

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Part 103

[CBP Dec. 20–09]

RIN 1651–AB36

Announcement of Vessel Manifest Confidentiality Online Application and Update of Mailing and Email Addresses for Submission of Vessel Manifest Confidentiality Certifications

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

ACTION: Final rule; technical amendment.

SUMMARY: This document makes technical amendments U.S. Customs and Border Protection (CBP) regulations in the Code of Federal Regulations by updating the mailing address and codifying the email address for submitting requests for confidential treatment of vessel manifest certifications. In addition, this document amends the regulations to announce a new way to submit requests for confidential treatment of vessel manifest certifications—via the Vessel Manifest Confidentiality Online Application, an online portal on www.CBP.gov. This document also makes other technical conforming changes, specifically updating names and references.

DATES: The final rule is effective May 22, 2020.

FOR FURTHER INFORMATION CONTACT: William G. Jackson, Trade Transformation Office, Office of Trade, william.g.jackson@cbp.dhs.gov or (571) 468–5110.

SUPPLEMENTARY INFORMATION:

Background

U.S. Customs and Border Protection's (CBP) regulations implementing the Freedom of Information Act (5 U.S.C. 552a) are contained in part 103 of title 19, Code of Federal Regulations (19 CFR part 103). These regulations prescribe rules governing disclosure and production of documents and information under various circumstances. Subpart C of part 103 contains exceptions to these general disclosure requirements by listing certain information that is subject to restricted access.

Section 103.31 generally provides for limited disclosure of vessel manifests and statistical reports. Section 103.31(d), the subject of this

rulemaking, describes a process by which parties can request that CBP keep certain manifest information confidential. For an inward manifest, an importer or consignee may request confidential treatment of its name and address, including identifying marks and numbers. *See* 19 CFR 103.31(d)(1). For an outward manifest, a shipper, or authorized employee or official of the shipper, may request confidential treatment of the shipper's name and address. *See* 19 CFR 103.31(d)(2). Currently, the regulations provide a mailing address to submit confidentiality requests, and parties can also submit their requests via email.

Discussion of Changes

This document amends the regulations to update the mailing address, codify the email address and create an electronic window to submit requests for confidential treatment of vessel manifest information to CBP. For mail submissions, CBP is updating the mailing address to the following: Vessel Manifest Program Manager, Office of Trade (Mail Stop 1354), U.S. Customs and Border Protection, 1801 N Beauregard Street, Alexandria, VA 22311. For email submissions, CBP is codifying the email address, which is vesselmanifestconfidentiality@cbp.dhs.gov. Finally, CBP is providing for submissions via an online portal on www.CBP.gov, known as the Vessel Manifest Confidentiality Online Application. This new portal allows CBP to review confidentiality requests more efficiently by automating the submission process, reducing the processing time to as little as 24 hours in most cases.

Technical Amendments

Due to the renaming of the U.S. Customs Service to U.S. Customs and Border Protection (CBP), this document amends 19 CFR 103.31 by replacing several references to “Customs” with “CBP.”

This document also amends 19 CFR 103.0 and 103.2 to remove references to 19 CFR 103.35 because § 103.35 no longer exists. On November 22, 2016, the Department of Homeland Security (DHS) revised its Freedom of Information Act regulations,¹ which moved the regulations pertaining to CBP's disclosure procedures for confidential commercial information from 19 CFR 103.35 to the DHS regulations, 6 CFR 5.12. Because of this change, this document makes

¹ Freedom of Information Act Regulations, 81 FR 83625 (Nov. 22, 2016).

conforming changes to 19 CFR 103.0 and 103.2.

Inapplicability of Prior Notice and Delayed Effective Date

According to section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), rulemaking generally requires prior notice and comment, and a 30-day delayed effective date, subject to specified exceptions. Pursuant to 5 U.S.C. 553(a)(2), matters relating to agency management or personnel are excepted from the requirements of section 553. Additionally, as provided in 5 U.S.C. 553(b)(3)(A) and 553(d)(2), the prior notice and comment and delayed effective date requirements do not apply when agencies promulgate rules concerning agency organization, procedure, or practice.

This final rule does not require prior notice and comment because it relates to agency management and agency organization, procedures, or practice. As explained above, the rule merely updates the methods through which CBP will receive requests for confidential treatment of vessel manifests by updating the mailing address, codifying the email address, and establishing an automated portal on www.CBP.gov. Accordingly, this rule does not affect the substantive rights or interests of the public, but merely conforms the regulations to existing agency management and agency procedures and organization.

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the 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. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule as a

“significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation. This regulation updates the regulations surrounding the process by which an importer, consignee, or shipper² may request confidentiality for its vessel manifest, eliminating some of the costs of processing the vessel manifest requests and increasing efficiency by providing an electronic option. This is a deregulatory action under Executive Order 13771,³ with an estimated net regulatory cost saving of \$50,245 on an annualized basis (in 2016 U.S. dollars, using a 7 percent discount rate over a perpetual time horizon and discounted back to 2016).

Currently, certain vessel manifest information is available to the public.⁴ However, importers, consignees, and shippers have the option to request that CBP keep certain elements of vessel manifests confidential. These elements include the consignee name and address, notify party name and address, and shipper name(s) and address(es). Importers, consignees, or shippers may choose to keep this information confidential to prevent their competitors from linking their manifest data to their company name(s). Certified requests may be sent by the importer, consignee, or shipper either by hard copy through the mail or by email to CBP, and requests must be renewed every two years.

Though vessel manifest confidentiality requests were formerly sent to CBP’s Office of Privacy, as of January 2, 2015, requests should be submitted to CBP’s Trade Transformation Office (TTO). However, the current regulations do not reflect this change. The Office of Privacy thus currently forwards all requests received to TTO. This rule amends the vessel manifest confidentiality request regulation by updating the address to which paper requests and renewal requests should be sent. The rule further provides for an electronic window for submitting the confidentiality request. Updating the regulation with the address of the correct office and including the electronic submission window would reduce the overall mailing and processing time for importers, consignees, shippers, and CBP alike.

In prior years, CBP has advised importers that it takes 60–90 days to process manifest confidentiality requests.⁵ This was due to a significant backlog of requests.⁶ TTO, which is responsible for processing the requests, has cleared the backlog, and processing of paper or email requests now takes no more than five days from receipt.⁷ Processing requires that CBP take the information in the request, regardless of how it was submitted, and transcribe it into the Automated Commercial Environment (ACE). With the electronic option described in this rule, processing would take no more than 24 hours, as the system would upload requests into ACE each night.⁸

Approximately 12,000 manifest confidentiality requests are processed each year. Of these, about 90 percent, or 10,800, are sent via email. The remaining 10 percent, or 1,200, are sent by mail. CBP believes that it would continue to process 12,000 of these requests each year,⁹ but that most importers and consignees would choose to use the electronic window when it becomes available on publication of this rule due to the increased convenience, reduction in errors, and faster processing time. Submitted identifier information will be instantly validated to ensure it matches the previously submitted information that is already in CBP systems, making the portal easier, faster, and less prone to errors than mail or email submissions. CBP estimates that 95 percent of these requests, or 11,400, would be filed via the electronic portal with this rule.¹⁰ The remaining 600 would continue to be submitted either by mail or email.

This rule would eliminate several costs in processing these vessel manifest requests. Importers, consignees, and shippers would no longer need to pay to print and mail their requests if they choose to use the electronic option over

the paper mail-in option. There is no prescribed format for a vessel manifest confidentiality request. It must be certified by the importer, consignee, or shipper and contain the party’s Internal Revenue Service Employer Number, if available, as well as the information the party wishes to keep confidential. The majority of requests are therefore only a page or two in length. TTO believes that due to the portal’s relative speed, ease of use, and data validation, of the 10 percent of requests currently submitted by the paper mail-in option, about half would move to the electronic option with this rule. Parties who switch would collectively save approximately \$330.00 per year on postage.¹¹ Those parties would also save about \$30.00 in printing costs each year.¹²

This rule’s electronic option would also benefit importers, consignees, and shippers by reducing processing times and errors, thus mitigating risk to their confidentiality during processing. Historically, processing took anywhere from 60–90 days as CBP worked through a significant backlog in requests. Currently, processing may take up to five days, which would be reduced to 24 hours with the rule’s electronic option. Utilizing the electronic option also would not increase the time burden on importers, consignees, and shippers to complete a request as they would submit the same amount of information via the electronic portal as they would provide on their paper-based form. Submitting a request through the electronic window would also eliminate the need for TTO employees to transcribe the requests into ACE manually as they do now, reducing the likelihood of human error.

CBP would see savings as well, primarily because TTO employees would no longer need to manually enter all requests into ACE.¹³ Until the

⁵ Source: U.S. Customs and Border Protection, *Trade Information Notice: Automation of the Electronic Vessel Manifest Confidentiality Request*. 2019. Available at <https://www.cbp.gov/document/technical-documentation/electronic-vessel-manifest-confidentiality>. Accessed October 30, 2019.

⁶ Source: Correspondence with CBP’s Trade Transformation Office on October 29, 2019.

⁷ *Id.*

⁸ The portal does not reside in ACE. Instead, data is uploaded from the portal to ACE each night.

⁹ TTO does believe there is a small chance that request submissions could spike as more importers, consignees, and shippers learn of the new electronic option. However, there is no similar program release to use as a comparison, so there is no way to accurately predict how many more importers, consignees, or shippers might exercise the option of confidentiality only once they can do so through the electronic window.

¹⁰ Source: Correspondence with CBP’s Trade Transformation Office on October 29, 2019.

¹¹ 50 percent × 1,200 mailed requests = 600 requests × first-class postage cost of \$0.55 avoided = \$330 cost saving. As of October 2019, a first-class stamp for a standard-sized envelope costs \$0.55. See United States Postal Service, *First-Class Mail*. Available at <https://www.usps.com/ship/first-class-mail.htm>. Accessed October 30, 2019. Printing cost per page based on: U.S. Department of State, *Supporting Statement for Paperwork Reduction Act Submission OMB Number 1405-0068: Medical History and Examination for Foreign Service*. June 20, 2017. Available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201706-1405-001. Accessed October 23, 2019.

¹² 50 percent × 1,200 mailed requests = 600 requests × \$0.05 printing cost per page avoided = \$30 cost saving.

¹³ CBP would also need to forward fewer requests from office to office as a result of updating the address to which paper requests can be sent. However, because a small number of importers, consignees, and shippers are expected to continue using the paper option, these savings are negligible.

² For the purposes of this analysis, a shipper may include an authorized employee or official of the shipper.

³ See OMB’s Memorandum, “Guidance Implementing Executive Order 13771, ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

⁴ See 19 CFR 103.31.

electronic window is available, all requests, regardless of how they are submitted, are transcribed into ACE. Once the window is available, TTO employees would no longer need to transcribe the 11,400 (95 percent) requests received via the window. The majority of these requests (90 percent)

take about 5 minutes (0.0833 hours) to process.¹⁴ The other 10 percent of requests are longer, usually sent in by large corporations with many name and address variations.¹⁵ These requests currently take an average of 30 minutes (0.5 hours) to process.¹⁶ Eliminating the transcription of these requests would

save CBP about \$115,967 annually based on the current time burdens for TTO employees and their assumed hourly time value of \$81.38.¹⁷ Table 1 summarizes the annual cost savings of this rule to importers, consignees, shippers, and CBP.

TABLE 1—TOTAL MONETIZED ANNUAL COST SAVINGS (BENEFITS) OF RULE
[Undiscounted 2020 U.S. dollars]

Party	Savings type	Annual cost savings
Importer/Consignee/Shipper	Postage	\$330
Importer/Consignee/Shipper	Printing	30
CBP	Transcription	115,967
Total		116,327

Along with benefits, the rule would introduce some costs. In 2019, CBP incurred \$270,177 in costs to set up the electronic submission system, including development, testing, and training.¹⁸ CBP would incur costs of approximately \$30,000 per year for ongoing maintenance of the electronic submission system.¹⁹ Importers,

consignees, and shippers would not face any new costs from this rule. Overall, this rule would make the process of requesting vessel manifest confidentiality more efficient for CBP, importers, consignees, and shippers, with minimal ongoing costs. Over a five-year period, this rule would result in an undiscounted net cost saving (*i.e.*, benefit) of \$191,458 (see Table 2). Table

3 contains the present value and annualized cost and cost saving amounts for a five-year period of analysis using discount rates of 3 percent and 7 percent. On net, this rule would result in an estimated regulatory cost saving of \$31,582 on an annualized basis over a 5 year period (in 2020 US dollars, using a 7 percent discount rate).

TABLE 2—TOTAL MONETIZED NET IMPACTS OF RULE
[Undiscounted 2020 U.S. dollars]

Year	Cost savings	Costs	Net cost savings
1	\$116,327	\$270,177	-\$153,850
2	116,327	30,000	86,327
3	116,327	30,000	86,327
4	116,327	30,000	86,327
5	116,327	30,000	86,327
Total	581,635	390,177	191,458

TABLE 3—TOTAL MONETIZED PRESENT VALUE AND ANNUALIZED NET IMPACTS OF RULE
[5-Year period, 2020 U.S. dollars]

	3% Discount rate		7% Discount rate	
	Present value	Annualized	Present value	Annualized
Cost Savings	\$532,741	\$116,327	\$476,962	\$116,327
Costs	370,573	80,916	347,470	84,745
Net Cost Savings	162,169	35,410	129,491	31,582

¹⁴ Source: Correspondence with CBP's Trade Transformation Office on October 29, 2019.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 90 percent × 11,400 transcribed requests = 10,260 shorter transcribed requests × 0.0833-hour transcription time burden to CBP per request = 855-hour (rounded) transcription time burden × assumed \$81.38 hourly time value of TTO employees = \$69,580 (rounded) time cost saving; 10 percent × 11,400 transcribed requests = 1,140 longer

transcribed requests × 0.5-hour transcription time burden to CBP per request = 570-hour (rounded) transcription time burden × assumed \$81.38 hourly time value of TTO employees = \$46,387 (rounded) time cost saving; \$69,580 time cost avoided for shorter requests + \$46,387 (rounded) time cost avoided for longer requests = \$115,967 total transcription time cost saving. CBP bases the \$81.38 hourly wage on the FY 2020 salary, benefits, and non-salary costs (*i.e.*, fully loaded wage) of the national average of CBP Trade and Revenue

positions. Source: Email correspondence with CBP's Office of Finance on June 12, 2019.

¹⁸ CBP has adjusted the \$266,447 in initial costs to 2020 dollars using the GDP deflator of +1.4%. Source: Bureau of Economic Analysis, "GDP Deflator." Updated April 30, 2020. <https://www.bea.gov/data/prices-inflation/gdp-price-deflator>. Accessed May 8, 2020.

¹⁹ Source: Email correspondence with CBP's Trade Transformation Office on October 22, 2019.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public an initial regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare an initial regulatory flexibility analysis for this rule.

Signing Authority

This document is being issued in accordance with 19 CFR 0.2(a), which provides that the authority of the Secretary of the Treasury with respect to CBP regulations that are not related to customs revenue functions was transferred to the Secretary of Homeland Security pursuant to Section 403(l) of the Homeland Security Act of 2002. Accordingly, this final rule to amend such regulations may be signed by the Secretary of Homeland Security (or his or her delegate).

List of Subjects in 19 CFR Part 103

Administrative practice and procedure, Confidential business information, Courts, Freedom of information, Law enforcement, Privacy, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth above, part 103 of the CBP regulations (19 CFR part 103) is amended as set forth below.

PART 103—AVAILABILITY OF INFORMATION

■ 1. The authority citation for part 103 continues to read in part as follows:

Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

Section 103.31 also issued under 19 U.S.C. 1431;

* * * * *

§ 103.0 [Amended]

■ 2. Section 103.0 is amended by removing the phrase “Except for 19 CFR 103.35, the” and adding, in its place, the word “The”.

§ 103.2 [Amended]

■ 3. Section 103.2 is amended by:

■ a. Removing from paragraph (a) the words “except as provided in paragraph (b) of this section,”;

■ b. Removing the paragraph designation “(a)” and the paragraph heading; and

■ c. Removing paragraph (b).

■ 4. Section 103.31 is amended by removing the word “Customs” and adding, in its place, the term “CBP” in paragraphs (a)(3), (b), and (c) and revising paragraphs (d)(1)(iii) and (iv) and (d)(2)(iii) to read as follows:

§ 103.31 Information on vessel manifests and summary statistical reports.

* * * * *

(d) * * *

(1) * * *

(iii) The certification must be submitted to the Vessel Manifest Program Manager, Office of Trade (Mail Stop 1354), U.S. Customs and Border Protection, 1801 N Beauregard Street, Alexandria, VA 22311; or submitted electronically via an email transmission at vesselmanifestconfidentiality@cbp.dhs.gov or via the Vessel Manifest Confidentiality Online Application on CBP’s public website, www.CBP.gov.

(iv) Each initial certification will be valid for a period of two years from the date of receipt. Renewal certifications should be submitted to the Vessel Manifest Program Manager at least 60 days prior to the expiration of the current certification. Information so certified may be copied, but not published, by the press during the effective period of the certification. An importer or consignee shall be given written notification by CBP of the receipt of its certification of confidentiality.

(2) * * *

(iii) The certification must be submitted to the Vessel Manifest Program Manager, Office of Trade (Mail Stop 1354), U.S. Customs and Border Protection, 1801 N Beauregard Street, Alexandria, VA 22311; or submitted electronically via an email transmission at vesselmanifestconfidentiality@cbp.dhs.gov or via the Vessel Manifest Confidentiality Online Application on the CBP’s public website, www.CBP.gov.

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Dated: May 14, 2020.

Mark A. Morgan,

Acting Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2020–10802 Filed 5–21–20; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico

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

ACTION: Notification of continuation of temporary travel restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border. Such travel will be limited to “essential travel,” as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Daylight Time (EDT) on May 21, 2020 and will remain in effect until 11:59 p.m. EDT on June 22, 2020.

FOR FURTHER INFORMATION CONTACT: Alyce Modesto, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202–344–3788.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, DHS published notice of the Secretary’s decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to “essential travel,” as further defined in that document.¹ The document described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, the Secretary had determined that the risk of continued transmission and spread of COVID–19 between the United States and Mexico posed a “specific threat to human life or national interests.” The Secretary later published a notification continuing

¹ 85 FR 16547 (Mar. 24, 2020). That same day, DHS also published notice of the Secretary’s decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to “essential travel,” as further defined in that document. 85 FR 16548 (Mar. 24, 2020).