

(TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS or FMS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove "or GPS or FMS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP'S.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on March 6, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

* * * *Effective April 23, 1998*

Yuma, AZ, Yuma MCAS/Yuma Intl, VOR/DME RWY 17, Orig Cancelled
Yuma, AZ, Yuma MCAS/Yuma Intl, VOR/DME or TACAN-1 RWY 17, Amdt 1
Yuma, AZ, Yuma MCAS/Yuma Intl, VOR/DME RNAV RWY 21R, Amdt 3 Cancelled
Yuma, AZ, Yuma MCAS/Yuma Intl, VOR/DME RNAV RWY 21R, Amdt 4
Petaluma, CA, Petaluma Muni, VOR RWY 29, Orig Cancelled
Moose Lake, MN, Moose Lake Carlton County, NDB or GPS Rwy 4, Amdt 1 Cancelled
Moose Lake, MN, Moose Lake Carlton County, NDB RWY 4, Amdt 1

[FR Doc. 98-6396 Filed 3-11-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 133

[T.D. 98-21]

RIN 1515-AB28

Copyright/Trademark/Trade Name Protection; Disclosure of Information

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to allow Customs to provide to intellectual property rights (IPR) owners sample merchandise and to disclose to IPR owners certain information regarding the identity of persons involved with importing merchandise that is detained or seized for infringement of the IPR owner's

registered copyright, trademark, or trade name rights. These amendments will assist Customs in making infringement determinations and enable concerned IPR owners to more expeditiously proceed to enforce their property rights by means of instituting appropriate judicial remedies against the parties identified as being involved with infringement of the rights of the IPR owner.

EFFECTIVE DATE: April 13, 1998.

FOR FURTHER INFORMATION CONTACT: The Intellectual Property Rights Branch, Office of Regulations and Rulings, (202) 927-2330.

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 identity of persons involved with importing merchandise that is either detained or seized for infringing copyright, trademark, or trade name rights. Sixty-five comments were received pursuant to this notice.

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. The URAA contains the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) (19 U.S.C. 3511) of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT)—now the World Trade Organization (WTO).

On July 14, 1995, Customs published its analysis of the 65 comments in a revised Notice of Proposed Rulemaking (60 FR 36249). The revised Notice, in addition to making changes in response to the comments received, proposed further regulatory changes to make the regulations consistent with certain provisions of the NAFTA and the URAA and to improve the clarity of the proposed regulations. Accordingly, the Background information contained in the revised Notice regarding these agreements remains applicable and is incorporated here by reference.

The comments received in response to the revised Notice of Proposed Rulemaking published on July 14, 1995, and Customs responses to them are set forth below.

Analysis of Comments

Twenty-two comments were received (21 in favor, including 8 with suggested changes to the revised proposal, and 1 against) that raised 7 areas of concern:

(1) Disclosure of confidential business information would violate both the Freedom of Information Act (FOIA) and the Trade Secrets Act;

(2) Disclosure of confidential importer information to the IPR holder is contrary to the intent of both NAFTA and GATT;

(3) The 30-day notification period does not allow the IPR owner to act expeditiously;

(4) Disclosure should include country of origin information;

(5) Disclosure should include the date(s) of importation, the port of entry, and a description of the merchandise;

(6) Disclosure should include the identity of the importer; and

(7) IPR owners should be allowed to retain samples sent for inspection, and Customs should clarify its position regarding the testing of samples, since testing may result in the destruction of a sample.

1. Disclosure of Confidential Business Information Would Violate Both the FOIA and the Trade Secrets Act

Comment: Stating that commercial information is "confidential" and, therefore, not subject to public disclosure, one commenter asserts that the proposed disclosure of information would contravene both the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Trade Secrets Act (18 U.S.C. 1905). Citing the FOIA as providing that confidential information is not subject to public disclosure if it would cause substantial harm to the competitive position of the source of the information and the Trade Secrets Act as providing that sensitive business information should not be disclosed unless otherwise provided by law, the commenter states that Customs is bound not to disclose such confidential information as the names and addresses of importers, exporters, and manufacturers, and recommends that Customs withdraw its revised notice.

Customs' Response: Customs disagrees with these interpretations of the cited Acts.

Regarding the FOIA, its basic objective is to disclose official information, making available to the public federal agency records (5 U.S.C. 552(a)), except to the extent that such records (or portions thereof) are specifically exempt from disclosure (5 U.S.C. 552(b)). Thus, contrary to the commenter's position, the FOIA does not mandate nondisclosure, but rather

seeks to establish workable standards for determining whether particular material may be withheld or must be disclosed.

Regarding the Trade Secrets Act, this Act specifically prohibits the disclosure of confidential information, except as is authorized by law, under penalty of fine and/or imprisonment (*see also*, § 103.34 of the Customs Regulations (19 CFR 103.34)). As explained below, Customs has revised § 133.22(b) so that no trade secret information will be disclosed at the detention stage. However, at the seizure stage, Customs believes that statutory authority exists to provide Customs with the authority to disclose the information specified. Therefore, Customs believes that substantive agency regulations, promulgated pursuant to such statutory authority and published in compliance with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), are not in conflict with the Trade Secrets Act.

Concerning Customs' statutory authority to disclose certain importation information to IPR holders, numerous provisions in titles 15, 17, and 19 of the U.S. Code authorize the Secretary of the Treasury (the Secretary) to promulgate regulations to enforce their prohibitions against the importation of IPR-infringing merchandise. The Copyright Act of 1976 (17 U.S.C. 602 *et seq.*) (the Copyright Act) prohibits the importation of infringing copies and authorizes the Secretary to prescribe a procedure whereby a person with an interest in the work may be entitled to notification of the importation. Further, section 603 of the Copyright Act authorizes the Secretary to enforce the Copyright Act's provisions by prohibiting such importations, and provides that (1) a court order may be obtained enjoining an importation and (2) a claimant seeking exclusion of an importation may establish proof that an importation would violate section 602. Such order or proof would necessarily entail the availability of certain transaction information to the person claiming an interest in the copyright.

Under the Lanham Trademark Act (15 U.S.C. 1124), the Secretary is authorized to make regulations regarding trademarks and to aid Customs officers in enforcing the prohibitions against importation. Also, sections 526 and 595a(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1526 and 1595a(c)), prohibit the importation or introduction of merchandise with unauthorized trademarks or merchandise or packaging in which copyright, trademark, or trade name protection violations are involved and under the provisions of section 624 of the Tariff Act of 1930, as amended

(19 U.S.C. 1624), the Secretary is authorized to promulgate regulations to carry out those provisions. Section 526 of the Tariff Act of 1930, as amended, further provides for the notification of trademark owners when merchandise bearing a counterfeit mark is seized. Customs believes that these statutes may be reasonably interpreted to permit Customs to provide for the disclosure of certain import information, and where the identification of such violative merchandise requires the assistance of IPR owners, relevant information may be made available.

Since the purpose of these disclosure regulations is to further the statutory enforcement scheme by allowing Customs to release certain commercial information so that Customs can more timely and accurately identify legitimate merchandise, pursuant to the regulations promulgated herein, Customs is authorized by law to disclose such information without violating the Trade Secrets Act. Accordingly, since the regulations do not provide for the disclosure of either the manufacturer's or importer's identity at the detention stage, no trade secrets are being divulged. As stated in the revised Notice of Proposed Rulemaking, it is Customs policy to avail itself of any opportunity to gather information quickly and accurately so that decisions concerning imported merchandise can be correctly and timely made. Accordingly, the provisions of §§ 133.22 and 133.43, which pertain to detention, do not provide for the disclosure of any manufacturer or importer information, while the provisions of §§ 133.23a and 133.42, which pertain to seizure, are revised to allow for the disclosure of the name and address information pertaining to the manufacturer and importer.

Further, to make clear when Customs officers will be required to disclose importation information and provide sample merchandise to IPR owners and when Customs officers may, on an *ad hoc* basis, disclose such information, *i.e.*, to solicit an IPR owner's assistance in determining whether a particular importation should be detained in the first instance, the provisions of § 133.22(b) are revised to better reflect Customs detention notice policies. Accordingly, § 133.22(b) has been amended to provide that once a notice of detention is issued, Customs officers are required to disclose the importation information to IPR owners, within the 30-day time limitation imposed by the detention statute, in order to more quickly determine whether the marks are restricted or prohibited. But during the time between presentation of the

goods for Customs examination and issuance of a formal detention notice. Customs officers have the authority to disclose such importation information where the circumstances warrant. Customs expects that such disclosure will allow Customs officers, in many cases, to determine immediately whether a formal detention should be initiated or whether the goods should be released, thereby avoiding lengthy delays and demurrage charges.

For the above reasons, Customs will not withdraw its revised notice.

2. Disclosure of Confidential Importer Information to the IPR Holder Is Contrary to the Intent of Both the NAFTA and the GATT

Comment: The same commenter suggested that the proposed disclosure was contrary to the intent of both the NAFTA and the GATT. Citing the NAFTA as providing that it does not affect U.S. law or practice relating to parallel importation of products protected by intellectual property rights and the GATT as stating that measures and procedures to enforce property rights should not themselves become barriers to legitimate trade, the commenter states that the proposed changes cannot be said to be consistent with the stated objectives of these two agreements. The commenter states that Customs' proposal is principally directed at changing established law and practice relating to parallel imports and will inevitably serve as a barrier to legitimate trade. Accordingly, the commenter recommends that Customs withdraw its revised notice.

Customs' Response: Inasmuch as the proposed regulations provide for disclosure as authorized by law, Customs does not believe that such disclosure is inconsistent with either the NAFTA or the GATT TRIPs Agreement. The border enforcement provisions of these Agreements contemplate the prosecution of suspect importations by IPR owners. To that end, each Agreement provides for the disclosure of information to IPR owners sufficient to substantiate claims of infringement. Article 1718 of the NAFTA and Article 57 of the GATT TRIPs Agreement do not, as the commenter suggests, give blanket nondisclosure benefit to the importer. Customs believes that the references in these Agreements to the "protection of confidential information" require only that the disclosure of information comply with the respective signatory party's laws and regulations regarding disclosure. For the reasons discussed above in the previous response, the

proposed regulations have been issued pursuant to valid statutory authority.

Accordingly, Customs will not withdraw its revised notice.

3. The 30-day Notification Period Does Not Allow the IPR Owner To Act Expeditiously

Comment: Another commenter urged that the 30-day notification period should be reduced to 10 days so that an IPR owner could be in a position to act more expeditiously, and recommends that Customs change the time period accordingly.

Customs' Response: Aside from the permissive disclosure situation described above, Customs believes that the 30 business day time limit for required disclosure of importation information affords IPR owners sufficient time to act expeditiously. Customs must consider the workload placed on its employees and regulate manageable time frames for their compliance with the relevant disclosure rules.

Accordingly, Customs will not change the time period as proposed in §§ 133.22(b), 133.23(c), 133.42(d), and 133.43(b).

4. Disclosure Should Include Country of Origin Information

Comment: Several comments were received noting that country of origin information should be included in the revision of 19 CFR 133.43, as it was in the other sections revised.

Customs' Response: Customs agrees that the regulations should be consistent and has added country of origin information as information to be disclosed under 19 CFR 133.43.

5. Disclosure Should Include the Date(s) of Importation, the Port of Entry, and a Description of the Merchandise

Comment: In the Background section of the revised Notice of Proposed Rulemaking Customs indicated that certain information, namely dates of importation, port of entry and description of the merchandise, would be included in every notification as a matter of course. One commenter requested that these items be specifically set forth to insure that this information is released.

Customs' Response: Customs agrees and has added this information concerning the dates of importation, port of entry, and a description of the merchandise as information to be disclosed under §§ 133.22(b), 133.23(c), 133.42(d), and 133.43(b).

6. Disclosure Should Include the Identity of the Importer

Comment: Comments were received requesting that the identity of the importer be provided under 19 CFR 133.22 when goods are detained for suspicion of trademark counterfeiting. These commenters argue that such disclosure would then parallel the release of an importer's identity under 19 CFR 133.43 when goods are detained for suspicion of copyright counterfeiting.

Customs' Response: The identity of an importer is provided under the provisions of 19 CFR 133.43 (suspected copyright counterfeiting) because of the broad bonding provisions contained in that section. The bonding requirements applicable to goods detained for suspicion of trademark counterfeiting are much narrower, only providing security for samples. Although the NAFTA and the GATT TRIPs Agreement each provides that the competent authorities may require such a security for all detentions of goods suspected of IPR infringement, Customs has not implemented such a requirement for trademarked goods.

Customs' objective of making timely and accurate determinations on counterfeiting requires that the unauthorized application of a mark be readily ascertained. To that end, Customs has determined that the identity of the manufacturer is important because the mark is typically applied by the manufacturer. Until Customs institutes a similar, broad bonding procedure for suspected counterfeit trademark goods, it has decided that the importer's identity shall not be released at the time of detention.

7. IPR Owners Should Be Allowed To Retain Samples Sent for Inspection, and Customs Should Clarify Its Position Regarding the Testing of Samples, Since Testing May Result in the Destruction of a Sample

Comment: A comment was received suggesting that IPR owners be permitted to retain samples forwarded by Customs for examination. Another comment noted that certain testing may result in the destruction or partial destruction of a sample, and requested clarification of Customs position on the testing of samples.

Customs' Response: Customs recognizes that testing may be required to determine whether a sample bears a counterfeit trademark or constitutes a piratical copy. Customs' intention is to allow for the manipulation of samples provided to IPR owners, including the

destruction of the sample if required during the testing procedure. However, Customs has determined that samples may not be retained by IPR owners, and Customs will require either the return of samples, the remains of tested sample, or assurances to Customs' satisfaction that the article has been destroyed. Accordingly, the regulations as set forth below have been modified to provide that where Customs has provided sample merchandise to an IPR owner for examination, testing, or any other use in pursuit of a related private civil remedy, the IPR owner must return the sample to Customs upon demand or at the conclusion of the examination, testing, or use in pursuit of a related private civil remedy. In the event the sample is damaged, destroyed, or lost while in the custody of the IPR owner, the owner shall certify this fact to Customs. The regulations also require that the IPR owner post a bond conditioned to indemnify the importer and to hold harmless Customs, in the event that the sample is destroyed.

In the August 23, 1993, notice of proposed rulemaking, and the July 14, 1995, revised notice of proposed rulemaking on these regulations, Customs proposed furnishing samples of imported goods bearing trademarks to IPR owners to determine whether infringement has occurred. Customs has determined that in some instances samples may be furnished to IPR owners under the proposed rules where subsequently it is determined that no infringement has occurred. It logically flows that in some of these instances importers may suffer damages as a result of the furnishing of samples to the IPR owner (for example, samples may be lost or destroyed). To provide protection to importers in this eventuality, Customs has determined to require IPR owners to provide Customs with a bond as a precondition to obtaining samples. Specifically, Customs has revised §§ 133.22(c), 133.23a(d), 133.42(e), and 133.43(b) and (c) to require that a bond be posted by the IPR owner to indemnify the importer and hold harmless Customs from any loss or damage resulting from Customs furnishing a sample to the IPR owner, in the event that the sample merchandise provided is subsequently determined not to bear an infringing mark.

Conclusion

After analysis of the comments and further consideration of the matter, Customs has decided to adopt the proposed amendments to part 133 of the Customs Regulations with the modifications discussed above in the analysis of comments.

The Regulatory Flexibility Act

Based on the reasons set forth above and because the regulatory burden falls primarily on Customs to notify IPR holders of infringing imported merchandise, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments to the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, the 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.

List of Subjects in 19 CFR Part 133

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

Amendments to the Regulations

For the reasons stated above, part 133 of the Customs Regulations (19 CFR part 133), is amended as set forth below:

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The general authority citation for part 133 is revised 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. Section 133.22 is amended by revising the section heading; revising the text of paragraph (a); redesignating paragraphs (b) and (c) as paragraphs (d) and (e); adding new paragraphs (b) and (c); and revising the heading of newly redesignated paragraph (d). The additions and revisions are to read as follows:

§ 133.22 Procedure on detention of articles subject to restriction.

(a) *In general.* Articles subject to the restrictions of § 133.21 shall be detained for 30 days from the date on which the merchandise is presented for Customs examination. The importer shall be notified of the decision to detain within 5 days of the decision that such restrictions apply. The importer may, during the 30-day period, establish that any of the circumstances described in § 133.21(c) are applicable. Extensions of the 30-day time period may be freely granted for good cause shown.

(b) *Notice of detention and disclosure of information.* From the time

merchandise is presented for Customs examination until the time a notice of detention is issued Customs may disclose to the owner of the trademark or trade name any of the following information in order to obtain assistance in determining whether an imported article bears an infringing trademark or trade name. Customs shall disclose this same information (if available) to the owner of the trademark or trade name within 30 days (excluding weekends and holidays) of the date of detention:

- (1) The date of importation;
- (2) The port of entry;
- (3) A description of the merchandise;
- (4) The quantity involved; and
- (5) The country of origin of the merchandise.

(c) *Samples available to the trademark or trade name owner.* At any time following presentation of the merchandise for Customs examination but prior to seizure, Customs may provide a sample of the suspect merchandise to the owner of the trademark or trade name for examination or testing to assist in determining whether the article imported bears an infringing trademark or trade name. To obtain a sample under this section, the trademark/trade name owner must furnish Customs 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 resulting from the furnishing of a sample by Customs to the trademark owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination or testing. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark or trade name owner, the owner shall, in lieu of return of the sample, certify to Customs that: "The sample described as [insert description] and provided pursuant to 19 CFR 133.22(c) was (damaged/destroyed/lost) during examination or testing for trademark infringement."

(d) *Form of notice.* * * *

* * * * *

3. Section 133.23a is amended by redesignating paragraph (c) as paragraph (e); adding new paragraphs (c) and (d); and revising the heading and removing the first sentence of newly designated paragraph (e). The additions and revisions are to read as follows:

§ 133.23a Articles bearing counterfeit trademarks.

* * * * *

(c) *Notice to trademark owner.* When merchandise is seized under this section, Customs shall disclose to the owner of the trademark the following information, if available, within 30 days, excluding weekends and holidays, of the date of the notice of seizure:

- (1) The date of importation;
- (2) The port of entry;
- (3) A description of the merchandise;
- (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.

(d) *Samples available to the trademark owner.* At any time following seizure of the merchandise, Customs may provide a sample of the suspect merchandise to the owner of the trademark for examination, testing, or other use in pursuit of a related private civil remedy for trademark infringement. To obtain a sample under this section, the trademark/trade name owner must furnish Customs 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 resulting from the furnishing of a sample by Customs to the trademark owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination, testing, or other use in pursuit of a related private civil remedy for trademark infringement. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark owner, the owner shall, in lieu of return of the sample, certify to Customs that: "The sample described as [insert description] and provided pursuant to 19 CFR 133.23a(d) was (damaged/destroyed/lost) during examination, testing, or other use."

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

4. Section 133.42 is amended by redesignating paragraph (d) as paragraph (f) and adding new paragraphs (d) and (e) to read as follows:

§ 133.42 Infringing copies or phonorecords.

* * * * *

(d) *Disclosure.* When merchandise is seized under this section, Customs shall disclose to the owner of the copyright

the following information, if available, within 30 days, excluding weekends and holidays, of the date of the notice of seizure:

- (1) The date of importation;
- (2) The port of entry;
- (3) A description of the merchandise;
- (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 available to the copyright owner.* At any time following seizure of the merchandise, Customs may provide a sample of the suspect merchandise to the owner of the copyright for examination, testing, or any other use in pursuit of a related private civil remedy for copyright infringement. To obtain a sample under this section, the copyright owner must furnish to Customs 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 resulting from the furnishing of a sample by Customs to the copyright owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination, testing, or other use in pursuit of a related private civil remedy for copyright infringement. In the event that the sample is damaged, destroyed, or lost while in the possession of the copyright owner, the owner shall, in lieu of return of the sample, certify to Customs that: "The sample described as [insert description] provided pursuant to 19 CFR 133.42(e) was (damaged/destroyed/lost) during examination, testing, or other use."

* * * * *

5. In § 133.43, paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), and paragraph (b) is revised and a new paragraph (c) is added to read as follows:

§ 133.43 Procedure on suspicion of infringing copies.

* * * * *

(b) *Notice to copyright owner.* If the importer of suspected infringing copies or phonorecords files a denial as provided in paragraph (a) of this section, the port director shall furnish to the copyright owner the following information, if available, within 30

days, excluding weekends and holidays, of the receipt of the importer's denial:

- (1) The date of importation;
- (2) The port of entry;
- (3) A description of the merchandise;
- (4) The quantity involved;
- (5) The country of origin of the merchandise; and

(6) Notice that the imported article will be released to the importer unless, within 30 days from the date of the notice, the copyright owner files with the port director a written demand for the exclusion from entry of the detained imported articles.

(c) *Samples available to the copyright owner.* At any time following presentation of the merchandise for Customs examination but prior to seizure, Customs may provide a sample of the suspect merchandise to the owner of the copyright for examination or testing to assist in determining whether the article imported is a piratical copy. To obtain a sample under this section, the copyright owner must furnish Customs 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 resulting from Customs detention or seizure, or the furnishing of a sample by Customs to the trademark owner, in the event that the Commissioner of Customs, or his designee, or a federal court determines that the article does not bear an infringing mark. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination or testing. In the event that the sample is damaged, destroyed, or lost while in the possession of the copyright owner, the owner shall, in lieu of return of the sample, certify to Customs that: "The sample described as [insert description] provided pursuant to 19 CFR 133.43(c) was (damaged/destroyed/lost) during examination or testing for copyright infringement."

* * * * *

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: February 17, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98-6183 Filed 3-11-98; 8:45 am]

BILLING CODE 4820-02-P