

DEPARTMENT OF THE TREASURY**Customs Service****19 CFR Part 141**

RIN 1515-AC15

Anticounterfeiting Consumer Protection Act: Customs Entry Documentation

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to implement section 12 of the Anticounterfeiting Consumer Protection Act of 1996 (ACPA), enacted by Congress to protect consumers and American businesses from counterfeit copyrighted and trademarked products. Section 12 of the ACPA concerns the content of entry documentation required by Customs to determine whether the imported merchandise or its packaging bears an infringing trademark. The proposed regulatory provision requires importers to provide on the invoice a listing of all trademarks appearing on imported merchandise and its packaging. The amendment is designed to help Customs fight counterfeiting more effectively.

DATES: Comments must be submitted by November 12, 1999.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Suite 3000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lou Alfano, Commercial Enforcement, Office of Field Operations, (202) 927-0005.

SUPPLEMENTARY INFORMATION:**Background**

Finding that counterfeit products cost American businesses an estimated \$200 billion each year worldwide, Congress enacted the Anticounterfeiting Consumer Protection Act of 1996 (ACPA) to make sure that Federal law adequately addresses the scope and sophistication of modern counterfeiting. The provisions of the ACPA are designed to provide important weapons in the fight against counterfeiters. On July 2, 1996, the President signed the ACPA into law (Pub.L. 104-153, 110 Stat. 1386).

The ACPA contains 14 sections, 13 of which are substantive in nature. Section 14 of the ACPA directs the Secretary of the Treasury to prescribe such regulations or amendments to existing regulations as may be necessary to implement and enforce particular provisions of the ACPA.

This document concerns section 12 of the ACPA, which amends section 484(d) of the Tariff Act of 1930 (19 U.S.C. 1484(d)) concerning Customs entry documentation. The amendment to section 484(d) adds a new provision authorizing the Secretary of the Treasury to require that entry documentation contain such information as may be necessary to enable Customs to determine whether the imported merchandise bears an infringing trademark on either the goods or packaging in violation of section 42 of the Act of July 5, 1946 (commonly referred to as the "Trademark Act of 1946" (15 U.S.C. 1124)), or any other applicable law. The amendment enables Customs to identify shipments likely to contain counterfeit products that come from locations where goods bearing a particular mark are not legitimately manufactured.

In this document Customs proposes to implement the entry documentation content requirement by amending paragraph (a)(3) of § 141.86, Customs Regulations (19 CFR 141.86(a)(3)), which concerns the general information requirements of invoices, to specifically require that importers provide on the invoice a listing of any trademark information appearing on imported merchandise and its packaging. This amendment is necessary because while the current section requires information regarding "marks, numbers, and symbols" to be set forth on the invoice, it does not specify trademark information.

Comments

Before adopting this proposed regulatory amendment 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, Office of Regulations and Rulings, U.S. Customs Service, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC.

Inapplicability of the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that this amendment, if adopted, will not have a significant economic impact on a substantial number of small entities, as the amendment concerns identifying information regarding imported merchandise of a sort that is already maintained by the importer. Accordingly, this amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

List of Subjects in 19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Foreign trade statistics, Invoices, Packaging, Prohibited merchandise, Release of merchandise, Reporting and recordkeeping requirements, Restricted merchandise (counterfeit goods), Trademarks, Trade names.

Amendment to the Regulations

For the reasons stated above, it is proposed to amend part 141 of the Customs Regulations (19 CFR part 141) as set forth below:

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

2. In § 141.86, paragraph (a)(3) is revised to read as follows:

§ 141.86 Contents of invoices and general requirements.

(a) * * *

(3) A detailed description of the merchandise, including the name by which it is known; marks, numbers, and symbols under which it is sold by the seller or manufacturer to the trade in the country of exportation; the grade or quality of the merchandise; and a listing of any trademarks appearing on the merchandise or its components; together with a listing of the marks, numbers, and any trademarks appearing on the

packages in which the merchandise is packed;

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Raymond W. Kelly,
Commissioner of Customs.

Approved: July 6, 1999

Dennis M. O'Connell,
Acting Deputy Assistant Secretary of the Treasury
[FR Doc. 99-23686 Filed 9-10-99; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 09-99-007]

Safety Zone, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Notice; withdrawal of proposed rule.

SUMMARY: The Coast Guard is withdrawing a notice of proposed rulemaking (NPRM) to establish a temporary safety zone on the American side of the Detroit River for the Windsor Can-AM Offshore Power Boat Race. The event sponsor withdrew his application for safety reasons, and based on comments received by the Coast Guard, the proposed rule was criticized and deemed not in the best interest of this vital international waterway.

DATES: This proposed rule is withdrawn effective July 30, 1999.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at Marine Safety Office, Detroit between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG French, Coast Guard Marine Safety Office Detroit, 110, at 313-568-9580.

SUPPLEMENTARY INFORMATION:

Regulatory History

On 3 May, 1999, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (64 FR 23570-23571) that the American side of the Detroit River would be closed for the Windsor Can-Am Offshore Race, which at the time was scheduled to take place on August 22, 1999. In the mean time, the Coast Guard received notice from the event organizer on June 4, 1999 of his intention not to hold the race. The organizer noted safety concerns resulting from recent fatal accidents in the Detroit river where high currents and murky waters made

rescue of victims impossible. The event sponsor believed such a race in such a location was "unsafe."

The Coast Guard received 7 letters in response to its proposed rulemaking during the public comment period, all of which were opposed to the closure. Relevant issued commenters raised ranged from adverse economic consequences that were likely to result from the river closure to possible violations of existing binational agreements between the United States and Canada

1. The Detroit and St. Clair River system hereafter called the Detroit River Corridor, is a key international trade route, that if closed, would adversely affect the entire Great Lakes and restrict access to other key economic ports.

2. The proposed closure appears to contradict the Boundary Waters Treaty of 1909 which states in part, "The navigation of all boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels and boats of both countries equally." The treaty goes on to establish a precedence to be observed among the various uses enumerated . . . for these waters." According to the treaty, "No use shall be permitted which tends materially to conflict with or restrain any other use which is given preference over it in this order of precedence:

(1) Uses for domestic and sanitary purposes;

(2) Uses for navigation

(3) Uses for power and irrigation."

As the term "domestic" is not defined, and recreational use is not spelled out or given priority in the treaty, decisions on boundary water uses are in the purview of the International Joint Commission.

3. Closure of the river for even a few hours has a ripple effect on commercial shipping in the Great Lakes that causes more than a minor inconvenience to vessels. Closure of any part of the Detroit River Corridor presents safety issue for vessel operators related to reduced speed and steerage. Compound that with closure of the Belle Isle Anchorage and, for the prudent commercial mariner, you shut down the entire river system for up to six hours, shutting down commercial navigation from Lake Erie to Lake Huron. Such a closure would have a detrimental effect not only on vessel operators, but also pilots and terminal operators, with impacts on the time sensitive nature of delivering raw materials to Great lakes ports and plants.

4. Race locations are variables that can be controlled, so as not to impede

safe commercial navigation. Races similar to the one proposed are conducted in other areas all over the Great Lakes without river closures. A notable example is the Detroit Thunderfest. Those events are held in locations mutually agreeable to recreational and navigational interests. Closure of the river for this event to promote essentially a single sponsor's commercial use of the river over navigational use would set a precedent that might lead to applications for more such events in the future, resulting in further restrictions to navigation. More than that, though, a decision to close the river to the commercial advantage of one sponsor gives that sponsor a material benefit that other sponsors do not get—an arbitrary and capricious decision in favor of one person or group, made to the disadvantage and harm of others. It isn't fair.

5. The proposed rulemaking does not address fully the idea of just compensation for the maritime community adversely affected by the action. Costs are difficult to calculate, especially hidden costs. A more detailed agreement on compensation would need to be worked out well in advance of any such event.

The Coast Guard agrees with all these points of contention. Before withdrawing his permit application, the event sponsor did not have the benefit of the public comments in this matter or an opportunity to address the issues raised during the comment period. The Coast Guard appreciates all the efforts of the regulated community in sharing its views and will retain the public docket for future use. Accordingly, the Coast Guard is withdrawing the notice of proposed rulemaking and terminating further rulemaking on this proposal. Based on the regulatory history of this event, the Coast Guard Captain of the Port Detroit will be reluctant to consider proposed closures in any part of the Detroit River Corridor in the future. The Coast Guard will also work closely with Canadian Officials and the International Joint Commission to ensure that all provisions of the Boundary Waters Treaty of 1909 are upheld.

Dated July 30, 1999.

B. P. Hall,

Commander, USCG, Acting Captain of the Port, Detroit.

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