

# U.S. Customs and Border Protection

**19 CFR Part 122**

**[CBP Dec. 12–08]**

## **TECHNICAL AMENDMENT TO CUBA AIRPORT LIST: ADDITION OF RECENTLY APPROVED AIRPORTS**

**AGENCY:** Customs and Border Protection, Department of Homeland Security.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This document amends the Customs and Border Protection (CBP) regulations by updating the list of airports authorized to accept aircraft traveling to or from Cuba.

**EFFECTIVE DATE:** April 20, 2012.

**FOR FURTHER INFORMATION CONTACT:** Arthur A.E. Pitts, Sr., U.S. Customs and Border Protection, Office of Field Operations, 202–344–2752.

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

Part 122, subpart O, of the CBP regulations sets forth special procedures that apply to all aircraft (except public aircraft) entering or departing the United States to or from Cuba. Prior to January 2011, the regulations required direct flights between the United States and Cuba to arrive at or depart from one of three named U.S. airports: John F. Kennedy International Airport, Los Angeles International Airport, or Miami International Airport.

In a statement issued on January 14, 2011, the President announced a series of changes to ease the restrictions on travel to and from Cuba as part of an initiative to support the Cuban people's desire to freely determine their country's future by, among other things, supporting licensed travel and intensifying people-to-people exchanges. In the statement, the President announced that additional U.S. airports able to process international flights may request

CBP approval to accept direct flights to and from Cuba in accordance with procedures to be established by CBP. On January 28, 2011, CBP published a final rule in the **Federal Register** (76 FR 5058) that amended the CBP regulations to establish such procedures and airport eligibility criteria.

As provided in 19 CFR 122.153(b), airports meeting certain prerequisites may submit a written request to CBP requesting approval to become an airport of entry and departure for aircraft traveling to and from Cuba. Upon determination that the airport is suitable to process these flights, CBP will notify the requestor that the airport has been approved, and that it may immediately begin to accept such aircraft. For more detailed background information on the application and approval procedure and the eligibility criteria, see the January 28, 2011 final rule and 19 CFR 122.153.

#### *List of Approved Airports*

The CBP regulations also specify that for reference purposes, approved airports will be listed on the CBP Web site and reflected in updates to the list in 19 CFR 122.153(c). The current list includes the three airports that were authorized to accept aircraft traveling to or from Cuba before the publication of the January 28, 2011 final rule: John F. Kennedy International Airport, Los Angeles International Airport, and Miami International Airport. This document updates the list of airports to reflect the 16 airports that CBP has approved to accept aircraft traveling to or from Cuba, since the publication of the final rule. Those airports include:

- Hartsfield-Jackson Atlanta International Airport
- Austin-Bergstrom International Airport
- Baltimore/Washington International Thurgood Marshall Airport
- O'Hare International Airport
- Dallas/Fort Worth International Airport
- Fort Lauderdale-Hollywood International Airport
- Southwest Florida International Airport
- George Bush Intercontinental Airport
- Key West International Airport
- Louis Armstrong New Orleans International Airport
- Oakland International Airport
- Orlando International Airport

- Pittsburgh International Airport
- San Juan Luis Muñoz Marín International Airport
- Tampa International Airport
- Palm Beach International Airport

The updated list of approved airports also appears on the CBP Web site: *www.cbp.gov*.

### **Inapplicability of Public Notice and Delayed Effective Date Requirements**

Because this amendment merely updates the list of airports authorized to accept aircraft traveling to or from Cuba to include airports already approved by CBP in accordance with 19 CFR 122.153 and neither imposes additional burdens on, nor takes away any existing rights or privileges from the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

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

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. This amendment does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

### **Signing Authority**

This final rule technical amendment is being issued in accordance with 19 CFR 0.2(a).

### **List of Subjects in 19 CFR Part 122**

Administrative practice and procedure, Air carriers, Aircraft, Airports, Alcohol and alcoholic beverages, Cigars and cigarettes, Cuba, Customs duties and inspection, Drug traffic control, Freight, Penalties, Reporting and recordkeeping requirements, Security measures.

### **Amendments to Regulations**

Part 122, Code of Federal Regulations (19 CFR part 122) is amended as set forth below:

#### **PART 122—AIR COMMERCE REGULATIONS**

■ 1. The authority citation for part 122 continues to read as follows:  
**Authority:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

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■ 2. In § 122.153, revise paragraph (c) to read as follows:

**§ 122.153 Limitations on airport of entry or departure.**

\* \* \* \* \*

(c) *List of airports authorized to accept aircraft traveling to or from Cuba.* For reference purposes, the following is a list of airports that have been authorized by CBP to accept aircraft traveling between Cuba and the United States.

Location	Name
Atlanta, Georgia .....	Hartsfield-Jackson Atlanta International Airport.
Austin, Texas .....	Austin-Bergstrom International Airport.
Baltimore, Maryland .....	Baltimore/Washington International Thurgood Marshall Airport.
Chicago, Illinois .....	O'Hare International Airport.
Dallas, Texas .....	Dallas/Fort Worth International Airport.
Fort Lauderdale, Florida .....	Fort Lauderdale-Hollywood International Airport.
Fort Myers, Florida .....	Southwest Florida International Airport.
Houston, Texas .....	George Bush Intercontinental Airport.
Jamaica, New York .....	John F. Kennedy International Airport.
Key West, Florida .....	Key West International Airport.
Los Angeles, California .....	Los Angeles International Airport.
Miami, Florida .....	Miami International Airport.
New Orleans, Louisiana .....	Louis Armstrong New Orleans International Airport.
Oakland, California .....	Oakland International Airport.
Orlando, Florida .....	Orlando International Airport.
Pittsburgh, Pennsylvania .....	Pittsburgh International Airport.
San Juan, Puerto Rico .....	San Juan Luis Muñoz Marín International Airport.
Tampa, Florida .....	Tampa International Airport.
West Palm Beach, Florida .....	Palm Beach International Airport.

Dated: April 10, 2012.

DAVID V. AGUILAR,  
*Acting Commissioner,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, April 20, 2012 (77 FR 23598)]

**DEPARTMENT OF THE TREASURY  
19 CFR Parts 133 and 151**

**[USCBP-2012-0011; CBP Dec. 12-10]**

**RIN 1515-AD87**

**DISCLOSURE OF INFORMATION FOR CERTAIN  
INTELLECTUAL PROPERTY RIGHTS ENFORCED AT THE  
BORDER**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Interim rule; solicitation of comments.

**SUMMARY:** This document amends, on an interim basis, the U.S. Customs and Border Protection (CBP) regulations pertaining to importations of merchandise bearing recorded trademarks or recorded trade names. The interim amendments, effective upon publication in the **Federal Register**, allow CBP, subject to limitations, to disclose to an intellectual property right holder information appearing on merchandise or its retail packaging that may comprise information otherwise protected by the Trade Secrets Act, for the purpose of assisting CBP in determining whether the merchandise bears a counterfeit mark. Such information will be provided to the right holder in the form of photographs or a sample of the goods and/or their retail packaging in their condition as presented to CBP for examination and alphanumeric codes appearing on the goods. The information will include, but not be limited to, serial numbers, universal product codes, and stock keeping unit (SKU) numbers appearing on the imported merchandise and its retail packaging, whether in alphanumeric or other formats. These changes provide a pre-seizure procedure for disclosing information about imported merchandise suspected of bearing a counterfeit mark for the limited purpose of obtaining the right holder's assistance in determining whether the mark is counterfeit or not.

**DATES:** Effective April 24, 2012; comments must be received on or before June 25, 2012.

**ADDRESSES:** You may submit comments, identified by docket number, by *one* of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP 2012–0011.
- *Mail:* Trade and Commercial Regulations Branch, Office of International Trade, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street NW. (Mint Annex), Washington, DC 20229–1179.

*Instructions:* All submissions received must include the agency name and docket number for this interim rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Office of International Trade, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Paul Pizzeck, Intellectual Property Rights Branch, Regulations and Rulings, Office of International Trade, (202) 325–0020.

## **SUPPLEMENTARY INFORMATION:**

### **Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. If appropriate to a specific comment, the commenter should reference the specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

## Background

### *Purpose of the Interim Amendments*

CBP is responsible for border enforcement of intellectual property rights laws and regulations. One of the primary purposes of CBP's efforts to interdict counterfeit imported goods is to protect the public from unsafe and substandard products, which, in some cases, can be a threat to public health and safety, and also a threat to the national security. In particular, counterfeit integrated circuits and electronic components can find their way into critical manufacturing, military, infrastructure, and consumer product applications. In fact, inquiries conducted by Congress and the Department of Defense (DoD) have revealed that counterfeit electronic components, including counterfeit integrated circuits, have entered military and government supply chains, posing a serious threat to our military and government personnel and infrastructure.

Due to the development of sophisticated techniques of some counterfeiters and the highly technical nature of some imported goods, it has become increasingly difficult for CBP to determine whether some goods suspected of bearing counterfeit marks in fact bear counterfeit marks. The current regulation pertaining to goods bearing counterfeit marks does not provide a procedure for disclosing information to right holders to assist CBP in its efforts to identify goods bearing infringing marks, prior to CBP's making a determination to seize.

In this document, CBP is making several changes to subpart C of part 133 of the CBP regulations (19 CFR part 133) regarding the detention of suspect merchandise and the disclosure of information to right holders during detention of goods bearing potentially counterfeit marks and after seizure of goods bearing counterfeit marks. These changes, made on an interim basis and effective on the date of their publication in the **Federal Register**, include a clarifying revision of the current regulation's definition of "counterfeit trademark" and an addition of a 30-day detention period relative to goods suspected of bearing counterfeit marks. These changes will enhance CBP's enforcement capability against increasingly sophisticated counterfeit products that threaten the public health and safety and national security.

### *The Trade Secrets Act and Disclosure Under the Current Regulation*

The Trade Secrets Act (18 U.S.C. 1905) bars the unauthorized disclosure by government officials of any information received in the course of their employment or official duties when such information (also referred to collectively as "protected information") "concerns or relates to the trade secrets, processes, operations, style of work, or

apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association.” Case law interpreting the statute states that the Act “appears to cover practically any commercial or financial data collected by any Federal employee from any source” and that the “comprehensive catalogue of items” listed in the Act “accomplishes essentially the same thing as if it had simply referred to ‘all officially collected commercial information’ or ‘all business and financial data received.’” See *CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1140 (D.C. Cir. 1987).

Specifically, the Trade Secrets Act protects those required to furnish commercial or financial information to the government by shielding them from the competitive disadvantage that could result from disclosure of that information by the government. In turn, this protection encourages those providing information to the government to furnish accurate and reliable information that is useful to the government.

The protection afforded by the Trade Secrets Act, however, must be balanced against the important and legitimate interests of government. The Trade Secrets Act permits those covered by the Act to disclose confidential information when the disclosure is otherwise “authorized by law,” which includes both statutes expressly authorizing disclosure and properly promulgated substantive agency regulations authorizing disclosure based on a valid statutory interpretation. See *Chrysler v. Brown*, 441 U.S. 281, 294–316 (1979).

#### *The National Defense Authorization Act for Fiscal Year 2012*

Section 818(g) of the National Defense Authorization Act for Fiscal Year 2012 (NDAA) (Pub. L. 112–81) provides:

If United States Customs and Border Protection suspects a product of being imported in violation of section 42 of the Lanham Act, and subject to any applicable bonding requirements, the Secretary of the Treasury may share information appearing on, and unredacted samples of, products and their packaging and labels, or photographs of such products, packaging, and labels, with the rightholders of the trademarks suspected of being copied or simulated for purposes of determining whether the products are prohibited from importation pursuant to such section.

The NDAA enhances CBP’s capability to enforce laws protecting marks by authorizing the agency to disclose certain information to right holders to assist CBP officers in determining whether suspect merchandise bears counterfeit marks.

### *Further Statutory Analysis Concerning Disclosure of Commercial Information*

Under the NDAA, CBP is authorized by law to make certain disclosures. One reading of the language of the NDAA, however, is that disclosure is limited to trademarks and does not include other marks noted under the Lanham Act (certification, collective, and service marks). Moreover, some have suggested that the legislative history of the Act indicates that certain legislators intended that the exception to the Trade Secrets Act created by the NDAA is to apply only to military sales.

Consequently, CBP, in publishing this interim rule, is exercising regulatory authority to remove any ambiguity about CBP's authority to disclose information with regard to certification, collective, and service marks, as well as trademarks, and to further clarify that the disclosure authority extends to all imports and not just those associated with military sales.

As noted above, the Secretary of the Treasury (the Secretary) has authority to disclose information otherwise protected under the Trade Secrets Act when such disclosures are authorized by law. Disclosures meeting the "authorized by law" standard of the Trade Secrets Act include those made under regulations that are (1) in compliance with the provisions of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and (2) based on a valid statute. Regarding CBP's statutory authority to disclose certain importation information to right holders, various provisions in titles 15 and 19 of the United States Code (U.S.C.) authorize CBP to promulgate regulations to enforce prohibitions against the importation of merchandise that infringes intellectual property rights.

Section 42 of the Lanham Act (15 U.S.C. 1124) prohibits the importation of merchandise bearing a mark which copies or simulates a registered mark. In order to aid CBP in enforcing this prohibition, section 42 provides for the recordation of registered marks under such regulations as the Secretary of the Treasury shall prescribe. Sections 526(e) and 595a(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1526(e), and 19 U.S.C. 1595a(c)), prohibit the importation of merchandise bearing a counterfeit mark and the introduction or attempted introduction into the United States of merchandise or packaging in which, *inter alia*, trademark or trade name protection violations are involved, including, but not limited to violations of sections 1124, 1125 and 1127 of Title 15 (sections 42, 32 and 45 of the Lanham Act). Moreover, section 526(e) of the Tariff Act of 1930, as amended, (19 U.S.C. 1526(e)) requires CBP to notify the owner of the trademark when merchandise bearing a counterfeit mark within the

meaning of section 1127 of Title 15 and imported in violation of section 1124 of Title 15 is seized. Section 624 of the Tariff Act of 1930, as amended (19 U.S.C. 1624), authorizes the Secretary of the Treasury to promulgate regulations to carry out the provisions of the Tariff Act of 1930, as amended. Collectively, these statutes authorize the Secretary of the Treasury, in instances where identification of suspected violative merchandise requires the assistance of right holders for the specific and limited purpose of determining whether imported merchandise bears a counterfeit mark, to provide for the disclosure of certain information to right holders upon importation.

The interim rule is intended to support the statutory enforcement scheme discussed above and to allow CBP officers, without violating the Trade Secrets Act, to disclose information that might reveal otherwise confidential commercial or financial information in order to assist CBP in identifying merchandise bearing counterfeit marks at the time of detention.

#### *Notice Provision To Prevent Economic Harm to Legitimate Importers*

In addition, CBP is putting in place a procedure that provides the importer the opportunity to demonstrate to CBP, within seven (7) days (exclusive of weekends and holidays) of a notice of detention, that the article in question does not bear a counterfeit mark, before releasing information to the right holder. Only absent such a demonstration by the importer will information, images, or samples be shared with the right holder. This procedural safeguard is intended to achieve the policy goals of the NDAA in a manner consistent with maintaining the flow of information to the government, fostering competition, keeping prices low, and maintaining consumer choice.

Information that is covered by the Trade Secrets Act and obtained from an importer, including the importer's name and place of business, manufacturer's identity, supply chain, and other confidential commercial or financial information, if disclosed, could provide insights into the importer's business operations, processes, style of work, and income, all inuring to the importer's competitive disadvantage. For example, product coding, such as serial numbers, and SKUs often incorporates information about where and when a product was manufactured, as well as other information that could allow one to identify information about the manufacture of the product. It is likewise possible that such information could directly or indirectly reveal the identity of wholesalers, exporters, or other parties in the importer's supply chain and the timing and pricing of the transactions involving those entities. Such confidential commercial or financial

information, if not properly protected, could be used by competitors to an importer's economic disadvantage, potentially resulting in reduced competition and consumer choice with attendant increases in prices.

*Interim Amendments Concerning Pre-Seizure Disclosure of Information*

This document is amending the CBP regulations to allow CBP to provide right holders, for the limited purpose of assisting CBP in making infringement determinations, with any information appearing on merchandise and/or its retail packaging, or a sample of the merchandise including its retail packaging, when CBP reasonably suspects that such merchandise and/or packaging may bear a counterfeit mark (see § 133.21(b)(1) of this rule). This disclosure of information, which includes images (photographs) or samples, as appropriate, could potentially disclose confidential commercial or financial information otherwise protected under the Trade Secrets Act. The interim regulation also includes a procedure that allows an importer, prior to release of the information, the opportunity to establish, within seven (7) days (excluding weekends and holidays) of a notice of detention, that the marks are not counterfeit. Only absent such a demonstration by the importer will the disclosure be made to the right holder.

In conjunction with the interim rule's procedure outlined above, CBP is adding to the regulation a 30-day period (and an extension, if requested by the importer for good cause) to commence upon presentation of the goods for examination, within which a determination with respect to admissibility will be made (see § 133.21(b) of this rule). Under the interim regulation, CBP will issue the notice of detention within five days of its detention decision, starting the seven-day period within which the importer may demonstrate that the goods do not bear a counterfeit mark. Only if such demonstration is untimely or insufficient will CBP release information to the right holder.

In brief summation, this change to the regulations concerning counterfeit marks, in principal part, allows CBP, prior to seizure, to release to right holders information appearing on goods (and/or their retail packaging), and on images and samples, that are not redacted, i.e., images showing the merchandise (and/or its retail packaging) in its condition as presented for examination and samples (and/or its retail packaging) in their condition as so presented. This allows the right holder to assist CBP in its enforcement effort to prevent the entry of goods bearing counterfeit marks. However, in certain circum-

stances, DHS criminal investigators may provide right holders such information or samples without notifying the importer, for example to obtain from the right holder evidence that will assist the investigators in demonstrating probable cause when they seek a judicial order in the course of a criminal or national security investigation.

*Other Interim Amendments To Clarify and Maintain Consistency With the Current Regulations*

As mentioned previously, CBP is also making a clarifying amendment to the definition of “counterfeit trademark.” The amended definition of “counterfeit mark” uses the term “mark” instead of “trademark” (see § 133.21(a) of this rule).

In addition, CBP is amending the regulations pertaining to goods bearing copying or simulating marks and restricted gray market goods to correct an inconsistency in the regulatory scheme for such goods (19 CFR 133.22(f) and 133.23(f), respectively). The 30-day detention period for these goods is set forth in § 133.25 of the CBP regulations, and this procedure provides for extension of the detention period applicable to these goods upon good cause shown. Therefore, CBP is removing from §§ 133.22(f) and 133.23(f) inconsistent language that appears to restrict the respective detention periods to only 30 days.

Lastly, CBP is amending the provisions of 19 CFR 151.16(a) regarding detention of merchandise to make them consistent with the interim regulations in this rulemaking. The regulations pertaining to detention of merchandise exclude from their applicability imported articles suspected of being infringing copies or phonorecords, imported goods bearing marks which are confusingly similar to recorded trademarks, and imported restricted gray market merchandise. The interim amendment to section 151.16(a) excludes imports of goods suspected of bearing counterfeit marks from the applicability of the regulations pertaining to detention of merchandise.

**Inapplicability of Notice and Delayed Effective Date Requirements**

As explained previously in this document (see “Purpose of the Interim Amendments” subsection in the *Background* section), CBP is responsible for enforcement of intellectual property rights laws and regulations at the border. An important goal of CBP efforts to interdict counterfeit imported goods is to protect the public from unsafe and substandard counterfeit products. In addition, counterfeit goods present a threat to national security and our critical infrastructure. Counterfeit integrated circuits and electronic components can be used in critical manufacturing, military, infrastructure, and con-

sumer product applications. Inquiries conducted by Congress and the DoD have revealed that counterfeit electronic components, including counterfeit integrated circuits, have entered military and government supply chains, posing a serious threat to our military and government personnel and infrastructure. Moreover, interdiction of counterfeit goods has been made increasingly difficult due to the development of sophisticated techniques used by some counterfeiters and the highly technical nature of some imported goods.

Because this rule addresses an immediate need to address without delay vulnerabilities in our military and government procurement processes, as well as an immediate need to interdict goods bearing counterfeit marks that pose health and safety risks to the American public, CBP has determined that it would be contrary to the public interest to delay the effective date of this rule. Therefore, CBP has determined that in accordance with the sections 553(b)(B) and 553(c) of the Administrative Procedure Act (5 U.S.C 553), good cause exists to dispense with the prior comment requirement and delayed effective date requirement. Subsection 818(g) of the NDAA was effective upon enactment, but the authority it provides the Secretary is discretionary and not mandatory. Accordingly, although some may interpret the statute to allow the Secretary to exercise his discretionary authority without amending CBP's existing regulations, CBP believes that amending the existing, more restrictive regulations is consistent with the requirements of the Administrative Procedure Act and will eliminate any legal ambiguity. The interim regulations also promote transparency and provide an important opportunity to gather feedback and input from stakeholders regarding implementation of § 818(g) of the NDAA.

### **Executive Orders 12866 and 13563**

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action" although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

## **Regulatory Flexibility Act**

Because a notice of proposed rulemaking is not required under section 553(b)(3)(B) of the APA for the reasons described in the *Inapplicability of Notice and Delayed Effective Date Requirements* section of this document, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, this interim rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

## **Signing Authority**

This rulemaking is being issued in accordance with 19 CFR 0.1(a)(1), pertaining to the authority of the Secretary of the Treasury (or that of his or her delegate) to approve regulations concerning trademark enforcement.

## **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the collections of information for this document are included in an existing collection for Notices of Detention (OMB control number 1651-0073). An agency may not conduct, 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 burden hours related to the Notices of Detention for OMB control number 1651-0073 are as follows:

**Number of Respondents:** 1,350.

**Number of Responses:** 1,350.

**Time per Response:** 2 hours.

**Total Annual Burden Hours:** 2,700.

There is no change in burden hours under this collection with this rule.

## **List of Subjects**

### *19 CFR Part 133*

Copying or simulating trademarks, Copyrights, Counterfeit trademarks, Customs duties and inspection, Detentions, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures, Trademarks, Trade names.

### *19 CFR Part 151*

Customs duties and inspection, Examination, Imports, Penalties, Reporting and recordkeeping requirements, Sampling and testing.

## Amendments to the CBP Regulations

For the reasons stated above in the preamble, CBP is amending parts 133 and 151 of title 19 of the Code of Federal Regulations (19 CFR parts 133 and 151) to read as follows:

### **PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS**

■ 1. The general authority citation for part 133 and the specific authority citation for § 133.21 through 133.25 are revised, to read as follows:

**Authority:** 15 U.S.C. 1124, 1125, 1127; 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1202, 1499, 1526, 1624; 31 U.S.C. 9701;

\* \* \* \* \*

Sections 133.21 through 133.25 also issued under 18 U.S.C. 1905; Sec. 818(g), Pub. L. 112–81.

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■ 2. The heading for subpart C is revised to read as follows:

### **Subpart C—Importations Bearing Recorded Marks or Trade Names**

■ 3. Section 133.21 is revised to read as follows:

#### **§ 133.21 Articles suspected of bearing counterfeit marks.**

(a) *Counterfeit mark defined.* A “counterfeit mark” is a spurious mark that is identical with, or substantially indistinguishable from, a mark registered on the Principal Register of the U.S. Patent and Trademark Office.

(b) *Detention.* CBP may detain any article of domestic or foreign manufacture imported into the United States that bears a mark suspected of being a counterfeit version of a mark that is registered with the U.S. Patent and Trademark Office and is recorded with CBP pursuant to subpart A of this part. The detention will be for a period of up to thirty days from the date on which the merchandise is presented for examination. The 30-day time period may be extended for up to an additional thirty days for good cause shown by the importer. In accordance with 19 U.S.C. 1499, if after the detention period and any authorized extensions the article is not released the article will be deemed excluded for the purposes of 19 U.S.C. 1514(a)(4).

(1) *Notice to importer of detention and possible disclosure.* Within five days (excluding weekends and holidays) from the date of a decision to detain, CBP will notify the importer in writing of the detention. The notice will inform the importer that a disclosure of infor-

mation concerning the detained merchandise may be made to the owner of the mark to assist CBP in determining whether any marks are counterfeit, unless the importer presents information within seven days of the notification (excluding weekends and holidays) establishing to CBP's satisfaction that the detained merchandise does not bear a counterfeit mark. CBP may disclose information appearing on the merchandise and/or its retail packaging, images (including photographs) of the merchandise and/or its retail packaging in its condition as presented for examination, or a sample of the merchandise and/or its retail packaging in its condition as presented for examination. The release (disclosure) of a sample is subject to the bond and return requirements of paragraph (c) of this section. Where the importer does not timely provide information or the information provided is insufficient for CBP to determine that the merchandise does not bear a counterfeit mark, CBP may proceed with the disclosure to the owner of the mark, and will so notify the importer. Disclosure under this section may include any serial numbers, dates of manufacture, lot codes, batch numbers, universal product codes, or other identifying marks appearing on the merchandise or its retail packaging, in alphanumeric or other formats.

(2) *Notice to owner of the mark and disclosure of information.* From the time merchandise is presented for examination until the time a notice of detention is issued, CBP may disclose to the owner of the mark any of the following information in order to obtain assistance in determining whether an imported article bears a counterfeit mark. Once a notice of detention is issued, CBP will disclose to the owner of the mark the following information, if available, within thirty days (excluding weekends and holidays) from the date of detention:

- (i) The date of importation;
- (ii) The port of entry;
- (iii) The description of the merchandise from the entry;
- (iv) The quantity involved; and
- (v) The country of origin of the merchandise.

(3) *Redacted images and samples made available to the owner of the mark.* Notwithstanding the notice and seven-day response procedure of paragraph (b)(1) of this section, CBP may, at any time after presentation of the merchandise for examination, provide to the owner of the mark images or a sample of the detained merchandise or its retail packaging, provided that identifying information has been removed, obliterated, or otherwise obscured. Identifying information includes, but is not limited to, serial numbers, dates of manufacture, lot codes, batch numbers, universal product codes, the name or address of the manufacturer, exporter, or importer of the merchandise, or any mark

that could reveal the name or address of the manufacturer, exporter, or importer of the merchandise, in alphanumeric or other formats. CBP will release to the owner of the mark a sample under this paragraph when the owner furnishes CBP a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage to the sample resulting from the furnishing of a sample by CBP to the owner of the mark. CBP may demand the return of the sample at any time. The owner of the mark must return the sample to CBP upon demand or at the conclusion of any examination, testing, or similar procedure performed on the sample. In the event that the sample is damaged, destroyed, or lost while in the possession of the owner of the mark, the owner must, in lieu of return of the sample, certify to CBP that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.21(b)(3) was (damaged/destroyed/lost) during examination, testing, or other use.”

(c) *Unredacted samples made available to the owner of the mark prior to seizure.* A sample of the imported merchandise may be released prior to seizure to the owner of the mark in accordance with paragraph (b)(1) of this section. CBP will release to the owner of the mark a sample under this paragraph when the owner furnishes CBP a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage to the sample resulting from the furnishing of a sample by CBP to the owner of the mark. CBP may demand the return of the sample at any time. The owner of the mark must return the sample to CBP upon demand or at the conclusion of any examination, testing, or similar procedure performed on the sample. In the event that the sample is damaged, destroyed, or lost while in the possession of the owner of the mark, the owner must, in lieu of return of the sample, certify to CBP that: “The sample described as [insert description] and provided pursuant to 19 CFR 133.21(c) was (damaged/destroyed/lost) during examination, testing, or other use.”

(d) *Seizure.* Upon a determination by CBP, made any time after the merchandise has been presented for examination, that an article of domestic or foreign manufacture imported into the United States bears a counterfeit mark, CBP will seize such merchandise and, in the absence of the written consent of the owner of the mark, forfeit the seized merchandise in accordance with the customs laws. When merchandise is seized under this section, CBP will disclose to the

owner of the mark the following information, if available, within thirty days (excluding weekends and holidays) from the date of the notice of seizure:

- (1) The date of importation;
- (2) The port of entry;
- (3) The description of the merchandise from the entry;
- (4) The quantity involved;
- (5) The name and address of the manufacturer;
- (6) The country of origin of the merchandise;
- (7) The name and address of the exporter; and
- (8) The name and address of the importer.

(e) *Samples made available to the owner of the mark after seizure.*

At any time following a seizure of merchandise bearing a counterfeit mark under this section, CBP may provide a sample and its retail packaging, in its condition as presented for examination, to the owner of the mark for examination, testing, or other use in pursuit of a related private civil remedy for trademark infringement. To obtain a sample under this paragraph, the owner of the mark must furnish CBP a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage to the sample resulting from the furnishing of a sample by CBP to the owner of the mark. CBP may demand the return of the sample at any time. The owner of the mark must return the sample to CBP upon demand or at the conclusion of the examination, testing, or other use in pursuit of a related private civil remedy for infringement. In the event that the sample is damaged, destroyed, or lost while in the possession of the owner of the mark, the owner must, in lieu of return of the sample, certify to CBP that: "The sample described as [insert description] and provided pursuant to 19 CFR 133.21(e) was (damaged/destroyed/lost) during examination, testing, or other use."

(f) *Consent of the mark owner; failure to make appropriate disposition.* The owner of the mark, within thirty days from notification of seizure, may provide written consent to the importer allowing the importation of the seized merchandise in its condition as imported or its exportation, entry after obliteration of the mark, or other appropriate disposition. Otherwise, the merchandise will be disposed of in accordance with § 133.52 of this part, subject to the importer's right to petition for relief from forfeiture under the provisions of part 171 of this chapter.

**§ 133.22 [Amended]**

■ 4. Section 133.22(f), first sentence, is amended by removing the words “within the 30-day period of detention” and adding in their place the words “within the period of detention as provided in § 133.25 of this subpart”.

**§ 133.23 [Amended]**

■ 5. Section 133.23(f), first sentence, is amended by removing the words “within the 30-day period of detention” and adding in their place the words “within the period of detention as provided in § 133.25 of this subpart”.

**§ 133.26 [Amended]**

■ 6. Section 133.26 is amended by removing from the first sentence the words “subject to the restrictions of § 133.22 or § 133.23 of this subpart” and adding in their place the words “subject to the restrictions of § 133.21, § 133.22 or § 133.23 of this subpart”.

**PART 151—EXAMINATION, SAMPLING AND TESTING OF MERCHANDISE**

■ 7. The general authority citation for part 151 continues to read as follows:

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

\* \* \* \* \*

■ 8. Section 151.16(a) is revised to read as follows:

**§ 151.16 Detention of merchandise**

(a) *Exemptions from applicability.* The provisions of this section are not applicable to detentions effected by CBP on behalf of other agencies of the U.S. Government in whom the determination of admissibility is vested and to detentions arising from possibly piratical copies (see part 133, subpart E, of this Chapter), imports of articles bearing counterfeit marks or suspected counterfeit marks, goods bearing marks which are confusingly similar to recorded trademarks, or restricted gray market merchandise (see part 133, subpart C, of this chapter.)

\* \* \* \* \*

Dated: April 18, 2012.

DAVID V. AGUILAR,  
*Acting Commissioner,*  
*U.S. Customs and Border Protection.*

**19 CFR Part 101****[Docket No. USCBP-2012-0006]****EXTENSION OF PORT LIMITS OF INDIANAPOLIS, IN****AGENCY:** U.S. Customs and Border Protection, DHS.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** U.S. Customs and Border Protection (CBP) is proposing to extend the geographical limits of the port of entry of Indianapolis, Indiana. The proposed extension will make the boundaries more easily identifiable to the public and will allow for uniform and continuous service to the extended area of Indianapolis, Indiana. The proposed change is part of CBP's continuing program to use its personnel, facilities, and resources more efficiently, and to provide better service to carriers, importers, and the general public.

**DATES:** Comments must be received on or before June 25, 2012.

**ADDRESSES:** Please submit comments, identified by docket number, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2012-0006.
- *Mail:* Border Security Regulations Branch, Office of International Trade, U.S. Customs and Border Protection, Mint Annex, 799 9th Street NW., Washington, DC 20229-1179.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and 19 CFR 103.11(b) on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Border Security Regulations Branch, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Roger Kaplan, Office of Field Operations, U.S. Customs and Border Protection, (202) 325-4543, or by email at *Roger.Kaplan@dhs.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

### **II. Background**

As part of its continuing efforts to use CBP's personnel, facilities, and resources more efficiently, and to provide better service to carriers, importers, and the general public, CBP is proposing to extend the limits of the Indianapolis, Indiana, port of entry. CBP ports of entry are locations where CBP officers and employees are assigned to accept entries of merchandise, clear passengers, collect duties, and enforce the various provisions of customs, immigration, agriculture, and related U.S. laws at the border. The term "port of entry" is used in the Code of Federal Regulations (CFR) in title 8 for immigration purposes and in title 19 for customs purposes. For customs purposes, CBP regulations list designated CBP ports of entry and the limits of each port in section 101.3(b)(1) of title 19 (19 CFR 101.3(b)(1)).<sup>1</sup>

Indianapolis was designated as a customs port of entry by the President's message of March 3, 1913, concerning a reorganization of the customs service pursuant to the Act of August 24, 1912 (37 Stat. 434; 19 U.S.C. 1). Although CBP is not aware of any document which specifically sets forth the geographical boundaries of the Indianapolis port of entry, the port limits are generally understood to be the corporate limits of the city of Indianapolis.

In 1970, by act of the Indiana legislature, the city of Indianapolis consolidated with the surrounding county of Marion. However, four municipalities within Marion County remained excluded from the corporate limits of Indianapolis. Additionally, members of the trade community have expressed a need for CBP services in areas west and south of the city limits.

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<sup>1</sup> Ports of entry for immigration purposes are currently listed at 8 CFR 100.4.

CBP would like to extend the boundaries of the port of entry of Indianapolis, Indiana, to include all the territory within the boundaries of Marion County, Indiana, as well as portions of the neighboring counties of Boone, Hendricks, and Johnson. This update is necessary to clarify the geographic limits of the port. The update will also allow CBP to better serve the public in the greater Indianapolis area, by providing regular service to (1) municipalities within Indianapolis that are not technically within the city limits, and to (2) locations to the immediate west and south of the city. The proposed change in the boundaries of the port of Indianapolis, Indiana, will not result in a change in the service that is provided to the public by the port and will not require a change in the staffing or workload at the port.

### **III. Proposed Port Limits of Indianapolis, Indiana**

The new port limits of Indianapolis, Indiana, are proposed as follows:

### **IV. Statutory and Regulatory Reviews**

#### *A. Executive Orders 12866 and 13563*

DHS does not consider this proposed rule to be a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563. The proposed change is intended to expand the geographical boundaries of the Indianapolis, Indiana, port of entry and make the boundaries more easily identifiable to the public. There are no new costs to the public associated with this rule, and the rule does not otherwise implicate the factors set forth in section 3(f) of Executive Order 12866. Accordingly, this rule has not been submitted to the Office of Management and Budget for review.

#### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires federal agencies to examine the impact a rule would have on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This proposed rule merely expands the limits of an existing port of entry and does not impose any new costs on the public. Accordingly, we certify that this rule would not have a significant economic impact on a substantial number of small entities.

### *C. Signing Authority*

The signing authority for this document falls under 19 CFR 0.2(a) because the extension of port limits is not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, this notice of proposed rulemaking may be signed by the Secretary of Homeland Security (or her delegate).

### **V. Authority**

This change is proposed under the authority of 5 U.S.C. 301; 6 U.S.C. 203; 19 U.S.C. 2 & note, 66, and 1624.

### **VI. Proposed Amendment to the Regulations**

If the proposed port limits are adopted, CBP will amend the list of CBP ports of entry at 19 CFR 101.3(b)(1) to reflect the new description of the limits of the Indianapolis, Indiana, port of entry.

Dated: April 10, 2012.

JANET NAPOLITANO,  
*Secretary of Homeland Security.*

[Published in the Federal Register, April 25, 2012 (77 FR 24656)]

