

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

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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 Miami regulatory audit field office will process the application and will coordinate and consult, as may be necessary, with the appropriate Customs Headquarters and field officials. The Miami 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 Miami regulatory audit field office shall inform the applicant. If additional information is necessary to process the application, the applicant shall be notified. Customs 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 Customs.

(2) *Approval and certification.* If, upon review, Customs determines that the application should be approved and that certification should be granted, the Director of the Miami regulatory audit field office shall 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, Customs shall, 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 Customs 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 shall:

(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 shall notify Customs of the steps it has taken to prevent a recurrence of the violation.

§ 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