

from the date specified in the demand as the latest redelivery date if redelivery has not taken place;

(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 Customs for audit, inquiry, investigation, or inspection of such records; and

(vi) The recordkeeper shall 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 the Miami regulatory audit field office. 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 shall be 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, the appropriate Customs office may instruct the person in writing to discontinue use of the alternative storage method. The instruction shall take effect upon receipt thereof and shall remain in effect until the noncompliance has been rectified and alternative storage has recommenced in accordance with the procedures set forth in paragraph (b)(1) of this section.

§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 re-

quired 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 ap-

propriate 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 or compliance assessment, 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 or compliance assessment, 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

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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]

§ 163.7 Summons.

(a) *Who may be served.* During the course of any investigation or compliance assessment, 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, 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