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**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Customs and Border Protection**

DEPARTMENT OF THE TREASURY

**19 CFR PART 103**

**CBP Dec. 13-18**

**Technical Corrections Relating to the Procedures for the Production or Disclosure  
of Information in State or Local Criminal Proceedings**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security,  
Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends U.S. Customs and Border Protection (CBP) regulations to update the list of supervisors authorized to allow their employees to testify in state or local criminal proceedings in response to a demand of a court, administrative agency, or other authority. The applicable regulation was promulgated by the U.S. Customs Service prior to the creation of CBP as part of the Department of Homeland Security (DHS). The changes are necessary to more accurately reflect the current CBP organizational structure. This document also makes non-substantive editorial and nomenclature changes to reflect the transfer of the legacy U.S. Customs Service of the Department of the Treasury to DHS and the creation of U.S. Customs and Border Protection.

**EFFECTIVE DATE:** [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**FOR FURTHER INFORMATION CONTACT:** Howard Charles, Office of Chief Counsel, 202-344-2759, howard.charles@dhs.gov.

**SUPPLEMENTARY INFORMATION:**

**I. BACKGROUND**

**A. Production or Disclosure in Federal, State, Local, and Foreign Proceedings**

Title 19, Code of Federal Regulations (19 CFR), Part 103, Subpart B, sets forth the procedures to be followed with respect to the production or disclosure of any information, including testimony, in all federal, state, local, and foreign proceedings when a demand of a court, administrative agency, or other authority is issued for such information. Although 19 CFR 103.22(a) generally requires prior written approval from the Chief Counsel of the former U.S. Customs Service, 19 CFR 103.26 allows certain agency supervisors to authorize their employees to testify, disclose, or produce certain information in state or local criminal cases when the demand is made by prosecutors. The listed agency supervisors include: port directors, special agents in charge, and chiefs of field laboratories.

**B. Establishment and Reorganization of CBP Under the Homeland Security Act of 2002**

The Department of Homeland Security (DHS) was established on January 24, 2003, pursuant to the Homeland Security Act of 2002. See Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135, codified at 6 U.S.C. § 111. Section 403(1) of

the Homeland Security Act of 2002 transferred the functions, personnel, assets, and liabilities of the U.S. Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury, to the Secretary of Homeland Security, with certain exceptions pertaining to Customs revenue functions not relevant to this final rule.

The reorganization under DHS resulted in the consolidation of certain existing organizations as well as the creation of new divisions, or offices, within U.S. Customs and Border Protection (CBP). The Office of Field Operations (OFO), Office of Internal Affairs (IA), U.S. Border Patrol (USBP), Office of Air and Marine (OAM), and Laboratory and Scientific Services (LSS)<sup>1</sup> were established under CBP following the reorganization under DHS. Similarly, under the DHS reorganization the investigative functions of the former U.S. Customs Service were reassigned to U.S. Immigration and Customs Enforcement (ICE).<sup>2</sup>

### **C. Regulatory Amendment**

The list of agency supervisors contained in 19 CFR 103.26 who can authorize their employees to testify or provide information in state or local criminal cases has not been updated to reflect the organizational structure of CBP. As such, it does not include personnel from USBP or OAM and it includes LSS position titles that no longer exist in the CBP organization.

Therefore, it is necessary to amend 19 CFR 103.26 to include the appropriate officials within CBP, including USBP, OAM, and LSS personnel.

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<sup>1</sup> LSS was the Office of Technical Services until 1992 when it was renamed LSS. LSS transitioned to CBP's Office of Information and Technology from the Office of Field Operations on September 1, 2000. LSS provides CBP with forensic and scientific analysis in trade enforcement. The field laboratories use mobile labs to provide on-site emergency response and analysis at the border.

<sup>2</sup> CBP subsequently established IA and special agents in charge within that office to investigate internal matters.

Under CBP's current organizational structure, "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", and "any supervisor of such officials" are the appropriate officials within OFO, IA, USBP, OAM, and LSS, respectively, who are authorized to allow employees under their supervision to provide information and testify in state or local criminal proceedings.

For the reasons described above, and to more accurately reflect the current CBP organizational structure, this final rule amends 19 CFR 103.26 by adding "chief patrol agents", "directors within the Office of Air and Marine", and "any supervisor of such officials"; and by replacing "chiefs of field laboratories" with "directors of field laboratories" in the list of personnel authorized to allow employees under their supervision to testify, disclose, or produce certain information in state or local criminal proceedings.

This document also amends 19 CFR part 103, Subpart B to reflect the transfer of the legacy U.S. Customs Service of the Department of the Treasury to DHS and the subsequent renaming of the agency as U.S. Customs and Border Protection (CBP).

## **II. STATUTORY AND REGULATORY REQUIREMENTS**

### **A. Inapplicability of Public Notice and Delayed Effective Date Requirements**

This amendment merely updates the regulations to reflect the current organizational structure of CBP as it relates to the supervisors authorized to allow employee testimony in state and local criminal proceedings and to reflect the transfer of the legacy U.S. Customs Service of the Department of the Treasury to DHS and the subsequent renaming of the agency. As this rule pertains to agency organization,

procedure, or practice it is exempt from prior notice and public comment pursuant to 5 U.S.C. 553(b)(A). For this same reason, pursuant to 5 U.S.C. 553(d)(3), CBP finds that good cause exists for not providing a delayed effective date.

**B. The Regulatory Flexibility Act and Executive Order 12866**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. This amendment does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866, as supplemented by Executive Order 13563.

**C. Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**D. Executive Order 13132**

The rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13123, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

**E. Signing Authority**

This document is limited to technical corrections of CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b).

**LIST OF SUBJECTS IN 19 CFR PART 103**

Administrative practice and procedure, Confidential business information, Courts, Freedom of information, Law enforcement, Privacy, Reporting and recordkeeping requirements.

## **AMENDMENTS TO REGULATIONS**

For the reasons stated in the preamble, part 103 of title 19 of the Code of Federal Regulations (19 CFR Part 103) is amended as set forth below.

### **PART 103--GENERAL PROVISIONS**

1. The general authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

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#### **§ 103.21 [Amended]**

2. Amend § 103.21 by:
  - a. Removing the words “Customs” and “the Customs Service” and adding in their place “CBP”;
  - b. Removing the words “Department of the Treasury” and adding in their place “Department of Homeland Security”; and
  - c. Removing the words “the United States Customs Service” and adding in their place “U.S. Customs and Border Protection”.

#### **§§ 103.22, 103.23, 103.24, 103.25, 103.27 [Amended]**

3. Amend §§ 103.22, 103.23, 103.24, 103.25, 103.27 by removing the words “Customs” and “the Customs Service” and adding in their place “CBP”.

#### **§ 103.26 [Amended]**

4. Amend § 103.26 by:

- a. Removing the words “Port directors, special agents in charge, and chiefs of field laboratories” and adding in their place “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”.
- b. Removing the word “Customs” and adding in its place “CBP”.

DATE: November 18, 2013

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Thomas S. Winkowski  
Acting Commissioner

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