

clear lack of consensus on the part of the trade community regarding the value of the proposed amendment and the administrative burden the proposal, if adopted, would create for CBP and U.S. importers.

EFFECTIVE DATE: The effective date of this withdrawal is August 13, 2003.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

On January 9, 2003, the U.S. Customs Service (now a bureau within the new Department of Homeland Security and renamed the Bureau of Customs and Border Protection (CBP)) published a notice of proposed rulemaking (the NPRM) in the **Federal Register** (68 FR 1173) proposing to amend § 103.31 of the Customs Regulations (19 CFR 103.31) pertaining to public disclosure of vessel manifest information and the confidential treatment of some of that information for importers and consignees. Under § 103.31(d)(1), an importer or consignee, or an authorized employee, attorney, or official of the importer or consignee, can file a request for confidentiality (referred to as a certification in the regulation) relative to the name and address of the importer or consignee and the name and address of its shippers. The proposed regulation would allow, in certain circumstances, certain carriers handling the importer's or consignee's shipments, if properly authorized, to also file a confidentiality request on behalf of the importer or consignee.

This document withdraws the NPRM.

Prior Relevant Rulemaking and the NPRM

On October 31, 2002, CBP published a final rule document in the **Federal Register** (67 FR 66318) that amended the Customs Regulations pertaining to the inward foreign manifest to provide that CBP must receive from the carrier the vessel's Cargo Declaration (Customs Form (CF) 1302), one document among a few that comprise the manifest, or a CBP-approved electronic equivalent of the cargo declaration, at least 24 hours before the cargo is laden aboard the vessel at the foreign port, and to require that Vessel Automated Manifest System (AMS) participants provide the cargo declaration electronically.

The regulation also provides that a properly licensed or registered non-vessel operating common carrier

(NVOCC) that is in possession of an International Carrier Bond containing the provisions of § 113.64 of the regulations (19 CFR 113.64) may electronically transmit required manifest information directly to CBP through the AMS 24 or more hours before cargo it delivers to the vessel carrier is laden aboard the vessel at the foreign port. If the NVOCC chooses not to transmit the required manifest information to CBP, as described above, the regulation requires the NVOCC to instead fully disclose and present the required information to the vessel carrier to allow the vessel carrier to present the information to CBP via the AMS system (see 19 CFR 4.7(b)(3)). (The manifest information filing procedure of § 4.7(b) is sometimes referred to in this document as the "24-hour rule.")

The final rule document (in the preamble discussion) also noted the NVOCC community's concern that certain information and data that a NVOCC would supply under the procedures of the "24-hour rule" would be subject to release for publication under 19 U.S.C. 1431 (section 1431) and § 103.31 of the Customs Regulations. The NVOCC group contended that such release would reveal confidential business information that could result in harm to the NVOCC community.

To respond to this concern, CBP indicated that it would publish another NPRM for the purpose of seeking further input from the trade regarding the value of amending § 103.31 to allow NVOCCs and vessel operating common carriers (ocean carriers) filing manifest information in accordance with the "24-hour rule" to request confidentiality under the regulation on behalf of importers and consignees. At the same time, the agency began considering whether section 1431 might accommodate expanding the parties who can file a confidentiality request on behalf of an importer or consignee. The result was publication of the January 9, 2003, NPRM and its request for public comment.

The Statute and the Regulation

At the heart of the NPRM were the provisions of section 1431 regarding public disclosure and confidential treatment of vessel manifest information. Under section 1431(c)(1), certain vessel manifest information must be made available for public disclosure, including, among other things, the name and address of each importer and consignee, the name and address of the importer's or consignee's shipper, the general character of the cargo, the name of the vessel or carrier, and the country of origin of the

shipment. Under section 1431(c)(1)(A), the importer or consignee may request that its name and address and the name and address of its shipper be kept confidential by filing a biennial certification in accordance with regulations adopted by CBP. Under § 103.31(a) of the Customs Regulations (19 CFR 103.31(a)), vessel manifest information must be made available, under rules set forth in the regulation, to accredited representatives of the press, including newspapers, commercial magazines, trade journals, and similar publications. As stated previously, under § 103.31(d), an importer or consignee, or an authorized employee, attorney or official of the importer or consignee, may request confidentiality relative to the importer's or consignee's name and address, and the name and address of its shippers, by filing a request with CBP every two years.

The statute and regulation thus require that certain manifest information be made available to the public and, at the same time, that importers and consignees be permitted to keep their identity confidential, along with that of their shippers, should they so choose. In passing section 1431, Congress struck a balance between freedom of information (the requirement to release/disclose manifest information) and fair competition (the right to request confidentiality of certain information by importers and consignees) (hereinafter referred to as the "freedom of information—confidentiality balance"). Many in the trade community and related businesses benefit from the availability of manifest information, and some importers and consignees utilize the confidentiality provision to protect their competitive posture. Regarding this balance, it is noted that Congress stated that "greater disclosure of manifest information will facilitate better public analysis of import trends, and allow port authorities and transportation companies, among others, more easily to identify potential customers and changes in their industries." (S. Rep. No. 308, 98th Cong., 1st Sess. 30 (1983), *reprinted in* 1984 U.S.C.C.A.N. 4910, 4939.) Congress further stated that section 1431 "retains sufficient protection for business-confidential data of importing firms, while encouraging greater competition among those in the import-servicing trades." *Id.*

Discussion of Comments

A total of 60 comments were submitted in response to the NPRM. A substantial majority of the comments were opposed to amending § 103.31 as