

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–20372 Filed 8–8–03; 8:45 am]

BILLING CODE 6750–01–C

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 103

RIN 1515–AD29

[CBP Decision 03–02]

Confidentiality of Commercial Information

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

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document amends Chapter I of Title 19 of the Code of Federal Regulations on an interim basis regarding the disclosure procedures that the Bureau of Customs and Border Protection (CBP) follows when commercial information is provided to CBP by a business submitter. The predecessor of CBP—the U.S. Customs Service—as a component of the Treasury Department, had followed these procedures consistent with a Department of the Treasury regulation that implemented an Executive Order setting forth the procedure for the treatment of commercial information. As CBP is now a component of the Department of Homeland Security, CBP is setting forth this established policy in its own regulations.

DATES: This interim rule is effective August 11, 2003. Comments must be received on or before October 10, 2003.

ADDRESSES: Written comments may be addressed to the Customs and Border Protection Bureau, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Submitted comments may be inspected at Customs and Border Protection Bureau, 799 9th Street, NW., Washington, DC during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Disclosure Law Branch, Office of Regulations and Rulings, (202) 572–8720.

SUPPLEMENTARY INFORMATION:

Background

The regulations of the Bureau of Customs and Border Protection (CBP), regarding information requested pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, are set forth in part 103 of Chapter I of Title 19 of the Code of Federal Regulations (19 CFR part 103). These regulations were the regulations of the former U.S. Customs Service (Customs). As a component of the Department of the Treasury, Customs supplemented its regulations with the Department of the Treasury regulations (found at 31 CFR part 1) regarding public access to records. Section 1.6 of the Department of the Treasury regulations (31 CFR 1.6) concerns the treatment of information denominated as “business information”. This section provides that such information provided to the Department of the Treasury by a “business submitter” shall not be disclosed pursuant to a FOIA request except in accordance with the provisions of the section. Part 103 of 19 CFR does not have a similar provision and Customs followed the Department of the Treasury’s disclosure procedure set forth in 31 CFR 1.6 since it was promulgated in 1987.

Section 1.6 was promulgated in accordance with Executive Order 12600 of June 23, 1987, 52 FR 23781, 3 CFR part 1987, 235, 23 Weekly Comp. Pres. Doc. 727. Executive Order 12600 ordered the head of each Executive department to issue a predisclosure notification procedure for FOIA requests concerning confidential commercial information.

On March 1, 2003, Customs was transferred from the Treasury Department to the new Department of Homeland Security (DHS). Pub. L. 107–296, 6 U.S.C. 133, 116 Stat. 2135. DHS published procedures for the public on how to obtain information from DHS in an interim rule published in the **Federal Register** (68 FR 4055) on January 27, 2003. Under this rule, established at 6 CFR, Chapter I, part 5, the DHS FOIA provisions apply to all Department components transferred to the DHS, except to the extent that such component has adopted separate guidance under the FOIA (6 CFR 5.1(a)(2)).

The DHS FOIA regulation at 6 CFR 5.8(c) provides that a submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under

exemption 4 of the FOIA. (Exemption 4 of the FOIA protects trade secrets and commercial or financial information that is privileged or confidential.) The regulations go on to say that, before business information will be released, notice will be provided to business submitters whenever (1) a FOIA request is made that seeks the business information that has been designated in good-faith as confidential, or (2) the DHS component agency has reason to believe the information may be protected from disclosure. When notice is provided, the submitter will be required to submit a detailed written statement specifying the grounds for withholding any portion of the information and must show why the information is a trade secret or commercial or financial information that is privileged or confidential.

Customs, in accordance with the Treasury Regulations (31 CFR 1.6), had not required business submitters to designate information as protected from disclosure as privileged or confidential under exemption 4 of the FOIA for the agency to not disclose “commercial information”, defined as trade secret, commercial, or financial information obtained from a person. The Treasury regulations provide that a component of the Treasury Department can determine for itself that information it receives from business submitters will not be disclosed pursuant to a FOIA request. If the agency determines the information is confidential, it can protect the information as confidential without notifying the business submitter that a FOIA request has been received.

For example, Customs routinely considered commercial information appearing on entry documents as confidential and privileged under exemption 4 of the FOIA. Customs did not require business submitters to designate that information as confidential and did not require the business submitters to respond to a notice from Customs with a written detailed statement specifying the reasons for the claim of confidentiality.

Accordingly, CBP is issuing this document to assure the trading community that the transfer of Customs from Treasury to DHS will not affect the treatment of commercial information which business submitters provide to CBP. In this document CBP is amending its regulations on an interim basis to set forth the established policy it had been following pursuant to the Treasury regulations.