

“Shavings B L Inc.” would yield “SHABL.” The English words “a,” “an,” “and,” “of,” and “the” in the manufacturer’s name are to be ignored. For example, “The Embassy of Spain” would yield “EMBSPA.” Portions of a name separated by a hyphen are to be treated as a single word. For example, “Rawles-Aden Corp.” or “Rawles—Aden Corp.” would both yield “RAWCOR.” Some names include numbers. For example, “20th Century Fox” would yield “20TCEN” and “Concept 2000” would yield “CON200.”

a. Some words in the title of the foreign manufacturer’s name are not to be used for the purpose of constructing the MID. For example, most textile factories in Macau start with the same words, “Fabrica de Artigos de Vestuario,” which means “Factory of Clothing.” For a factory named “Fabrica de Artigos de Vestuario JUMP HIGH Ltd.,” the portion of the factory name that identifies it as a unique entity is “JUMP HIGH.” This is the portion of the name that should be used to construct the MID. Otherwise, all of the MIDs from Macau would be the same, using “FABDE,” which is incorrect.

b. Similarly, many factories in Indonesia begin with the prefix PT, such as “PT Morich Indo Fashion.” In Russia, other prefixes are used, such as “JSC,” “OAO,” “OOO,” and “ZAO.” These prefixes are to be ignored for the purpose of constructing the MID.

4. The next group of characters in the MID consists of the first four numbers in the largest number on the street address line. For example, “11455 Main Street, Suite 9999” would yield “1145.” A suite number or a post office box is to be used if it contains the largest number. For example, “232 Main Street, Suite 1234” would yield “1234.” If the numbers in the street address are spelled out, such as “One Thousand Century Plaza,” no numbers representing the manufacturer’s address will appear in this section of the MID. However, if the address is “One Thousand Century Plaza, Suite 345,” this would yield “345.” When commas or hyphens separate numbers, all punctuation is to be ignored and the number that remains is to be used. For example, “12,34,56 Alaska Road” and “12-34-56 Alaska Road” would yield “1234.” When numbers are separated by a space, both numbers are recognized and the larger of the two numbers is to be selected. For example, “Apt. 509 2727 Cleveland St.” would yield “2727.”

5. The last characters in the MID consist of the first three letters in the city name. For example, “Tokyo” would yield “TOK,” “St. Michel” would yield “STM,” “18-Mile High” would yield “MIL,” and “The Hague” would yield “HAG.” Numbers in the city name or line are to be ignored. For city-states, the first three letters are to be taken from the country name. For example, Hong Kong

would yield “HON,” Singapore would yield “SIN,” and Macau would yield “MAC.”

6. As a general rule, in constructing a MID, all punctuation, such as commas, periods, apostrophes, and ampersands, are to be ignored. All single character initials, such as the “S” in “Thomas S. Delvaux Company,” are also to be ignored, as are leading spaces in front of any name or address.

7. Examples of manufacturer names and addresses and their corresponding MIDs are listed below:

LA VIE DE FRANCE, 243 Rue de la Payees, 62591 Bremond, France; FRLAVIE243BRE
 20TH CENTURY TECHNOLOGIES, 5 Ricardo Munoz, Suite 5880, Caracas, Venezuela; VE20TCEN5880CAR
 Fabrica de Artigos de Vestuario TOP JOB, Grand River Building, FI 2-4, Macau; MOTOPJOB24MAC
 THE GREENHOUSE, 45 Royal Crescent, Birmingham, Alabama 35204; USGRE45BIR
 CARDUCCIO AND JONES, 88 Canberra Avenue, Sidney, Australia; AUCARJON88SID
 N. MINAMI & CO., LTD., 2-6, 8-Chome Isogami-Dori, Fukiai-Ku, Kobe, Japan; JPMINCO26KOB
 BOCCACCIO S.P.A., Visa Mendotti, 61, 8320 Verona, Italy; ITBOCSPA61VER
 MURLA-PRAXITELES INC., Athens, Greece; GRMURINCATH
 SIGMA COY E.X.T., 4000 Smyrna, Italy, 1640 Delgado; ITSIGCOY1640SMY
 COMPANHIA TEXTIL KARSTEN, Calle Grande, 25-27, 67890 Lisbon, Portugal, PTKAR257LIS
 HURON LANDMARK, 1840 Huron Road, Windsor, ON, Canada N9C 2L5; XOHURLAN1840WIN
 A.B.C. COMPANY, 55-5 Hung To Road, P.O. Box 1234, Kowloon, Hong Kong; HKABCCOM1234HON.

[CBP Dec. 05–32, 70 FR 58015, Oct. 5, 2005, as amended at CBP Dec. 11–09, 76 FR 14584, Mar. 17, 2011; CBP Dec. 15–14, 80 FR 61286, Oct. 13, 2015]

PART 103—AVAILABILITY OF INFORMATION

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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;

Section 103.31a also issued under 19 U.S.C. 2071 note and 6 U.S.C. 943;

Section 103.33 also issued under 19 U.S.C. 1628;

Section 103.34 also issued under 18 U.S.C. 1905.

Section 103.35 also issued under E.O. 12600 of June 23, 1987.

SOURCE: T.D. 81–168, 46 FR 32565, June 24, 1981, unless otherwise noted.

§ 103.0 Scope.

This part governs the production/disclosure of agency-maintained documents/information requested pursuant to the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552), the Privacy Act of 1974, as amended (5 U.S.C. 552a), and/or under other statu-

tory or regulatory provisions and/or as requested through administrative and/or legal processes. In this respect, this part contains regulations on production or disclosure in federal, state, local, and foreign proceedings and includes specific information pertaining to the procedures to be followed when producing or disclosing documents or information under various circumstances. In addition, this part contains regulations on other information subject to restricted access. As information obtained by CBP is derived from myriad sources, persons seeking information should consult with the appropriate field officer before invoking the formal procedures set forth in this part. Except for 19 CFR 103.35, the regulations in this part supplement the regulations of the Department of Homeland Security regarding public access to records found at 6 CFR part 5. For purposes of this part, the CBP Office of the Chief Counsel is considered to be a part of CBP.

[CBP Dec. 15–16, 80 FR 71692, Nov. 17, 2015]

Subpart A—Production of Documents/Disclosure of Information Under the FOIA

§ 103.1 Public reading room.

CBP maintains a virtual public reading room at <http://foiarr.cbp.gov/> where the material required to be made available under 5 U.S.C. 552(a) and this part may be inspected and copied.

[CBP Dec. 15–16, 80 FR 71692, Nov. 17, 2015]

§ 103.2 Department of Homeland Security Freedom of Information Act procedures.

(a) *Department of Homeland Security FOIA regulations.* In order to process requests for documents/information and appeals under the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552), except as provided in paragraph (b) of this section, CBP applies the Department of Homeland Security FOIA regulations in 6 CFR part 5, subpart A.

(b) *Exception.* Notwithstanding section 5.8 of title 6, CBP retains its own policy on the treatment of confidential

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commercial information provided in § 103.35.

[CBP Dec. 15–16, 80 FR 71692, Nov. 17, 2015]

§ 103.3 Department of Homeland Security Privacy Act procedures.

Department of Homeland Security Privacy Act regulations. In order to process access requests for documents/information and appeals under the Privacy Act of 1974, as amended (5 U.S.C. 552a), CBP applies the Department of Homeland Security Privacy Act regulations in 6 CFR part 5, subpart B.

[CBP Dec. 15–16, 80 FR 71692, Nov. 17, 2015]

§§ 103.4–103.13 [Reserved]

Subpart B—Production or Disclosure in Federal, State, Local, and Foreign Proceedings

SOURCE: T.D. 96–36, 61 FR 19838, May 3, 1996, unless otherwise noted.

§ 103.21 Purpose and definitions.

(a) *Purpose.* (1) This subpart sets forth procedures to be followed with respect to the production or disclosure of any documents contained in CBP files, any information relating to material contained in CBP files, any testimony by a CBP employee, or any information acquired by any person as part of that person's performance of official duties as a CBP employee or because of that person's official status, hereinafter collectively referred to as "information", in all federal, state, local, and foreign proceedings when a subpoena, notice of deposition (either upon oral examination or written interrogatory), order, or demand, hereinafter collectively referred to as a "demand", of a court, administrative agency, or other authority is issued for such information.

(2) This subpart does not cover those situations where the United States is a party to the action. In situations where the United States is a party to the action, CBP employees are instructed to follow internal CBP policies and procedures.

(b) *CBP employee.* For purposes of this subpart, the term "CBP employee" includes all present and former officers and employees of U.S. Customs and Border Protection.

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(c) *CBP documents.* For purposes of this subpart, the term "CBP documents" includes any document (including copies thereof), no matter what media, produced by, obtained by, furnished to, or coming to the knowledge of, any CBP employee while acting in his/her official capacity, or because of his/her official status, with respect to the administration or enforcement of laws administered or enforced by CBP.

(d) *Originating component.* For purposes of this subpart, the term "originating component" references the CBP official, or the official's designee, in charge of the office responsible for the collection, assembly, or other preparation of the information demanded or that, at the time the person whose testimony is demanded acquired the information in question, employs or employed the person whose testimony is demanded.

(e) *Disclosure to government law enforcement or regulatory agencies.* Nothing in this subpart is intended to impede the appropriate disclosure of information by CBP to federal, state, local, and foreign law enforcement or regulatory agencies, in accordance with the confidentiality requirements of the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905), and other applicable statutes.

(f) *Disclosure to federal attorneys and the Court of International Trade.* Nothing in this subpart is intended to restrict the disclosure of CBP information requested by the Court of International Trade, U.S. Attorneys, or attorneys of the Department of Justice, for use in cases which arise under the laws administered or enforced by, or concerning, CBP and which are referred by the Department of Homeland Security to the Department of Justice for prosecution or defense.

(g) *Disclosure of non-CBP information.* Nothing in the subpart is intended to impede the appropriate disclosure of non-CBP information by CBP employees in any proceeding in which they are a party or witness solely in their personal capacities.

(h) *Failure of CBP employee to follow procedures.* The failure of any CBP employee to follow the procedures specified in this subpart neither creates nor

confers any rights, privileges, or benefits on any person or party.

(i) *In camera inspection of records.* Nothing in this subpart authorizes CBP personnel to withhold records from a federal court, whether civil or criminal, pursuant to its order for such records appropriately made, for purposes of *in camera* inspection of the records to determine the propriety of claimed exemption(s) from disclosure.

[61 FR 19838, May 3, 1996, as amended at 78 FR 70856, Nov. 27, 2013]

§ 103.22 Procedure in the event of a demand for CBP information in any federal, state, or local civil proceeding or administrative action.

(a) *General prohibition against disclosure.* In any federal, state, or local civil proceeding or administrative action in which CBP is not a party, no CBP employee shall, in response to a demand for CBP information, furnish CBP documents or testimony as to any material contained in CBP files, any information relating to or based upon material contained in CBP files, or any information or material acquired as part of the performance of that person's official duties (or because of that person's official status) without the prior written approval of the Chief Counsel, as described in paragraph (b) of this section.

(b) *Employee notification to Counsel.* Whenever a demand for information is made upon a CBP employee, that employee shall immediately prepare a report that specifically describes the testimony or documents sought and notify the Assistant Chief Counsel or Associate Chief Counsel for the area where the employee is located. If the employee is located at Headquarters or outside of the United States, the employee shall immediately notify the Chief Counsel. The CBP employee shall then await instructions from the Chief Counsel concerning the response to the demand.

(c) *Requesting party's initial burden.* A party seeking CBP information shall serve on the appropriate CBP employee the demand, a copy of the Summons and Complaint, and provide an affidavit, or, if that is not feasible, a statement that sets forth a summary of the documents or testimony sought and its

relevance to the proceeding. Any disclosure authorization for documents or testimony by a CBP employee shall be limited to the scope of the demand as summarized in such affidavit or statement. The Chief Counsel may, upon request and for good cause shown, waive the requirements of this paragraph.

(d) *Requesting party's notification requirement.* The demand for CBP information, pursuant to the provisions of paragraph (c) of this section, shall be served at least ten (10) working days prior to the scheduled date of the production of the documents or the taking of testimony.

(e) *Counsel notification to originating component.* Upon receipt of a proper demand for CBP information, one which complies with the provisions of paragraph (c) of this section, if the Chief Counsel believes that it will comply with any part of the demand, it will immediately advise the originating component.

(f) *Conditions for authorization of disclosure.* The Chief Counsel, subject to the provisions of paragraph (h) of this section, may authorize the production of CBP documents or the appearance and testimony of a CBP employee if:

(1) Production of the demanded documents or testimony, in the judgment of the Chief Counsel, are appropriate under the factors specified in § 103.23(a) of this subpart; and

(2) None of the factors specified in § 103.23(b) of this subpart exist with respect to the demanded documents or testimony.

(g) *Limitations on the scope of authorized disclosure.* (1) The Chief Counsel shall authorize the disclosure of CBP information by a CBP employee without further authorization from CBP officials whenever possible, *provided that*:

(i) If necessary, Counsel has consulted with the originating component regarding disclosure of the information demanded;

(ii) There is no objection from the originating component to the disclosure of the information demanded; and

(iii) Counsel has sought to limit the demand for information to that which would be consistent with the factors specified in § 103.23 of this part.

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(2) In the case of an objection by the originating component, the Chief Counsel shall make the disclosure determination.

(h) *Disclosure of commercial information.* In the case of a demand for commercial information or commercial documents concerning importations or exportations, the Chief Counsel shall obtain the authorization of the Assistant Commissioner (Field Operations) or his/her designee prior to the Chief Counsel authorizing the production/disclosure of such documents/information.

[61 FR 19838, May 3, 1996, as amended at 78 FR 70856, Nov. 27, 2013]

§ 103.23 Factors in determining whether to disclose information pursuant to a demand.

(a) *General considerations.* In authorizing disclosures pursuant to a proper demand for CBP information, one which complies with the provisions of § 103.22(c), the Chief Counsel should consider the following factors:

(1) Whether the disclosure would be appropriate under the relevant substantive law concerning privilege;

(2) Whether the disclosure would be appropriate under the rules of procedure governing the case or matter in which the demand arose; and,

(3) Whether the requesting party has demonstrated that the information requested is:

(i) Relevant and material to the action pending, based on copies of the summons and complaint that are required to be attached to the subpoena *duces tecum* or other demand;

(ii) Genuinely necessary to the proceeding, *i.e.*, a showing of substantial need has been made;

(iii) Unavailable from other sources; and,

(iv) Reasonable in its scope, *i.e.*, the documents, information, or testimony sought are described with particularity.

(4) Whether consultation with the originating component requires that the Chief Counsel make a separate determination as to the disclosure of the information requested.

(b) *Circumstances where disclosure will not be made.* Among the demands in response to which disclosure will not be authorized by the Chief Counsel are

those demands with respect to which any of the following factors exist:

(1) Disclosure would violate a treaty, statute (such as the Privacy Act, 5 U.S.C. 552a, the Trade Secrets Act, 18 U.S.C. 1905, or the income tax laws, 26 U.S.C. 6103 and 7213), or a rule of procedure, such as the grand jury secrecy rule, Fed.R.Crim.Proc. rule 6(e) (18 U.S.C.App.);

(2) Disclosure would violate a specific regulation;

(3) Disclosure would reveal classified or confidential information;

(4) Disclosure would reveal a confidential source or informant;

(5) Disclosure would reveal investigatory records compiled for law enforcement purposes, interfere with enforcement proceedings, or disclose investigative techniques and procedures;

(6) Disclosure would improperly reveal confidential commercial information without the owner's consent (*e.g.*, entry information);

(7) Disclosure relates to documents which were produced by another agency or entity;

(8) Disclosure would unduly interfere with the orderly conduct of CBP business;

(9) CBP has no interest, records, or other official information regarding the matter in which disclosure is sought;

(10) There is a failure to make proper service upon the United States; or

(11) There is a failure to comply with federal, state, or local rules of discovery.

[61 FR 19838, May 3, 1996, as amended at 78 FR 70856, Nov. 27, 2013]

§ 103.24 Procedure in the event a decision concerning a demand is not made prior to the time a response to the demand is required.

If response to a demand is required before the instructions from the Chief Counsel are received, the U.S. Attorney, his/her assistant, or other appropriate legal representative shall be requested to appear with the CBP employee upon whom the demand has been made. The U.S. Attorney, his/her assistant, or other appropriate legal representative shall furnish the court or other authority with a copy of the regulations contained in this subpart,

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inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of the Chief Counsel, and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

[61 FR 19838, May 3, 1996, as amended at 78 FR 70856, Nov. 27, 2013]

§ 103.25 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the demand in response to a request made in accordance with § 103.24 pending receipt of instructions, or rules that the demand must be complied with irrespective of instructions rendered in accordance with §§ 103.22, 103.23, 103.26, or 103.27 of this subpart not to produce the documents or disclose the information sought, the CBP employee upon whom the demand has been made shall, pursuant to this subpart, respectfully decline to comply with the demand. *See, United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

[61 FR 19838, May 3, 1996, as amended at 78 FR 70856, Nov. 27, 2013]

§ 103.26 Procedure in the event of a demand for CBP information in a state or local criminal proceeding.

Port directors, special agents in charge within the Office of Internal Affairs, chief patrol agents, directors within the Office of Air and Marine, directors of field laboratories, or any supervisor of such officials may, in the interest of federal, state, and local law enforcement, upon receipt of demands of state or local authorities, and at the expense of the State, authorize employees under their supervision to attend trials and administrative hearings on behalf of the government in any state or local criminal case, to produce records, and to testify as to facts coming to their knowledge in their official capacities. However, in cases where a defendant in a state or local criminal case demands testimony or the production of CBP documents or information, authorization from the Chief Counsel is required as under § 103.22 of this subpart. No disclosure of information under this section shall be made if any

of the factors listed in § 103.23(b) of this subpart are present.

[61 FR 19838, May 3, 1996, as amended at 78 FR 70856, Nov. 27, 2013]

§ 103.27 Procedure in the event of a demand for CBP information in a foreign proceeding.

(a) *Required prior approval for disclosure.* In any foreign proceeding in which CBP is not a party, no CBP employee shall, in response to a demand, furnish CBP documents or testimony as to any material contained in CBP files, any information relating to or based upon material contained in CBP files, or any information or material acquired as part of the performance of that person's official duties (or because of that person's official status) without the prior approval of the Chief Counsel, as described in paragraph (b) of this section.

(b) *Employee notification to Counsel.* Whenever a demand in a foreign proceeding is made upon a CBP employee concerning pre-clearance activities within the territory of the foreign country, that employee shall immediately notify the appropriate Associate Chief Counsel responsible for the pre-clearance location. All other demands in a foreign proceeding shall be reported by CBP employees to the Chief Counsel. The CBP employee shall then await instructions from the Chief Counsel concerning the response to the demand.

(c) *Counsel notification to originating component.* Upon receipt of a proper demand for CBP information, one which complies with the provisions of § 103.22(c), if the Chief Counsel believes that it will comply with any part of the demand, it will immediately advise the originating component.

(d) *Conditions for authorization of disclosure.* The Chief Counsel, subject to the terms of paragraph (e) of this section, may authorize the disclosure of CBP documents or the appearance and testimony of a CBP employee if:

(1) Production of the demanded documents or testimony, in the judgment of the Chief Counsel, are appropriate under the factors specified in § 103.23(a) of this subpart; and

(2) None of the factors specified in § 103.23(b) of this subpart exist with respect to the demanded documents or testimony.

(e) *Limitations on the scope of authorized disclosure.* (1) The Chief Counsel shall authorize the disclosure of CBP information by a CBP employee without further authorization from CBP officials whenever possible, provided that:

(i) If necessary, Counsel has consulted with the originating component regarding disclosure of the information demanded;

(ii) There is no objection from the originating component to the disclosure of the information demanded; and

(iii) Counsel has sought to limit the demand for information to that which would be consistent with the factors specified in § 103.23 of this part.

(2) In the case of an objection by the originating component, the Chief Counsel shall make the disclosure determination.

[61 FR 19838, May 3, 1996, as amended at 78 FR 70856, Nov. 27, 2013]

**Subpart C—Other Information
Subject to Restricted Access**

§ 103.31 Information on vessel manifests and summary statistical reports.

(a) *Disclosure to members of the press.* Accredited representatives of the press, including newspapers, commercial magazines, trade journals, and similar publications shall be permitted to examine vessel manifests and summary statistical reports of imports and exports and to copy therefrom for publication information and data subject to the following rules:

(1) Of the information and data appearing on outward manifests, only the name and address of the shipper, general character of the cargo, number of packages and gross weight, name of vessel or carrier, port of exit, port of destination, and country of destination may be copied and published. However, if the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure of the above information is likely to pose a threat of personal injury or property

damage, that information shall not be disclosed to the public.

(2) Commercial or financial information, such as the names of the consignees, and marks and numbers shall not be copied from outward manifests or any other papers.

(3) All the information appearing on the cargo declaration (Customs Form 1302) of the inward vessel manifest may be copied and published. However, if the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that the disclosure of the information contained on the cargo declaration is likely to pose a threat of personal injury or property damage, that information shall not be disclosed to the press.

(b) *Review of data.* All copies and notations from inward or outward manifests shall be submitted for examination by a Customs officer designated for that purpose.

(c) *Disclosure to the public.* Members of the public shall not be permitted to examine vessel manifests. However, they may request and obtain from Customs, information from vessel manifests, subject to the rules set forth in paragraph (a) of this section. However, importers and exporters, or their duly authorized brokers, attorneys, or agents may be permitted to examine manifests with respect to any consignment of goods in which they have a proper and legal interest as principal or agent, but shall not be permitted to make any general examination of manifests or make any copies or notations from them except with reference to the particular importation or exportation in which they have a proper and legal interest.

(d) *Confidential treatment—(1) Inward manifest.* An importer or consignee may request confidential treatment of its name and address contained in inward manifests, to include identifying marks and numbers. In addition, an importer or consignee may request confidential treatment of the name and address of the shipper or shippers to such importer or consignee by using the following procedure:

(i) An importer or consignee, or authorized employee, attorney or official of the importer or consignee, must submit a certification (as described in

paragraph (d)(1)(ii) of this section) claiming confidential treatment of its name and address. The name and address of an importer or consignee includes marks and numbers which reveal the name and address of the importer or consignee. An importer or consignee may file a certification requesting confidentiality for all its shippers.

(ii) There is no prescribed format for a certification. However, the certification shall include the importer's or consignee's Internal Revenue Service Employer Number, if available. There is no requirement to provide sufficient facts to support the conclusion that the disclosure of the names and addresses would likely cause substantial harm to the competitive position of the importer or consignee.

(iii) The certification must be submitted to the Disclosure Law Officer, Headquarters, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

(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 Disclosure Law Officer 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 Customs of the receipt of its certification of confidentiality.

(2) *Outward manifest.* If a shipper wishes to request confidential treatment by Customs of the shipper's name and address contained in an outward manifest, the following procedure shall be followed:

(i) A shipper, or authorized employee or official of the shipper, must submit a certification claiming confidential treatment of the shipper's name and address. The certification shall include the shipper's Internal Revenue Service Employer Number, if available.

(ii) There is no prescribed format for a certification.

(iii) The certification must be submitted to the Disclosure Law Officer, Headquarters, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

(iv) Each certification will be valid for a period of two (2) years from the date of its approval.

(3) If any individual shall abuse the privilege granted him to examining inward and outward manifests or shall make any improper use of any information or data obtained from such manifests or other papers filed in the customhouse, both he and the party or publication which he represents shall thereafter be denied access to such papers.

(e) *Availability of manifest data on CD-ROMS—(1) Availability.* Manifest data acquired from the Automated Manifest System (AMS) is available to interested members of the public on CD-ROMS. This data, compiled daily, will contain all manifest transactions made on the nationwide system within the last 24 hour period. Data for which parties have requested confidential treatment in accordance with paragraph (d) of this section will not be included on the CD-ROMS. These CD-ROMS may be purchased at the government's production cost. CD-ROMS are available for specific days or on a subscription basis.

(2) *Requests and subscriptions.* Requests for CD-ROMS must be in writing and submitted to: U.S. Customs and Border Protection, National Finance Center, Collections Section, P.O. Box 68907, Indianapolis, Indiana 46268, or 6026 Lakeside Blvd., Indianapolis, Indiana 46278. Requests must include a check to cover the cost of the CD-ROMS requested. Actual costs and other specific information should be ascertained by contacting the Collections Section at (317) 614-4514. Bills for subscriptions will be issued monthly, with the first month's fee due in advance. Requested CD-ROMS will be mailed from the CBP Technology Support Center, first class, on the next business day after compilation. Parties desiring another form of delivery will have to make their own arrangements and notify CBP in advance. Subscriptions may be canceled provided CBP receives written notice at least 10 days prior to the end of the month. The CBP Technology Support Center must be notified in writing within seven days of technical problems with CD-ROMS or non-receipt of CD-ROMS in order to receive a replacement or credit towards

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future tape purchases. Refunds will not be provided. Information regarding the technical specifications of the CD-ROMS, problem CD-ROMS or the non-receipt of CD-ROMS should be directed to CBP Technology Support Center at 1-800-927-8729.

(3) *Data elements.* The following are the data elements from the AMS manifest which will be provided to the public via CD-ROMS:

1. Carrier code.
2. Vessel country code.
3. Vessel name.
4. Voyage number.
5. District/port of unloading.
6. Estimated arrival date.
7. Bill of lading number.
8. Foreign port of lading.
9. Manifest quantity.
10. Manifest units.
11. Weight.
12. Weight unit.
13. Shipper name.¹
14. Shipper address.¹
15. Consignee name.¹
16. Consignee address.¹
17. Notify party name.¹
18. Notify party address.¹
19. Piece count.
20. Description of goods.
21. Container number.
22. Seal number.

[T.D. 81-168, 46 FR 32565, June 24, 1981]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §103.31, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 103.31a Advance electronic information for air, truck, and rail cargo; Importer Security Filing information for vessel cargo.

The following types of advance electronic information are *per se* exempt from disclosure as either trade secrets or privileged or confidential commercial or financial information, unless CBP receives a specific request for such records pursuant to 6 CFR 5.3, and the owner of the information expressly agrees in writing to its release:

(a) Advance cargo information that is electronically presented to Customs and Border Protection (CBP) for inbound or outbound air, rail, or truck

¹Designates data element which will be deleted where confidentiality has been requested.

cargo in accordance with §122.48a, 123.91, 123.92, or 192.14 of this chapter;

(b) Importer Security Filing information that is electronically presented to CBP for inbound vessel cargo in accordance with §149.2 of this chapter;

(c) Vessel stow plan information that is electronically presented to CBP for inbound vessels in accordance with §4.7c of this chapter; and

(d) Container status message information that is electronically presented for inbound containers in accordance with §4.7d of this chapter.

[CBP Dec. 08-46, 73 FR 71780, Nov. 25, 2008, as amended by CBP Dec. 15-16, 80 FR 71692, Nov. 17, 2015]

§ 103.32 Information concerning fines, penalties, and forfeitures cases.

Except as otherwise provided in these regulations or in other directives (including those published as Treasury Decisions or CBP Decisions), port directors and other CBP officers must refrain from disclosing facts concerning seizures, investigations, and other pending cases until CBP action is completed. After the penalty proceeding is closed by payment of the claim amount, payment of a mitigated amount, or judicial action, the identity of the violator, the section of the law violated, the amount of penalty assessed, loss of revenue, mitigated amount (if applicable), and the amount of money paid may be disclosed to the public by the appropriate port director. Public disclosure of any other item of information concerning such cases, whether open or closed, must only be made in conformance with the procedures provided in 6 CFR 5.3.

[T.D. 81-168, 46 FR 32565, June 24, 1981. Redesignated by T.D. 96-36, 61 FR 19838, May 3, 1996, as amended by CBP Dec. 15-16, 80 FR 71693, Nov. 17, 2015]

§ 103.33 Release of information to foreign agencies.

(a) The Commissioner or his designee may authorize Customs officers to exchange information or documents with foreign customs and law enforcement agencies if the Commissioner or his designee reasonably believes the exchange of information is necessary to—

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(1) Ensure compliance with any law or regulation enforced or administered by Customs;

(2) Administer or enforce multilateral or bilateral agreements to which the U.S. is a party;

(3) Assist in investigative, judicial and quasi-judicial proceedings in the U.S.; and

(4) An action comparable to any of those described in paragraphs (a) (1) through (3) of this section undertaken by a foreign customs or law enforcement agency, or in relation to a proceeding in a foreign country.

(b)(1) Information may be provided to foreign customs and law enforcement agencies under paragraph (a) of this section only if the Commissioner or his designee obtains assurances from such agencies that such information will be held in confidence and used only for the law enforcement purposes for which such information is provided to such agencies by the Commissioner or his designee.

(2) No information may be provided under paragraph (a) of this section to any foreign customs or law enforcement agency that has violated any assurances described in paragraph (b)(1) of this section.

[T.D. 86-196, 51 FR 40792, Nov. 10, 1986. Redesignated by T.D. 96-36, 61 FR 19838, May 3, 1996]

§ 103.34 Sanctions for improper actions by CBP officers or employees.

(a) The improper disclosure of the confidential information contained in CBP documents, or the disclosure of information relative to the business of one importer or exporter that is acquired by a CBP officer or employee in an official capacity to any person not authorized by law or regulations to receive this information is a ground for dismissal from CBP, suspension, or other disciplinary action, and if done for a valuable consideration subjects that person to criminal prosecution.

(b) Under 5 U.S.C. 552(a)(4)(F), the Special Counsel, Merit Systems Protection Board, has authority, upon the issuance of a written finding by a court that a CBP officer or employee who was primarily responsible for withholding a record may have acted arbitrarily or capriciously, to initiate a

proceeding to determine whether disciplinary action is warranted against that officer or employee. Such proceedings are governed by Merit Systems Protection Board regulations found at part 1201 of Title 5 of the Code of Federal Regulations.

[T.D. 81-168, 46 FR 32565, June 24, 1981. Redesignated by T.D. 96-36, 61 FR 19838, May 3, 1996, as amended by CBP Dec. 15-16, 80 FR 71693, Nov. 17, 2015]

§ 103.35 Confidential commercial information; exempt.

(a) *In general.* Notwithstanding 6 CFR 5.8, for purposes of this section, “commercial information” is defined as trade secret, commercial, or financial information obtained from a person. Commercial information provided to CBP by a business submitter will be treated as privileged or confidential and will not be disclosed pursuant to a Freedom of Information Act (FOIA) request or otherwise made known in any manner except as provided in this section.

(b) *Notice to business submitters of FOIA requests for disclosure.* Except as provided in paragraph (b)(2) of this section, CBP will provide business submitters with prompt written notice of receipt of FOIA requests or appeals that encompass their commercial information. The written notice will describe either the exact nature of the commercial information requested, or enclose copies of the records or those portions of the records that contain the commercial information. The written notice also will advise the business submitter of its right to file a disclosure objection statement as provided under paragraph (c)(1) of this section. CBP will provide notice to business submitters of FOIA requests for the business submitter’s commercial information for a period of not more than 10 years after the date the business submitter provides CBP with the information, unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(1) *When notice is required.* CBP will provide business submitters with notice of receipt of a FOIA request or appeal whenever:

(i) The business submitter has in good faith designated the information as commercially- or financially-sensitive information. The business submitter's claim of confidentiality should be supported by a statement by an authorized representative of the business entity providing specific justification that the information in question is considered confidential commercial or financial information and that the information has not been disclosed to the public; or

(ii) CBP has reason to believe that disclosure of the commercial information could reasonably be expected to cause substantial competitive harm.

(2) *When notice is not required.* The notice requirements of this section will not apply if:

(i) CBP determines that the commercial information will not be disclosed;

(ii) The commercial information has been lawfully published or otherwise made available to the public; or

(iii) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(c) *Procedure when notice given*—(1) *Opportunity for business submitter to object to disclosure.* A business submitter receiving written notice from CBP of receipt of a FOIA request or appeal encompassing its commercial information may object to any disclosure of the commercial information by providing CBP with a detailed statement of reasons within 10 days of the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays). The statement should specify all the grounds for withholding any of the commercial information under any exemption of the FOIA and, in the case of Exemption 4, should demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. The disclosure objection information provided by a person pursuant to this paragraph may be subject to disclosure under the FOIA.

(2) *Notice to FOIA requester.* When notice is given to a business submitter under paragraph (b)(1) of this section, notice will also be given to the FOIA requester that the business submitter has been given an opportunity to object to any disclosure of the requested

commercial information. The requester will be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. The notice will also invite the FOIA requester to agree to a voluntary extension(s) of time so that CBP may review the business submitter's disclosure objection statement.

(d) *Notice of intent to disclose.* CBP will consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose commercial information. Whenever CBP decides to disclose the requested commercial information over the objection of the business submitter, CBP will provide written notice to the business submitter of CBP's intent to disclose, which will include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the commercial information to be disclosed; and,

(3) A specified disclosure date which will not be less than 10 days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of intent to disclose the requested information has been issued to the business submitter. Except as otherwise prohibited by law, CBP will also provide a copy of the notice of intent to disclose to the FOIA requester at the same time.

(e) *Notice of FOIA lawsuit.* Whenever a FOIA requester brings suit seeking to compel the disclosure of commercial information covered by paragraph (b)(1) of this section, CBP will promptly notify the business submitter in writing.

[CBP Dec. 03–02, 68 FR 47454, Aug. 11, 2003, as amended by CBP Dec. 15–16, 80 FR 71693, Nov. 17, 2015]

PART 111—CUSTOMS BROKERS

Sec.
111.0 Scope.

Subpart A—General Provisions

111.1 Definitions.
111.2 License and district permit required.
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