

§ 163.10

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 instructions 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 Compliance assessment and other audit procedures.

(a) *Conduct of a Customs compliance assessment or other audit.* In conducting a compliance assessment or other audit, the Customs auditors, except as otherwise provided in paragraph (c) of this section, shall:

(1) Provide notice, telephonically and in writing, to the person who is to be the subject of the compliance assessment or other audit, in advance of the

compliance assessment or other audit and with a reasonable estimate of the time to be required for the compliance assessment or other audit;

(2) Inform the person who is to be the subject of the compliance assessment or other audit, in writing and before commencing the compliance assessment or other audit, of his right to an entry conference at which time the objectives and records requirements of the compliance assessment or other audit will be explained and the estimated termination date will be set;

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

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

(5) Complete a formal written compliance assessment or other audit report within 90 calendar days following the closing conference referred to in paragraph (a)(4) of this section, unless the Director, Regulatory Audit Division, at Customs Headquarters provides written notice to the person who was the subject of the compliance assessment or other audit of the reason for any delay and the anticipated completion date; and

(6) After application of any exemption contained in 5 U.S.C. 552, send a copy of the formal written compliance assessment or other audit report to the person who was the subject of the compliance assessment or other audit within 30 calendar days following completion of the report.

(b) *Petition procedures for failure to conduct closing conference.* Except as otherwise provided in paragraph (c) of this section, if the estimated or actual termination date for a compliance assessment or other audit passes without a Customs auditor providing a closing conference to explain the results of the compliance assessment or other audit, the person who was the subject of the compliance assessment or other audit may petition in writing for such a conference to the Director, Regulatory Audit Division, U.S. Customs Service,

Washington, DC 20229. Upon receipt of such a request, the Director shall provide for such a conference to be held within 15 calendar days after the date of receipt.

(c) *Exception to procedures.* Paragraphs (a)(5), (a)(6) and (b) of this section shall not apply after Customs commences a formal investigation with respect to the issue involved.

§ 163.12 Recordkeeping Compliance Program.

(a) *General.* The Recordkeeping Compliance Program is a voluntary Customs 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 Customs 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 shall be submitted to the Director, Regulatory Audit Division, U.S. Customs Service, 909 S.E. First Avenue, Miami, Florida 33131. The application shall be submitted in accordance with the guidelines contained in the Customs Recordkeeping Compliance Handbook which may be obtained by downloading it from the Customs Electronic Bulletin Board (703-921-6155) or by writing to the Recordkeeping Compliance Program, Regulatory Audit Division, Office of Strategic Trade, U.S. Customs Service, 909 S.E. First Avenue, Suite 710, Miami, Florida 33131.

(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 Customs. To be certified, a recordkeeper must be in compliance with Customs laws and regulations. Customs will take into account the size and nature of the importing business and the volume of imports and Customs workload constraints prior to granting certification. In order to be certified, a recordkeeper must meet the applicable requirements set forth in the Customs 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 Customs;

(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 Customs;

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

(vi) Has procedures for notifying Customs 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 Customs 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