

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)(1)(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 the person placing the order with the importer with knowledge that they will be used in the manufacture or production of the imported merchandise.

(c) *Recordkeeping required for certain exporters.* Any person who exports goods to Canada or Mexico for which a Certificate of Origin was completed and signed pursuant to the North American Free Trade Agreement must also maintain records in accordance with part 181 of this chapter.

(d) *Recordkeeping required for customs brokers.* Each customs broker must also make and maintain records and make such records available in accordance with part 111 of this chapter.

(e) *Recordkeeping not required for certain travelers.* After having physically cleared the Customs facility, a traveler who made a baggage or oral declaration upon arrival in the United States will not be required to maintain supporting records regarding non-commercial merchandise acquired abroad which falls within the traveler's personal exemptions or which is covered by a flat rate of duty.

### § 163.3 Entry records.

Any person described in §163.2(a) with reference to an import transaction shall be prepared to produce or transmit to Customs, in accordance with §163.6(a), any entry records which may be demanded by Customs. If entry records submitted to Customs not pursuant to a demand are returned by Customs, or if production of entry records at the time of entry is waived by Customs, such person shall continue to maintain those entry records in accordance with this part. Entry records which are normally kept in the ordinary course of business must be maintained by such person in accordance with this part whether or not copies thereof are retained by Customs.

### § 163.4 Record retention period.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, any record required to be made, kept, and rendered for examination and inspection by Customs under §163.2 or any other provision of this chapter shall be kept for 5 years from the date of entry, if the record relates to an entry, or 5 years from the date of the activity which required creation of the record.

(b) *Exceptions.* (1) Any record relating to a drawback claim shall be kept until the third anniversary of the date of payment of the claim.

(2) Packing lists shall be retained for a period of 60 calendar days from the end of the release or conditional release period, whichever is later, or, if a demand for return to Customs custody has been issued, for a period of 60 calendar days either from the date the goods are redelivered or from the date specified in the demand as the latest redelivery date if redelivery has not taken place.

(3) A consignee who is not the owner or purchaser and who appoints a customs broker shall keep a record pertaining to merchandise covered by an informal entry for 2 years from the date of the informal entry.

(4) Records pertaining to articles that are admitted free of duty and tax pursuant to 19 U.S.C. 1321(a)(2) and §§10.151 through 10.153 of this chapter, and carriers' records pertaining to manifested cargo that is exempt from

entry under the provisions of this chapter, shall be kept for 2 years from the date of the entry or other activity which required creation of the record.

(5) If another provision of this chapter sets forth a retention period for a specific type of record that differs from the period that would apply under this section, that other provision controls.

#### § 163.5 Methods for storage of records.

(a) *Original records.* All persons listed in § 163.2 shall maintain all records required by law and regulation for the required retention periods and as original records, whether paper or electronic, unless alternative storage methods have been adopted in accordance with paragraph (b) of this section. The records, whether in their original format or under an alternative storage method, must be capable of being retrieved upon lawful request or demand by Customs.

(b) *Alternative method of storage—(1) General.* Any of the persons listed in § 163.2 may maintain any records, other than records required to be maintained as original records under laws and regulations administered by other Federal government agencies, in an alternative format, provided that the person gives advance written notification of such alternative storage method to the Director, Regulatory Audit Division, U.S. Customs Service, 909 S.E. First Avenue, Miami, Florida 33131, and provided further that the Director of the Miami regulatory audit field office does not instruct the person in writing as provided herein that certain described records may not be maintained in an alternative format. The written notice to the Director of the Miami regulatory audit field office must be provided at least 30 calendar days before implementation of the alternative storage method, must identify the type of alternative storage method to be used, and must state that the alternative storage method complies with the standards set forth in paragraph (b)(2) of this section. If an alternative storage method covers records that pertain to goods under Customs seizure or detention or that relate to a matter that is currently the subject of an inquiry or investigation or administrative or court proceeding, the appro-

priate Customs office may instruct the person in writing that those records must be maintained as original records and therefore may not be converted to an alternative format until specific written authorization is received from that Customs office. A written instruction to a person under this paragraph may be issued during the 30-day advance notice period prescribed in this section or at any time thereafter, must describe the records in question with reasonable specificity but need not identify the underlying basis for the instruction, and shall not preclude application of the planned alternative storage method to other records not described therein.

(2) *Standards for alternative storage methods.* Methods commonly used in standard business practice for storage of records include, but are not limited to, machine readable data, CD ROM, and microfiche. Methods that are in compliance with generally accepted business standards will generally satisfy Customs requirements, provided that the method used allows for retrieval of records requested within a reasonable time after the request and provided that adequate provisions exist to prevent alteration, destruction, or deterioration of the records. The following standards must be applied by recordkeepers when using alternative storage methods:

(i) Operational and written procedures are in place to ensure that the imaging and/or other media storage process preserves the integrity, readability, and security of the information contained in the original records. The procedures must include a standardized retrieval process for such records. Vendor specifications/documentation and benchmark data must be available for Customs review;

(ii) There is an effective labeling, naming, filing, and indexing system;

(iii) Except in the case of packing lists (see § 163.4(b)(2)), entry records must be maintained in their original formats for a period of 120 calendar days from the end of the release or conditional release period, whichever is later, or, if a demand for return to Customs custody has been issued, for a period of 120 calendar days either from the date the goods are redelivered or