

**1651 – 0028 Cost Submission  
Laws and Regulations**

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**TITLE 19—**

**CUSTOMS DUTIES CHAPTER 4-  
-TARIFF ACT OF 1930 SUBTITLE III-  
-ADMINISTRATIVE PROVISIONS Part I—**

Definitions and National Customs Automation Program  
Subpart a--definitions

**Sec. 1401a.** Value (a) Generally (1) Except as otherwise specifically provided for in this chapter, imported merchandise shall be appraised, for the purposes of this chapter, on the basis of the following:

- (A) The transaction value provided for under subsection (b) of this section.
- (B) The transaction value of identical merchandise provided for under subsection (c) of this section, if the value referred to in subparagraph (A) cannot be determined, or can be determined but cannot be used by reason of subsection (b)(2) of this section.
- (C) The transaction value of similar merchandise provided for under subsection (c) of this section, if the value referred to in subparagraph (B) cannot be determined.
- (D) The deductive value provided for under subsection (d) of this section, if the value referred to in subparagraph (C) cannot be determined and if the importer does not request alternative valuation under paragraph (2).
- (E) The computed value provided for under subsection (e) of this section, if the value referred to in subparagraph (D) cannot be determined.
- (F) The value provided for under subsection (f) of this section, if the value referred to in subparagraph (E) cannot be determined.

(2) If the value referred to in paragraph (1)(C) cannot be determined with respect to imported merchandise, the merchandise shall be appraised on the basis of the computed value provided for under paragraph (1)(E), rather than the deductive value provided for under paragraph (1)(D), if the importer makes a request to that effect to the customs officer concerned within such time as the Secretary shall prescribe. If the computed value of the merchandise cannot subsequently be determined, the merchandise may not be appraised on the basis of the value referred to in paragraph (1)(F) unless the deductive value of the merchandise cannot be determined under paragraph (1)(D).

(3) Upon written request therefor by the importer of merchandise, and subject to provisions of law regarding the disclosure of information, the customs officer concerned shall provide the importer with a written explanation of how the value of that merchandise was determined under this section.

### **1401a. Value**

**(e) Computed value** (1) The computed value of imported merchandise is the sum of-- (A) the cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise; (B) an amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States; (C) any assist, if its value is not included under subparagraph (A) or (B); and (D) the packing costs. (2) For purposes of paragraph (1)-- (A) the cost or value of materials under paragraph (1)(A) shall not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used; and (B) the amount for profit and general expenses under paragraph (1)(B) shall be based upon the producer's profits and expenses, unless the producer's profits and expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States, in which case the amount under paragraph (1)(B) shall be based on the usual profit and general expenses of such producers in such sales, as determined from sufficient information.

**TITLE 19 –  
CUSTOMS DUTIES CHAPTER 4-  
-TARIFF ACT OF 1930 SUBTITLE III-  
-ADMINISTRATIVE PROVISIONS Part III-**

Ascertainment, Collection, and Recovery of Duties Sec. 1509. Examination of books and witnesses (a) Authority In any investigation or inquiry conducted for the purpose of ascertaining the correctness of any entry, for determining the liability of any person for duty, fees and taxes due or duties, fees and taxes which may be due the United States, for determining liability for fines and penalties, or for insuring compliance with the laws of the United States administered by the United States Customs Service, the Secretary (but no delegate of the Secretary below the rank of district director or special agent in charge) may-- (1) examine, or cause to be examined, upon reasonable notice, any record (which for purposes of this section, includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry, except that-- (A) if such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry) it shall be provided to the Customs Service within a reasonable time after demand for its production is made, taking into consideration the number, type, and age of the item demanded; and (B) if a person of whom demand is made under subparagraph (A) fails to comply with the demand, the person may be subject to penalty

under subsection (g) of this section; (2) summon, upon reasonable notice-- (A) the person who-- (i) imported, or knowingly caused to be imported, merchandise into the customs territory of the United States, (ii) exported merchandise, or knowingly caused merchandise to be exported, to a NAFTA country (as defined in section 3301(4) of this title) 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, (iii) transported or stored merchandise that was or is carried or held under customs bond, or knowingly caused such transportation or storage, or (iv) filed a declaration, entry, or drawback claim with the Customs Service; (B) any officer, employee, or agent of any person described in subparagraph (A); (C) any person having possession, custody or care of records relating to the importation or other activity described in subparagraph (A); or (D) any other person he may deem proper; to appear before the appropriate customs officer at the time and place within the customs territory of the United States specified in the summons (except that no witness may be required to appear at any place more than one hundred miles distant from the place where he was served with the summons), to produce records, as defined in subsection (d)(1)(A) of this section, and to give such testimony, under oath, as may be relevant to such investigation or inquiry; and (3) take, or cause to be taken, such testimony of the person concerned, under oath, as may be relevant to such investigation or inquiry. (b) Regulatory audit procedures (1) In conducting a regulatory audit under this section (which does not include a quantity verification for a customs bonded warehouse or general purpose foreign trade zone), the Customs Service auditor shall provide the person being audited, in advance of the audit, with a reasonable estimate of the time to be required for the audit. If in the course of an audit it becomes apparent that additional time will be required, the Customs Service auditor shall immediately provide a further estimate of such additional time. (2) Before commencing an audit, the Customs Service auditor shall inform the party to be audited of his right to an entry conference at which time the purpose will be explained and an estimated termination date set. Upon completion of on-site audit activities, the Customs Service auditor shall schedule a closing conference to explain the preliminary results of the audit. (3) Except as provided in paragraph (5), if the estimated or actual termination date for an audit passes without the Customs Service auditor providing a closing conference to explain the results of the audit, the person being audited may petition in writing for such a conference to the officer designated pursuant to regulations, who, upon receipt of such a request, shall provide for such a conference to be held within 15 days after the date of receipt. (4) Except as provided in paragraph (5), the Customs Service auditor shall complete the formal written audit report within 90 days following the closing conference unless the officer designated pursuant to regulations provides written notice to the person being audited of the reason for any delay and the anticipated completion date. After application of any exemption contained in section 552 of title 5, a copy of the formal written audit report shall be sent to the person audited no later than 30 days following completion of the report. (5) Paragraphs (3) and (4) shall not apply after the Customs Service commences a formal investigation with respect to the issue involved. (c) Service of summons A summons issued pursuant to this section may be served by any person designated in the summons to serve it. Service upon a natural person may be made by personal delivery of the summons to him. Service may 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 delivering the summons to an officer, or managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The certificate of service signed by the person serving the summons is prima facie evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of records, such records shall be described in the summons with reasonable specificity. (d) Special procedures for third-party summonses (1) For purposes of this subsection-- (A) The term "records" includes those-- (i) required to be kept under section 1508 of this title; or (ii) regarding which there is probable cause to believe that they pertain to merchandise the importation of which into the United States is prohibited. (B) The term "summons" means any summons issued under subsection (a) of this section which requires the production of records or the giving of testimony relating to records. Such term does not mean any summons issued to aid in the collection of the liability of any person against whom an assessment has been made or judgment rendered. (C) The term "third-party recordkeeper" means-- (i) any customhouse broker, unless such customhouse broker is the importer of record on an entry; (ii) any attorney; and (iii) any accountant. (2) If-- (A) any summons is served on any person who is a third-party recordkeeper; and (B) the summons requires the production of, or the giving of testimony relating to, any portion of records made or kept of the transactions described in section 1508 of this title of any person (other than the person summoned) who is identified in the description of the records contained in such summons; then notice of such summons shall be given to any persons so identified within a reasonable time before the day fixed in the summons as the day upon which such records are to be examined or testimony given. Such notice shall be accompanied by a copy of the summons which has been served and shall contain directions for staying compliance with the summons under paragraph (5)(B) of this subsection. (3) Any notice required under paragraph (2) of this subsection shall be sufficient if such notice is served in the manner provided in subsection (b) of this section upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person. (4) Paragraph (2) of this subsection shall not apply to any summons-- (A) served on the person with respect to whose liability for duties, fees, or taxes the summons is issued, or any officer or employee of such person; or (B) to determine whether or not records of the transactions described in section 1508 of this title of an identified person have been made or kept. (5) Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under paragraph (2) of this subsection shall have the right-- (A) to intervene in any proceeding with respect to the enforcement of such summons under section 1510 of this title; and (B) to stay compliance with the summons if, not later than the day before the day fixed in the summons as the day upon which the records are to be examined or testimony given-- (i) notice in writing is given to the person summoned not to comply with the summons; and (ii) a copy of such notice not to comply with the summons is mailed by registered or certified mail to such person and to such office as the Secretary may direct in the notice referred to in paragraph (2) of this subsection. (6) No examination of any records required to be produced under a summons as to which notice is required under paragraph (2) of this subsection may be made-- (A) before the expiration of the period

allowed for the notice not to comply under paragraph (5)(B) of this subsection, or (B) if the requirements of such paragraph (5)(B) have been met, except in accordance with an order issued by a court of competent jurisdiction authorizing examination of such records or with the consent of the person staying compliance. (7) The provisions of paragraphs (2) and (5) of this subsection shall not apply with respect to any summons if, upon petition by the Secretary, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

(e) List of records and information The Customs Service shall identify and publish a list of the records or entry information that is required to be maintained and produced under subsection (a)(1)(A) of this section. (f) Recordkeeping compliance program (1) In general After consultation with the importing community, the Customs Service shall by regulation establish a recordkeeping compliance program which the parties listed in section 1508(a) of this title may participate in after being certified by the Customs Service under paragraph (2). Participation in the recordkeeping compliance program by recordkeepers is voluntary. (2) Certification A recordkeeper may be certified as a participant in the recordkeeping compliance program after meeting the general recordkeeping requirements established under the program or after negotiating an alternative program suited to the needs of the recordkeeper and the Customs Service. Certification requirements shall take into account the size and nature of the importing business and the volume of imports. In order to be certified, the recordkeeper must be able to demonstrate that it-- (A) understands the legal requirements for recordkeeping, including the nature of the records required to be maintained and produced and the time periods involved; (B) has in place procedures to explain the recordkeeping requirements to those employees who are involved in the preparation, maintenance, and production of required records; (C) has in place procedures regarding the preparation and maintenance of required records, and the production of such records to the Customs Service; (D) 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 the Customs Service; (E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternative records or recordkeeping formats other than the original records; and (F) has procedures for notifying the Customs Service of occurrences of variances to, and violations of, the requirements of the recordkeeping compliance program or the negotiated alternative programs, and for taking corrective action when notified by the Customs Service of violations or problems regarding such program. (g) Penalties (1) "Information" defined For purposes of this subsection, the term "information" means any record, statement, declaration, document, or electronically stored or transmitted information or data referred to in subsection (a)(1)(A) of this section. (2) Effects of failure to comply with demand Except as provided in paragraph (4), if a person fails to comply with a lawful demand for information under subsection (a)(1)(A) of this section the following provisions apply: (A) If the failure to comply is a result of the willful failure of the person to maintain, store, or retrieve the demanded information, 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. (B) If the failure to comply is a result of the negligence of the person in maintaining, storing, or retrieving the demanded information, 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. (C) In addition to any penalty imposed under subparagraph (A) or (B) regarding demanded information, if such information related to the eligibility of merchandise for a column 1 special rate of duty under title I, the entry of such merchandise-- (i) if unliquidated, shall be liquidated at the applicable column 1 general rate of duty; or (ii) if liquidated within the 2-year period preceding the date of the demand, shall be reliquidated, notwithstanding the time limitation in section 1514 or 1520 of this title, at the applicable column 1 general rate of duty; except that any liquidation or reliquidation under clause (i) or (ii) shall be at the applicable column 2 rate of duty if the Customs Service demonstrates that the merchandise should be dutiable at such rate. (3) Avoidance of penalty No penalty may be assessed under this subsection if the person can show-- (A) that the loss of the demanded information 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; (B) on the basis of other evidence satisfactory to the Customs Service, that the demand was substantially complied with; or (C) the information demanded was presented to and retained by the Customs Service at the time of entry or submitted in response to an earlier demand. (4) Penalties not exclusive Any penalty imposed under this subsection shall be in addition to any other penalty provided by law except for-- (A) a penalty imposed under section 1592 of this title for a material omission of the demanded information, or (B) disciplinary action taken under section 1641 of this title. (5) Remission or mitigation A penalty imposed under this section may be remitted or mitigated under section 1618 of this title. (6) Customs summons Nothing in this subsection shall limit or preclude the Customs Service from issuing, or seeking the enforcement of, a customs summons. (7) Alternatives to penalties (A) In general When a recordkeeper who-- (i) has been certified as a participant in the recordkeeping compliance program under subsection (f) of this section; and (ii) is generally in compliance with the appropriate procedures and requirements of the program; does not produce a demanded record or information for a specific release or provide the information by acceptable alternative means, the Customs Service, in the absence of willfulness or repeated violations, shall issue a written notice of the violation to the recordkeeper in lieu of a monetary penalty. Repeated violations by the recordkeeper may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken. (B) Contents of notice A notice of violation issued under subparagraph (A) shall-- (i) state that the recordkeeper has violated the recordkeeping requirements; (ii) indicate the record or information which was demanded; and (iii) warn the recordkeeper that future failures to produce demanded records or information may result in the imposition of monetary penalties. (C) Response to notice Within a reasonable time after receiving written notice under subparagraph (A), the recordkeeper shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation. (D) Regulations The Secretary shall promulgate regulations to implement this paragraph. Such regulations may specify the time periods for compliance with a

demand for information and provide guidelines which define repeated violations for purposes of this paragraph. Any penalty issued for a recordkeeping violation shall take into account the degree of compliance compared to the total number of importations, the nature of the demanded records and the recordkeeper's cooperation. (June 17, 1930, ch. 497, title IV, Sec. 509, 46 Stat. 733; June 25, 1948, ch. 646, Sec. 26, 62 Stat. 990; Pub. L. 91-271, title III, Sec. 301(n), June 2, 1970, 84 Stat. 289; Pub. L. 95-410, title I, Sec. 105, Oct. 3, 1978, 92 Stat. 889; Pub. L. 99-570, title III, Sec. 3117, Oct. 27, 1986, 100 Stat. 3207-84; Pub. L. 103-182, title II, Sec. 205(b), title VI, Sec. 615, Dec. 8, 1993, 107 Stat. 2094, 2175; Pub. L. 104-295, Sec. 3(a)(1), (10), Oct. 11, 1996, 110 Stat. 3515, 3516.) References in Text Title I, referred to in subsec. (g)(2)(C), means title I of act June 17, 1930, ch. 497, as amended, which contains the Harmonized Tariff Schedule of the United States and which is not set out in the Code. See notes preceding section 1202 of this title and Publication of Harmonized Tariff Schedule note set out under section 1202 of this title. Prior Provisions Provisions substantially the same, in most respects, as those in this section, were contained in act Oct. 3, 1913, ch. 16, Sec. III, O, 38 Stat. 188, which substantially reenacted the provisions of Customs Administrative Act of June 10, 1890, ch. 407, Sec. 16, 26 Stat. 138, as renumbered and reenacted without other change by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, Sec. 28, 36 Stat. 100. Section III of the 1913 act was superseded and more closely assimilated to this section by act Sept. 21, 1922, ch. 356, title IV, Sec. 508, 42 Stat. 968, and repealed by section 643 thereof. Section 508 of the 1922 act was superseded by section 509 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act. Prior provisions similar to those in this section and section 1510 of this title were made by R.S. Secs. 2922-2924, repealed by section 29 of the Customs Administrative Act of 1890, 26 Stat. 141. Amendments 1996--Subsec. (a)(2). Pub. L. 104-295, Sec. 3(a)(1), substituted "(d)(1)(A)" for "(c)(1)(A)" in concluding provisions. Subsec. (b)(3), (4). Pub. L. 104-295, Sec. 3(a)(10), substituted "officer designated pursuant to regulations" for "appropriate regional commissioner". 1993--Subsec. (a). Pub. L. 103-182, Sec. 615(1)(A), substituted ", fees and taxes" for "and taxes" in two places in introductory provisions. Subsec. (a)(1). Pub. L. 103-182, Sec. 615(1)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "examine, or cause to be examined, upon reasonable notice, any record, statement, declaration or other document, described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry;". Subsec. (a)(2)(A). Pub. L. 103-182, Sec. 615(1)(C), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "the person who imported, or knowingly caused to be imported, merchandise into the customs territory of the United States;". See Construction of 1993 Amendment note below. Subsec. (a)(2)(A)(ii). Pub. L. 103-182, Sec. 205(b), amended generally cl. (ii), as amended by Pub. L. 103-182, Sec. 615(1)(C). Prior to amendment, cl. (ii) read as follows: "exported merchandise, or knowingly caused merchandise to be exported, to Canada;". See Construction of 1993 Amendment note below. Subsec. (a)(2)(B), (C). Pub. L. 103-182, Sec. 615(1)(C), amended subpars. (B) and (C) generally. Prior to amendment, subpars. (B) and (C) read as follows: "(B) any officer, employee, or agent of such person, (C) any person having possession, custody, or care of records relating to such importation, or". Subsec. (a)(2)(D). Pub. L. 103-182, Sec. 615(1)(D), substituted a semicolon for comma at end. Subsecs. (b), (c). Pub. L. 103-

182, Sec. 615(2), (3), added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d). Subsec. (d). Pub. L. 103-182, Sec. 615(2), redesignated subsec. (c) as (d). Subsec. (d)(1)(A). Pub. L. 103-182, Sec. 615(4)(A), substituted "those" for "statements, declarations, or documents" in introductory provisions. Subsec. (d)(1)(C)(i). Pub. L. 103-182, Sec. 615(4)(B), inserted ", unless such customhouse broker is the importer of record on an entry" after "broker". Subsec. (d)(2)(B). Pub. L. 103-182, Sec. 615(4)(C), (D), substituted "the transactions described in section 1508 of this title" for "the import transactions". Subsec. (d)(4)(A). Pub. L. 103-182, Sec. 615(4)(E), inserted ", fees," after "duties". Subsec. (d)(4)(B). Pub. L. 103-182, Sec. 615(4)(C), (D), substituted "the transactions described in section 1508 of this title" for "the import transactions". Subsecs. (e) to (g). Pub. L. 103-182, Sec. 615(5), added subsecs. (e) to (g). 1986--Subsec. (a)(2). Pub. L. 99-570, Sec. 3117(1), substituted "as defined in subsection (c)(1)(A) of this section" for "required to be kept under section 1508 of this title" in concluding provisions. Subsec. (c)(1)(A). Pub. L. 99-570, Sec. 3117(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "The term 'records' includes statements, declarations, or documents required to be kept under section 1508 of this title." 1978--Pub. L. 95-410 substituted subsec. (a) to (c) provisions for examination of books and witnesses for prior provisions for examination of importer and others, which authorized appropriate customs officers to issue citations for examination under oath of any owner, importer, consignee, agent, or other person upon any material matter or thing respecting any imported merchandise then under consideration or previously imported within one year, in ascertaining the classification or the value thereof or the rate or amount of duty and to require production of any letters, accounts, contracts, invoices, or other documents relating to the merchandise, and the reduction of the testimony to writing, required the testimony to be filed and preserved under Customs Court rules, and authorized consideration of the evidence in subsequent proceedings relating to the merchandise. 1970--Pub. L. 91-271 substituted "Appropriate customs officer" for "Collectors and appraisers". 1948--Act June 25, 1948, struck out "and judges and divisions of the United States Customs Court" after "Collectors and appraisers" in first sentence. Effective Date of 1996 Amendment Amendment by Pub. L. 104-295 applicable as of Dec. 8, 1993, see section 3(b) of Pub. L. 104-295, set out as a note under section 1321 of this title. Effective Date of 1993 Amendment Amendment by section 205(b) of Pub. L. 103-182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 213(b) of Pub. L. 103-182, set out as an Effective Date note under section 3331 of this title. Effective Date of 1970 Amendment For effective date of amendment by Pub. L. 91-271, see section 203 of Pub. L. 91-271, set out as a note under section 1500 of this title. Effective Date of 1948 Amendment Section 38 of act June 25, 1948, provided that the amendment made by that act is effective Sept. 1, 1948. Construction of 1993 Amendment Amendment by section 205(b) of Pub. L. 103-182 to be made after amendment by section 615 of Pub. L. 103-182 is executed, see section 212 of Pub. L. 103-182, set out as a note under section 58c of this title. Section Referred to in Other Sections This section is referred to in sections 1508, 1510, 1553a of this title; title 26 section 6103.



**TITLE 19 CUSTOMS DUTIES CHAPTER  
-BUREAU OF CUSTOMS AND BORDER PROTECTION,  
DEPARTMENT OF HOMELAND SECURITY;  
DEPARTMENT OF THE TREASURY (CONTINUED)**

**PART 10\_ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE,  
ETC.-**

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**Sec. 10.11 General.** (a) Sections 10.12 through 10.23 set forth definitions and interpretative regulations adopted by the Commissioner of Customs pertaining to the construction of subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and related provisions of law. These provisions concern claims for the exemption from duty provided by subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), for American-made fabricated components which are returned to the United States as parts of articles assembled abroad. The examples included in these sections describe specific situations in which the exemption may or may not be applicable. The definitions and regulations that follow are promulgated to inform the public of the constructions and interpretations that the United States Customs Service shall give to relevant statutory terms and to assure the impartial and uniform assessment of duties upon merchandise claimed to be partially exempt from duty under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), at the various ports of entry. Nothing in these regulations purports or is intended to restrict the legal right of importers or others to a judicial review of the matters contained therein. (b) Section 10.24 sets forth the documentary requirements applicable to the entry of assembled articles claimed to be subject to the exemption provided under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). Allowance of an importer's claim is dependent upon meeting the statutory requirements for the exemption under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and his complying with the documentary requirements set forth in Sec. 10.24.

**Sec. 10.12 Definitions.** As used in Sec. Sec. 10.11 through 10.24, the following terms shall have the meanings indicated: (a) American-made. The term "American-made" is used to refer to a product of the United States as defined in paragraph (e) of this section. (b) Assembly. "Assembly" means the fitting or joining together of fabricated components. (c) Exemption. "Exemption" means the deduction of the cost or value of products of the United States which were assembled abroad in accordance with the requirements of subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), from the full value of the assembled article. (d) Fabricated component. "Fabricated component" means a manufactured article ready for assembly

in the condition as exported except for operations incidental to the assembly. (e) Product of the United States. A "product of the United States" is an article manufactured within the Customs territory of the United States and may consist wholly of United States components or materials, of United States and foreign components or materials, or wholly of foreign components or materials. If the article consists wholly or partially of foreign components or materials, the manufacturing process must be such that the foreign components or materials have been substantially transformed into a new and different article, or have been merged into a new and different article.

**Sec. 10.13 Statutory provision:** Subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). Subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS), (19 U.S.C. 1202), provides that articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting, are subject to a duty upon the full value of the imported article, less the cost or, if no charge is made, the value of such products of the United States. The rate of duty which is assessed upon the dutiable portion of the imported article is that which is applicable to the imported article as a whole under the appropriate provision of the HTSUS (19 U.S.C. 1202) for such article. If that provision requires a specific or compound rate of duty, the total duties assessed on the imported article are reduced in such proportion as the cost or value of the returned United States components which qualify for the exemption bears to the full value of the assembled article. Example 1. A transistor radio is assembled abroad from foreign-made components and American-made transistors. Upon importation, the transistor radio is subject to the ad valorem rate of duty applicable to transistor radios upon the value of the radio less the cost or value of the American-made transistors assembled therein. Example 2. A solid-state watch movement is assembled abroad from foreign-made components and an American-made integrated circuit. If the movement in question is subject to the specific rate of duty of 75 cents if the value of the assembled movement is \$30, and if the value of the American-made integrated circuit is \$10, then the value of the integrated circuit represents one third of the total value of the assembled article and the duty on the assembled article will be reduced by one third (\$.25). Therefore, the duty on the assembled movement is 50 cents.

**Sec. 10.14 Fabricated components subject to the exemption.** (a) Fabricated components, the product of the United States. Except as provided in Sec. 10.15, the exemption provided under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), applies to fabricated components, the product of the United States. The components must be in condition ready for assembly without further fabrication at the time of their exportation from the United States to qualify for the exemption. Components will not lose their entitlement to the exemption by being subjected to operations incidental to the assembly either before, during, or after their assembly with other components. Materials undefined in final dimensions and shapes, which are cut into specific shapes or patterns abroad are not considered fabricated

components. Example 1. Articles identifiable in their exported condition as components or parts of the article into which they will be assembled, such as transistors, diodes, integrated circuits, machinery parts, or precut parts of wearing apparel, are regarded as fabricated components. Example 2. Prestamped metal lead frames for semiconductor devices exported in multiple unit strips in which the individual frame units are connected to each other, or integrated circuit wafers containing individual integrated circuit dice which have been scribed or scored in the United States, are regarded as fabricated components. The separation of the individual frames by cutting, or the segmentation of the wafer into individual dice by flexing and breaking along scribed or scored lines, is regarded as an operation incidental to the assembly process. Example 3. Wires of various type, electrical conductors, metal foils, insulating tapes, ribbons, findings used in dressmaking, and similar products, which are in a finished state when exported from the United States, and are ready for use in the assembly of the imported article, are regarded as fabricated components if they are only cut to length or subjected to operations incidental to the assembly process while abroad. Example 4. Uncut textile fabrics exported in bolts from which wearing apparel components will be cut according to a pattern are not regarded as fabricated components. Similarly, other materials, such as lumber, leather, sheet metal, plastic sheeting, exported in basic shapes and forms to be fabricated into components for assembly, are not eligible for treatment as fabricated components.

(b) Substantial transformation of foreign-made articles or materials. Foreign-made articles or materials may become products of the United States if they undergo a process of manufacture in the United States which results in their substantial transformation. Substantial transformation occurs when, as a result of manufacturing processes, a new and different article emerges, having a distinctive name, character, or use, which is different from that originally possessed by the article or material before being subject to the manufacturing process. The mere finishing or modification of a partially or nearly complete foreign product in the United States will not result in the substantial transformation of such product and it remains the product of a foreign country. Example 1. A cast metal housing for a valve is made in the United States from imported copper ingots, the product of a foreign country. The housing is a product of the United States because the manufacturing operations performed in the United States to produce the housing resulted in a substantial transformation of the foreign copper ingots. Example 2. An integrated circuit device is assembled in a foreign country and imported into the United States where its leads are formed by bending them to a specified angle. It is then tested and marked. The imported article does not become a product of the United States because the operations performed in the United States do not result in a substantial transformation of the foreign integrated circuit device. Example 3. A circuit board assembly for a computer is assembled in the United States by soldering American-made and foreign-made components onto an American-made printed circuit board. The finished circuit board assembly has a distinct electronic function and is ready for incorporation into the computer. The foreign-made components have undergone a substantial transformation by becoming permanent parts of the circuit board assembly. The circuit board assembly, including all of its parts is regarded as a fabricated component, the product of the United States, for purposes of subheading 9802.00.80, HTSUS (19 U.S.C. 1202).

**Sec. 10.15 Fabricated components not subject to the exemption.** Fabricated components which are not products of the United States are excluded from the exemption. In addition, the exemption is not applicable to any component exported from the Customs territory of the United States: (a) From continuous Customs custody with remission, abatement, or refund of duty; (b) With benefit of drawback; (c) To comply with any law of the United States or regulation of any Federal agency requiring exportation; or (d) After manufacture or production in the United States under subheading 9813.00.05, HTSUS (19 U.S.C. 1202). Example. Partially completed components of an electric motor are imported in several separate shipments and are entered under a temporary importation bond to be manufactured into finished motors under the provisions of subheading 9813.00.05, HTSUS (19 U.S.C. 1202). The components are completed and assembled into finished electric motors. The finished motors are exported and are assembled abroad into electric fans which are subsequently imported into the United States. Irrespective of the fact that the assembly of the motors might involve such a substantial change that the motor could be considered a product of the United States, no exemption may be given for the value of the electric motors, since they were exported after manufacture or production in the United States under the provision of subheading 9813.00.05, HTSUS (19 U.S.C. 1202).

**Sec. 10.16 Assembly abroad.** (a) Assembly operations. The assembly operations performed abroad may consist of any method used to join or fit together solid components, such as welding, soldering, riveting, force fitting, gluing, laminating, sewing, or the use of fasteners, and may be preceded, accompanied, or followed by operations incidental to the assembly as illustrated in paragraph (b) of this section. The mixing or combining of liquids, gases, chemicals, food ingredients, and amorphous solids with each other or with solid components is not regarded as an assembly.

Example 1. A television yoke is assembled abroad from American-made magnet wire. In the foreign assembly plant the wire is despoiled and wound into a coil, the wire cut from the spool, and the coil united with other components, including a terminal panel and housing which are also American-made. The completed article upon importation would be subject to the ad valorem rate of duty applicable to television parts upon the value of the yoke less the cost or value of the American-made wire, terminal panel and housing, assembled therein. The winding and cutting of the wire are either assembly steps or steps incidental to assembly.

Example 2. An aluminum electrolytic capacitor is assembled abroad from American-made aluminum foil, paper, tape, and Mylar film. In the foreign assembly plant the aluminum foil is trimmed to the desired width, cut to the desired length, interleaved with paper, which may or may not be cut to length or despoiled from a continuous length, and rolled into a cylinder wherein the foil and paper are cut and a section of sealing tape fastened to the surface to prevent these components from unwinding. Wire or other electric connectors are bonded at appropriate intervals to the aluminum foil of the cylinder which is then inserted into a metal can, and the ends closed with a protective washer. As imported, the capacitor is subject to the ad valorem rate of duty applicable to capacitors upon the value less the cost or value of the American-made foil, paper, tape, and Mylar film. The operations performed on these components are all either assembly steps or steps incidental to assembly.

Example 3. The manufacture abroad of cloth on a loom using thread or yarn exported from the United States on spools, cops, or pirns is not considered an assembly

but a weaving operation, and the thread or yarn does not qualify for the exemption. However, American-made thread used to sew buttons or garment components is qualified for the exemption because it is used in an operation involving the assembly of solid components. (b) Operations incidental to the assembly process. Operations incidental to the assembly process whether performed before, during, or after assembly, do not constitute further fabrication, and shall not preclude the application of the exemption. The following are examples of operations which are incidental to the assembly process: (1) Cleaning; (2) Removal of rust, grease, paint, or other preservative coating; (3) Application of preservative paint or coating, including preservative metallic coating, lubricants, or protective encapsulation; (4) Trimming, filing, or cutting off of small amounts of excess materials; (5) Adjustments in the shape or form of a component to the extent required by the assembly being performed abroad; (6) Cutting to length of wire, thread, tape, foil, and similar products exported in continuous length; separation by cutting of finished components, such as prestamped integrated circuit lead frames exported in multiple unit strips; and (7) Final calibration, testing, marking, sorting, pressing, and folding of assembled articles. (c) Operations not incidental to the assembly process. Any significant process, operation, or treatment other than assembly whose primary purpose is the fabrication, completion, physical or chemical improvement of a component, or which is not related to the assembly process, whether or not it effects a substantial transformation of the article, shall not be regarded as incidental to the assembly and shall preclude the application of the exemption to such article. The following are examples of operations not considered incidental to the assembly as provided under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202): (1) Melting of exported ingots and pouring of the metal into molds to produce cast metal parts; (2) Cutting of garment parts according to pattern from exported material; (3) Painting primarily intended to enhance the appearance of an article or to impart distinctive features or characteristics; (4) Chemical treatment of components or assembled articles to impart new characteristics, such as showerproofing, permapressing, sanforizing, dyeing or bleaching of textiles; (5) Machining, polishing, burnishing, peening, plating (other than plating incidental to the assembly), embossing, pressing, stamping, extruding, drawing, annealing, tempering, case hardening, and any other operation, treatment or process which imparts significant new characteristics or qualities to the article affected. (d) Joining of American-made and foreign-made components. An assembly operation may involve the use of American-made components and foreign-made components. The various requirements for establishing entitlement to the exemption apply only to the American-made components of the assembly. Example. Diodes are assembled abroad from American-made components. The process includes the encapsulation of the assembled components in a plastic shell. The plastic used for the encapsulation is in the form of a pellet, and is of foreign origin. After the prefabricated diode components are assembled, the assembled unit is placed in a transfer molding machine, where, by use of the pellet, molten epoxy is caused to flow around the perimeters of the assembled components, forming upon solidification a plastic body for the diode. Upon importation, exemption may be granted for the value of the American-made components, but not for the value of the plastic pellet. If the plastic pellet used for encapsulation was of United States origin, its value would still be a part of the dutiable value of the diode, because the plastic pellet is not a

fabricated component of a type designed to be fitted together by assembly, but merely a premeasured quantity of material which was applied to the assembled unit by a process not constituting an assembly. (e) Subassembly. An assembly operation may involve the joining or fitting of American-made components into a part or subassembly of an article, followed by the installation of the part or subassembly into the complete article.

Example. Rolls of foil and rolls of paper are exported and cut to specific length abroad and interleaved and rolled to form the electrodes and dielectric of a capacitor. Following this procedure, the rolls are assembled with cans and other parts to form a complete capacitor. The foil and paper are entitled to the exemption. (f) Packing. The packing abroad of merchandise into containers does not in itself qualify either the containers or their contents for the exemption. However, assembled articles which otherwise qualify for the exemption and which are packaged abroad following their assembly will not be disqualified from the exemption by reason of their having been so packaged, whether for retail sale or for bulk shipment. The tariff status of the packing materials or containers will be determined in accordance with General Rule of Interpretation 5, HTSUS (19 U.S.C. 1202).

**Sec. 10.17 Valuation of exempted components.** The value of fabricated components to be subtracted from the full value of the assembled article is the cost of the components when last purchased, f.o.b. United States port of exportation or point of border crossing as set out in the invoice and entry papers, or, if no purchase was made, the value of the components at the time of their shipment for exportation, f.o.b. United States port of exportation or point of border crossing, as set out in the invoice and entry papers. However, if the appraising officer concludes that the cost or value of the fabricated components so ascertained does not represent a reasonable cost or value, then the value of the components shall be determined in accordance with section 402 or section 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402).

**Sec. 10.18 Valuation of assembled articles.** As in the case of the appraisement of any other import merchandise (see subpart C of part 152 of this chapter), the full value of assembled articles imported under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), is determined in accordance with 19 CFR 152.100 et seq.

**Sec. 10.21 Updating cost data and other information.** When a claim for the exemption is predicated on estimated cost data furnished either in advance of or at the time of entry, this fact should be clearly stated in writing at the time of entry, and suspension of liquidation may be requested by the importer or his agent pending the furnishing of actual cost data. Actual cost data must be submitted as soon as accounting procedures permit. To insure that information used for Customs purposes is reasonably current, the importer shall ordinarily be required to furnish updated cost and assembly data at least every six months, regardless of whether he considers that significant changes have occurred. The 6-month period for the submission of updated cost or other data may be extended by the port director if such extension is appropriate for the type of merchandise involved, or because of the accounting period normally used in the trade, or because of other relevant circumstances.

**Sec. 10.23 Standards, quotas, and visas.** All requirements and restrictions applicable to imported merchandise, such as labeling, radiation standards, flame-retarding

properties, quotas, and visas, apply to assembled articles eligible for the exemption in the same manner as they would apply to all other imported merchandise.

**Sec. 10.24 Documentation.** (a) Documents required. The following documents shall be filed in connection with the entry of assembled articles claimed to be subject to the exemption under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202). (1) Declaration by the assembler. A declaration by the person who performed the assembly operations abroad shall be filed in substantially the following form: I, -----, declare that to the best of my knowledge and belief the ----- were assembled in whole or in part from fabricated components listed and described below, which are products of the United States:

-----  
Unit value at Marks of time and place Port and date of identification, Description of  
Quantity of export from export from Name and address numbers component United  
States United States of manufacturer \1\  
-----

----- \1\  
In accordance with U.S. Note 4 to Subchapter II of Chapter 98, Harmonized Tariff  
Schedule of the United States (19 U.S.C. 1202). Description of the operations  
performed abroad on the exported components (in sufficient detail to enable Customs  
officers to determine whether the operations performed are within the preview of  
subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C.  
1202) (attach supplemental sheet if more space is required)):

\_\_\_\_ Date Signature

\_\_\_\_ Address Capacity (2) Endorsement by the importer. An endorsement, in substantially  
the following form, shall be signed by the importer: I declare that to the best of my  
knowledge and belief the (above), (attached) declaration, and any other information  
submitted herewith, or otherwise supplied or referred to, is correct in every respect and  
there has been compliance with all pertinent legal notes to the Harmonized Tariff  
Schedule of the United States (19 U.S.C. 1202).

\_\_\_\_ Date Signature

\_\_\_\_ Address Capacity (b) Revision of format. In specific cases, the port director may  
revise the format of either of the documents specified in paragraph (a) of this section  
and may make such changes as conditions warrant, provided the data and information  
required to be supplied in these documents are presented. For example, if the  
components were furnished by the importer, the information on components may be  
supplied as part of the importer's endorsement, rather than as part of the assembler's  
declaration. (c) Reference to previously filed documents. In lieu of filing duplicate lists of  
components and descriptions of assembly operations with each entry, the documents  
specified in paragraph (a) of this section may refer to assembly descriptions and lists of  
components previously filed with and approved by the port director, or to records  
showing costs, names of manufacturers, and other necessary data on components,  
provided the importer has arranged with the port director to maintain such records and

keep them available for examination by authorized Customs officers. (d) Waiver of specific details for each entry. There are cases where large quantities of United States components are purchased from various sources or exported at various ports and dates on a continuing basis, so that it is impractical to identify the exact source, port and date of export for each particular component included in an entry of merchandise claimed to be subject to the exemption under subheading 9802.00.80, HTSUS (19 U.S.C. 1202). In these cases, specific details such as the port and date of export and the name of the manufacturer of the United States components may be waived if the port director is satisfied that the importer and assembler have established reliable controls to insure that all components for which the exemption is claimed are in fact products of the United States. These controls shall include strict physical segregation of United States and foreign components, as well as records of United States components showing quantities, sources, costs, dates shipped abroad, and other necessary information. These records shall be maintained by the importer and assembler for 5 years from the date of the released entry in a manner so that they are readily available for audit, inspection, copying, reproduction or other official use by authorized Customs officers. (e) Waiver of documents. When the port director is satisfied that unusual circumstances make the production of either or both of the documents specified in paragraph (a) of this section, or of any of the information set forth therein, impractical and is further satisfied that the requirements of subheading 9802.00.80, HTSUS, and related legal notes have been met, he may waive the production of such document(s) or information. (f) Unavailability of documents at time of entry. If either or both of the documents specified in paragraph (a) of this section are not available at the time of entry, a bond on Customs Form 301 containing the bond conditions set forth in Sec. 113.62 of this chapter for the production of the document(s) may be given pursuant to Sec. Sec. 113.41--113.46 and 141.66 of this chapter. (g) Responsibility of correctness. Subject to the civil and criminal sanctions provided by law for false or fraudulent entries, the importer has the ultimate responsibility for supplying all information needed by the Customs Service to process an entry, and for the completeness and truthfulness of such information. If certain information cannot be supplied by the assembler, it must be provided by the importer.

**Sec. 141.88 Computed value.** When the port director determines that information as to computed value is necessary in the appraisement of any class or kind of merchandise, he shall so notify the importer, and thereafter invoices of such merchandise shall contain a verified statement by the manufacturer or producer of computed value as defined in Sec. 402(e), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a(e)).

## **PART 152 - CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE-**

-Table of Contents Subpart E - Valuation of Merchandise

### **Sec. 152.106 Computed Value.**

(a) Elements. The computed value of imported merchandise is the sum of: (1) The cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise; (2) An amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or



kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States; (3) Any assist, if its value is not included under paragraph (a) (1) or (2) of this section; and (4) The packing costs. (b) Special rules. (1) The cost or value of materials under paragraph (a)(1) of this section will not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used. (2) The amount for profit and general expenses under paragraph (a)(2) of this section will be based upon the producer's profit and general expenses, unless the producer's profit and general expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States. In that case, the amount under paragraph (a)(2) of this section will be based on the usual profit and general expenses of such producers in those sales, as determined from "sufficient information". See Sec. 152.102(j). (c) Profit and general expenses. The amount for profit and general expenses will be taken as a whole. If the producer's profit figure is low and general expenses high, those figures taken together nevertheless may be consistent with those usually reflected in sales of imported merchandise of the same class or kind. (1) Interpretative note 1. A product is introduced into the United States, and the producer accepts either no profit or a low profit to offset the high general expenses required to introduce the product into this market. If the producer can demonstrate that there is a low profit on sales of the imported merchandise because of peculiar commercial circumstances, the actual profit figures will be accepted provided the producer has valid commercial reasons to justify them and his pricing policy reflects the usual pricing policies in the industry. (2) Interpretative note 2. Producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or they sell merchandise to complement a range of merchandise being produced in the United States and accept a low profit to maintain competitiveness. If the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of merchandise of the same class or kind as the merchandise being valued which are made in the country of exportation for export to the United States, the amount for profit and general expenses will be based upon reliable and quantifiable information other than that supplied by or on behalf of the producer of the merchandise. (d) Assists and packing costs. Computed value also will include an amount equal to the apportioned value of any assists used in the production of the imported merchandise and the packing costs for the imported merchandise. The value of any engineering, development, artwork, design work, and plans and sketches undertaken in the United States will be included in computed value only to the extent that their value has been charged to the producer. Depending on the producer's method of accounting, the value of assists may be included (duplicated) in the producer's cost of materials, fabrication, and other processing, or in the general expenses. If duplication occurs, a separate amount for the value of the assists will not be added to the other elements as it is not intended that any component of computed value be included twice. (e) Merchandise of same class or kind. Sales for export to the United States of the narrowest group or range of imported merchandise, including the merchandise being appraised, will be examined to determine usual profit and general expenses. For the purpose of computed

value, merchandise of the same class or kind must be from the same country as the merchandise being appraised. Example A foreign shipper sells merchandise to a related U.S. importer. The foreign shipper does not sell to any unrelated persons. The transaction between the foreign shipper and the U.S. importer is determined to have been affected by the relationship. There is no identical or similar merchandise from the same country of production. The U.S. importer further processes the product and sells the finished product to an unrelated buyer in the U.S. within 180 days of the date of importation. No assists from the unrelated U.S. buyer are involved, and the type of processing involved can be accurately costed. The U.S. importer has requested that the shipment be appraised under computed value. The profit and general expenses figure for the same class or kind of merchandise in the country of exportation for export to the U.S. is known. How should the merchandise be appraised? The merchandise should be appraised under computed value, using the company's profit and general expenses if not inconsistent with those usually reflected in sales of merchandise of the same class or kind. (f) Availability of information. (1) It will be presumed that the computed value of the imported merchandise cannot be determined if: (i) The importer is unable to provide required computed value information within a reasonable time, and/or (ii) The foreign producer refuses to provide, or is legally prevented from providing, that information. (2) If information other than that supplied by or on behalf of the producer is used to determine computed value, the port director shall inform the importer, upon written request, of: (i) The source of the information, (ii) The data used, and (iii) The calculation based upon the specified data, if not contrary to domestic law regarding disclosure of information. See also Sec. 152.101(d).

**TITLE 5 CFR ADMINISTRATIVE PERSONNEL**  
**CHAPTER III--OFFICE OF MANAGEMENT AND BUDGET**  
**PART 1320 \_CONTROLLING PAPERWORK BURDENS ON THE PUBLIC—**

Table of Contents Sec. 1320.6 Public protection. (a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to the requirements of this part if: (1) The collection of information does not display, in accordance with Sec. 1320.3(f) and Sec. 1320.5(b)(1), a currently valid OMB control number assigned by the Director in accordance with the Act; or (2) The agency fails to inform the potential person who is to respond to the collection of information, in accordance with Sec. 1320.5(b)(2), that such person is not required to respond to the collection of information unless it displays a currently valid OMB control number. (b) The protection provided by paragraph (a) of this section may be raised in the form of a complete defense, bar, or otherwise to the imposition of such penalty at any time during the agency administrative process in which such penalty may be imposed or in any judicial action applicable thereto. (c) Whenever an agency has imposed a collection of information as a means for proving or satisfying a condition for the receipt of a benefit or the avoidance of a penalty, and the collection of information does not display a currently valid OMB control number or inform the potential persons who are to respond to the collection of information, as prescribed in Sec. 1320.5(b), the agency shall not treat a person's failure to comply, in

and of itself, as grounds for withholding the benefit or imposing the penalty. The agency shall instead permit respondents to prove or satisfy the legal conditions in any other reasonable manner. (1) If OMB disapproves the whole of such a collection of information (and the disapproval is not overridden under Sec. 1320.15), the agency shall grant the benefit to (or not impose the penalty on) otherwise qualified persons without requesting further proof concerning the condition. (2) If OMB instructs an agency to make a substantive or material change to such a collection of information (and the instruction is not overridden under Sec. 1320.15), the agency shall permit respondents to prove or satisfy the condition by complying with the collection of information as so changed. (d) Whenever a member of the public is protected from imposition of a penalty under this section for failure to comply with a collection of information, such penalty may not be imposed by an agency directly, by an agency through judicial process, or by any [[Page 153]] other person through administrative or judicial process. (e) The protection provided by paragraph (a) of this section does not preclude the imposition of a penalty on a person for failing to comply with a collection of information that is imposed on the person by statute--e.g., 26 U.S.C. Sec. 6011(a) (statutory requirement for person to file a tax return), 42 U.S.C. Sec. 6938(c) (statutory requirement for person to provide notification before exporting hazardous waste).