States-Canada Free-Trade Agreement (CFTA), the objectives of which included the elimination of Customs duties and other barriers to trade in goods and services between the two countries. The provisions of the CFTA were adopted by the United States with the enactment of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. 100–449, 102 Stat. 1851, and the CFTA went into effect on January 1, 1989. Regulations setting forth the basic legal and procedural requirements for obtaining preferential duty treatment on imported merchandise under the CFTA are contained in §§ 10.301 through 10.311 of the Customs Regulations (19 CFR 10.301 through 10.311).

On December 17, 1992, the United States, Canada and Mexico entered into the North American Free Trade Agreement (NAFTA). As in the case of the CFTA, the stated objectives of the NAFTA include the elimination of barriers to trade in goods and services between the territories of the three countries. The provisions of the NAFTA were adopted by the United States with the enactment of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, and the NAFTA went into effect on January 1, 1994. Interim regulations implementing the Customs-related provisions of the NAFTA were published in the Federal Register as T.D. 94–1 on December 30, 1993 (58 FR 69460), and final NAFTA implementing regulations were published as T.D. 95–68 on September 6, 1995 (60 FR 46334); the majority of those NAFTA regulations are set forth in part 181 of the Customs Regulations (19 CFR part 181).

In view of the similarity between the objectives of the CFTA and those of the NAFTA, the United States and Canada recognized that, in principle, there would be no need to continue the operation of the CFTA upon accession to, and entry into force of, the NAFTA. Accordingly, by an exchange of letters dated December 30, 1993, the Governments of the United States and Canada formally agreed, subject to certain transitional arrangements not involving preferential duty treatment, to suspend the operation of the CFTA upon the entry into force of the NAFTA, with the suspension to remain in effect for such time as the two Governments are Parties to the NAFTA.

Customs believes that the present CFTA implementing regulations are unclear as regards their applicability because they do not reflect the fact that the operation of the CFTA has been suspended as a result of the entry into force of the NAFTA. On the other hand, Customs notes that those regulations must be retained because they continue to have application to Customs transactions involving merchandise imported from Canada that was entered or withdrawn from warehouse for consumption during the period in which the CFTA was in effect (that is, from January 1, 1989, through December 31, 1993).

In order to address the considerations mentioned above, this document revises § 10.301 (Scope) to include references both to the suspension of the CFTA and to the circumstances in which the CFTA regulations continue to have application.

Inapplicability of Public Notice and Comment Procedures and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(a), public notice and comment procedures are inapplicable to this final rule because it is within the foreign affairs function of the United States. In addition, for the above reason and because this regulatory amendment involves no substantive change but rather merely conforms the regulations to present law, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) for dispensing with a 30-day delayed effective date.

Executive Order 12866

Because this document involves a foreign affairs function it is not subject to the provisions of E.O. 12866.

Regulatory Flexibility Act

Since the amendment is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.).*

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

Amendment to the Regulations

For the reasons set out in the preamble, part 10 of the Customs Regulations (19 CFR part 10) is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for part 10 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

2. Section 10.301 is revised to read as follows:

§ 10.301 Scope and applicability.

The provisions of §§ 10.302 through 10.311 of this part relate to the procedures for obtaining duty preferences on imported goods under the United States-Canada Free-Trade Agreement (the Agreement) entered into on January 2, 1988, and the United States-Canada Free-Trade Agreement Implementation Act of 1988 (102 Stat. 1851). The United States and Canada agreed to suspend operation of the Agreement with effect from January 1, 1994, to coincide with the entry into force of the North American Free Trade Agreement (see part 181 of this chapter) and, accordingly, the provisions of §§ 10.302 through 10.311 of this part apply only to goods imported from Canada that were entered for consumption, or withdrawn from warehouse for consumption, during the period January 1, 1989, through December 31, 1993. In situations involving goods subject to bilateral restrictions or prohibitions, or country of origin marking, other criteria for determining origin may be applicable pursuant to Article 407 of the Agreement.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: March 29, 1996.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–11007 Filed 5–02–96; 8:45 am]

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19 CFR Part 103

[T.D. 96–36]

RIN 1515–AB58

Disclosure or Production of Customs Information Pursuant to Legal Process

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adopting final rules that clarify the procedures to be followed when subpoenas or other demands of courts and other authorities,

except Congress, are issued to compel the disclosure or production of Customs information, *i.e.,* documents, information, or employee testimony, for use in federal, state, local, and foreign proceedings. The procedures will be applicable to current and former Customs employees and to litigants who seek to compel Customs employees to disclose or produce Customs information. Specifically, the amendments will place in the Office of the Chief Counsel the authority to make determinations concerning the disclosure of such information to ensure the more efficient use of Customs personnel resources in responding to requests in a timely manner. The amendments also restructure the general organizational scheme of Part 103 of the Customs Regulations to clarify their application.

EFFECTIVE DATE: June 3, 1996.

FOR FURTHER INFORMATION CONTACT: Matthew McConkey, Office of the Chief Counsel (202) 927–6900.

SUPPLEMENTARY INFORMATION:

Background

Customs enforces some 600 laws for 60 agencies while facilitating the flow of merchandise in international commerce. In addition to maintaining records relevant to its enforcement functions, Customs also maintains information that has a bearing on other law enforcement provisions. Many of the records Customs maintains contain confidential business information subject to the Trade Secrets Act, 18 U.S.C. 1905, which prohibits the unauthorized disclosure of such information by an officer or employee of the United States.

Regulations pertaining to Customs release of information, *i.e.,* documents, information, or employee testimony, subpoenaed for use in judicial proceedings are found at § 103.17 of the Customs Regulations (19 CFR 103.17). But while § 103.17 provides some procedures regarding the disclosure of information, *e.g.,* the testimony of employees, and the production of documents pursuant to a subpoena *duces tecum* in cases both where the agency is and is not a party to a legal proceeding, it does not adequately describe the procedures for determining whether and how the information should be released in response to such demands.

On September 6, 1994, Customs published a document in the Federal Register (59 FR 46007) proposing to amend the Customs Regulations to clarify the procedures to be followed when subpoenas or other demands of courts and other authorities, except Congress, are issued to compel the disclosure or production of Customs information for use in various proceedings. The procedures would be applicable to current and former Customs employees and to litigants who seek to compel Customs employees to disclose or produce Customs information. Specifically, the proposed amendments sought to place in the Office of the Chief Counsel the responsibility to make determinations concerning the disclosure of such information to ensure the more efficient use of Customs personnel resources in responding to requests in a timely manner. The amendments also proposed to restructure the general organizational scheme of part 103 of the Customs Regulations to clarify their application. The notice proposed to revise two sections (§§ 103.0 and 103.17), renumber five sections (§§ 103.14 through 103.18), and create six new sections (§§ 103.22 through 103.27) of the Customs Regulations. The notice also solicited comments concerning these changes.

The comments received and Customs responses to them are set forth below.

Discussion of Comments

Two comments were received—one from a Bar Association, the other from a group of undergraduate business students—that raised three areas of concern: (1) Centralizing decisions over the disclosure process; (2) agency assertion of privilege and the role of discovery; and (3) the omission of *in camera* disclosure provisions. We address these concerns in turn.

Centralizing Decisions Over the Disclosure Process

Comment: Both commenters protested the concept of centralized decision-making concerning the disclosure process as likely to increase the inefficiency of a bureaucracy given that centralization requires the central decision-maker to find the information demanded, analyze it, etc. These commenters argue that the offices having the information demanded are in closer contact with the information and should have the authority to decide whether to comply with demand.

Customs Response: As a general proposition, Customs believes that it is appropriate to fix the responsibility for legal review of subpoena issues within one office. It was, perhaps, misleading to state in the proposed rule that the transferring of responsibility for legal review of subpoena issues to the Office of Chief Counsel was a centralizing move. Decisions concerning the disclosure or production of Customs information pursuant to legal process are now handled by the Disclosure Law Branch of the Office of Regulations and Rulings, which has offices only at Customs Headquarters in Washington, D.C. By placing the decision-making process regarding subpoena demands for information in the Office of the Chief Counsel, the amendments to the regulations actually serve to decentralize the processing of such information demands, as the Office of the Chief Counsel has a field presence throughout the United States. Thus, the processing of subpoena demands should be handled more efficiently than when all such demands were handled by the one office in Washington, D.C.

Agency Assertion of Privilege and the Role of Discovery

Comment: Stating that the proposed regulations are not as even-handed as the present regulations in allowing for privilege claims, a commenter proposed adding language to § 103.21(e), which concerns disclosure of information to government law enforcement or regulatory agencies, and § 103.26, which concerns procedures in the event of a demand for Customs information in a state or local criminal proceeding, to reflect disclosure limitations, *i.e.,* scope of privileges, contained in § 103.12, which concerns Freedom of Information Act (FOIA) exemptions from disclosure. The commenter states that these two regulatory provisions should be more explicit as to what information can be turned over and on whose authority and suggests that language be added to more appropriately apprise Customs field personnel of their duty to refer certain matters to Customs Headquarters.

Customs Response: Customs does not agree with the commenter. Sections 103.21(e) and 103.26 are located in subpart B of the Customs Regulations, which concerns disclosure of Customs information pursuant to legal process for use in legal proceedings; however, the disclosure limitations of concern (§ 103.12) are located in subpart A of the regulations, which concerns disclosure of Customs information pursuant to various disclosure laws. This means that the exemptions available under provisions in subpart A are not available under provisions in subpart B. On a separate note, the Office of the Chief Counsel does not process information requests under subpart A, only those under subpart B. Accordingly, no change to the proposed regulations is made based on this comment.

Comment: A commenter stated that the provisions of § 103.21(f) are inadequate to protect the orderly functioning of the discovery process in

that they allow the Government to frustrate discovery requests solely by asserting that regulation as the reason for objection to discovery requests, compelling parties to resort to judicial intervention to resolve matters of asserted privilege. The commenter stresses the point that if the Government wishes to assert a non-disclosure privilege in any action before the Court of International Trade (CIT) (particularly in discovery), then such privilege should be asserted by its attorneys with specific references to the discovery request and which privilege is claimed, i.e., executive, statutory, or evidentiary. Accordingly, to make it clear that non-government attorneys should not have to make special discovery requests of the Chief Counsel's office to carry on discovery against the United States nor have to resort to the Court to enforce discovery demands, the commenter suggests that language be added to § 103.21(f) indicating this.

Customs Response: Customs believes that § 103.21(f) need not be changed. Section 103.21(f) is not a substantive provision, but rather a statement of purpose, that is not subject to the general prohibition provisions contained at § 103.22, which only pertain to proceedings in which *Customs is not a party* (emphasis added).

In the notice of proposed rulemaking, it was stated, regarding paragraph (f) of § 103.21, that this paragraph serves to limit the scope of the proposed regulations by providing that it is not intended to impede or restrict the appropriate disclosure of any information to certain federal attorneys and judges in connection with Customs cases—*i.e.*, when the Customs Service is a party—referred by the Department of the Treasury to the Department of Justice for prosecution or defense. The comment presumes that the regulatory provision proposed by Customs will control when the agency is a party before an Article III court, which cannot be; the Court's rules of procedure will, of course, control such a proceeding. Accordingly, no change to this regulatory provision is made based on this comment; however, the heading of § 103.22 is revised to reflect the fact that the procedures thereunder only pertain when the Customs Service is not a party to the litigation or proceeding.

Omission of In Camera Disclosure Provisions

Comment: A commenter stated that the provisions of current § 103.17(d), which provide for *in camera* review of documents, are not extended to certain other criminal actions. While the commenter believes that proposed § 103.21(f) confers the right of *in camera* inspection on judges of the CIT, he states that such an extension is not evident in the provisions of proposed § 103.26, which pertains to criminal proceedings in other federal courts. Accordingly, the commenter suggests that Customs amend its regulations to allow for turnover of its information to state and local law enforcement officers.

Customs Response: Although the comment seems to present two different issues *in camera* disclosure to judges and disclosure to law enforcement personnel), Customs does not agree that *in camera* inspection of records and documents in state or local criminal proceedings is not present in § 103.26. Regarding *in camera* disclosure of Customs documents to any court (State or Federal, whether civil or criminal), it is within the inherent power of a court of competent jurisdiction to order *in camera* disclosure of Customs documents. Regarding disclosure to state and local law enforcement officers, as provided at § 103.21(e), nothing in this subpart is intended to impede the appropriate disclosure of information, in keeping with the Privacy Act (5 U.S.C. 552a) and the Trade Secrets Act (18 U.S.C. 1905), by Customs to federal, state, local, and foreign law enforcement or regulatory agencies. Nevertheless, because of the concern expressed over Customs perceived ability to withhold records from a court of competent jurisdiction, Customs has no hesitation in adding the former *in camera* provisions of § 103.17(d) as new § 103.21(i). Accordingly, a provision is added to the final regulations providing that nothing in new subpart B authorizes Customs 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.

Other Matters

Three other procedural changes to the proposed regulations are made and a referencing (typographical) error is corrected at this time. The first procedural change, a change to § 103.22(d), increases the processing time from 5 days to 10 days. This change is made because Customs wishes to ensure that demands for Customs information can be met by available staff. The second and third procedural changes, to § 103.23(b), add two subparagraphs to provide for two additional circumstances where disclosure will not be made: failure to make proper service upon the United States (§ 103.23(b)(10)), and failure to comply with federal, state, or local rules of discovery (§ 103.23(b)(11)). Although these grounds for not authorizing disclosure are readily contained in both civil and criminal rules of procedure throughout the United States, the presence of either of these facts at the agency level will help the Office of the Chief Counsel to summarily respond to such requests. The typographical error concerns a reference in § 103.25 to § 103.22; it should read § 103.24 to reflect the statement in the **BACKGROUND** portion of the notice that the new § 103.25 concerns ''the preceding section'' *i.e.*, § 103.24.

Unrelated to subpoenas, this document also amends § 103.6, concerning the initial handling of requests for information pursuant to the FOIA, to reflect that the initial determination regarding such requests for information maintained in the field shall be made by the appropriate director of a service port, or in the case of records of the Office of Investigations, the appropriate special agent in charge. The regulations currently do not distinguish between records of the Office of Investigations and other records regarding who shall make the initial determination concerning their release.

Conclusion

Based on the comments received and further consideration by Customs, Customs has decided to finalize the amendments proposed with the following changes: In § 103.21, a new paragraph (i) is added to continue authorizing *in camera* inspections by any court; in § 103.22(d), the processing time of requests is increased from five to ten days; and in § 103.23(b), subparagraphs (10) and (11) are added providing additional circumstances where disclosure will not be made: where there is a failure to make proper service upon the United States, and where there is a failure to comply with federal, state, or local rules of discovery. Further, the heading of § 103.22 is revised to make it clear that the procedures thereunder only pertain when the Customs Service is not a party to the litigation or proceeding and the referencing (typographical) error in § 103.25 to § 103.22 is corrected to reference § 103.24. Also, references to certain Customs field organization designations, *i.e.*, district directors and regional commissioners, are revised to reference port directors to account for Customs reorganization. Lastly, certain editorial changes are made to make clear the relationship between (1) the Office

of the Chief Counsel, (2) its field counsel, (3) Customs employees served with demands, and (4) the official in charge of the originating component.

Inapplicability of the Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and based upon the information set forth above, it is certified that the regulations will not have a significant impact on a substantial number of small entities. Accordingly, these regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Further, this document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

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, Subpoenas.

Amendment to the Regulations

For the reasons set forth above, part 103, Customs Regulations (19 CFR part 103), is amended as set forth below:

PART 103—AVAILABILITY OF INFORMATION

1. The table of contents of part 103 is revised to read as set forth below to reflect the amendments that follow:

Sec.
103.0 Scope.

Subpart A—Production of documents/disclosure of information pursuant to the FOIA

103.1 Public reading rooms.
103.2 Information available to the public.
103.3 Publication of information in the Federal Register.
103.4 Public inspection and copying.
103.5 Specific requests for records.
103.6 Grant or denial of initial request.
103.7 Administrative appeal of initial determination.
103.8 Time extensions.
103.9 Judicial review.
103.10 Fees for services.
103.11 Specific Customs Service records subject to disclosure.
103.12 Exemptions.
103.13 Segregability of records.

Subpart B—Production or disclosure in Federal, State, Local, and Foreign proceedings

103.21 Purpose and definitions.
103.22 Procedure in the event of a demand for Customs information in any federal, state, or local civil proceeding or administrative action.
103.23 Factors in determining whether to disclose information pursuant to a demand.
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.
103.25 Procedure in the event of an adverse ruling.
103.26 Procedure in the event of a demand for Customs information in a state or local criminal proceeding.
103.27 Procedure in the event of a demand for Customs information in a foreign proceeding.

Subpart C—Other Information Subject to Restricted Access

103.31 Information on vessel manifests and summary statistical reports.
103.32 Information concerning fines, penalties, and forfeitures cases.
103.33 Release of information to foreign agencies.
103.34 Sanctions for improper actions by Customs officers or employees.

§§ 103.31, 103.33, 103.34 [Amended]

2. The general authority citation for part 103 is revised and specific authority citations for §§ 103.31, 103.33, and 103.34 are added to read 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; Section 103.33 also issued under 19 U.S.C. 1628; Section 103.34 also issued under 18 U.S.C. 1905.

3. Section 103.0 is revised to read as follows:

§ 103.0 Scope.

This part governs the production/disclosure of agency-maintained documents/information requested pursuant to various disclosure laws and/or legal processes. Thus, the extent of disclosure of requested information may be dependent on whether the request is pursuant to the provisions of 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 statutory or regulatory authorities, as required by administrative and/or legal processes. The regulations for this part contain a discussion of applicable fees for the search, duplication, review, and other tasks associated with processing information requests pursuant to the FOIA, and also provide for the appeal of agency decisions and sanctions for the improper withholding and/or the untimely release of requested information. As information obtained by Customs is derived from a myriad of sources, persons seeking information should consult with a disclosure law officer, the director of a service port, or the local public information officer before invoking the formal procedures set forth in this part. These regulations supplement the regulations of the Department of the Treasury regarding public access to records, which are found at 31 CFR part 1, and, in the event of any inconsistency between these regulations and those of the Department of the Treasury, the latter shall prevail. For purposes of this part, the Office of the Chief Counsel is considered a part of the United States Customs Service.

§§ 103.1–103.13 [Amended]

4. Sections 103.1 through 103.13 are designated as subpart A and a new heading for subpart A is added to read as follows:

Subpart A—Production of documents/disclosure of information under the FOIA

5. In § 103.6, paragraph (a)(1) is revised to read as follows:

§ 103.6 Grant or denial of initial request.

(a) *Officers designated to make initial determinations*—(1) *Service ports.* The appropriate director of a service port, or in the case of records of the Office of Investigations, the appropriate special agent in charge (SAC), shall make any initial determination of a request for a record which is maintained, respectively, at that service port or under the SAC's jurisdiction.

* * * * *

§§ 103.14, 103.15, 103.16, 103.18 [Redesignated as §§ 103.31, 103.34, 103.32, 103.33]

6. Sections 103.14, 103.15, 103.16, and 103.18 are redesignated as §§ 103.31, 103.34, 103.32, and 103.33, respectively, and designated as subpart C and a new heading for subpart C is added to read as follows:

Subpart C—Other Information Subject to Restricted Access

§ 103.17 [Removed]

7. Section 103.17 is removed.

8. A new subpart B, consisting of §§ 103.21 through 103.27, is added to read as follows:

Subpart B—Production or disclosure in Federal, State, Local, and Foreign proceedings

§ 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 Customs files, any information relating to material contained in Customs files, any testimony by a Customs employee, or any information acquired by any person as part of that person's performance of

official duties as a Customs 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, Customs employees are instructed to follow internal Customs policies and procedures.

(b) *Customs employee.* For purposes of this subpart, the term ''Customs employee'' includes all present and former officers and employees of the United States Customs Service.

(c) *Customs documents.* For purposes of this subpart, the term ''Customs documents'' includes any document (including copies thereof), no matter what media, produced by, obtained by, furnished to, or coming to the knowledge of, any Customs 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 the Customs Service.

(d) *Originating component.* For purposes of this subpart, the term ''originating component'' references the Customs 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 Customs 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 Customs 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, the Customs Service and which are referred by the Department of the Treasury to the Department of Justice for prosecution or defense.

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

(h) *Failure of Customs employee to follow procedures.* The failure of any Customs 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 Customs 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.

§ 103.22 Procedure in the event of a demand for Customs 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 the Customs Service is not a party, no Customs employee shall, in response to a demand for Customs information, furnish Customs documents or testimony as to any material contained in Customs files, any information relating to or based upon material contained in Customs 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 Customs 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 Customs employee shall then await instructions from the Chief Counsel concerning the response to the demand.

(c) *Requesting party's initial burden.* A party seeking Customs information shall serve on the appropriate Customs 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 Customs 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 Customs 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 Customs 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 Customs documents or the appearance and testimony of a Customs 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 Customs information by a Customs employee without further authorization from Customs 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.

(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.

§ 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 Customs 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 Customs business;

(9) Customs 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.

§ 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 Customs 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, 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.

§ 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 Customs 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).

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

Port directors, special agents in charge, and chiefs of field laboratories 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 Customs 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.

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

(a) *Required prior approval for disclosure.* In any foreign proceeding in which the Customs Service is not a party, no Customs employee shall, in response to a demand, furnish Customs documents or testimony as to any material contained in Customs files, any information relating to or based upon material contained in Customs 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 Customs 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 Customs employees to the Chief Counsel. The Customs 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 Customs 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 Customs documents or the appearance and testimony of a Customs 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 Customs information by a Customs employee without further authorization from Customs 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.

William F. Riley,

Acting Commissioner of Customs.

Approved: December 14, 1995.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–11006 Filed 5–2–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

22 CFR Part 126

[Public Notice 2346]

Amendment to the List of Proscribed Destinations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to reflect that it is no longer the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in the Russian Federation. All requests for approval involving items covered by the U.S. Munitions List will be reviewed on a case-by-case basis.

EFFECTIVE DATE: April 3, 1996.

FOR FURTHER INFORMATION CONTACT: Gordon J. Stirling, Office of Arms Export and Export Control Policy, Bureau of Political-Military Affairs, Department of State (202/647–0397).

SUPPLEMENTARY INFORMATION: In connection with the President's policy that U.S. laws and regulations be updated to reflect the end of the Cold War, the Department of State is amending the ITAR to reflect that it is no longer the policy of the United States, pursuant to § 126.1, to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in the Russian Federation. Requests for licenses or other approvals for Russia involving items covered by the U.S. Munitions List (22 CFR part 121) will no longer be presumed to be disapproved.

This amendment to the ITAR involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. This final rule does not contain a new or amended information requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

In accordance with 5 U.S.C. 808, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (the ''Act''), the Department of State has found for foreign policy reasons that notice and public procedure under section 251 of the Act is impracticable and contrary to the public interest.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, under the authority of Section 38 of the Arms Export Control Act (22 U.S.C. 2778) and Executive Order 11958, as amended, 22 CFR subchapter M is amended as follows:

1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Arms Export Control Act, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 41 FR 4311; E.O. 11322, 32 FR 119; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28206.

§ 126.1 [Amended]

2. Section 126.1 is amended by removing ''Russia,'' from paragraph (a).

Dated: April 23, 1996.

Lynn E. Davis,

Under Secretary of State for Arms Control and International Security Affairs.

[FR Doc. 96–11090 Filed 5–2–96; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach, CA; 96–007]

RIN 2115–AA97

Safety Zone; Dana Point, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the United States offshore from Capistrano Beach to San Mateo Point, California in the vicinity of the 3rd Annual Dana Point Challenge (offshore powerboat race) on May 19, 1996. The safety zone boundaries are as follows: commencing at latitude 33°26.0′ N, 117°42.0′ W; thence to 33°27.0′ N, 117°41.3′ W; thence 33°24.0′ N, 117°37.0′ W; thence to 33°23.2′ N, 117°38.0′ W; thence returning to the point of beginning. This safety zone is necessary to ensure the safety of contestant and spectator vessels involved with the 3rd Annual Dana Point Challenge. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This safety zone is in effect on May 19, 1996, from 10 a.m. PDT until 4 p.m. PDT.

FOR FURTHER INFORMATION CONTACT: Lieutenant Mark T. Cunningham, Chief, Port Safety and Security Division, Marine Safety Office Los Angeles-Long Beach, 165 N. Pico Avenue, Long Beach, CA 90802; (310) 980–4454.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publication of a notice of proposed rulemaking and delay of its effective date would be contrary to the public interest since the details of the safety zone boundaries and marine event permit were not finalized until a date fewer than 30 days prior to the event date.