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


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 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 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

For the purposes of this analysis, a shipper may include an authorized employee or official of the shipper. 3 For OMB’s Memorandum, “Guidance Implementing Executive Order 13771, ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

In prior years, CBP has advised importers that it takes 60–90 days to process manifest confidentiality requests. This was due to a significant backlog of requests. 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. 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.

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, 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. 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, 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. Those parties would also save about $30.00 in printing costs each year. 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 still submit the same amount of information via the electronic portal as they would provide in 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. Until the
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. The other 10 percent of requests are longer, usually sent in by large corporations with many name and address variations. These requests currently take an average of 30 minutes (0.5 hours) to process. 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. Table 1 summarizes the annual cost savings of this rule to importers, consignees, shippers, and CBP.

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. CBP would incur costs of approximately $30,000 per year for ongoing maintenance of the electronic submission system. 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 1—Total Monetized Annual Cost Savings (Benefits) of Rule**

<table>
<thead>
<tr>
<th>Party</th>
<th>Savings type</th>
<th>Annual cost savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Importer/Consignee/Shipper</td>
<td>Postage</td>
<td>$330</td>
</tr>
<tr>
<td>Importer/Consignee/Shipper</td>
<td>Printing</td>
<td>30</td>
</tr>
<tr>
<td>CBP</td>
<td>Transcription</td>
<td>115,967</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>116,327</td>
</tr>
</tbody>
</table>

**Table 2—Total Monetized Net Impacts of Rule**

<table>
<thead>
<tr>
<th>Year</th>
<th>Cost savings</th>
<th>Costs</th>
<th>Net cost savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$116,327</td>
<td>$270,177</td>
<td>$153,850</td>
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<tr>
<td>2</td>
<td>116,327</td>
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<td>86,327</td>
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<tr>
<td>3</td>
<td>116,327</td>
<td>30,000</td>
<td>86,327</td>
</tr>
<tr>
<td>4</td>
<td>116,327</td>
<td>30,000</td>
<td>86,327</td>
</tr>
<tr>
<td>5</td>
<td>116,327</td>
<td>30,000</td>
<td>86,327</td>
</tr>
<tr>
<td>Total</td>
<td>581,635</td>
<td>390,177</td>
<td>191,458</td>
</tr>
</tbody>
</table>

**Table 3—Total Monetized Present Value and Annualized Net Impacts of Rule**

<table>
<thead>
<tr>
<th></th>
<th>3% Discount rate</th>
<th>7% Discount rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Present value</td>
<td>Annualized</td>
</tr>
<tr>
<td>Cost Savings</td>
<td>$532,741</td>
<td>$116,327</td>
</tr>
<tr>
<td>Costs</td>
<td>370,573</td>
<td>80,916</td>
</tr>
<tr>
<td>Net Cost Savings</td>
<td>162,169</td>
<td>35,410</td>
</tr>
</tbody>
</table>

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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.
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:

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.


Mark A. Morgan,
Acting Commissioner, U.S. Customs and Border Protection.

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


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:

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).