

These final rules amend 15 CFR part 801 by revising paragraph 801.9(b)(5)(ii) to set forth revised reporting requirements for the BE-93, Annual Survey of Royalties, License Fees, and Other Receipts and Payments Between U.S. and Unaffiliated Foreign Persons. The survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (P.L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended). Section 3103(a) of the Act provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services. In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated the authority under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The BE-93 is an annual survey of U.S. royalty and license fee transactions for intangible rights with unaffiliated foreign persons. The data are needed to support U.S. trade policy initiatives, compile the U.S. international transactions accounts and national income and product accounts, assess U.S. competitiveness in international trade in services, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

The change to the BE-93 annual survey contained in these final rules is to require a BE-93 from all U.S. persons whose total receipts from, or total payments to, unaffiliated foreign persons for intangible rights exceeded \$2 million during the reporting year. The new exemption level is an increase from the current level of \$500,000. The increase is intended to reduce respondent burden, particularly for small companies. The data collected on the BE-93 are disaggregated by country and by type of intangible right.

#### Executive Order 12866

These final rules are not significant for purposes of E.O. 12866.

#### Executive Order 13132

These final rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

#### Paperwork Reduction Act

The collection of information required in these final rules has been approved by the Office of Management and Budget under the Paperwork Reduction

Act. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number; such a Control Number (0608-0017) has been displayed.

Public reporting burden for this collection of information is estimated to vary from less than one hour to 25 hours, with an overall average burden of 4 hours. This includes time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing the reviewing the collection of information.

Comments regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE-1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A. Paperwork Reduction Project 0608-0017, Washington, DC 20530. (Attention PRA Desk Officer for BEA.)

#### Regulatory Flexibility Act

The Assistant General Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these final rules will not have a significant economic impact on a substantial number of small entities. While the survey does not collect data on total sales or other measures of the overall size of businesses that respond to the survey, historically the respondent universe has been comprised mainly of major U.S. corporations. With the proposed increase in the exemption level for the survey from \$500,000 to \$2 million in covered receipts or payments, even fewer small businesses can be expected to be subject to reporting than in the past. Of those smaller businesses that must report, most will tend to have specialized operations and activities and will likely report only one type of royalty or license transaction, often limited to transactions with a single partner country; therefore, the burden on them can be expected to be small.

#### List of Subjects in 15 CFR Part 801

Economic statistics, Balance of payments, Foreign trade, Penalties, Report and recordkeeping requirements.

Dated: November 27, 2000.

**J. Steven Landefeld,**

*Director, Bureau of Economic Analysis.*

For the reasons set forth in the preamble, BEA amends 15 CFR part 801, as follows:

#### **PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS**

1. The authority citation for 15 CFR part 801 continues to read as follows:

**Authority:** 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101-3108; and E.O. 11961, 3 CFR, 1977 Comp., p.86 as amended by E.O. 12013, 3 CFR, 1977 Comp., p. 147; E.O. 12318, 3 CFR, 1981 Comp., p. 173; and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

2. Section 801.9 is amended by revising paragraph (b)(5)(ii) to read as follows:

#### **§ 801.9 Reports required.**

\* \* \* \* \*

(b) \* \* \*

(5) \* \* \*

(ii) *Exemption.* A U.S. person otherwise required to report is exempt if total receipts and total payments of the types covered by the form are each \$2 million or less in the reporting year. If the total of either covered receipts or payments is more than \$2 million in the reporting year, a report must be filed.

\* \* \* \* \*

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## **DEPARTMENT OF THE TREASURY**

### **Customs Service**

#### **19 CFR Parts 12, 113, 163 and 178**

[T.D. 00-87]

RIN 1515-AC43

#### **Amended Bond Procedures for Articles Subject to an Exclusion Order Issued by the U.S. International Trade Commission**

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, with some changes, proposed amendments to the Customs Regulations regarding bond procedures for the entry of articles subject to an exclusion order issued by the U.S. International Trade Commission ("Commission"). Merchandise that is subject to a Commission exclusion order may be entitled to entry under a special bond

prescribed by the Secretary of the Treasury in an amount determined by the Commission to be sufficient to protect the complainant from any injury. If the Commission later determines that the respondent has violated the provisions of section 337, the bond may be forfeited to the complainant. This document adds the text of this special importation and entry bond to the Customs Regulations, and makes conforming changes to other regulatory provisions that are impacted by the addition of the new bond text.

**EFFECTIVE DATE:** January 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Glen Vereb, Entry Procedures and Carriers Branch, (202) 927-1327.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), the U.S. International Trade Commission ("Commission") has the authority to conduct investigations into certain alleged unfair practices in import trade. Most complaints filed under this provision involve allegations of patent infringement, trademark infringement, or misappropriation of trade secrets. The Commission may determine that section 337 has been violated or, during the course of an investigation, that there is reason to believe that section 337 has been violated.

If the Commission finds a violation, or reason to believe there is a violation, of section 337, it may direct the Secretary of the Treasury to exclude the subject articles from entry into the U.S. During the period the Commission's exclusion order remains in effect, and prior to the date that the Commission's determination of a violation of section 337 becomes final, articles otherwise excluded may be entered under a single entry bond prescribed by the Secretary of the Treasury.

Certain statutory changes to section 337 of the Tariff Act of 1930 were enacted pursuant to the Uruguay Round Agreements Act (URAA), Public Law 103-465, 108 Stat. 4809 (December 8, 1994). Paragraphs (e)(1) and (j)(3) of section 337, as respectively amended by sections 321(a)(3) and (6) of the URAA, provide that articles subject to a Commission exclusion order may be entered under bond prescribed by the Secretary of the Treasury in an amount determined by the Commission to be sufficient to protect the complainant from any injury and that if the Commission later determines that the respondent has violated the provisions of section 337, the bond may be forfeited to the complainant.

On February 8, 2000, Customs published a document in the **Federal Register** (65 FR 6062) that proposed to amend the Customs Regulations to implement the statutory changes to section 337 effected by section 321 of the URAA.

In that document, it was proposed to create a new single entry bond that must be filed for articles subject to a Commission exclusion order. It was proposed that the amount of the single entry bond would be determined by the Commission to be sufficient to protect the complainant from any injury. It was proposed that if the Commission later determines that the respondent has violated the provisions of section 337, the bond may be forfeited to the 3 complainant. The procedures for importing merchandise subject to the bonding requirements of section 337 were proposed to be set forth in § 12.39, Customs Regulations. The new bond conditions were proposed to be set forth in part 113, Customs Regulations.

Further, it was proposed to remove any reference to Commission exclusion orders from § 113.62, as this section pertains to basic importation and entry bonds. The newly proposed bond to indemnify the complainant under section 337 is applicable where merchandise is subject to a Commission exclusion order and is set forth in appendix B to part 113. Customs wishes to emphasize that the proposed special importation and entry bond is in addition to, not in lieu of, the basic importation and entry bond (§ 113.62) and any other Customs requirements for the importation of merchandise subject to a Commission exclusion order.

It was also noted in the proposal that the "(a)(1)(A)" list of documents required for entry, set forth in the appendix to part 163 of the Customs Regulations, would be amended if the proposal were adopted. The (a)(1)(A) list would be amended to reflect the fact that the new bond would be required as an entry document for entry of merchandise covered by a Commission exclusion order.

In addition, it was noted in the proposal that part 178, which lists the information collections contained in the regulations and the control numbers assigned by OMB, would be amended accordingly if the proposal were adopted.

Comments were solicited on the proposal.

**Discussion of Comment**

One comment was received by Customs in response to the solicitation of comments.

*Comment:* The commenter recommended four changes to the text of the proposed bond, as follows:

(1) *Bond Oblige:* That additional text be included in the bond to better identify the actual complainant. This is suggested to be achieved by including a blank space for the complainant's name to be typed on the bond and by including a blank space in which to type the specific Commission case or investigation number;

(2) *Description of the Merchandise:* That the bond text require the entry date and entry number for the merchandise so that there is certainty as to which merchandise is secured by which bond;

(3) *Prompt Notice to the Principal from the Port Director Regarding the Commission Exclusion Determination:* That a condition of the bond be that the port director's notice to redeliver to the importer be promptly issued after the Commission investigation; and

(4) *Agreement to Pay Face Value of the Bond Upon Default of the Principal's Obligation to Export/Destroy the Merchandise:* That the seventh paragraph of the proposed bond text be clarified to indicate that the principal and the surety, "jointly and severally," agree to pay an amount equal to the face value of the bond in the event of default.

*Customs Response:* With respect to these four recommendations, Customs agrees with the adoption of all but the third (*i.e.*, "Prompt Notice to the Principal from the Port Director regarding the Commission Exclusion Determination"). Unlike the previous Commission bond that indemnified the Government, the new Commission bond indemnifies the complainant. Consequently, the new bond should impose as few preconditions as possible on the Government. Since a Commission order is either served on the principal, or made by general announcement in the **Federal Register**, there is no need to add, as a condition of the bond, the requirement that a port director issue a notice to redeliver, let alone impose a requirement that such a notice be issued "promptly" within a specified time period.

**Conclusion**

After review of the comment and further consideration, Customs has decided that the proposed amendments, with the changes to the text of the proposed special importation and entry bond discussed above, should be adopted as a final rule.

**The Regulatory Flexibility Act and Executive Order 12866**

Because these amendments conform the Customs Regulations to reflect the

terms of an existing statute regarding bond procedures for articles subject to an exclusion order issued by the Commission, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that these amendments will not have a significant impact on a substantial number of small entities. Further, these amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

**Paperwork Reduction Act**

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1515-0222. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in this final rule is in appendix B to part 113. Although other parts of the Customs Regulations are being amended, all information required by these amendments is contained or identified in appendix B to part 113. The information requested is necessary to enable Customs to permit the entry of merchandise the subject of a Commission exclusion order under a bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended. The likely respondents are individuals or commercial organizations that seek to import merchandise that is the subject of a section 337 exclusion order into the U.S.

The estimated average annual burden associated with the collection of information in this final rule is 30 minutes per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Avenue, N.W. Washington, D.C. 20229, and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch at the address set forth above.

**Drafting Information**

The principal author of this document was Suzanne Kingsbury, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects**

*19 CFR Part 12*

Bonds, Customs duties and inspection, Entry of merchandise, Imports, Restricted merchandise, Unfair competition.

*19 CFR Part 113*

Bonds, Customs duties and inspection, Imports.

*19 CFR Part 163*

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

*19 CFR Part 178*

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

For the reasons stated in the preamble, parts 12, 113, 163 and 178 of the Customs Regulations (19 CFR parts 12, 113, 163 and 178) are amended as follows:

**PART 12—SPECIAL CLASSES OF MERCHANDISE**

1. The general authority citation for part 12 and the specific authority citation for § 12.39 continue to read as follows:

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

\* \* \* \* \*

Section 12.39 is also issued under 19 U.S.C. 1337, 1623.

\* \* \* \* \*

2. Section 12.39(b)(2) is revised to read as follows:

**§ 12.39 Imported articles involving unfair methods of competition or practices.**

\* \* \* \* \*

(b) \* \* \*

(2) During the period the Commission's exclusion order remains in effect, excluded articles may be entered under a single entry bond in an amount determined by the International Trade Commission to be sufficient to protect the complainant from any injury. On or after the date that the Commission's determination of a violation of section 337 becomes final, as set forth in paragraph (a) of this section, articles covered by the determination will be refused entry. If a violation of section 337 is found, the bond may be forfeited to the complainant under terms and

conditions prescribed by the Commission. To enter merchandise that is the subject of a Commission exclusion order, importers must: 9

(i) File with the port director prior to entry a bond in the amount determined by the Commission that contains the conditions identified in the special importation and entry bond set forth in appendix B to part 113 of this chapter; and

(ii) Comply with the terms set forth in 19 CFR 210.50(d) in the event of a forfeiture of this bond.

\* \* \* \* \*

**PART 113—CUSTOMS BONDS**

1. The general authority citation for part 113 continues to read as follows, and a new authority citation is added for § 113.74:

**Authority:** 19 U.S.C. 66, 1623, 1624.

\* \* \* \* \*

§ 113.74 also issued under 19 U.S.C. 1337.

**§ 113.62 [Amended]**

2. In § 113.62:  
a. The introductory paragraph is amended by removing that portion of the text which reads “, except that a bond taken in the case of merchandise subject to an exclusion order of the International Trade Commission under 19 U.S.C. 1337 shall be a single entry bond”; and

b. Paragraph (l)(1) is amended by removing the words “except that in the case of merchandise subject to an exclusion order of the International Trade Commission under 19 U.S.C. 1337 which has been released before such order becomes final, the obligors agree to pay liquidated damages in the amount specified in the order for failure to redeliver such merchandise”;

3. A new § 113.74 is added to read as follows:

**§ 113.74 Bond conditions to indemnify a complainant under section 337 of Tariff Act of 1930, as amended.**

A bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended, must contain the conditions listed in appendix B to this part. The bond must be a single entry bond and must be filed in accordance with the provisions set forth in 19 CFR 12.39(b)(2). For the forfeiture or return of this bond, the provisions of 19 CFR 210.50(d) will apply.

4. A new appendix B is added to part 113 to read as follows:

**Appendix B to Part 113—Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, as Amended**

This appendix contains the bond to indemnify a complainant under section

337 of the Tariff Act of 1930, as amended. The provisions contained in 11 §§ 12.39(b)(2) and 113.74 of the Customs Regulations (19 CFR Chapter I) and § 210.50(d) of the U.S. International Trade Commission Regulations (19 CFR Chapter II) apply.

**Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, As Amended**

\_\_\_\_\_ as principal and \_\_\_\_\_ as surety, are held and bound to \_\_\_\_\_, as the complainant in U.S. International Trade Commission case/investigation number \_\_\_\_\_, of unfair practices or methods of competition in import trade in violation of section 337, Tariff Act of 1930, as amended, in the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_), for payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, by these conditions.

Pursuant to the provisions of section 337, Tariff Act of 1930, as amended, the principal and surety recognize that the Commission has, according to the conditions described in its order, excluded from, or authorized, entry into the United States of the following merchandise \_\_\_\_\_

\_\_\_\_\_ under entry number \_\_\_\_\_, dated \_\_\_\_\_.

The principal and surety recognize that the Commission has excluded that merchandise from entry until its investigation is completed, or until its decision that there is a violation of section 337 becomes final.

The principal and surety recognize that certain merchandise excluded from entry by the Commission was, or may be, offered for entry into the United States while the Commission's prohibition is in effect.

The principal and surety recognize that the principal desires to obtain a release of that merchandise pending a final determination of the merchandise's admissibility into the United States, as provided under section 337, and, for that purpose, the principal and surety execute this stipulation:

If it is determined, as provided in section 337 of the Tariff Act of 1930, as amended, to exclude that merchandise from the United States, then, on notification from the port director of Customs, the principal is obligated to export or destroy under Customs supervision the merchandise released under this stipulation within 30 days from the date of the port director's notification.

The principal and surety, jointly and severally, agree that if the principal defaults on that obligation, the principal and surety shall pay to the complainant an amount equal to the face value of the bond as may be demanded by him/her under the applicable law and regulations.

Witness our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year).

\_\_\_\_\_(seal)

Principal

\_\_\_\_\_(seal)

Surety

**PART 163—RECORDKEEPING**

1. The authority citation for part 163 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

2. In the appendix to part 163—Interim (a)(1)(A) List, under section "IV.," the list of documents/records or information required for entry of special categories of merchandise is amended by adding the following new listing in the appropriate numerical order:

\* \* \* \* \*

**Part 113, Appendix B—Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, as Amended**

\* \* \* \* \*

**PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS**

1. The authority citation for part 178 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding a new listing to the table in numerical order to read as follows:

**§ 178.2 Listing of OMB control numbers.**

| 19 CFR section            | Description  | OMB control no. |
|---------------------------|--|-----------------|
| * * * * *                 | * * * * *  | * * * * *       |
| Part 113—Appendix B ..... | Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, as Amended. | 1515-0222       |
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**Raymond W. Kelly,**  
*Commissioner of Customs.*

Approved: December 7, 2000.

**Timothy E. Skud,**  
*Acting Deputy Assistant Secretary of the Treasury.*

[FR Doc. 00-31699 Filed 12-12-00; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Parts 132 and 163**

[T.D. 00-86]

RIN 1515-AC54

**Export Certificates for Lamb Meat Subject to Tariff-Rate Quota**

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, without change, the interim rule amending the Customs Regulations that was published in the **Federal Register** on December 2, 1999, as T.D. 99-87. The interim rule set forth the form and manner by which an importer establishes that a valid export certificate is in effect for certain fresh, chilled or frozen lamb meat that is the subject of a tariff-rate quota, and the product of a participating country, as defined in interim regulations of the United States Trade Representative (USTR). The export certificate enables the importer to claim the in-quota rate of duty on the lamb meat.

**EFFECTIVE DATE:** December 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Porter, Office of Field Operations, (202-927-5399).

**SUPPLEMENTARY INFORMATION:**

**Background**

By Presidential Proclamation No. 7208 dated July 7, 1999, as modified by Presidential Proclamation No. 7214 of July 30, 1999, the President, acting under the authority of section 203 of the Trade Act of 1974 (19 U.S.C. 2253), established a tariff-rate quota with respect to certain fresh, chilled or frozen lamb meat exported to the United States on or after July 22, 1999.

Under a tariff-rate quota, the United States applies one tariff rate, known as the in-quota tariff rate, to imports of a product up to a particular amount, known as the in-quota quantity, and another, higher rate, known as the over-quota rate, to imports of a product in excess of the given amount. The preferential, in-quota tariff rate would be applicable only to the extent that the aggregate in-quota quantity of a product allocated to a country had not been exceeded.