

(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

Sec.

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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.

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

§ 163.0 Scope.

This part sets forth the record-keeping 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 or compliance assessment, 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 are contained in parts 10 and 181 of this chapter, respectively.

§ 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.
- (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-Morocco Free Trade Agreement

(MFTA), including a MFTA importer's declaration.

(x) 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.

(xi) 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 a Customs regulatory audit verification of information contained in records required to be maintained and produced by persons listed in § 163.2 or pursuant to other applicable laws and regulations administered by Customs but does not include a quantity verification for a customs bonded warehouse or general purpose foreign trade zone. The purpose of an audit is to determine that information submitted or required is accurate, complete and in accordance with laws and regulations administered by Customs.

(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) *Compliance assessment.* A "compliance assessment" is a type of importer audit performed by a Customs Compliance Assessment Team which uses various audit techniques, including statistical testing of import and financial transactions, to assess the importer's compliance level in trade areas, to determine the adequacy of the importer's internal controls over its customs operations, and to determine the importer's rates of compliance.

(f) *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.

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

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

(h) *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.

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

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

(k) *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.

(l) *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, as amended by CBP Dec. 05-07, 70 FR 10884, Mar. 7, 2005; CBP Dec. 07-28, 72 FR 32003, June 11, 2007; CBP Dec. 07-50, 72 FR 35160, June 27, 2007; CBP Dec. 07-51, 72 FR 35658, June 29, 2007; CBP Dec. 07-81, 72 FR 58522, Oct. 16, 2007]

§ 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)(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