

deposition (either upon oral examination or written interrogatory), order, or demand, hereinafter collectively referred to as a “demand”, of a court, administrative agency, or other authority is issued for such information.

(2) This subpart does not cover those situations where the United States is a party to the action. In situations where the United States is a party to the action, Customs employees are instructed to follow internal Customs policies and procedures.

(b) *Customs employee.* For purposes of this subpart, the term “Customs employee” includes all present and former officers and employees of the United States Customs Service.

(c) *Customs documents.* For purposes of this subpart, the term “Customs documents” includes any document (including copies thereof), no matter what media, produced by, obtained by, furnished to, or coming to the knowledge of, any Customs employee while acting in his/her official capacity, or because of his/her official status, with respect to the administration or enforcement of laws administered or enforced by the Customs Service.

(d) *Originating component.* For purposes of this subpart, the term “originating component” references the Customs official, or the official’s designee, in charge of the office responsible for the collection, assembly, or other preparation of the information demanded or that, at the time the person whose testimony is demanded acquired the information in question, employs or employed the person whose testimony is demanded.

(e) *Disclosure to government law enforcement or regulatory agencies.* Nothing in this subpart is intended to impede the appropriate disclosure of information by Customs to federal, state, local, and foreign law enforcement or regulatory agencies, in accordance with the confidentiality requirements of the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905), and other applicable statutes.

(f) *Disclosure to federal attorneys and the Court of International Trade.* Nothing in this subpart is intended to restrict the disclosure of Customs information requested by the Court of International Trade, U.S. Attorneys, or at-

torneys of the Department of Justice, for use in cases which arise under the laws administered or enforced by, or concerning, the Customs Service and which are referred by the Department of the Treasury to the Department of Justice for prosecution or defense.

(g) *Disclosure of non-Customs information.* Nothing in the subpart is intended to impede the appropriate disclosure of non-Customs information by Customs employees in any proceeding in which they are a party or witness solely in their personal capacities.

(h) *Failure of Customs employee to follow procedures.* The failure of any Customs employee to follow the procedures specified in this subpart neither creates nor confers any rights, privileges, or benefits on any person or party.

(i) *In camera inspection of records.* Nothing in this subpart authorizes Customs personnel to withhold records from a federal court, whether civil or criminal, pursuant to its order for such records appropriately made, for purposes of *in camera* inspection of the records to determine the propriety of claimed exemption(s) from disclosure.

§ 103.22 Procedure in the event of a demand for Customs information in any federal, state, or local civil proceeding or administrative action.

(a) *General prohibition against disclosure.* In any federal, state, or local civil proceeding or administrative action in which the Customs Service is not a party, no Customs employee shall, in response to a demand for Customs information, furnish Customs documents or testimony as to any material contained in Customs files, any information relating to or based upon material contained in Customs files, or any information or material acquired as part of the performance of that person’s official duties (or because of that person’s official status) without the prior written approval of the Chief Counsel, as described in paragraph (b) of this section.

(b) *Employee notification to Counsel.* Whenever a demand for information is made upon a Customs employee, that employee shall immediately prepare a report that specifically describes the testimony or documents sought and

notify the Assistant Chief Counsel or Associate Chief Counsel for the area where the employee is located. If the employee is located at Headquarters or outside of the United States, the employee shall immediately notify the Chief Counsel. The Customs employee shall then await instructions from the Chief Counsel concerning the response to the demand.

(c) *Requesting party's initial burden.* A party seeking Customs information shall serve on the appropriate Customs employee the demand, a copy of the Summons and Complaint, and provide an affidavit, or, if that is not feasible, a statement that sets forth a summary of the documents or testimony sought and its relevance to the proceeding. Any disclosure authorization for documents or testimony by a Customs employee shall be limited to the scope of the demand as summarized in such affidavit or statement. The Chief Counsel may, upon request and for good cause shown, waive the requirements of this paragraph.

(d) *Requesting party's notification requirement.* The demand for Customs information, pursuant to the provisions of paragraph (c) of this section, shall be served at least ten (10) working days prior to the scheduled date of the production of the documents or the taking of testimony.

(e) *Counsel notification to originating component.* Upon receipt of a proper demand for Customs information, one which complies with the provisions of paragraph (c) of this section, if the Chief Counsel believes that it will comply with any part of the demand, it will immediately advise the originating component.

(f) *Conditions for authorization of disclosure.* The Chief Counsel, subject to the provisions of paragraph (h) of this section, may authorize the production of Customs documents or the appearance and testimony of a Customs employee if:

(1) Production of the demanded documents or testimony, in the judgment of the Chief Counsel, are appropriate under the factors specified in §103.23(a) of this subpart; and

(2) None of the factors specified in §103.23(b) of this subpart exist with re-

spect to the demanded documents or testimony.

(g) *Limitations on the scope of authorized disclosure.* (1) The Chief Counsel shall authorize the disclosure of Customs information by a Customs employee without further authorization from Customs officials whenever possible, *provided that*:

(i) If necessary, Counsel has consulted with the originating component regarding disclosure of the information demanded;

(ii) There is no objection from the originating component to the disclosure of the information demanded; and

(iii) Counsel has sought to limit the demand for information to that which would be consistent with the factors specified in §103.23 of this part.

(2) In the case of an objection by the originating component, the Chief Counsel shall make the disclosure determination.

(h) *Disclosure of commercial information.* In the case of a demand for commercial information or commercial documents concerning importations or exportations, the Chief Counsel shall obtain the authorization of the Assistant Commissioner (Field Operations) or his/her designee prior to the Chief Counsel authorizing the production/disclosure of such documents/information.

§ 103.23 Factors in determining whether to disclose information pursuant to a demand.

(a) *General considerations.* In authorizing disclosures pursuant to a proper demand for Customs information, one which complies with the provisions of §103.22(c), the Chief Counsel should consider the following factors:

(1) Whether the disclosure would be appropriate under the relevant substantive law concerning privilege;

(2) Whether the disclosure would be appropriate under the rules of procedure governing the case or matter in which the demand arose; and,

(3) Whether the requesting party has demonstrated that the information requested is:

(1) Relevant and material to the action pending, based on copies of the summons and complaint that are required to be attached to the subpoena *duces tecum* or other demand;