

§ 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)(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—(1) NAFTA. 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.

(2) Kimberley Process Certification Scheme. Any U.S. person (see definition in § 12.152(b)(5)) who exports from the United States any rough diamonds must retain a copy of the Kimberley Process Certificate accompanying each shipment for a period of at least five years from the date of exportation. See 19 CFR 12.152(f)(3). Any U.S. person who exports from the United States any rough diamonds and does not keep records in this time frame may be subject to penalties under 19 U.S.C. 3907.

(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](#) must 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 CBP.

(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 Regulatory **Audit**, U.S. Customs and Border Protection, 2001 Cross Beam Dr., Charlotte, North Carolina 28217, and provided further that the Director of Regulatory **Audit**, Charlotte 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 Regulatory **Audit**, Charlotte 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 CBP 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 appropriate CBP 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 CBP 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 CBP 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 CBP 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 by the [importer](#) 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 CBP custody has been issued, for a period of 120 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. Customs brokers who are not serving as the [importer](#) of record and who maintain separate electronic [records](#) are exempted from this requirement. This exemption does not apply to any document that is required by law to be maintained as a paper record.

(iv) An internal testing of the system must be performed on a yearly basis;

(v) The recordkeeper must have the capability to make, and must bear the cost of, hard-copy reproductions of alternatively stored [records](#) that are required by CBP for [audit](#), [inquiry](#), investigation, or inspection of such [records](#); and

(vi) The recordkeeper must retain and keep available one working copy and one back-up copy of the [records](#) stored in a secure location for the required periods as provided in § 163.4.

(3) *Changes to alternative storage procedures.* No changes to alternative recordkeeping procedures may be made without first notifying the Director of Regulatory [Audit](#), Office of International Trade, Customs and Border Protection, 2001 Cross Beam Drive, Charlotte, North Carolina 28217. The notification must be in writing and must be provided to the director at least 30 calendar days before implementation of the change.

(4) *Penalties.* All persons listed in § 163.2 who use alternative storage methods for [records](#) and who fail to maintain or produce the [records](#) in accordance with this part are subject to penalties pursuant to § 163.6 for entry [records](#) or sanctions pursuant to §§ 163.9 and 163.10 for other [records](#).

(5) *Failure to comply with alternative storage requirements.* If a person listed in § 163.2 uses an alternative storage method for [records](#) that is not in compliance with the conditions and requirements of this section, CBP may issue a written notice informing the person of the facts giving rise to the notice and directing that the alternative storage method must be discontinued in 30 calendar days unless the person provides written notice to the issuing CBP office within that time period that explains, to CBP's satisfaction, how compliance has been achieved. Failure to timely respond to CBP will result in CBP requiring discontinuance of the alternative storage method until a written statement explaining how compliance has been achieved has been received and accepted by CBP.

19 U.S. Code § 1508 - Recordkeeping

Current through Pub. L. 114-38. (See [Public Laws for the current Congress](#).)

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§ 1508.
Recordkeeping

(a) Requirements Any—

(1) owner, importer, consignee, importer of record, entry filer, or other party who—

(A)

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

(B)

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)

agent of any party described in paragraph (1); or

(3)

person whose activities require the filing of a declaration or entry, or both;

shall make, keep, and render for examination and inspection records (which for purposes of this section include, but are not limited to, statements, declarations, documents and electronically generated or machine readable data) which—

(A)

pertain to any such activity, or to the information contained in the records required by this chapter in connection with any such activity; and

(B)

are normally kept in the ordinary course of business.

19 U.S. Code § 1509 - Examination of books and witnesses

Current through Pub. L. 114-38. (See [Public Laws for the current Congress](#).)

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§ 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.

(6)

(A)

If during the course of any audit concluded under this subsection, the Customs Service identifies overpayments of duties or fees or over-declarations of quantities or values that are within the time period and scope of the audit that the Customs Service has defined, then in calculating the loss of revenue or monetary penalties under [section 1592 of this title](#), the Customs Service shall treat the overpayments or over-declarations on finally liquidated entries as an offset to any underpayments or underdeclarations also identified on finally liquidated entries, if such overpayments or over-declarations were not made by the person being audited for the purpose of violating any provision of law.

(B)

Nothing in this paragraph shall be construed to authorize a refund not otherwise authorized under [section 1520 of this title](#).

(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) CertificationA 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.