

filed, the Government will file an appropriate complaint for forfeiture, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

[T.D. 00-88, 65 FR 78091, Dec. 14, 2000, as amended by T.D. 02-08, 67 FR 9191, Feb. 28, 2002]

§ 162.95 Release of seized property.

(a) *Generally.* Except as provided in paragraph (b) of this section, a claimant to seized property under 18 U.S.C. 983(a) is entitled to immediate release of the property if:

(1) The claimant has a possessory interest in the property;

(2) The claimant has sufficient ties to the community to provide assurance that the property will be available at the time of trial;

(3) The continued possession of the property by Customs pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing an individual from working, or leaving an individual homeless; and

(4) The claimant's likely hardship from the continued possession by Customs of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceedings.

(b) *Exceptions.* Immediate release of seized property under paragraph (a) of this section will not apply if the seized property:

(1) Is contraband, currency or other monetary instrument, or electronic funds, unless, in the case of currency, other monetary instrument or electronic funds, such property comprises the assets of a legitimate business which has been seized;

(2) Is to be used as evidence of a violation of the law;

(3) By reason of design or other characteristic, is particularly suited for use in illegal activities; or

(4) Is likely to be used to commit additional criminal acts if returned to the claimant.

(c) *Request for release.* A claimant seeking release of property under this

section must request possession of the property from the Fines, Penalties, and Forfeitures Officer who issued the notice of seizure. The request need not be made in any particular form, but must be in writing and set forth the basis on which the requirements of paragraph (a) of this section have been met. The request may be filed at any time during which the property remains under seizure.

(d) *Granting request for release.* The Fines, Penalties, and Forfeitures Officer may release the property if it is determined to be appropriate under paragraphs (a) through (c) of this section.

(e) *Denial of or failure to act on request for release.* If the Fines, Penalties, and Forfeitures Officer denies the request for release or fails to make a decision on the request by the 15th calendar day after the date the request is received by Customs, the claimant may file a petition in the district court in which the complaint has been filed, or, if no complaint has been filed, in the U.S. district court in which the seizure warrant was issued or in the U.S. district court for the district in which the property was seized.

[T.D. 00-88, 65 FR 78091, Dec. 14, 2000, as amended by T.D. 02-08, 67 FR 9191, Feb. 28, 2002]

§ 162.96 Remission of forfeitures and payment of fees, costs or interest.

When a person elects to petition for relief before, or in lieu of, filing a claim under § 162.94, any seizure subject to forfeiture under this subpart may be remitted or mitigated pursuant to the provisions of 19 U.S.C. 1618 or 31 U.S.C. 5321(c), as applicable. Any person who accepts a remission or mitigation decision will not be considered to have substantially prevailed in a civil forfeiture proceeding for purposes of collection of any fees, costs or interest from the Government.

PART 163—RECORDKEEPING

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APPENDIX TO PART 163—INTERIM (a)(1)(A) LIST

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

Section 163.2 also issued under 19 U.S.C. 3904, 3907.

SOURCE: T.D. 98–56, 63 FR 32946, June 16, 1998, unless otherwise noted.

§ 163.0 Scope.

This part sets forth the recordkeeping requirements and procedures governing the maintenance, production, inspection, and examination of records. It also sets forth the procedures governing the examination of persons in connection with any investigation, audit or other inquiry conducted for the purposes of ascertaining the correctness of any entry, for determining the liability of any person for duties, fees and taxes due or that may be due, for determining liability for fines, penalties and forfeitures, or for ensuring compliance with the laws and regulations administered or enforced by Customs. Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters, and producers under the United States-Canada Free Trade Agreement and the North American Free Trade Agreement and the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) are contained in parts 10 and 181 and 182 of this chapter, respectively.

[T.D. 98–56, 63 FR 32946, June 16, 1998, as amended by CBP Dec. 11–20, 76 FR 65960, Oct. 25, 2011; CBP Dec. 21–10, 86 FR 35582, July 6, 2021]

§ 163.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *Records*—(1) *In general*. The term “records” means any information made or normally kept in the ordinary course of business that pertains to any activity listed in paragraph (a)(2) of this section. The term includes any information required for the entry of merchandise (the (a)(1)(A) list) and other information pertaining to, or from which is derived, any information element set forth in a collection of information required by the Tariff Act of 1930, as amended, in connection with any activity listed in paragraph (a)(2) of this section. The term includes, but is not limited to, the following: Statements; declarations; documents; electronically generated or machine readable data; electronically stored or transmitted information or data; books; papers; correspondence; accounts; financial accounting data; technical data; computer programs necessary to retrieve information in a usable form; and entry records (contained in the (a)(1)(A) list).

(2) *Activities*. The following are activities for purposes of paragraph (a)(1) of this section:

(i) Any importation, declaration or entry;

(ii) The transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;

(iii) The filing of a drawback claim;

(iv) The completion and signature of a NAFTA Certificate of Origin pursuant to §181.11(b) of this chapter;

(v) The collection, or payment to Customs, of duties, fees and taxes; or

(vi) The completion and signature of a Chile FTA certification of origin and any other supporting documentation pursuant to the United States-Chile Free Trade Agreement.

(vii) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Singapore Free Trade Agreement (SFTA), including a SFTA importer’s supporting statement if previously required by the port director or Center director before January 19, 2017, or the Center director on or after January 19, 2017.

(viii) The maintenance of any documentation that the importer may have

in support of a claim for preferential tariff treatment under the United States-Jordan Free Trade Agreement (US-JFTA), including a US-JFTA declaration.

(ix) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Australia Free Trade Agreement (AFTA), including an AFTA importer's supporting statement.

(x) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Morocco Free Trade Agreement (MFTA), including a MFTA importer's declaration.

(xi) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), including a CAFTA-DR importer's certification.

(xii) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Bahrain Free Trade Agreement (BFTA), including a BFTA importer's declaration.

(xiii) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Oman Free Trade Agreement (OFTA), including an OFTA importer's declaration.

(xiv) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Peru Trade Promotion Agreement (PTPA), including a PTPA importer's certification.

(xv) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Korea Free Trade Agreement (UKFTA), including a UKFTA importer's certification.

(xvi) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United

States-Colombia Trade Promotion Agreement (CTPA), including a CTPA importer's certification.

(xvii) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Panama Trade Promotion Agreement (PANTPA), including a PANTPA importer's certification.

(xviii) Any other activity required to be undertaken pursuant to the laws or regulations administered by Customs.

(b) (a)(1)(A) *list*. See the definition of "entry records".

(c) *Audit*. "Audit" means an evaluation by CBP under 19 U.S.C. 1509 of records required to be maintained and/or produced by persons listed in §163.2, or pursuant to other applicable laws or regulations administered by CBP, for the purpose of furthering any investigation or review conducted to: ascertain the correctness of any entry; determine the liability of any person for duties, taxes, and fees due, or revenue due, or which may be due the United States; determine liability for fines, penalties, and forfeitures; ensure compliance with the laws of the United States administered by CBP; or determine that information submitted or required is accurate, complete, and in accordance with any laws and regulations administered or enforced by CBP. An audit does not include a quantity verification for a customs bonded warehouse or general purpose foreign trade zone. An audit may be as extensive or simple as CBP determines is warranted to achieve the audit's purpose under applicable laws and regulations.

(d) *Certified recordkeeper*. A "certified recordkeeper" is a person who is required to keep records under this chapter and who is a participant in the Recordkeeping Compliance Program provided for in §163.12.

(e) *Entry records/(a)(1)(A) list*. The terms "entry records" and "(a)(1)(A) list" refer to records required by law or regulation for the entry of merchandise (whether or not Customs required their presentation at the time of entry). The (a)(1)(A) list is contained in the Appendix to this part.

(f) *Inquiry*. An "inquiry" is any formal or informal procedure, other than

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an investigation, through which a request for information is made by a Customs officer.

(g) *Original*. The term “original”, when used in the context of maintenance of records, has reference to records that are in the condition in which they were made or received by the person responsible for maintaining the records pursuant to 19 U.S.C. 1508 and the provisions of this chapter, including records consisting of the following:

(1) Electronic information which was used to develop other electronic records or paper documents;

(2) Electronic information which is in a readable format such as a facsimile paper format or an electronic or hardcopy spreadsheet;

(3) In the case of a paper record that is part of a multi-part form where all parts of the form are made by the same impression, one of the carbon-copy parts or a facsimile copy or photocopy of one of the parts; and

(4) A copy of a record that was provided to another government agency which retained it, provided that, if required by Customs, a signed statement accompanies the copy certifying it to be a true copy of the record provided to the other government agency.

(h) *Party/person*. The terms “party” and “person” refer to a natural person, corporation, partnership, association, or other entity or group.

(i) *Summons*. “Summons” means any summons issued under this part that requires the production of records or the giving of testimony, or both.

(j) *Technical data*. “Technical data” are records which include diagrams and other data with regard to a business or an engineering or exploration operation, whether conducted inside or outside the United States, and whether on paper, cards, photographs, blueprints, tapes, microfiche, film, or other media or in electronic or magnetic storage.

(k) *Third-party recordkeeper*. “Third-party recordkeeper” means any attorney, any accountant or any customs broker other than a customs broker who is the importer of record on an entry.

[T.D. 98–56, 63 FR 32946, June 16, 1998]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 163.1, see the List of CFR

Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 163.2 Persons required to maintain records.

(a) *General*. Except as otherwise provided in paragraph (b) or (e) of this section, the following persons shall maintain records and shall render such records for examination and inspection by Customs:

(1) An owner, importer, consignee, importer of record, entry filer, or other person who:

(i) Imports merchandise into the customs territory of the United States, files a drawback claim, or transports or stores merchandise carried or held under bond, or

(ii) Knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;

(2) An agent of any person described in paragraph (a)(1) of this section; or

(3) A person whose activities require the filing of a declaration or entry, or both.

(b) *Domestic transactions*. For purposes of paragraph (a)(1)(ii) of this section, a person who orders merchandise from an importer in a domestic transaction knowingly causes merchandise to be imported only if:

(1) The terms and conditions of the importation are controlled by the person placing the order with the importer (for example, the importer is not an independent contractor but rather is the agent of the person placing the order: Whereas a consumer who purchases an imported automobile from a domestic dealer would not be required to maintain records, a transit authority that prepared detailed specifications from which imported subway cars or busses were manufactured would be required to maintain records); or

(2) Technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with the importer with knowledge that they will be used in the manufacture or production of the imported merchandise.

(c) *Recordkeeping required for certain exporters and producers*—(1) *NAFTA*.

Any person who exports goods to Canada or Mexico for which a Certificate of Origin was completed and signed pursuant to the North American Free Trade Agreement must also maintain records in accordance with part 181 of this chapter.

(2) *USMCA*. Any exporter or producer who completes a certification of origin or a producer who provides a written representation for a good exported from the United States to Canada or Mexico pursuant to the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) must maintain records in accordance with part 182 of this chapter.

(3) *Kimberley Process Certification Scheme*. Any U.S. person (see definition in §12.152(b)(5)) who exports from the United States any rough diamonds must retain a copy of the Kimberley Process Certificate accompanying each shipment for a period of at least five years from the date of exportation. See 19 CFR 12.152(f)(3). Any U.S. person who exports from the United States any rough diamonds and does not keep records in this time frame may be subject to penalties under 19 U.S.C. 3907.

(d) *Recordkeeping required for customs brokers*. Each customs broker must also make and maintain records and make such records available in accordance with part 111 of this chapter.

(e) *Recordkeeping not required for certain travelers*. After having physically cleared the Customs facility, a traveler who made a baggage or oral declaration upon arrival in the United States will not be required to maintain supporting records regarding non-commercial merchandise acquired abroad which falls within the traveler's personal exemptions or which is covered by a flat rate of duty.

[T.D. 98-56, 63 FR 32946, June 16, 1998, as amended by USCBP-2012-0022, 78 FR 40630, July 8, 2013; CBP Dec. 21-10, 86 FR 35582, July 6, 2021]

§ 163.3 Entry records.

Any person described in §163.2(a) with reference to an import transaction shall be prepared to produce or transmit to Customs, in accordance with §163.6(a), any entry records which may be demanded by Customs. If entry records submitted to Customs not pur-

suant to a demand are returned by Customs, or if production of entry records at the time of entry is waived by Customs, such person shall continue to maintain those entry records in accordance with this part. Entry records which are normally kept in the ordinary course of business must be maintained by such person in accordance with this part whether or not copies thereof are retained by Customs.

§ 163.4 Record retention period.

(a) *General*. Except as otherwise provided in paragraph (b) of this section, any record required to be made, kept, and rendered for examination and inspection by Customs under §163.2 or any other provision of this chapter shall be kept for 5 years from the date of entry, if the record relates to an entry, or 5 years from the date of the activity which required creation of the record.

(b) *Exceptions*. (1) Any record relating to a drawback claim shall be kept until the third anniversary of the date of payment of the claim.

(2) Packing lists shall be retained for a period of 60 calendar days from the end of the release or conditional release period, whichever is later, or, if a demand for return to Customs custody has been issued, for a period of 60 calendar days either from the date the goods are redelivered or from the date specified in the demand as the latest redelivery date if redelivery has not taken place.

(3) A consignee who is not the owner or purchaser and who appoints a customs broker shall keep a record pertaining to merchandise covered by an informal entry for 2 years from the date of the informal entry.

(4) Records pertaining to articles that are admitted free of duty and tax pursuant to 19 U.S.C. 1321(a)(2) and §§10.151 through 10.153 of this chapter, and carriers' records pertaining to manifested cargo that is exempt from entry under the provisions of this chapter, shall be kept for 2 years from the date of the entry or other activity which required creation of the record.

(5) If another provision of this chapter sets forth a retention period for a specific type of record that differs from

the period that would apply under this section, that other provision controls.

§ 163.5 Methods for storage of records.

(a) *Original records.* All persons listed in § 163.2 must maintain all records required by law and regulation for the required retention periods and as original records, whether paper or electronic, unless alternative storage methods have been adopted in accordance with paragraph (b) of this section. The records, whether in their original format or under an alternative storage method, must be capable of being retrieved upon lawful request or demand by CBP.

(b) *Alternative method of storage—*(1) *General.* Any of the persons listed in § 163.2 may maintain any records, other than records required to be maintained as original records under laws and regulations administered by other Federal government agencies, in an alternative format, provided that the person gives advance written notification of such alternative storage method to the Regulatory Audit, U.S. Customs and Border Protection, 2001 Cross Beam Dr., Charlotte, North Carolina 28217, and provided further that the Director of Regulatory Audit, Charlotte office does not instruct the person in writing as provided herein that certain described records may not be maintained in an alternative format. The written notice to the Director of Regulatory Audit, Charlotte office must be provided at least 30 calendar days before implementation of the alternative storage method, must identify the type of alternative storage method to be used, and must state that the alternative storage method complies with the standards set forth in paragraph (b)(2) of this section. If an alternative storage method covers records that pertain to goods under CBP seizure or detention or that relate to a matter that is currently the subject of an inquiry or investigation or administrative or court proceeding, the appropriate CBP office may instruct the person in writing that those records must be maintained as original records and therefore may not be converted to an alternative format until specific written authorization is received from that CBP office. A written instruction to a person under

this paragraph may be issued during the 30-day advance notice period prescribed in this section or at any time thereafter, must describe the records in question with reasonable specificity but need not identify the underlying basis for the instruction, and shall not preclude application of the planned alternative storage method to other records not described therein.

(2) *Standards for alternative storage methods.* Methods commonly used in standard business practice for storage of records include, but are not limited to, machine readable data, CD ROM, and microfiche. Methods that are in compliance with generally accepted business standards will generally satisfy CBP requirements, provided that the method used allows for retrieval of records requested within a reasonable time after the request and provided that adequate provisions exist to prevent alteration, destruction, or deterioration of the records. The following standards must be applied by recordkeepers when using alternative storage methods:

(i) Operational and written procedures are in place to ensure that the imaging and/or other media storage process preserves the integrity, readability, and security of the information contained in the original records. The procedures must include a standardized retrieval process for such records. Vendor specifications/documentation and benchmark data must be available for CBP review;

(ii) There is an effective labeling, naming, filing, and indexing system;

(iii) Except in the case of packing lists (*see* § 163.4(b)(2)), entry records must be maintained by the importer in their original formats for a period of 120 calendar days from the end of the release or conditional release period, whichever is later, or, if a demand for return to CBP custody has been issued, for a period of 120 calendar days either from the date the goods are redelivered or from the date specified in the demand as the latest redelivery date if redelivery has not taken place. Customs brokers who are not serving as

the importer of record and who maintain separate electronic records are exempted from this requirement. This exemption does not apply to any document that is required by law to be maintained as a paper record.

(iv) An internal testing of the system must be performed on a yearly basis;

(v) The recordkeeper must have the capability to make, and must bear the cost of, hard-copy reproductions of alternatively stored records that are required by CBP for audit, inquiry, investigation, or inspection of such records; and

(vi) The recordkeeper must retain and keep available one working copy and one back-up copy of the records stored in a secure location for the required periods as provided in §163.4.

(3) *Changes to alternative storage procedures.* No changes to alternative recordkeeping procedures may be made without first notifying the Director of Regulatory Audit, Office of International Trade, Customs and Border Protection, 2001 Cross Beam Drive, Charlotte, North Carolina 28217. The notification must be in writing and must be provided to the director at least 30 calendar days before implementation of the change.

(4) *Penalties.* All persons listed in §163.2 who use alternative storage methods for records and who fail to maintain or produce the records in accordance with this part are subject to penalties pursuant to §163.6 for entry records or sanctions pursuant to §§163.9 and 163.10 for other records.

(5) *Failure to comply with alternative storage requirements.* If a person listed in §163.2 uses an alternative storage method for records that is not in compliance with the conditions and requirements of this section, CBP may issue a written notice informing the person of the facts giving rise to the notice and directing that the alternative storage method must be discontinued in 30 calendar days unless the person provides written notice to the issuing CBP office within that time period that explains, to CBP's satisfaction, how compliance has been achieved. Failure to timely respond to CBP will result in CBP requiring discontinuance of the alternative storage method until a written statement ex-

plaining how compliance has been achieved has been received and accepted by CBP.

[T.D. 98-56, 63 FR 32946, June 16, 1998, as amended by CBP Dec. 12-12, 77 FR 33966, June 8, 2012]

§ 163.6 Production and examination of entry and other records and witnesses; penalties.

(a) *Production of entry records.* Pursuant to written, oral, or electronic notice, any Customs officer may require the production of entry records by any person listed in §163.2(a) who is required under this part to maintain such records, even if the entry records were required at the time of entry. Any oral demand for entry records shall be followed by a written or electronic demand. The entry records shall be produced within 30 calendar days of receipt of the demand or within any shorter period as Customs may prescribe when the entry records are required in connection with a determination regarding the admissibility or release of merchandise. Should any person from whom Customs has demanded entry records encounter a problem in timely complying with the demand, such person may submit a written or electronic request to Customs for approval of a specific additional period of time in which to produce the records; the request must be received by Customs before the applicable due date for production of the records and must include an explanation of the circumstances giving rise to the request. Customs will promptly advise the requesting person electronically or in writing either that the request is denied or that the requested additional time period, or such shorter period as Customs may deem appropriate, is approved. The mere fact that a request for additional time to produce demanded entry records was submitted under this section shall not by itself preclude the imposition of a monetary penalty or other sanction under this part for failure to timely produce the records, but no such penalty or other sanction will be imposed if the request is approved and the records are produced before expiration of that additional period of time.

(b) *Failure to produce entry records*—(1) *Monetary penalties applicable.* The following penalties may be imposed if a person fails to comply with a lawful demand for the production of an entry record and is not excused from a penalty pursuant to paragraph (b)(3) of this section:

(i) If the failure to comply is a result of the willful failure of the person to maintain, store, or retrieve the demanded record, such person shall be subject to a penalty, for each release of merchandise, not to exceed \$100,000, or an amount equal to 75 percent of the appraised value of the merchandise, whichever amount is less; or

(ii) If the failure to comply is a result of negligence of the person in maintaining, storing, or retrieving the demanded record, such person shall be subject to a penalty, for each release of merchandise, not to exceed \$10,000, or an amount equal to 40 percent of the appraised value of the merchandise, whichever amount is less.

(2) *Additional actions*—(i) *General.* In addition to any penalty imposed under paragraph (b)(1) of this section, and except as otherwise provided in paragraph (b)(2)(ii) of this section, if the demanded entry record relates to the eligibility of merchandise for a column 1 special rate of duty in the Harmonized Tariff Schedule of the United States (HTSUS), the entry of such merchandise:

(A) If unliquidated, shall be liquidated at the applicable HTSUS column 1 general rate of duty; or

(B) If liquidated within the 2-year period preceding the date of the demand, shall be reliquidated, notwithstanding the time limitation in 19 U.S.C. 1514 or 1520, at the applicable HTSUS column 1 general rate of duty.

(ii) *Exception.* Any liquidation or reliquidation under paragraph (b)(2)(i)(A) or (b)(2)(i)(B) of this section shall be at the applicable HTSUS column 2 rate of duty if Customs demonstrates that the merchandise should be dutiable at such rate.

(3) *Avoidance of penalties.* No penalty may be assessed under paragraph (b)(1) of this section if the person who fails to comply with a lawful demand for entry records can show:

(i) That the loss of the demanded record was the result of an act of God or other natural casualty or disaster beyond the fault of such person or an agent of the person;

(ii) On the basis of other evidence satisfactory to Customs, that the demand was substantially complied with;

(iii) That the record demanded was presented to and retained by Customs at the time of entry or submitted in response to an earlier demand; or

(iv) That he has been certified as a participant in the Recordkeeping Compliance Program (see §163.12), that he is generally in compliance with the appropriate procedures and requirements of that program, and that the violation in question is his first violation and was a non-willful violation.

(4) *Penalties not exclusive.* Any penalty imposed under paragraph (b)(1) of this section shall be in addition to any other penalty provided by law except for:

(i) A penalty imposed under 19 U.S.C. 1592 for a material omission of any information contained in the demanded record; or

(ii) Disciplinary action taken under 19 U.S.C. 1641.

(5) *Remission or mitigation of penalties.* A penalty imposed under this section may be remitted or mitigated under 19 U.S.C. 1618.

(6) *Customs summons.* The assessment of a penalty under this section shall not limit or preclude the issuance or enforcement of a summons under this part.

(c) *Examination of entry and other records*—(1) *Reasons for examination.* Customs may initiate an investigation, audit or other inquiry for the purpose of:

(i) Ascertaining the correctness of any entry, determining the liability of any person for duties, taxes and fees due or duties, taxes and fees which may be due, or determining the liability of any person for fines, penalties and forfeitures; or

(ii) Ensuring compliance with the laws and regulations administered or enforced by Customs.

(2) *Availability of records.* During the course of any investigation, audit or other inquiry, any Customs officer, during normal business hours, and to

the extent possible at a time mutually convenient to the parties, may examine, or cause to be examined, any relevant entry or other records by providing the person responsible for such records with reasonable written, oral or electronic notice that describes the records with reasonable specificity. The examination of entry records shall be subject to the notice and production procedures set forth in paragraph (a) of this section, and a failure to produce entry records may result in the imposition of penalties or the taking of other action as provided in paragraph (b) of this section.

(3) *Examination notice not exclusive.* In addition to, or in lieu of, issuance of an examination notice under paragraph (c)(2) of this section, Customs may issue a summons pursuant to §163.7, and seek its enforcement pursuant to §§163.9 and 163.10, to compel the production of any records required to be maintained and produced under this chapter.

[T.D. 98-56, 63 FR 32946, June 16, 1998; 63 FR 34808, June 26, 1998, as amended by CBP Dec. 11-20, 76 FR 65961, Oct. 25, 2011]

§ 163.7 Summons.

(a) *Who may be served.* During the course of any investigation, audit or other inquiry initiated for the reasons set forth in §163.6(c), the Commissioner of Customs or his designee, but no designee of the Commissioner below the rank of port director, Center director, field director of regulatory audit or special agent in charge, may issue a summons requiring a person within a reasonable period of time to appear before the appropriate Customs officer and to produce records or give relevant testimony under oath or both. Such a summons may be issued to any person who:

(1) Imported, or knowingly caused to be imported, merchandise into the customs territory of the United States;

(2) Exported merchandise, or knowingly caused merchandise to be exported, to a NAFTA country as defined in 19 U.S.C. 3301(4) (see also part 181 of this chapter) or to Canada during such time as the United States-Canada Free Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada;

(3) Transported or stored merchandise that was or is carried or held under customs bond, or knowingly caused such transportation or storage;

(4) Filed a declaration, entry, or drawback claim with Customs;

(5) Is an officer, employee, or agent of any person described in paragraph (a)(1) through (a)(4) of this section;

(6) Has possession, custody or care of records relating to an importation or other activity described in paragraph (a)(1) through (a)(4) of this section; or

(7) Customs may deem proper.

(b) *Contents of summons—(1) Appearance of person.* Any summons issued under this section to compel the appearance of a person shall state:

(i) The name, title, and telephone number of the Customs officer before whom the appearance shall take place;

(ii) The address within the customs territory of the United States where the person shall appear, not to exceed 100 miles from the place where the summons was served;

(iii) The time of appearance; and

(iv) The name, address, and telephone number of the Customs officer issuing the summons.

(2) *Production of records.* If a summons issued under this section requires the production of records, the summons shall set forth the information specified in paragraph (b)(1) of this section and shall also describe the records in question with reasonable specificity.

(c) *Service of summons—(1) Who may serve.* Any Customs officer is authorized to serve a summons issued under this section if designated in the summons to serve it.

(2) *Method of service—(i) Natural person.* Service upon a natural person shall be made by personal delivery.

(ii) *Corporation, partnership, association.* Service shall be made upon a domestic or foreign corporation, or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivery to an officer, managing or general agent, or any other agent authorized by appointment or law to receive service of process.

(3) *Certificate of service.* On the hearing of an application for the enforcement of a summons, the certificate of service signed by the person serving

the summons is prima facie evidence of the facts it states.

(d) *Transcript of testimony under oath.* Testimony of any person taken pursuant to a summons may be taken under oath and when so taken shall be transcribed or otherwise recorded. When testimony is transcribed or otherwise recorded, a copy shall be made available on request to the witness unless for good cause shown the issuing officer determines under 5 U.S.C. 555 that a copy should not be provided. In that event, the witness shall be limited to inspection of the official transcript of the testimony. The testimony or transcript may be in the form of a written statement under oath provided by the person examined at the request of the Customs officer.

[T.D. 98–56, 63 FR 32946, June 16, 1998, as amended by CBP Dec. 11–20, 76 FR 65961, Oct. 25, 2011; CBP Dec. No. 16–26, 81 FR 93024, Dec. 20, 2016]

§ 163.8 Third-party recordkeeper summons.

(a) *Notice required.* Except as otherwise provided in paragraph (f) of this section, if a summons issued under § 163.7 to a third-party recordkeeper requires the production of, or the giving of testimony relating to, records pertaining to transactions of any person, other than the person summoned, who is identified in the description of the records contained in the summons, then notice of the summons shall be provided to the person so identified in the summons.

(b) *Time of notice.* The notice of service of summons required by paragraph (a) of this section should be provided by the issuing officer immediately after service of summons is obtained under § 163.7(c), but in no event shall notice be given less than 10 business days before the date set in the summons for the production of records or the giving of testimony.

(c) *Contents of notice.* The issuing officer shall ensure that any notice issued under this section includes a copy of the summons and provides the following information:

(1) That compliance with the summons may be stayed if written direction not to comply with the summons

is given by the person receiving notice to the person summoned;

(2) That a copy of any such direction to not comply and a copy of the summons shall be sent by registered or certified mail to the person summoned and to the Customs officer who issued the summons; and

(3) That the actions under paragraphs (c)(1) and (c)(2) of this section shall be accomplished not later than the day before the day fixed in the summons as the day upon which the records are to be examined or the testimony is to be given.

(d) *Service of notice.* The Customs officer who issues the summons shall serve the notice required by paragraph (a) of this section in the same manner as is prescribed in § 163.7(c)(2) for the service of a summons, or by certified or registered mail to the last known address of the person entitled to notice.

(e) *Examination of records precluded.* If notice is required by this section, no record may be examined before the date fixed in the summons as the date to produce the records. If the person entitled to notice under paragraph (a) of this section issues a stay of compliance with the summons in accordance with paragraph (c) of this section, no examination of records shall take place except with the consent of the person staying compliance or pursuant to an order issued by a U.S. district court.

(f) *Exceptions to notice and stay of summons provisions—(1) Personal liability for duties, fees, or taxes.* The notice provisions of paragraph (a) of this section shall not apply to any summons served on the person, or on any officer or employee of the person, with respect to whose liability for duties, fees, or taxes the summons is issued.

(2) *Verification of existence of records.* The notice provisions of paragraph (a) of this section shall not apply to any summons issued to determine whether or not records of transactions of an identified person have been made or kept.

(3) *Judicial determination.* The notice provisions of paragraph (a) of this section and the stay of compliance provisions of paragraph (c) of this section shall not apply with respect to a summons described in paragraph (a) of this

section if a U.S. district court determines, upon petition by the issuing Customs officer, that reasonable cause exists to believe that the giving of notice may lead to an attempt:

(i) To conceal, destroy, or alter relevant records;

(ii) To prevent the communication of information from other persons through intimidation, bribery, or collusion; or

(iii) To flee to avoid prosecution, testifying, or production of records.

§ 163.9 Enforcement of summons.

Whenever a person does not comply with a Customs summons, the issuing officer may request the appropriate U.S. attorney to seek an order requiring compliance from the U.S. district court for the district in which the person is found or resides or is doing business. A person who is entitled to notice under § 163.8(a) shall have a right to intervene in any such enforcement proceeding.

§ 163.10 Failure to comply with court order; penalties.

(a) *Monetary penalties.* The U.S. district court for any judicial district in which a person served with a Customs summons is found or resides or is doing business may order such person to comply with the summons. Upon the failure of a person to obey a court order to comply with a Customs summons, the court may find such person in contempt and may assess a monetary penalty.

(b) *Importations prohibited.* If a person fails to comply with a court order to comply with a Customs summons and is adjudged guilty of contempt, the Commissioner of Customs, with the approval of the Secretary of the Treasury, for so long as that person remains in contempt:

(1) May prohibit importation of merchandise by that person, directly or indirectly, or for that person's account; and

(2) May withhold delivery of merchandise imported by that person, directly or indirectly, or for that person's account.

(c) *Sale of merchandise.* If any person remains in contempt for more than 1 year after the Commissioner issues in-

structions to withhold delivery under paragraph (b)(2) of this section, the merchandise shall be considered abandoned and shall be sold at public auction or otherwise disposed of in accordance with subpart E of part 162 of this chapter.

§ 163.11 Audit procedures.

(a) *General requirements.* In conducting an audit under 19 U.S.C. 1509(b), the CBP auditors, except as otherwise provided in paragraph (f) of this section, will:

(1) Provide notice, telephonically and in writing, to the person to be audited of CBP's intention to conduct an audit and a reasonable estimate of the time to be required for the audit;

(2) Inform the person who is to be the subject of the audit, in writing and before commencement of the audit, of that person's right to an entrance conference, at which time the objectives and records requirements of the audit, and any sampling plan to be employed or offsetting that may apply, will be explained and the estimated termination date of the audit will be set. Where a decision on a sampling plan and methodology is not made at the time of the entrance conference, CBP will discuss these matters with the person being audited as soon as possible after the discovery of facts and circumstances that warrant the possible need to employ sampling;

(3) Provide a further estimate of any additional time for the audit if, during the course of the audit, it becomes apparent that additional time will be required;

(4) Schedule a closing conference upon completion of the audit on-site work to explain the preliminary results of the audit;

(5) Complete a formal written audit report within 90 calendar days following the closing conference referred to in paragraph (a)(4) of this section, unless the Executive Director, Regulatory Audit, Office of International Trade, CBP Headquarters, provides written notice to the person audited of the reason for any delay and the anticipated completion date; and

(6) After application of any disclosure exemptions contained in 5 U.S.C. 552, send a copy of the formal written audit

report to the person audited within 30 calendar days following completion of the report.

(b) *Petition procedures for failure to conduct closing conference.* Except as otherwise provided in paragraph (f) of this section, if the estimated or actual termination date of the audit passes without a CBP auditor providing a closing conference to explain the results of the audit, the person audited may petition in writing for a closing conference to the Executive Director, Regulatory Audit, Office of International Trade, Customs and Border Protection, Washington, DC 20229. Upon receipt of the request, the director will provide for the closing conference to be held within 15 calendar days after the date of receipt.

(c) *Use of statistical sampling in calculation of loss of duties or revenue—*(1) *General.* In conducting an audit under this section, regardless of the finality of liquidation under 19 U.S.C. 1514, CBP auditors have the sole discretion to determine the time period and scope of the audit and will examine a sufficient number of transactions, as determined solely by CBP. In addition to examining all transactions to identify loss of duties, taxes, and fees under 19 U.S.C. 1592 or loss of revenue under 19 U.S.C. 1593a, or to determine compliance with any other applicable customs laws or other laws enforced by CBP, CBP auditors, at their sole discretion, may use statistical sampling methods. During the audit, CBP auditors will explain the sampling plan and how the results of the sampling will be projected over the universe of transactions for purposes of calculating lost duties, taxes, and fees or lost revenue and, where appropriate, overpayments and over-declarations eligible for offsetting under paragraph (d) of this section. The person being audited and CBP will discuss the specifics of the sampling plan before audit work under the plan is commenced. Once the sampling plan is accepted, the audited person waives the ability to contest the validity of the sampling plan or its methodology at a later date and challenges of the sampling will be limited to challenging computational and clerical errors. CBP’s authority to conduct the audit or employ statistical sampling is not

dependent on the audited person’s acceptance of the specifics of the sampling plan. An audited person’s acceptance of the sampling plan and methodology must be in writing and signed by a management official with authority to bind the company in matters of trade, imports, and/or other affairs under the customs laws, CBP regulations, or other applicable laws. The audited person may submit the signed waiver to the CBP auditor. The appropriate field director, Regulatory Audit, will sign the waiver for CBP. Where the sampling plan or methodology is subsequently adjusted or modified, at CBP’s discretion, acceptance of the adjustments or modifications also must be in writing and signed. This is not a waiver of the audited person’s right to later contest substantive issues, such as misclassification, undervaluation, etc., that may properly be raised under applicable regulations, including in a request for CBP Headquarters advice under 19 CFR 171.14, a request for CBP Headquarters review under 19 CFR 162.74(c), a response to a prepenalty notice issued by CBP under 19 U.S.C. 1592(b)(1) or 19 U.S.C. 1593a(b)(1), a petition submitted in response to a penalty notice issued by CBP under 19 U.S.C. 1592(b)(2) or 19 U.S.C. 1593a(b)(2) (19 CFR part 171) and 19 U.S.C. 1618, a supplemental petition submitted under 19 CFR 171.61 and 171.62, or any action commenced in a court of proper jurisdiction.

(2) *Projection.* For purposes of this section, “projection” of sampling results over the universe of transactions is the process by which the results obtained from the sample entries actually examined are applied to the universe of entries set within the time period and scope of the sampling plan to yield a reliable assessment of that which is sought to be ascertained or measured in the audit, including, but not limited to, lost duties or revenue, or overpayments or over-declarations, as described in paragraph (d)(1) of this section.

(3) *When CBP uses statistical sampling.* CBP auditors have the sole discretion to use statistical sampling techniques when:

(i) Review of 100 percent of the transactions is impossible or impractical;

(ii) The sampling plan is prepared in accordance with generally recognized sampling procedures; and

(iii) The sampling procedure is executed in accordance with that plan.

(4) *Statistical sampling by audited persons under CBP supervision.* CBP may authorize a person being audited to conduct, under CBP supervision, self-testing of its own transactions within the time period and scope of the audit as originally set or later modified by CBP at its discretion. Audited persons permitted in advance by CBP to conduct self-testing of certain transactions under CBP supervision within the time period and scope of a CBP audit may use statistical sampling methods, provided that the criteria contained in paragraph (c)(3) of this section are satisfied. CBP will determine the time period and scope of the CBP-approved and supervised self-testing and will explain any sampling plan to be employed in accordance with paragraph (c)(1) of this section. The execution and results of the self-testing and the sampling plan are subject to CBP approval, and the audited person is subject to the waiver of paragraph (c)(1) of this section.

(5) *Statistical sampling by a private party submitting a prior disclosure.* A private party conducting an independent review of certain transactions and a calculation of lost duties, taxes, and fees or lost revenue for purposes of prior disclosure, in accordance with 19 CFR 162.74(j), may use statistical sampling, provided that the private party submits an explanation of the sampling plan and methodology employed and that the criteria in paragraph (c)(3) of this section are satisfied. Where the private party submits a prior disclosure employing statistical sampling, the time period, scope, and any sampling plan employed by the private party, as well as the execution and results of the self-review, are subject to CBP review and approval. Where CBP and the private party discuss and accept the sampling plan and methodology, or an adjustment to it, the waiver of paragraph (c)(1) of this section applies.

(d) *Offset of overpayments and over-declarations in 19 U.S.C. 1592 penalty cases—(1) General.* In conducting any

audit authorized under 19 U.S.C. 1509 and this section for the purpose of calculating the loss of duties, taxes, and fees or monetary penalty under any provision of 19 U.S.C. 1592, CBP auditors identifying overpayments of duties or fees or over-declarations of quantities or values that are within the time period and scope of the audit, as established solely by CBP, will treat the overpayments or over-declarations on finally liquidated entries as an offset to any underpayments or under-declarations also identified on finally liquidated entries, provided that:

(i) The identified overpayments or over-declarations were not made by the person being audited for the purpose of violating any provision of law, including laws other than customs laws,

(ii) The identified underpayments or under-declarations were not made knowingly and intentionally, and

(iii) All other requirements of this paragraph (d) are met.

(2) *When audited person conducts self-testing under CBP supervision.* Offsetting will apply to self-testing conducted by an audited person under CBP supervision (i.e., during a CBP audit), provided that all requirements of this paragraph (d) are met, CBP approves the self-testing in advance and, upon review of the self-testing, CBP approves its execution and results.

(3) *When a private party submits a prior disclosure.* Offsetting will apply when a private party submits a prior disclosure, provided that the prior disclosure is in accordance with 19 CFR 162.74 and CBP approves the private party's self-review, including its execution and results. CBP's Office of International Trade, Regulatory Audit will review and evaluate all such prior disclosures and approve offsetting where it is satisfied that the requirements of 19 U.S.C. 1509(b)(6) and this paragraph (d) are met.

(4) *Time period and scope determined by CBP; projection when sampling employed.* In conducting an audit under paragraph (d)(1) of this section or authorizing an audited person's self-testing as described in paragraph (d)(2) of this section, CBP will have the sole authority to determine the time period and

scope of the audit. In conducting a review of a private party's prior disclosure as described in paragraph (d)(3) of this section, the time period and scope employed will be subject to CBP approval. In each of these circumstances, where statistical sampling is involved, CBP auditors will examine only the selected sample transactions. The results of the sample examination, with respect to properly identified overpayments and over-declarations and properly identified underpayments and under-declarations, will be projected over the universe of transactions to determine the total overpayments and over-declarations that are eligible for offsetting and to determine the total loss of duties, taxes, and fees.

(5) *Same acts, statements, omissions, or entries not required.* Offsetting may be permitted where the overpayments or over-declarations were not made by the same acts, statements, or omissions that caused the underpayments or under-declarations, and is not limited to the same entries that evidence the underpayments or under-declarations, provided that they are within the time period and scope of the audit as established by CBP and as described in paragraph (d)(4) of this section.

(6) *Limitations.* Offsetting will not be allowed with respect to specific overpayments or over-declarations made for the purpose of violating any provision of law, including laws other than customs laws. Offsetting will not be allowed with respect to overpayments or over-declarations resulting from a failure to timely claim or establish a duty allowance or preference. Offsetting will be disallowed entirely where CBP determines that any underpayments or under-declarations identified for offsetting purposes were made knowingly and intentionally.

(7) *Audit report.* Where overpayments or over-declarations have been identified in accordance with paragraph (d)(1) of this section, the audit report will state whether they have been made within the time period and scope of the audit.

(8) *Disallowance determinations referred to Fines, Penalties, and Forfeitures office.* Any determination that offsets will be disallowed where overpayments/over-declarations were made for the

purpose of violating any law, or where underpayments or under-declarations were made knowingly and intentionally, will be made by the appropriate Fines, Penalties, and Forfeitures (FP&F) office to which the issue was referred. CBP will notify the audited person of a determination whether to allow offsetting in whole or in part. The FP&F office will issue a notice of penalty under 19 U.S.C. 1592(b) and/or notice of liability for lost duties, taxes, and fees under 19 U.S.C. 1592(d) where it determines that such action is warranted. If the FP&F office issues a notice of penalty, the audited person may file a petition under 19 U.S.C. 1592(b)(2), 19 U.S.C. 1618, and 19 CFR part 171 to challenge the action.

(9) *Refunds limited.* An overpayment of duties and fees will only be credited toward a refund if the circumstances of the overpayment meet the requirements of 19 U.S.C. 1520 or the requirements of 19 U.S.C. 1514(a) pertaining to clerical error, mistake of fact, or other inadvertence in any entry, liquidation, or reliquidation.

(e) *Sampling not evidence of reasonable care.* The fact that entries were previously within the time period and scope of an audit conducted by CBP in which sampling was employed, in any circumstances described in this section, is not evidence of reasonable care by a violator in any subsequent action involving such entries.

(f) *Exception to procedures.* The provisions of paragraph (a) of this section may not apply when a private party submits a prior disclosure under paragraph (d)(3) of this section. Paragraphs (a)(5), (a)(6), (b), (d)(8), and (d)(9) of this section do not apply once CBP and/or ICE commences an investigation with respect to the issue(s) involved.

[CBP Dec. 11–20, 76 FR 65961, Oct. 25, 2011]

§ 163.12 Recordkeeping Compliance Program.

(a) *General.* The Recordkeeping Compliance Program is a voluntary CBP program under which certified recordkeepers may be eligible for alternatives to penalties (see paragraph (d) of this section) that might be assessed under § 163.6 for failure to produce a demanded entry record. However, even

where a certified recordkeeper is eligible for an alternative to a penalty, participation in the Recordkeeping Compliance Program has no limiting effect on the authority of CBP to use a summons, court order or other legal process to compel the production of records by that certified recordkeeper.

(b) *Certification procedures*—(1) *Who may apply.* Any person described in §163.2(a) who is required to maintain and produce entry records under this part may apply to participate in the Recordkeeping Compliance Program.

(2) *Where to apply.* An application for certification to participate in the Recordkeeping Compliance Program must be submitted to the Regulatory Audit, U.S. Customs and Border Protection, 2001 Cross Beam Dr., Charlotte, North Carolina 28217. The application must be submitted in accordance with the guidelines contained in the CBP Recordkeeping Compliance Handbook which may be obtained by downloading it from CBP's Regulatory Audit Web site located at http://www.cbp.gov/xp/cgov/import/regulatory_audit_program/archive/compliance_assessment/ or by writing to the Recordkeeping Compliance Program, Executive Director, Regulatory Audit, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Ave., NW., Washington, DC 20229.

(3) *Certification requirements.* A recordkeeper may be certified as a participant in the Recordkeeping Compliance Program after meeting the general recordkeeping requirements established under this section or after negotiating an alternative program suited to the needs of the recordkeeper and CBP. To be certified, a recordkeeper must be in compliance with all applicable laws and regulations. CBP will take into account the size and nature of the importing business and the volume of imports and CBP workload constraints prior to granting certification. In order to be certified, a recordkeeper must meet the applicable requirements set forth in the CBP Recordkeeping Compliance Handbook and must be able to demonstrate that it:

(i) Understands the legal requirements for recordkeeping, including the nature of the records required to be

maintained and produced and the time periods relating thereto;

(ii) Has in place procedures to explain the recordkeeping requirements to those employees who are involved in the preparation, maintenance and production of required records;

(iii) Has in place procedures regarding the preparation and maintenance of required records, and the production of such records to CBP;

(iv) Has designated a dependable individual or individuals to be responsible for recordkeeping compliance under the program and whose duties include maintaining familiarity with the recordkeeping requirements of CBP;

(v) Has a record maintenance procedure acceptable to CBP for original records or has an alternative records maintenance procedure adopted in accordance with §163.5(b); and

(vi) Has procedures for notifying CBP of any occurrence of a variance from, or violation of, the requirements of the Recordkeeping Compliance Program or negotiated alternative program, as well as procedures for taking corrective action when notified by CBP of violations or problems regarding such program. For purposes of this paragraph, the term "variance" means a deviation from the Recordkeeping Compliance Program that does not involve a failure to maintain or produce records or a failure to meet the requirements set forth in this section. For purposes of this paragraph, the term "violation" means a deviation from the Recordkeeping Compliance Program that involves a failure to maintain or produce records or a failure to meet the requirements set forth in this section.

(c) *Application review and approval and certification process*—(1) *Review of applications.* The Charlotte regulatory audit field office will process the application and will coordinate and consult, as may be necessary, with the appropriate CBP Headquarters and field officials. The Charlotte regulatory audit field office will review and verify the information contained in the application and may initiate an on-site verification prior to approval and certification. If an on-site visit is warranted, the Charlotte regulatory audit field office will inform the applicant. If

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additional information is necessary to process the application, the applicant will be notified. CBP requests for information not submitted with the application or for additional explanation of details will cause a delay in the application approval and certification of applicants and may result in the suspension of the application approval and certification process until the requested information is received by CBP.

(2) *Approval and certification.* If, upon review, CBP determines that the application should be approved and that certification should be granted, the Director of the Charlotte regulatory audit field office will issue the certification with all the applicable conditions stated therein.

(d) *Alternatives to penalties*—(1) *General.* If a certified participant in the Recordkeeping Compliance Program does not produce a demanded entry record for a specific release or provide the information contained in the demanded entry record by acceptable alternate means, CBP will, in lieu of a monetary penalty provided for in §163.6(b), issue a written notice of violation to the person as described in paragraph (d)(2) of this section, provided that the certified participant is generally in compliance with the procedures and requirements of the program and provided that the violation was not a willful violation and was not a repeat violation. A willful failure to produce demanded entry records or repeated failures to produce demanded entry records may result in the issuance of penalties under §163.6(b) and removal of certification under the program (see §163.13) until corrective action satisfactory to CBP is taken.

(2) *Contents of notice.* A notice of violation issued to a participant in the Recordkeeping Compliance Program for failure to produce a demanded entry record or information contained therein must:

- (i) State that the recordkeeper has violated the recordkeeping requirements;
- (ii) Identify the record or information which was demanded and not produced;
- (iii) Warn the recordkeeper that future failures to produce demanded

entry records or information contained therein may result in the imposition of monetary penalties and could result in the removal of the recordkeeper from the Recordkeeping Compliance Program.

(3) *Response to notice.* Within a reasonable time after receiving written notice under paragraph (d)(1) of this section, the recordkeeper must notify CBP of the steps it has taken to prevent a recurrence of the violation.

[T.D. 98–56, 63 FR 32946, June 16, 1998, as amended by CBP Dec. 12–12, 77 FR 33966, June 8, 2012]

§ 163.13 Denial and removal of program certification; appeal procedures.

(a) *General.* Customs may take, and applicants and participants may appeal and obtain administrative review of, the following decisions regarding the Recordkeeping Compliance Program provided for in §163.12:

(1) Denial of certification for program participation in accordance with paragraph (b) of this section; and

(2) Removal of certification for program participation in accordance with paragraph (c) of this section.

(b) *Denial of certification for program participation*—(1) *Grounds for denial.* Customs may deny an application for certification for participation in the Recordkeeping Compliance Program for any of the following reasons:

(i) The applicant fails to meet the requirements set forth in §163.12(b)(3);

(ii) A circumstance involving the applicant arises that would justify initiation of a certification removal action under paragraph (c) of this section; or

(iii) In the judgment of Customs, the applicant appears not to be in compliance with Customs laws and regulations.

(2) *Denial procedure.* If the Director of the Miami regulatory audit field office determines that an application submitted under §163.12 should not be approved and that certification for participation in the Recordkeeping Compliance Program should not be granted, the Director shall issue a written notice of denial to the applicant. The notice of denial shall set forth the reasons for the denial and shall advise the applicant of its right to file an appeal

of the denial in accordance with paragraph (d) of this section.

(c) *Certification removal*—(1) *Grounds for removal*. The certification for participation in the Recordkeeping Compliance Program by a certified recordkeeper may be removed when any of the following conditions are discovered:

(i) The certification privilege was obtained through fraud or mistake of fact;

(ii) The program participant no longer has a valid bond;

(iii) The program participant fails on a recurring basis to provide entry records when demanded by Customs;

(iv) The program participant willfully refuses to produce a demanded or requested record;

(v) The program participant is no longer in compliance with the Customs laws and regulations, including the requirements set forth in §163.12(b)(3); or

(vi) The program participant is convicted of any felony or has committed acts which would constitute a misdemeanor or felony involving theft, smuggling, or any theft-connected crime.

(2) *Removal procedure*. If Customs determines that the certification of a program participant should be removed, the Director of the Miami regulatory audit field office shall serve the program participant with written notice of the removal. Such notice shall inform the program participant of the grounds for the removal and shall advise the program participant of its right to file an appeal of the removal in accordance with paragraph (d) of this section.

(3) *Effect of removal*. The removal of certification shall be effective immediately in cases of willfulness on the part of the program participant or when required by public health, interest, or safety. In all other cases, the removal of certification shall be effective when the program participant has received notice under paragraph (c)(2) of this section and either no appeal has been filed within the time limit prescribed in paragraph (d)(2) of this section or all appeal procedures thereunder have been concluded by a decision that upholds the removal action.

Removal of certification may subject the affected person to penalties.

(d) *Appeal of certification denial or removal*—(1) *Appeal of certification denial*. A person may challenge a denial of an application for certification for participation in the Recordkeeping Compliance Program by filing a written appeal with the Executive Director, Regulatory Audit, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229. The appeal must be received by the Executive Director, Regulatory Audit, within 30 calendar days after issuance of the notice of denial. The Executive Director, Regulatory Audit, will review the appeal and will respond with a written decision within 30 calendar days after receipt of the appeal unless circumstances require a delay in issuance of the decision. If the decision cannot be issued within the 30-day period, the Executive Director, Regulatory Audit, will advise the appellant of the reasons for the delay and of any further actions which will be carried out to complete the appeal review and of the anticipated date for issuance of the appeal decision.

(2) *Appeal of certification removal*. A certified recordkeeper who has received a CBP notice of removal of certification for participation in the Recordkeeping Compliance Program may challenge the removal by filing a written appeal with the Executive Director, Regulatory Audit, U.S. Customs and Border Protection, Office of International Trade, Washington, DC 20229. The appeal must be received by the Executive Director, Regulatory Audit, within 30 calendar days after issuance of the notice of removal. The Executive Director, Regulatory Audit, shall consider the allegations upon which the removal was based and the responses made thereto by the appellant and shall render a written decision on the appeal within 30 calendar days after receipt of the appeal.

APPENDIX TO PART 163—INTERIM
(a)(1)(A) LIST

*List of Records Required for the Entry of
Merchandise*

General Information

(1) Section 508 of the Tariff Act of 1930, as amended (19 U.S.C. 1508), sets forth the general recordkeeping requirements for Customs-related activities. Section 509 of the Tariff Act of 1930, as amended (19 U.S.C. 1509) sets forth the procedures for the production and examination of those records (which includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data).

(2) Section 509(a)(1)(A) of the Tariff Act of 1930, as amended by title VI of Public Law 103-182, commonly referred to as the Customs Modernization Act (19 U.S.C. 1509(a)(1)(A)), requires the production, within a reasonable time after demand by the Customs Service is made (taking into consideration the number, type and age of the item demanded) if “such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry).” Section 509(e) of the Tariff Act of 1930, as amended by Public Law 103-182 (19 U.S.C. 1509(e)) requires the Customs Service to identify and publish a list of the records and entry information that is required to be maintained and produced under subsection (a)(1)(A) of section 509 (19 U.S.C. 1509(a)(1)(A)). This list is commonly referred to as “the (a)(1)(A) list.”

(3) The Customs Service has tried to identify all the presently required entry information or records on the following list. However, as automated programs and new procedures are introduced, these may change. In addition, errors and omissions to the list may be discovered upon further review by Customs officials or the trade. Pursuant to section 509(g), the failure to produce listed records or information upon reasonable demand may result in penalty action or liquidation or reliquidation at a higher rate than entered. A recordkeeping penalty may not be assessed if the listed information or records are transmitted to and retained by Customs.

(4) *Other recordkeeping requirements:* The importing community and Customs officials are reminded that the (a)(1)(A) list only pertains to records or information required for the entry of merchandise. An owner, importer, consignee, importer of record, entry filer, or other party who imports merchandise, files a drawback claim or transports or stores bonded merchandise, any agent of the foregoing, or any person whose activities require them to file a declaration or entry, is also required to make, keep and render for examination and inspection records (includ-

ing, but not limited to, statements, declarations, documents and electronically generated or machine readable data) which pertain to any such activity or the information contained in the records required by the Tariff Act in connection with any such activity, and are normally kept in the ordinary course of business. While these records are not subject to administrative penalties, they are subject to examination and/or summons by Customs officers. Failure to comply could result in the imposition of significant judicially imposed penalties and denial of import privileges.

(5) The following list does not replace entry requirements, but is merely provided for information and reference. In the case of the list conflicting with regulatory or statutory requirements, the latter will govern.

*List of Records and Information Required for
the Entry of Merchandise*

The following records (which include, but are not limited to, any statement, declaration, document, or electronically generated or machine readable data) are required by law or regulation for the entry of merchandise and are required to be maintained and produced to Customs upon reasonable demand (whether or not Customs required their presentation at the time of entry). Information may be submitted to Customs at the time of entry in a Customs authorized electronic or paper format. Not every entry of merchandise requires all of the following information. Only those records or information applicable to the entry requirements for the merchandise in question will be required/mandatory. The list may be amended as Customs reviews its requirements and continues to implement the Customs Modernization Act. When a record or information is filed with and retained by Customs, the record is not subject to recordkeeping penalties, although the underlying backup or supporting information from which it is obtained may also be subject to the general record retention regulations and examination or summons pursuant to 19 U.S.C. 1508 and 1509. (All references, unless otherwise indicated, are to the current edition of title 19, Code of Federal Regulations, as amended by subsequent FEDERAL REGISTER documents.)

I. General list of records required for most entries. Information shown with an asterisk (*) is usually on the appropriate form and filed with and retained by Customs:

§§ 141.11 through 141.15 Evidence of right to make entry (airway bill/bill of lading or *carrier certificate, etc.) when goods are imported on a common carrier

§ 141.19 *Declaration of entry (usually contained on the entry summary or warehouse entry)

§ 141.32 Power of attorney (when required by regulations)

§ 141.54 Consolidated shipments authority to make entry (if this procedure is utilized)

§ 142.3 Packing list (where appropriate)

§ 142.4 Bond information (except if 10.101 or 142.4(c) applies)

Parts 4, 18, 122, 123 *Vessel, Vehicle or Air Manifest (filed by the carrier)

II. The following records or information are required by § 141.61 on Customs Form (CF) 3461, or its electronic equivalent, or CF 7533 or the regulations cited. Information shown with an asterisk (*) is contained on the appropriate form and/or otherwise filed with and retained by Customs:

§§ 142.3, 142.3a *Entry Number

*Entry Type Code
*Elected Entry Date
*Port Code

§ 142.4 *Bond information

§§ 141.61, 142.3a *Broker/Importer Filer Number

§§ 141.61, 142.3 *Ultimate Consignee Name and Number/street address of premises to be delivered

§ 141.61 *Importer of Record Number

*Country of Origin

§ 141.11 *IT/BL/AWB Number and Code

*Arrival Date

§ 141.61 *Carrier Code

*Voyage/Flight/Trip
*Vessel Code/Name
*Manufacturer ID Number (for AD/CVD must be actual mfr.)
*Location of Goods-Code(s)/Name(s)
*U.S. Port of Unlading
*General Order Number (only when required by the regulations)

§ 142.6 *Description of Merchandise

§ 142.6 *HTSUSA Number

§ 142.6 *Manifest Quantity

*Total Value
*Signature of Applicant

III. In addition to the information listed above, the following records or items of information are required by law and regulation for the entry of merchandise and are presently required to be produced by the importer of record at the time the Customs Form 7501, or its electronic equivalent, is filed:

§ 141.61 *Entry Summary Date

§ 141.61 *Entry Date

§ 142.3 *Bond Number, Bond Type Code and Surety code

§ 142.3 *Ultimate Consignee Address

§ 141.61 *Importer of Record Name and Address

§ 141.61 *Exporting Country and Date Exported

*I.T. (In-bond) Entry Date (for IT Entries only)

*Mode of Transportation (MOT Code)

§ 141.61 *Importing Carrier Name

§ 141.82 Conveyance Name/Number

*Foreign Port of Lading
*Import Date and Line Numbers
*Reference Number
*HTSUS Number

§ 141.61 *Identification number for merchandise subject to Anti-dumping or Countervailing duty order (ADA/CVD Case Number)

§ 141.61 *Gross Weight

*Manifest Quantity

§ 141.61 *Net Quantity in HTSUSA Units

§ 141.61 *Entered Value, Charges, and Relationship

§ 141.61 *Applicable HTSUSA Rate, ADA/CVD Rate, I.R.C. Rate, and/or Visa Number, Duty, I.R. Tax, and Fees (e.g. HMF, MPF, Cotton)

§ 141.61 Non-Dutiable Charges

§ 141.61 *Signature of Declarant, Title, and Date

*Textile Category Number

§ 141.83, 141.86 Invoice information which includes, e.g., date, number, merchandise (commercial product) description, quantities, values, unit price, trade terms, part, model, style, marks and numbers, name and address of foreign party responsible for invoicing, kind of currency

Terms of Sale
Shipping Quantities
Shipping Units of Measurements
Manifest Description of Goods
Foreign Trade Zone Designation and Status
Designation (if applicable)
Indication of Eligibility for Special Access Program (9802/GSP/CBI)

§ 141.89 CF 5523

Part 141 Corrected Commercial Invoice

141.86 (e) Packing List

177.8 *Binding Ruling Identification Number (or a copy of the ruling)

§ 10.102 Duty Free Entry Certificate (9808.00.30009 HTS)

§ 10.108 Lease Statement

IV. Documents/records or information required for entry of special categories of merchandise (the listed documents or information is only required for merchandise entered [or required to be entered] in accordance with the provisions of the sections of 19 CFR [the Customs Regulations] listed). These are in addition to any documents/records or information required by other agencies in their regulations for the entry of merchandise:

§ 4.14 CF 226 Information for vessel repairs, parts and equipment

§ 7.3(f) CBP Form 3229, or its electronic equivalent, Origin certificate for insular possessions Shipper's and importer's declaration for insular possessions

Part 10 Documents required for entry of articles exported and returned:

- §§ 10.1 through 10.6 Foreign shipper's declaration or master's certificate, declaration for free entry by owner, importer or consignee
- § 10.7 Certificate from foreign shipper for reusable containers
- § 10.8 Declaration of person performing alterations or repairs
Declaration for non-conforming merchandise
- § 10.9 Declaration of processing
- § 10.24 Declaration by assembler Endorsement by importer
- §§ 10.31, 10.35 Documents required for Temporary Importations Under Bond:
Information required, Bond or Carnet
- § 10.36 Lists for samples, professional equipment, theatrical effects
Documents required for Instruments of International Traffic:
- § 10.41 Application, Bond or TIR carnet
NOTE: additional 19 U.S.C. 1508 records: see § 10.41b(e)
- § 10.43 Documents required for exempt organizations
- § 10.46 Request from head of agency for 9808.00.10 or 9808.00.20 HTSUS treatment
Documents required for works of art
- § 10.48 Declaration of artist, seller or shipper, curator, etc.
- §§ 10.49, 10.52 Declaration by institution
- § 10.53 Declaration by importer
USFWS Form 3-177, if appropriate
- §§ 10.59, 10.63 Documents/CF 5125 for withdrawal of ship supplies
- §§ 10.66, 10.67 Declarations for articles exported and returned
- §§ 10.68, 10.69 Documents for commercial samples, tools, theatrical effects
- §§ 10.70, 10.71 Purebred breeding certificate
- § 10.84 Automotive Products certificate
- § 10.90 Master records and metal matrices: detailed statement of cost of production
- § 10.98 Declarations for copper fluxing material
- § 10.99 Declaration of non-beverage ethyl alcohol, ATF permit
- §§ 10.101 through 10.102 Stipulation for government shipments and/or certification for government duty-free entries, etc.
- § 10.107 Report for rescue and relief equipment
- § 10.905 PTPA records that the importer may have in support of a PTPA claim for preferential tariff treatment, including an importer's certification
- 15 CFR part 301 Requirements for entry of scientific and educational apparatus
- § 10.121 Certificate from the U.S. Department of State for visual/auditory materials
- § 10.134 Declaration of actual use (When classification involves actual use)
- § 10.138 End Use Certificate

- §§ 10.171 through 10.178 Documents, etc. required for entries of GSP merchandise, GSP Declaration (plus supporting documentation)
- § 10.174 Evidence of direct shipment
- § 10.179 Certificate of importer of crude petroleum
- § 10.180 Certificate of fresh, chilled or frozen beef
- § 10.183 Civil aircraft parts/simulator documentation and certifications
- §§ 10.191 through 10.198 Documents, etc. required for entries of CBI merchandise, CBI declaration of origin (plus supporting information)
- § 10.194 Evidence of direct shipment
- § 10.199 Documents, etc. required for duty-free entry of spirituous beverages produced in Canada from CBI rum, declaration of Canadian processor (plus supporting information)
- § 10.216 AGOA Textile Certificate of Origin
- § 10.226 CBTPA Textile Certificate of Origin and supporting records
- § 10.228 CBTPA Declaration of Compliance for brassieres
- § 10.236 CBTPA Non-textile Certificate of Origin and supporting records
- § 10.246 ATPDEA Textile Certificate of Origin
- § 10.248 ATPDEA Declaration of Compliance for Brassieres
- § 10.256 ATPDEA Non-textile Certificate of Origin
- †[§ 10.306 Evidence of direct shipment for CFTA]
- †[§ 10.307 Documents, etc. required for entries under CFTA Certificate of origin of CF 353]
[†CFTA provisions are suspended while NAFTA remains in effect. See part 181]
- § 10.410 US-CFTA Certification of origin and supporting records.
- § 10.512 SFTA records that the importer may have in support of a SFTA claim for preferential tariff treatment, including an importer's supporting statement if previously required by the port director or Center director before January 19, 2017 or the Center director on or after January 19, 2017.
- § 10.522 SFTA TPL Certificate of eligibility.
- § 10.585 CAFTA-DR records that the importer may have in support of a CAFTA-DR claim for preferential tariff treatment, including an importer's certification.
- § 10.704 US-JFTA records that the importer may have in support of a US-JFTA claim for preferential tariff treatment, including an importer's declaration.
- § 10.723–10.727 AFTA records that the importer may have in support of an AFTA claim for preferential tariff treatment, including an importer's supporting statement.
- § 10.765 MFTA records that the importer may have in support of a MFTA claim for

- preferential tariff treatment, including an importer's declaration.
- § 10.805 BFTA records that the importer may have in support of a BFTA claim for preferential tariff treatment, including an importer's declaration.
- § 10.820 BFTA TPL certificate of eligibility.
- § 10.821 BFTA TPL declaration.
- § 10.848 HOPE Act Declaration of Compliance.
- § 10.865 OFTA records that the importer may have in support of an OFTA claim for preferential tariff treatment, including an importer's declaration.
- § 10.883 OFTA TPL certificate of eligibility.
- § 10.884 OFTA TPL declaration.
- § 10.1005 UKFTA records that the importer may have in support of a UKFTA claim for preferential tariff treatment, including an importer's certification.
- § 10.2003–10.2007 PANTPA records that the importer may have in support of a PANTPA claim for preferential tariff treatment, including an importer's certification.
- § 10.3005 CTPA records that the importer may have in support of a CTPA claim for preferential tariff treatment, including an importer's certification.
- § 12.6 European Community cheese affidavit
- § 12.7 HHS permit for milk or cream importation
- § 12.11 Notice of arrival for plant and plant products
- § 12.17 APHIS Permit animal viruses, serums and toxins
- § 12.21 HHS license for viruses, toxins, antitoxins, etc. for treatment of man
- § 12.23 Notice of claimed investigational exemption for a new drug
- §§ 12.26 through 12.31 Necessary permits from APHIS, FWS & foreign government certificates when required by the applicable regulation
- § 12.33 Chop list, proforma invoice and release permit from HHS
- § 12.34 Certificate of match inspection and importer's declaration
- § 12.43 Certificate of origin/declarations for goods made by forced labor, etc.
- § 12.61 Shipper's declaration, official certificate for seal and otter skins
- §§ 12.73, 12.80 Motor vehicle declarations
- § 12.85 Boat declarations (CG–5096, or its electronic equivalent) and USCG exemption
- § 12.91 FDA form 2877 and required declarations for electronics products
- § 12.99 Declarations for switchblade knives
- §§ 12.104 through 12.104i Cultural property declarations, statements and certificates of origin
- §§ 12.105 through 12.109 Pre-Columbian monumental and architectural sculpture and murals
- Certificate of legal exportation
- Evidence of exemption
- § 12.110 Pesticides, etc. notice of arrival
- §§ 12.118 through 12.127 Toxic substances: TSCA statements
- § 12.140(b) and (c) Canadian-issued Export Permit, Certificate of Origin issued by Canada's Maritime Lumber Bureau.
- § 12.142 Softwood Lumber Importer Declaration Supporting Documentation, Softwood Lumber Home Packages and Kits Documentation.
- § 12.152 Kimberley Process Certificate for rough diamonds.
- § 54.5 Declaration by importer of use of certain metal articles
- § 54.6(a) Re-Melting Certificate
- § 102.25 NAFTA textile requirements
- Part 113, Appendix B—Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, as Amended
- Part 114 Carnets (serves as entry and bond document where applicable)
- Part 115 Container certificate of approval
- Part 128 Express consignments
- § 128.21 *Manifests with required information (filed by carrier)
- §§ 132.15, 132.17 Export certificates, respectively, for beef or sugar-containing products subject to tariff-rate quota.
- § 132.18 License, or written authorization, as applicable, for worsted wool fabric subject to tariff-rate quota
- § 132.23 Acknowledgment of delivery for mailed items subject to quota
- §§ 133.21(e), 133.22(c)(3) and 133.23(e) Consent from trademark or trade name holder to import otherwise restricted goods
- §§ 134.25, 134.36 Certificate of marking; notice to repacker
- § 141.88 Computed value information
- § 141.89 Additional invoice information required for certain classes of merchandise including, but not limited to:
- Textile Entries:* Quota charge Statement, if applicable including Style Number, Article Number and Product
- Steel Entries:* Ordering specifications, including but not limited to, all applicable industry standards and mill certificates, including but not limited to, chemical composition.
- § 143.13 Documents required for appraisal—entry Bills, statements of costs of production Value declaration
- § 143.23 Informal entry: commercial invoice plus declaration
- § 144.12 Warehouse entry information
- § 145.11 Customs Declaration for Mail, Invoice
- § 145.12 Mail entry information (CF 3419 is completed by Customs but formal entry may be required.)
- Part 148 Supporting documents for personal importations
- Part 151, subpart B Scale Weight
- Part 151, subpart B Sugar imports sampling/lab information (Chemical Analysis)

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Part 151, subpart C Petroleum imports sampling/lab information Out turn Report 24. to 25—Reserved

Part 151, subpart E Wool and Hair invoice information, additional documents

Part 151, subpart F Cotton invoice information, additional documents

§ 181.22 NAFTA Certificate of origin and supporting records

19 U.S.C. 1356k Coffee Form O (currently suspended)

Other Federal and State Agency Documents

State and Local Government Records

Other Federal Agency Records (See 19 CFR part 12, 19 U.S.C. 1484, 1499)

Licenses, Authorizations, Permits

Foreign Trade Zones

§ 146.32 Supporting documents to CF 214

[T.D. 98–56, 63 FR 32946, June 16, 1998]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting the appendix, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

PART 165—INVESTIGATION OF CLAIMS OF EVASION OF ANTI-DUMPING AND COUNTER-VAILING DUTIES

Sec.

165.0 Scope.

Subpart A—General Provisions

- 165.1 Definitions.
- 165.2 Entries subject to this part.
- 165.3 Power of attorney.
- 165.4 Release of information provided by interested parties.
- 165.5 Obtaining and submitting information.
- 165.6 Adverse inferences.
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- 165.11 Allegations by interested parties.
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- 165.15 Initiation of investigations.
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- 165.21 Administrative record.
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- 165.24 Interim measures.
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- 165.41 Filing a request for review of the initial determination.
- 165.42 Responses to requests for administrative review.
- 165.43 Withdrawal.
- 165.44 Additional information.
- 165.45 Standard for administrative review.
- 165.46 Final administrative determination.
- 165.47 Potential penalties and other actions.

AUTHORITY: 19 U.S.C. 66, 1481, 1484, 1508, 1517 (as added by Pub. L. 114–125, 130 Stat. 122, 155 (19 U.S.C. 4301 note)), 1623, 1624, 1671, 1673.

SOURCE: 81 FR 56482, Aug. 22, 2016, unless otherwise noted.

§ 165.0 Scope.

This part relates to allegations by the public and requests from Federal agencies for an investigation regarding the evasion of antidumping (AD) and countervailing duty (CVD) orders and the procedures by which CBP investigates such claims consistent with the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), which contains Title IV—Prevention of Evasion of Antidumping and Countervailing Duty Orders (short title “Enforce and Protect Act of 2015” or “EAPA”) (Pub. L. 114–125, 130 Stat. 122, 155, Feb. 24, 2016) (19 U.S.C. 4301 note). This part includes the requirements for the filing of allegations and requests for investigations, the investigation procedures, and administrative review of determinations as to evasion of AD/CVD orders under the EAPA. The procedures under this part are not the exclusive manner by which CBP may receive allegations or requests for an investigation from Federal agencies or investigate such allegations or requests with respect to the evasion of AD/CVD orders. An investigation as described in this part, if initiated by CBP, does not preclude CBP or any other government entity from initiating any other investigation or proceeding pursuant to any other provision of law, including proceedings initiated under 19 U.S.C. 1592.