the broker (if any), Customs response is set forth below in the response regarding the use of the term ''importer.''

Comment: One commenter requested clarification on the timing of notices; i.e., when during the entry-detention-and-seizure process the notice would be provided.

Response: Although the IPR provisions contained in the NAFTA and the GATT do not specify a minimum time frame for notification to IPR owners, Customs believes that notification within a 30-day time period provides notice in a manner consistent with the purpose of these commitments.

Comment: Several commenters addressed the condition of sample merchandise provided under the proposed regulations.

Response: The condition of samples sent to IPR owners will be as allowed under applicable disclosure laws. Thus, where no part of seized or detained merchandise comes within an exemption from disclosure, the sample provided the IPR owner will be as received by Customs.

Comment: Comments were received with regard to the use of the term ''importer'' and the concern that an importer may in fact be a broker rather than ''the party who actually caused the importation.'' As a result, rights holders could be notified of the identity of a broker acting as importer rather than ''the party who actually caused the importation.''

Response: Customs recognizes that the term ''importer'' may include a broker under certain circumstances. However, Customs does not intend that nominal consignees should be included for the purposes of this regulation.

Comment: One commenter suggested that the term ''mark'' should be defined by specific reference to section 5 of the Lanham Act (15 U.S.C. 1127).

Response: While this comment is not relevant to the proposed regulations, Customs notes that § 133.1 of the Customs Regulations (19 CFR 133.1) provides for the recordation of trademarks registered under ''the Trademark Act of March 3, 1881, the Trademark Act of February 20, 1905, or the Trademark Act of 1946 (15 U.S.C. 1501, *et seq.*) except those registered on the supplemental register,'' and further provides that a ''status copy of the certificate of registration'' shall be provided to Customs at the time of recordation. Because these various Acts incorporate the definition of ''mark'' found at 15 U.S.C. 1127, which is referenced in provisions in Part 133 of the Customs Regulations, Customs believes that no further change to the proposed regulations is required.

Comment: One commenter opposed to the regulations suggested that the proposal would delay Customs in the clearing of shipments.

Response: Customs disagrees that the proposed regulations will result in extended periods of detention, given the revised operating requirements mandated by the Customs Modernization provisions (Title VI of the Act, the Mod Act). Because of the Mod Act, Customs must now provide for a formal decision and notice of detention, and for either the subsequent seizure or release of those goods within a specified time frame. In the event that Customs does not act in accordance with the statute, the goods are treated as excluded from entry, and importers acquire by operation of law certain rights of action with regard to protest against the exclusion.

Comment: Most of the comments in opposition suggested that the information released by Customs will be used by rights owners to obstruct or otherwise interfere with legitimate shipments, initiate spurious litigation, restrict legitimate parallel imports, and constitute the release of protected business confidential information.

Response: Customs does not intend to provide domestic rights owners open access to the Customs and/or shipping documents associated with either detained or seized merchandise. To the contrary, the proposed regulation is intended to define clearly the scope of permissible disclosure and to provide guidelines for the timely and necessary release of information. Customs sees no prolonged delays associated with such disclosure. One of Customs purposes in making such information available is to facilitate rights owners' pursuit of legal remedies for infringement. However, rights owners are not expected to institute frivolous litigation, nor does Customs expect that legitimate trade, in parallel goods or otherwise, would be restricted under the current statutes and regulations which clearly make provision for such legitimate goods.

Several commenters state that the effect of the regulatory change would be to ''hand over'' importers of parallel goods, thereby emasculating the regulatory provisions for such goods. To the contrary, Customs expects that limited, direct contact with IPR owners regarding detained goods will allow the more timely and accurate identification of parallel imports, and that where the importation of such goods is allowed, the goods will be released more rapidly without additional disclosure. All parties with an interest in the parallel goods issue should be aware that Customs has no intention of allowing disclosure beyond that which is legally allowed, and no objective other than the quick and accurate identification of legitimate goods. When rights owners can assist Customs in that task, every effort will be made to avail Customs of the opportunity.

Conclusion

Based on the comments received and the subsequent entry into force of the NAFTA and GATT provisions regarding the notification rights of IPR owners (article 1718 of the NAFTA and section 101(d)(15) of the URAA), Customs has decided to revise the amendments to part 133 of the Customs Regulations that were initially proposed on August 23, 1993, as follows: to make mandatory the disclosure of certain information concerning detained and seized merchandise; to make specific a thirty-day time frame within which Customs will notify IPR owners of detention and seizure activities; and, to allow for the disclosure of country of origin information and other items enumerated.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1099 14th Street, NW—Suite 4000, Washington, DC.

The Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. The amendments more fully carry out the intent of the law and confer a benefit on IPR owners in the enforcement of such rights. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as defined in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 133

Copyright, Counterfeit goods, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Restricted merchandise, Trademarks, Trade names.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend part 133, Customs Regulations (19 CFR part 133), as set forth below:

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The general authority citation for part 133 would continue to read as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

2. It is proposed to amend § 133.22 by revising the section heading; adding a new paragraph (b); redesignating current paragraphs (b) and (c) as paragraphs (c) and (d); and revising the heading of new paragraph (c). The addition and revision to read as follows:

§ 133.22 Procedure on detention of articles subject to restriction.

* * * * *

(b) *Notice of detention and disclosure of information.* When merchandise is detained, in order to obtain assistance in determining whether the item bears an infringing mark, Customs officers shall disclose to the owner of the trademark that merchandise has been detained and provide the following information regarding the detained merchandise, if available, within thirty days, excluding weekends and holidays, of the date of detention:

(1) a sample of the item bearing a suspected mark;

(2) the quantity involved;

(3) the name and address of the manufacturer; and

(4) the country of origin of the merchandise if known.

(c) *Form of notice.* * * *

* * * * *

3. It is proposed to amend § 133.23a by adding a new paragraph (c); redesignating current paragraph (c) as paragraph (d); and revising the section heading of and removing the first sentence in newly designated paragraph (d). The addition and revision to read as follows:

§ 133.23a Articles bearing counterfeit trademarks.

* * * * *

(c) *Notice to trademark owner.* When merchandise is seized, Customs officers shall disclose to the owner of the trademark that merchandise has been seized and provide the following information regarding the seized merchandise within thirty days, excluding weekends and holidays, of the date of seizure:

(1) a sample of the item bearing the counterfeit mark;

(2) the quantity involved;

(3) the name and address of the manufacturer;

(4) the country of origin of the merchandise if known;

(5) the name and address of the exporter; and

(6) the name and address of the importer.

(d) *Failure to make appropriate disposition.* * * *

* * * * *

4. It is proposed to amend § 133.42 by adding a new paragraph (d); and by redesignating current paragraph (d) as new paragraph (e). The revision to read as follows:

§ 133.42 Infringing copies or phonorecords.

* * * * *

(d) *Disclosure.* When merchandise is seized under this section, Customs officers shall disclose to the owner of the copyright that merchandise has been seized and provide the following information within thirty days, excluding weekends and holidays, of the date of seizure:

(1) a sample of the piratical copy;

(2) the quantity involved;

(3) the name and address of the manufacturer;

(4) the country of origin of the merchandise if known;

(5) the name and address of the exporter; and

(6) the name and address of the importer.

* * * * *

5. It is proposed to amend paragraph (b) of § 133.43 by revising the introductory text of paragraph (b); by adding new subparagraphs (b)(1) through (b)(4); and by redesignating current subparagraphs (b)(1) and (b)(2) as (b)(4)(i) and (b)(4)(ii). The addition and revision to read as follows:

§ 133.43 Procedure on suspicion of infringing copies.

* * * * *

(b) *Notice to copyright owner.* If the importer of the suspected infringing copies or phonorecords files a denial as provided in paragraph (a) of this section, the district director shall furnish to the copyright owner within thirty days, excluding weekends and holidays, of the receipt of the importer's denial:

(1) a sample of the suspected piratical item;

(2) the quantity involved;

(3) the name and address of the importer; and

(4) notice that the imported article will be released to the importer unless, within thirty days from the date of the notice, the copyright owner files with the district director: * * *

* * * * *

George J. Weise,

Commissioner of Customs.

Approved: June 20, 1995.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–17065 Filed 7–13–95; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 144–5–7100b; FRL–5256–4]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District and Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from marine coating operations, coating of metal parts and products, motor vehicle assembly line coating operations, solvent cleaning operations, architectural coatings, and motor vehicle and mobile equipment coating operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.