§ 103.2 Information available to the public.

(a) General. The Freedom of Information Act, as amended (5 U.S.C. 552), provides for access to information and records developed or maintained by Federal agencies. Subject only to the exemptions set forth in § 103.12, the public generally or any individual member is entitled to information or records which are described in paragraph (b) of this section and which are in the possession of the United States Customs Service. Access to that information is governed by the regulations in this part.

(b) Three categories of information available. Generally, 5 U.S.C. 552 divides agency information into three major categories and provides methods by which each category is available to the public. The three major categories, for which the disclosure requirements of the United States Customs Service are set forth in this part, are as follows:

(1) Information required to be published in the Federal Register (see § 103.3).

(2) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale (see § 103.4).

(3) Information required to be made available to any member of the public upon specific request (see § 103.5).

§ 103.3 Publication of information in the Federal Register.

(a) Requirements. Subject to the application of the exemptions described in § 103.12 and subject to the limitations provided in paragraph (b) of this section, the United States Customs Service is required, by 5 U.S.C. 552(a)(1), to separately state, publish and keep current in the Federal Register for the guidance of the public the following information:

(1) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions.

(2) A statement of the general course and method by which its function are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(3) Rules of procedure, descriptions of forms available and the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by it.

(5) Each amendment, revision, or repeal of matters referred to in paragraphs (a) (1) through (4) of this section.

(b) Limitations—(1) Incorporation by reference in the Federal Register. Matter reasonably available to an affected class of persons, whether published by a private organization or an agency of the United States, is published in the Federal Register for purposes of paragraph (a) of this section when it is incorporated by reference in the Federal Register with the approval of the Director of the Federal Register. Any matter which is incorporated by reference must be set forth in the privately- or publicly-printed document substantially in its entirety and not merely summarized or printed as a synopsis. There can be no incorporation by reference in the Federal Register of any matter where only a few persons having a special working knowledge of the activities of the United States Customs Service are familiar with its location and scope. The provisions of 5 U.S.C. 552(a)(1) and 1 CFR part 20 control any incorporation of matter by reference.

(2) Effect of failure to publish. Except to the extent that a person has actual and timely notice of the terms of any matter referred to in paragraph (a) of
this section which is required to be published in the Federal Register, that person is not required in any manner to resort to, or be adversely affec-
ted by, that matter if it is not published or incorporated by reference.
That is, any matter which imposes an obligation and which is not published
or incorporated by reference can not adversely change or affect a person’s
rights.
§ 103.4 Public inspection and copying.
(a) In general. Subject to the application of the exemption described in
§103.12 the United States Customs Service is required, by 5 U.S.C. 552(a)(2)
and §§174.32 and 177.10 of this chapter, to make available for public inspection
and copying or, in the alternative, promptly publish and offer for sale, the
following information:
(1) Final opinions and orders, including concurring or dissenting opinions,
made in the adjudication of cases;
(2) Within 120 days of issuance, any precedential decision (including any
ruling letter, internal advice memorandum, or protest review decision)
issued under the Tariff Act of 1930, as amended, with respect to any Customs
transaction;
(3) Those statements of policy and interpretations which have been adopted
by the United States Customs Service but are not published in the Federal
Register; and
(4) Administrative staff manuals and instructions to staff that affect a mem-
ber of the public.
(b) Indexes. The United States Customs Service is required by 5 U.S.C.
552(a)(2) to maintain and make available for public inspection and copying
those current indexes which identify any item described in paragraphs (a) (1)
through (3) of this section that is issued, adopted, or promulgated after
July 4, 1967, and that is required to be made available for public inspection or
published. Unless the Commissioner determines by an order published in the
Federal Register that publication is unnecessary and impracticable, these
indexes are published on a quarterly or more frequent basis and are available
for purchase at each of the public reading rooms listed in §103.1, at a cost not
to exceed the direct cost of duplication.
(c) Effect of failure to publish or make available. No matter, described in para-
graphs (a) (1) through (3) of this section which is required by this section to be
made available for public inspection or published, may be relied upon, used, or
cited as precedent by the United States Customs Service against a party, other
than an agency, unless that party has actual and timely notice of such mat-
ter or unless the matter has been indexed and either made available for in-
spection or published, as provided by this section. This paragraph applies
only to matters which have precedential significance and does not apply to
matters which have been made available pursuant to §103.3.
(d) Deletion of identifying details. To prevent an unwarranted invasion of
personal privacy, in accordance with 5
U.S.C. 552(a)(2), identifying details con-
tained in any matter described in paragraphs (a) (1) through (3) of this section
are deleted before making that matter available for inspection or publication.
However, in every case where identifying details are deleted, the basis for
the deletion is explained in writing, giving specific reasons for the deletion
and citing the applicable provision of 5
U.S.C. 552 and §103.12, in an attachment
to the document from which the identifying details have been deleted.
(e) Public reading rooms. The United States Customs Service has available
for inspection and copying, in a reading room or otherwise, the matters de-
scribed in paragraphs (a) (1) through (3) of this section which are required by
paragraph (a) to be made available for public inspection or published in the
current indexes. Facilities are provided whereby a person may inspect and ob-
tain copies of the material. There is no fee for access to materials, but a fee is
charged in accordance with §103.10 for a copy of any material provided.
§ 103.5 Specific requests for records.
(a) In general. Except with respect to the records made available under
§§103.3 and 103.4, but subject to the applica-
tion of the exemptions described in §103.12, the United States Customs Service
is required, by 5 U.S.C.
552(a)(3), upon a request for reasonably-