

[T.D. 95-69, 60 FR 46197, Sept. 5, 1995, as amended by T.D. 96-56, 61 FR 37818, July 22, 1996]

## PART 103—AVAILABILITY OF INFORMATION

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AUTHORITY: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

Section 103.31 also issued under 19 U.S.C. 1431;

Section 103.33 also issued under 19 U.S.C. 1628;

Section 103.34 also issued under 18 U.S.C. 1905.

SOURCE: T.D. 81-168, 46 FR 32565, June 24, 1981, unless otherwise noted.

### § 103.0 Scope.

This part governs the production/disclosure of agency-maintained documents/information requested pursuant to various disclosure laws and/or legal processes. Thus, the extent of disclosure of requested information may be dependent on whether the request is pursuant to the provisions of the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552), the Privacy Act of 1974, as amended (5 U.S.C. 552a), and/or under other statutory or regulatory authorities, as required by administrative and/or legal processes. The regulations for this part contain a discussion of applicable fees for the search, duplication, review, and other tasks associated with processing information requests pursuant to the FOIA, and also provide for the appeal of agency decisions and sanctions for the improper withholding and/or the untimely release of requested information. As information obtained by Customs is derived from a myriad of sources, persons seeking information should consult with a disclosure law officer, the director of a service port, or the local public information officer before invoking the formal procedures set forth in this part. These regulations supplement the regulations of the Department of the Treasury regarding public access to records, which are found at 31 CFR part 1, and, in the event of any inconsistency between these regulations and those of the Department of the Treasury, the latter shall prevail. For purposes of this part, the Office of the Chief Counsel is considered a part of the United States Customs Service.

[T.D. 96-36, 61 FR 19838, May 3, 1996]

### Subpart A—Production of Documents/Disclosure of Information Under the FOIA

#### § 103.1 Public reading rooms.

Each office listed below will maintain a public reading room or public reading area where the material required to be made available under 5 U.S.C. 552(a)(2) and this part may be inspected and copied:

United States Customs Service (Headquarters), 1301 Constitution Avenue, NW., Washington, DC 20229  
 Boston, 100 Summer Street, Suite 1819, Boston, Massachusetts 02110  
 New York, 6 World Trade Center, New York, New York 10048  
 Chicago, Room 1501, 55 East Monroe Street, Chicago, Illinois 60603  
 Miami, 99 S.E. 5th Street, Miami, Florida 33131  
 New Orleans, Canal-LaSalle Building, Rm. 302, 423 Canal St., New Orleans, Louisiana 70130  
 Houston, 5850 San Felipe, Houston, Texas 77057  
 Los Angeles, New Federal Building, 300 N. Los Angeles Street, Los Angeles, California 90012.

The reading rooms are open to the public during regular business hours unless other hours are posted, Monday through Friday of each week, exclusive of national holidays. A fee for copies of requested material is charged in accordance with § 103.10.

[T.D. 81-168, 46 FR 32565, June 24, 1981, as amended by T.D. 83-209, 48 FR 45544, Oct. 6, 1983; T.D. 95-77, 60 FR 50019, Sept. 27, 1995]

#### § 103.2 Information available to the public.

(a) *General.* The Freedom of Information Act, as amended (5 U.S.C. 552), provides for access to information and records developed or maintained by Federal agencies. Subject only to the exemptions set forth in § 103.12, the public generally or any individual member is entitled to information or records which are described in paragraph (b) of this section and which are in the possession of the United States Customs Service. Access to that information is governed by the regulations in this part.

(b) *Three categories of information available.* Generally, 5 U.S.C. 552 divides agency information into three major

categories and provides methods by which each category is available to the public. The three major categories, for which the disclosure requirements of the United States Customs Service are set forth in this part, are as follows:

(1) Information required to be published in the FEDERAL REGISTER (see § 103.3).

(2) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale (see § 103.4).

(3) Information required to be made available to any member of the public upon specific request (see § 103.5).

#### § 103.3 Publication of information in the Federal Register.

(a) *Requirements.* Subject to the application of the exemptions described in § 103.12 and subject to the limitations provided in paragraph (b) of this section, the United States Customs Service is required, by 5 U.S.C. 552(a)(1), to separately state, publish and keep current in the FEDERAL REGISTER for the guidance of the public the following information:

(1) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions.

(2) A statement of the general course and method by which its function are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(3) Rules of procedure, descriptions of forms available and the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by it.

(5) Each amendment, revision, or repeal of matters referred to in paragraphs (a) (1) through (4) of this section.

(b) *Limitations*—(1) *Incorporation by reference* in the FEDERAL REGISTER.

Matter reasonably available to an affected class of persons, whether published by a private organization or an agency of the United States, is published in the FEDERAL REGISTER for purposes of paragraph (a) of this section when it is incorporated by reference in the FEDERAL REGISTER with the approval of the Director of the Federal Register. Any matter which is incorporated by reference must be set forth in the privately- or publicly-printed document substantially in its entirety and not merely summarized or printed as a synopsis. There can be no incorporation by reference in the FEDERAL REGISTER of any matter where only a few persons having a special working knowledge of the activities of the United States Customs Service are familiar with its location and scope. The provisions of 5 U.S.C. 552(a)(1) and 1 CFR part 20 control any incorporation of matter by reference.

(2) *Effect of failure to publish.* Except to the extent that a person has actual and timely notice of the terms of any matter referred to in paragraph (a) of this section which is required to be published in the FEDERAL REGISTER, that person is not required in any manner to resort to, or be adversely affected by, that matter if it is not published or incorporated by reference. That is, any matter which imposes an obligation and which is not published or incorporated by reference can not adversely change or affect a person's rights.

#### § 103.4 Public inspection and copying.

(a) *In general.* Subject to the application of the exemption described in § 103.12 the United States Customs Service is required, by 5 U.S.C. 552(a)(2) and §§ 174.32 and 177.10 of this chapter, to make available for public inspection and copying or, in the alternative, promptly publish and offer for sale, the following information:

(1) Final opinions and orders, including concurring or dissenting opinions, made in the adjudication of cases;

(2) Within 120 days of issuance, any precedential decision (including any ruling letter, internal advice memorandum, or protest review decision) issued under the Tariff Act of 1930, as amend-

ed, with respect to any Customs transaction;

(3) Those statements of policy and interpretations which have been adopted by the United States Customs Service but are not published in the FEDERAL REGISTER; and

(4) Administrative staff manuals and instructions to staff that affect a member of the public.

(b) *Indexes.* The United States Customs Service is required by 5 U.S.C. 552(a)(2) to maintain and make available for public inspection and copying those current indexes which identify any item described in paragraphs (a) (1) through (3) of this section that is issued, adopted, or promulgated after July 4, 1967, and that is required to be made available for public inspection or published. Unless the Commissioner determines by an order published in the FEDERAL REGISTER that publication is unnecessary and impracticable, these indexes are published on a quarterly or more frequent basis and are available for purchase at each of the public reading rooms listed in § 103.1, at a cost not to exceed the direct cost of duplication.

(c) *Effect of failure to publish or make available.* No matter, described in paragraphs (a) (1) through (3) of this section which is required by this section to be made available for public inspection or published, may be relied upon, used, or cited as precedent by the United States Customs Service against a party, other than an agency, unless that party has actual and timely notice of such matter or unless the matter has been indexed and either made available for inspection or published, as provided by this section. This paragraph applies only to matters which have precedential significance and does not apply to matters which have been made available pursuant to § 103.3.

(d) *Deletion of identifying details.* To prevent an unwarranted invasion of personal privacy, in accordance with 5 U.S.C. 552(a)(2), identifying details contained in any matter described in paragraphs (a) (1) through (3) of this section are deleted before making that matter available for inspection or publication. However, in every case where identifying details are deleted, the basis for the deletion is explained in writing, giving

specific reasons for the deletion and citing the applicable provision of 5 U.S.C. 552 and §103.12, in an attachment to the document from which the identifying details have been deleted.

(e) *Public reading rooms.* The United States Customs Service has available for inspection and copying, in a reading room or otherwise, the matters described in paragraphs (a) (1) through (3) of this section which are required by paragraph (a) to be made available for public inspection or published in the current indexes. Facilities are provided whereby a person may inspect and obtain copies of the material. There is no fee for access to materials, but a fee is charged in accordance with §103.10 for a copy of any material provided.

#### §103.5 Specific requests for records.

(a) *In general.* Except with respect to the records made available under §§103.3 and 103.4, but subject to the application of the exemptions described in §103.12, the United States Customs Service is required, by 5 U.S.C. 552(a)(3), upon a request for reasonably-described records that conforms in every respect to the rules and procedures of this part, to make the requested records promptly available to the requester. A request or an appeal from the initial denial of a request which does not comply with the requirements set forth in this part is not subject to the time limits of §§103.6, 103.7, and 103.8 until amended so as to comply. Nevertheless, every reasonable effort will be made to answer each request within the applicable time limits or, if necessary, to promptly advise the requester in what respect the request or appeal is deficient so that it may be resubmitted or amended for consideration in accordance with this part. This section applies only to existing records which are in the possession or control of the United States Customs Service. There is no requirement that records be created or data be processed in other than the existing format in order to answer a request for records.

(b) *Requests for records not in control of the United States Customs Service—(1) Referral of request.* Where the request is for a record in the possession of, under the control of, or created by a constituent unit of the Department of the

Treasury other than the United States Customs Service, the appropriate Customs officer shall transfer the request to the appropriate constituent unit and notify the requester of that transfer. Forwarding a request to another constituent unit is not a denial of access within the meaning of these regulations. If the United States Customs Service receives a request forwarded from another constituent unit of the Department of the Treasury, the time limits for response set forth in §§103.6(b) and 103.8(a) commence upon receipt of the request by the Disclosure Law Officer, U.S. Customs Service. If the United States Customs Service receives a request for a record that is not in the possession or control of any constituent unit of the Department of the Treasury, the appropriate Customs officer shall return the request to the sender with an explanation of that fact.

(2) *Request for advice.* If the Customs Service has a copy of a requested unclassified record that was created by a Department or agency other than a constituent unit of the Department of the Treasury, the appropriate Customs officer shall ask that Department or agency for its advice on the release of the record. The appropriate Customs officer shall advise the other Department or agency that, in the absence of timely guidance from it, the United States Customs Service will proceed to make its own determination in accordance with this part. If it becomes necessary to respond to a requester because of the time limits set forth in §§103.6(b) and 103.8(a) without the advice of the other Department or agency, the appropriate Customs officer shall make the determination in accordance with this part and advise the requester accordingly. If the appropriate Customs officer denies access to the record under one of the exemptions set forth in §103.12, that officer shall advise the requester of the right to appeal the denial and of the possibility of sending a request for the record directly to the originating Department or agency. If a requester appeals from a denial to the United States Customs Service, the appropriate Customs officer shall ask the originating Department or agency for timely advice on

whether to release the records. Nevertheless, the ultimate decision on the appeal from a denial of access to a record rests with the FOIA Appeals Officer, as set forth in §103.7.

(3) *Classified records.* If the Customs Service has a copy of a requested record created by a Department or agency other than a constituent unit of the Department of the Treasury, and that record is classified or contains both classified and unclassified material, the request shall be referred to the originating Department or agency for a direct response. The requester shall be notified immediately of the referral. Such referral shall not constitute a denial of the request and no appeal rights accrue to the requester.

(c) *Form of request.* Although no standard form is prescribed for a request, in order to be subject to the provisions of this section and §§103.6 through 103.9, a request for records must:

(1) Be made in writing and signed by the person making that request;

(2) State that it is made pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552), or these regulations, and have conspicuously printed on the face of the envelope the words “Freedom of Information Act Request” or “FOIA Request”;

(3) Be addressed to the appropriate office or officer of the United States Customs Service, as set forth in paragraph (d) of this section;

(4) Reasonably describe the records in accordance with paragraph (e) of this section.

(5) Set forth the address where the person making the request desires to be notified of the determination as to whether the request will be granted;

(6) State whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them; and

(7) State the firm agreement of the requester to pay the fees for search and duplication ultimately determined in accordance with §103.10, or request that such fees be reduced or waived and state the justification for such request (see §103.10(d)).

Where the initial request, rather than stating a firm agreement to pay the fee ultimately determined in accordance

with §103.10, places an upper limit on the amount the requester agrees to pay and that upper limit is likely to be lower than the estimated fee, or where the requester asks for an estimate of the fees to be charged, or if the fees are expected to exceed \$50, the appropriate Customs officer shall promptly advise the requester of the estimated fee due and ask the requester to agree to pay that amount. Where the initial request includes a request for reduction or waiver of fees, the appropriate Customs officer shall determine whether to grant the request for reduction or waiver in accordance with §103.10(d) and notify the requester of the decision. If the officer decides to charge the requester for all or part of the fees normally due, the officer shall ask the requester to agree to pay the amount so determined. The requirements of this paragraph are not met until the requester agrees, in writing, to pay the fees applicable to the request for records, if any, or has made payment in advance of the fees estimated to be due.

(d) *To whom requests for records should be addressed—(1) Headquarters.* Requests made by mail for records maintained at the Headquarters of the United States Customs Service should be addressed to “Freedom of Information Act Request,” U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Requests may be delivered personally to the Disclosure Law Officer, U.S. Customs Service, Headquarters, Washington, DC.

(2) *Service ports.* A person shall request records or information maintained in a field office of the United States Customs Service by either mailing or personally delivering the request to the director of the service port at which the field office is located.

(e) *Reasonable description of records.* A request for records must describe the records in reasonably sufficient detail to enable a Customs officer who is familiar with the subject area of the request to locate the records without placing an unreasonably burden upon the United States Customs Service. While no specific formula for a reasonable description of a record can be established, the requirement is usually satisfied if the requester gives the

name, subject matter, and, if known, the date and location of the requested record. However, a requester should furnish any additional information which will more clearly identify the requested records. If a request does not reasonably describe the records being sought, the appropriate Customs officer shall ask the requester to refine the request. If necessary a requester may be granted a conference with knowledgeable Customs personnel. The requirement for a reasonably description is not a device for improperly withholding records from the public.

(f) *Date of receipt of request.* A request for records is considered to have been received for purposes of this part on the later of the dates on which:

- (1) The requirements of paragraph (c) of this section have been satisfied; and, where applicable,
- (2) The requester has agreed in writing, by executing a separate contract or otherwise, to pay the fees for search and duplication determined to be due in accordance with §103.10; or
- (3) The fees have been waived in accordance with §103.10(d); or
- (4) Payment in advance has been received from the requester.

A Customs officer or employee who receives a request for records and a separate agreement to pay, or a letter transmitting prepayment, or who issues a final notification of waiver of fees, shall stamp the date of receipt or dispatch by the responsible office on the material. The latest of those dates is the date of receipt of the request. As soon as the date of receipt has been established, the appropriate Customs officer shall acknowledge receipt and inform the requester of the title of the Customs officer who is responsible for acting on the request.

(g) *Search for record requested.* Upon the receipt of a request, the appropriate Customs officer shall attempt to identify and locate the requested records. With respect to records maintained in computerized form, a search for a record includes services functionally analogous to searches for records which are maintained in a conventional form. However, Customs personnel are not required to tabulate or compile information for the purpose of

creating a record. Only records in existence at the time of the receipt of the request will be treated as falling within the scope of the request and no request for the continuing production of documents created after receipt of the request will be honored.

(h) *“Request for record” defined.* For purposes of uniformity in record-keeping a “request for a record” is defined as a written request for a record of the U.S. Customs Service which has not been published in the FEDERAL REGISTER, the Customs Bulletin, by press release, or otherwise, or made available in a public reading room, or which has not previously been customarily furnished to requesters, whether or not the request makes reference to the Freedom of Information Act, as amended (5 U.S.C. 552).

[T.D. 81-168, 46 FR 32565, June 24, 1981; 46 FR 35084, July 7, 1981, as amended by T.D. 91-77, 56 FR 46114, Sept. 10, 1991]

#### **§103.6 Grant or denial of initial request.**

(a) *Officers designated to make initial determinations—(1) Service ports.* The appropriate director of a service port, or in the case of records of the Office of Investigations, the appropriate special agent in charge (SAC), shall make any initial determination of a request for a record which is maintained, respectively, at that service port or under the SAC’s jurisdiction.

(2) *Headquarters.* For records located at Customs Service Headquarters, the initial determination to grant or deny a request shall be made by the appropriate Division Director at Customs Service Headquarters having custody of or functional jurisdiction over the subject matter of the requested records. In the event the request relates to records which are maintained in an office which is not within a division, the initial determination shall be made by the individual designated for that purpose by the Assistant Commissioner having responsibility for that office.

(b) *Time limit for initial determinations.* The time limit for making an initial determination to grant or deny a request for records, including the time

for notifying the requester of that determination, is 10 days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request (see §103.5(f)), unless the designated officer invokes an extension pursuant to §103.8(a) or the requester otherwise agrees to an extension.

(c) *Grant of request.* If the appropriate Customs officer grants a request, and if the requester wants a copy of the requested records, that officer shall mail a copy of those records to the requester together with a statement of the fees for search and duplication at the time of the determination or promptly thereafter. If a requester wants to inspect the record, the appropriate Customs officer who grants the request shall send written notice to the requester stating the time and place of inspection and the amount of any fee involved in the request. In such a case, the appropriate Customs officer shall make the record available for inspection at the time and place stated, but in a manner so as not to interfere with its use by the United States Customs Service or to exclude other persons from making an inspection. In addition, reasonable limitations may be placed on the number of records which may be inspected by a person on any given date. The requester is not allowed to remove a record from the inspection room. If, after making inspection, the requester wants a copy of all or a portion of the requested record, the appropriate Customs officer shall supply the desired copy upon payment of the established fee prescribed in §103.10.

(d) *Denial of request.* The Customs officer who denies a request for records (whether in whole or in part) shall mail written notice of the denial to the requester. The letter of notification shall contain (1) the physical location of the requested records, (2) the applicable exemption(s) and reason for not granting the request, (3) the name and title or position of the Customs officer who denied the request, (4) advice on the right to administrative appeal in accordance with §103.7, and (5) the title and address of the Customs officer who is to decide any appeal.

(e) *Inability to locate records within time limits.* If a requested record cannot

be located and evaluated within the initial 10-day period or the extension period allowed under §103.8(a), the Customs officer who is responsible for the initial determination shall continue to search for the records. However, that officer shall also notify the requester of the facts and inform the requester that he or she may consider the notification to be a denial of access within the meaning of paragraph (d) of this section, and provide the requester with the address for the submission of an administrative appeal. The requester may also be invited, in the alternative, to agree to a voluntary extension of time in which to locate and evaluate the records. A voluntary extension of time does not waive a requester's right to appeal any ultimate denial of access or to appeal a failure to locate the records within the voluntary extension period.

[T.D. 81-168, 46 FR 32565, June 24, 1981, as amended by T.D. 96-36, 61 FR 19838, May 3, 1996]

**§ 103.7 Administrative appeal of initial determination.**

(a) *To whom appeals should be submitted.* A requester may submit an administrative appeal to the FOIA Appeals Officer at Headquarters, within 35 days after the date of notification described in §103.6 or the date of the letter transmitting the last records released, whichever is later. A requester shall mail or personally deliver an appeal to the United States Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

(b) *Form of appeal.* The Administrative appeal shall:

(1) Be in writing and signed by the requester,

(2) Have conspicuously printed on the face of the envelope the words "Freedom of Information Act Appeal";

(3) Reasonably describe, in accordance with §103.5(e), the records to which the appeal relates;

(4) Set forth the address where the requester desires to be notified of the determination on appeal;

(5) Specify the date of the initial request and the date and control number of the letter denying the initial request; and

(6) Petition the FOIA Appeals Officer at Headquarters, to grant the request

for records and state any arguments in support thereof.

(c) *Disposition of appeal.* The Customs officer or employee who receives an appeal shall stamp the date of receipt on the appeal and the stamped date is the date of receipt for purposes of the appeal. FOIA Appeals Officer at Headquarters, shall acknowledge and advise the appellant of the date of receipt and of the date that a response is due under this paragraph. The FOIA Appeals Officer shall affirm the initial denial (in whole or in part) or grant the request for records and notify the appellant of that determination by letter mailed within 20 days (exclusive of Saturdays, Sunday, and legal public holidays) after the date of receipt of the appeal, unless extended pursuant to §103.8(a). The purpose of the letter of denial is to inform the appellant of the reason for the denial and the right to judicial review of that denial under 5 U.S.C. 552(a)(4)(B). If the FOIA Appeals Officer is unable to act on an appeal within the 20-day period (or any extension thereof pursuant to §103.8(a)), the FOIA Appeals Officer shall send written notice of that fact to the appellant. In those circumstances, an appellant is entitled to commence an action in a district court as provided in §103.9 despite any continuation in the processing of an appeal. However, the appellant may also be invited, in the alternative, to agree to a voluntary extension of time in which to decide the appeal. A voluntary extension does not waive the right of the appellant to ultimately commence an action in a United States district court on the appellant's request.

#### **§103.8 Time extensions.**

(a) *Ten-day extension.* In unusual circumstances, the Customs officer who is responsible for deciding an initial request or an appeal may extend the time limitations set in §§103.6 and 103.7 after written notice to the requester or appellant. This notice must state the reason for the extension and the date on which the determination is expected to be dispatched. Any extension or extensions of time are limited to a cumulative total of not more than 10 additional working days. (For example, if an extension pursuant to this para-

graph is invoked in connection with an initial determination, any unused days of the extension period may be invoked in connection with the determination on administrative appeal by written notice from the FOIA Appeals Officer, who is to make the appellate determination. If no extension is sought for the initial determination, an extension of 10 days may be added to the ordinary 20-day period for appellant review.) Generally, extensions will be invoked only to the extent reasonably necessary to properly respond to a request. As used in this paragraph, "unusual circumstances" means at least one of the following:

(1) The need to search for and collect the requested records from field facilities or other establishments in buildings other than the building in which the office of the Customs officer to whom the request is made is located.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another Department or agency having a substantial interest in the determination of the request, among two or more constituent units within the Department of the Treasury, or within offices of the United States Customs Service (other than the legal staff or Office of Congressional & Public Affairs) having substantial subject-matter interest therein. Consultations with personnel of the Department of Justice concerned with requests for records under the Freedom of Information Act, as amended (5 U.S.C. 552), do not constitute a basis for an extension under this paragraph.

(b) *Extension by judicial review.* If the United States Customs Service fails to comply with the time limitations specified in §§103.6 and 103.7 and the requester commences an action under §103.9, the court in which the suit was initiated may retain jurisdiction and allow the United States Customs Service additional time to review its records, if the Customs Service shows

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the existence of exceptional circumstances and the exercise of due diligence in responding to the request.

[T.D. 81-168, 46 FR 32565, June 24, 1981; 46 FR 35084, July 7, 1981, as amended by T.D. 91-77, 56 FR 46114, Sept. 10, 1991]

**§ 103.9 Judicial review.**

(a) *Failure to comply with time limitations.* If the United States Customs Service fails to comply with the time limitations specified in §§ 103.6, 103.7 or § 103.8, a requester is considered to have exhausted the administrative remedies with respect to the request.

(b) *Procedure of initiating judicial review.* If a request for records is denied upon appeal pursuant to § 103.7, or if no determination is made within the 10-day or 20-day periods specified in §§ 103.6 and 103.7, respectively, together with an extension pursuant to § 103.8(a) or by agreement of the requester, the requester may commence an action under 5 U.S.C. 552(a)(4)(B) in a United States district court in the district (1) in which the requester resides, (2) in which the requester's principal place of business is located, (3) in which the records are situated, or (4) in the District of Columbia. Service of process in that action is governed by the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. The Chief Counsel, United States Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 is the officer designated to receive any service of process.

(c) *Proceeding against officer or employee.* Under 5 U.S.C. 552(a)(4)(F), the Special Counsel, Merit Systems Protection Board, has authority, upon the issuance of a written finding by a court that the Customs officer or employee who was primarily responsible for withholding a record may have acted arbitrarily or capriciously, to initiate a proceeding to determine whether disciplinary action is warranted against that officer or employee. The Special Counsel, after investigation and consideration of the evidence submitted, submits its findings and recommendations to the Commissioner of Customs and the Secretary of the Treasury. The Special Counsel also sends copies of the findings and recommendations to the

officer or employee or the representative of that officer or employee.

**§ 103.10 Fees for services.**

(a) *In general.* (1) The fees prescribed in this section are for search and duplication and under no circumstances is there a fee for determining whether an exemption can or should be asserted, for deleting exempt matter being withheld from records to be furnished, or for monitoring a requester's inspection of records made available in this manner.

(2) Customs publications which are available for sale through the Government Printing Office are on the shelves of the reading rooms and similar public inspection facilities, but those publications are not available for sale at those facilities. Those publications may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. However, pages from those publications may be copied at the public inspection facilities in accordance with the schedule of fees set forth in paragraph (g) of this section.

(b) *When charged.* Unless charges are inapplicable, or are waived or reduced in accordance with paragraph (c) or (d) of this section, fees are charged in accordance with the schedule contained in paragraph (g) of this section for services rendered in responding to requests for records.

(c) *Services performed without charge—*(1) *Certain classes of records.* The Commissioner of Customs or any of the Commissioner's designees may determine, under the rulemaking procedures of 5 U.S.C. 553, which classes or records under their control may be provided to the public without charge, or at a reduced charge.

(2) *Records provided to government units.* Normally, in accordance with paragraph (d)(2)(ii) of this section, no charge is made for providing records to Federal, State, or foreign governments, international governmental organizations, or local governmental agencies or offices.

(d) *Waiver or reduction of fees—*(1) *Records unavailable or exempt.* Fees may be waived or reduced at the discretion of the Customs officer who determines the availability of records, if the

record is not found or is exempt from disclosure.

(2) *Request for waiver or reduction of fees.* Fees may be waived or reduced on a case by case basis in accordance with this paragraph by the Customs officer who determines whether to release the record. A request for a waiver or reduction of fees must be in writing. The appropriate Customs officer shall waive or reduce a fee if the officer determines either that:

(i) The records are being requested by, or on behalf of, an individual who in writing, under penalty or perjury, demonstrates indigency to the satisfaction of the officer and that compliance with the request does not constitute an unreasonable burden on the United States Customs Service; or

(ii) A waiver or reduction of the fees is in the public interest because furnishing the information primarily benefits the general public.

(3) *Appeal from denial of request.* An appeal from a denial of a request for waiver or reduction of fees is decided under the criteria set forth in paragraph (d)(2) of this section by the FOIA Appeals Officer. An appeal shall be in writing and mailed to the FOIA Appeals Officer within 35 days of the denial of the initial request for waiver or reduction. An appeal under this paragraph is entitled to a prompt decision.

(e) *Avoidance of unexpected fees.* In order to protect a requester from unexpected fees, a requester is required to state in the request an agreement to pay the fees determined in accordance with paragraph (g) of this section or to state an acceptable upper limit on the cost of processing the request. If the fee for processing the request is estimated to exceed that limit, or if the requester has failed to state a limit and the cost is estimated to exceed \$50 and there is no decision to waive or reduce the fees, the appropriate Customs officer shall:

(1) Inform the requester of the estimated costs;

(2) Extend an offer to the requester to confer with Customs personnel in an attempt to reformulate the request in a manner which will reduce the fee and still meet the needs of the requester, and

(3) Inform the requester that the running of the time period within which a determination on the request must be made is suspended until the request is reformulated in manner to reduce the cost or until the requester pays or agrees to pay the estimated cost.

(f) *Form of payment.* (1) A requester shall pay by a check or money order that is payable to the order of the United States Customs Service.

(2) If the estimated cost exceeds \$50, the requester may be required to enter into a contract for the payment of actual costs, as determined in accordance with paragraph (g) of this section, which contract may provide for prepayment of the estimated costs in whole or in part.

(g) *Amount to be charged for specified services.* A fee for a service performed is imposed and collected as set forth in this paragraph. The Commissioner of Customs or the Commissioner's designee may set an appropriate fee for any service not described below. These extraordinary fees are imposed and collected pursuant to 31 U.S.C. 483a, subject to the constraints imposed by 5 U.S.C. 552(a)(4)(A).

(1) *Duplication.* (i) The charge for photocopies per page up to 8½" x 14" is at the rate of \$0.15 each.

(ii) The charge for photographs, films and other materials is their actual cost. The Customs Service may furnish the records to be released to a private contractor for copying and charge the person requesting the records the actual cost of duplication charged by the private contractor. No fee is charged where the requester furnishes the supplies and equipment and makes the copies at the Government location.

(2) *Unpriced printed materials.* The charge for unpriced printed material, which is available at the location where requested and which does not require duplication for copies to be furnished, is at the rate of \$0.25 for each twenty-five pages or fraction thereof.

(3) *Search services.* The charge for services of personnel involved in locating records is \$10.00 for each hour or fraction thereof. If a computer search is required because of the nature of the records sought and the manner in which the records are stored, the fee is \$10.00 for each hour or fraction thereof

of personnel time associated with the search plus the actual cost of extracting the stored information in the format in which it is normally produced. This actual cost of extracting information is based on computer time and supplies necessary to comply with the request.

(4) *Searches requiring travel or transportation.* The charge for transporting a record from one location to another, or for transporting a Customs officer or employee to the site of requested records when it is necessary to locate rather than examine the records, is the actual cost of the transportation.

[T.D. 81-168, 46 FR 32565, June 24, 1981, as amended by T.D. 84-149, 49 FR 28699, July 16, 1984]

**§ 103.11 Specific Customs Service records subject to disclosure.**

(a) *Administrative staff manuals and instructions.* Except as exempted by § 103.12, all administrative staff manuals and instructions to staff that affect any member of the public, and indexes thereto, are available for public inspection and copying in the Customs Service public reference facilities (see § 103.1), including the following:

Forms Catalog. Customs and other agency forms currently available from the Customs Service.

Legal Precedent Retrieval System. The directory is a listing by selected keywords of all classification rulings issued since early 1974 that affect a substantial volume of imports or transactions or are of general interest or importance, and of all published classification rulings issued since August 31, 1963, including classification decisions, and classification rulings circulated within the Customs Service by the Customs Information Exchange and the Office of Regulations and Rulings. The directory also contains limited information on decisions and rulings pertaining to entry, value, drawback, marking, country of origin, and vessel repairs. The directory is maintained on microfiche and is continually updated. Duplicate microfiche are available for 15¢ each, through subscription or in individual sets. The costs of a set will depend upon the number of microfiche it contains.

Fines, Penalties, and Forfeitures Handbook. Collects in one document information relating to the total management of the fines, penalties, and forfeitures program.

Inspector Rate Book. A ready reference guide for inspection personnel. Contains an

abbreviated Tariff Schedules of the United States and other reference material.

Customs Issuance System (CIS) Index. The index provides a brief description of circulars, manuals, legal rulings, decisions, and other Customs documents.

Operational Handbook of Other Agency Requirements Enforced by the U.S. Customs Service.

Customs Valuation under the Trade Agreements Act of 1979.

Fundamentals of Customs Tariff and Trade Operations Handbook. Material relating to the duties and responsibilities of import specialists: entry of merchandise, restrictions, prohibitions and other agency requirements, special trade programs, invoicing and related documentation, examination of merchandise, Customs valuation, tariff classification, liquidation, protests, and miscellaneous import specialist concerns.

(b) *Other Customs records.* In general, all other documents issued by the Secretary of the Treasury, the Commissioner of Customs, or other officers of the Department of the Treasury or of the United States Customs Service in matters administered by the United States Customs Service, if reasonably described, and unless exempted from disclosure under § 103.12, are available. The classes of records of the United States Customs Service which may be made available under this paragraph upon written request submitted in accordance with § 103.5 include, but are not limited to the following:

(1) Records relating to:

(i) Comments submitted by private parties (which are not considered to include foreign governments) in response to a published notice of proposed rule-making and of proposed changes in tariff classification, unless the submitter states that the information is privileged or confidential, giving reasons therefor, and the Commissioner of Customs agrees that the information contained therein is exempt from disclosure under § 103.12;

(ii) Advisory committees on Customs matters;

(iii) Rosters of licensed customhouse brokers;

(iv) Names of individual licensed customhouse brokers;

(v) Names and titles of all Customs personnel;

(vi) Performance awards;

(vii) Suggestion awards;

(viii) The administration of and decisions concerning import quotas; and

(ix) Customs laboratory methods.

(2) Decisions concerning—(i) Matters arising under the Tariff Schedules of the United States and the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202);

(ii) Whether or not specific items, articles, or merchandise qualify for entry under the Trade Fair Act of 1959 (19 U.S.C. 1751 *et seq.*), and the disposition of articles previously entered under the Trade Fair Act; Customs participation and assistance at Trade Fairs;

(iii) The dutiable status of gifts pursuant to section 321, Tariff Act of 1930, as amended (19 U.S.C. 1321);

(iv) The eligibility of vehicles used in international traffic pursuant to section 332(a), Tariff Act of 1930 (19 U.S.C. 1322(a)), and other instruments of international traffic generally for duty-free entry;

(v) Prohibition from entry of merchandise produced by convict, forced, or indentured labor (19 U.S.C. 1307);

(vi) The entry or valuation of merchandise;

(vii) Liens in cases arising under section 564, Tariff Act of 1930, as amended (19 U.S.C. 1564);

(viii) Bills of lading, carriers' certificates, or rights in respect of merchandise, cases arising under section 483 or 484(c), (h), or (i), Tariff Act of 1930, as amended (19 U.S.C. 1483, 1484(c), (h), (i));

(ix) Trademarks, trade names, copyrights, patents, and related matters;

(x) Country of origin marking requirements of section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304);

(xi) Psittacine or other birds, bird feathers, bird skins, monkeys, dogs, cats, and other animals and pets prohibited entry or subject to restrictions and controls on entry;

(xii) Entry of articles admitted temporarily free of duty under bond as provided in Schedule 8, Part 5C, Tariff Schedules of the United States and Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202), and entry of articles admitted temporarily free of duty under A.T.A. Carnets, as provided in § 114.22(a) of this chapter;

(xiii) Tonnage taxes (regular, special, and discriminatory) and light money;

(xiv) The entry, clearance and use of vessels and permits for them to proceed coastwise;

(xv) The regulation of vessels in the foreign, coastal, fishing, and other trades of the United States;

(xvi) The limitation of the use of foreign vessels in waters under the jurisdiction of the United States;

(xvii) Salvage operations by vessels within the territorial waters of the United States (46 U.S.C. 316);

(xviii) The assessment and collection of duties on equipment or repairs of vessels or aircraft under section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), and the remission or refund of such duties;

(xix) Requirements for entry, clearance, and use of aircraft;

(xx) The arrival or departure and the use of motor vehicles, railway trains, or other vehicles;

(xxi) Adequacy of premises at Customs bonded warehouses and control of the merchandise stored therein;

(xxii) Use of protective Customs seals and labels; and

(xxiii) The itineraries of foreign vessels which had been submitted for an advisory ruling to determine whether the primary object of a contemplated voyage would be considered to unlawful coastwise trade (see § 4.80a(d) of this chapter).

[T.D. 81-168, 46 FR 32565, June 24, 1981, as amended by T.D. 85-123, 50 FR 29954, July 23, 1985; T.D. 89-1, 53 FR 51255, Dec. 21, 1988; T.D. 97-82, 62 FR 51770, Oct. 3, 1997]

### § 103.12 Exemptions.

Pursuant to 5 U.S.C. 552(b), the disclosure requirements of 5 U.S.C. 552(a) are not applicable to U.S. Customs Service records which relate to the following:

(a) *Matters kept secret pursuant to Executive order.* Matters specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and which are, in fact, properly classified pursuant to such Executive order (see 31 CFR part 2).

(b) *Certain internal rules and procedures.* Information relating solely to the internal personnel rules and practices of an agency.

(c) *Matters exempt from disclosure by statute.* Information specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), if the statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(d) *Privileged or confidential information.* Trade secrets and commercial or financial information obtained from any person which is privileged or confidential.

(e) *Certain inter-agency or intra-agency correspondence.* Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the agency.

(f) *Material involving personal privacy.* Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) *Certain investigatory records.* Records or information compiled for law enforcement purposes, but only to the extent that the production of such enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could

reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

(h) *Certain pending criminal investigations.* Whenever a request is made which involves access to records described in paragraph (g)(1) of this section and—

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Customs may, during only such times as that circumstance continues, treat the records as not subject to the requirements of this part.

(i) *Certain informant records.* Whenever informant records maintained by Customs under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, Customs may treat the records as not subject to the requirements of this part unless the informant's status as an informant has been officially confirmed.

[T.D. 81–168, 46 FR 32565, June 24, 1981, as amended by T.D. 88–22, 53 FR 12937, Apr. 20, 1988]

#### § 103.13 Segregability of records.

(a) *Reasonably segregable portions.* Where the record requested contains information which is exempt from disclosure under 5 U.S.C. 552(b) and § 103.12, the reasonably segregable portions of the record shall be made available to the requester. For purposes of this section, the term “reasonably segregable portions” means those portions of the record: (1) Which are not exempt from disclosure by 5 U.S.C. 552(b) and § 103.12; (2) which, after deletion of the exempt material, still convey meaningful and nonmisleading information; and (3) from which it can reasonably be assumed that a skillful and knowledgeable person could not reconstruct the exempt portions.

(b) *Petitions by American manufacturers, producers, or wholesalers.* Identifying data is not to be deleted from petitions filed by American manufacturers, producers, and wholesalers pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516). See part 175 of this chapter.

### Subpart B—Production or Disclosure in Federal, State, Local, and Foreign Proceedings

SOURCE: T.D. 96-36, 61 FR 19838, May 3, 1996, unless otherwise noted.

#### § 103.21 Purpose and definitions.

(a) *Purpose.* (1) This subpart sets forth procedures to be followed with respect to the production or disclosure of any documents contained in Customs files, any information relating to material contained in Customs files, any testimony by a Customs employee, or any information acquired by any person as part of that person's performance of official duties as a Customs employee or because of that person's official status, hereinafter collectively referred to as "information", in all federal, state, local, and foreign proceedings when a subpoena, notice of deposition (either upon oral examination or written interrogatory), order, or demand, hereinafter collectively referred to as a "demand", of a court, administrative agency, or other authority is issued for such information.

(2) This subpart does not cover those situations where the United States is a party to the action. In situations where the United States is a party to the action, Customs employees are instructed to follow internal Customs policies and procedures.

(b) *Customs employee.* For purposes of this subpart, the term "Customs employee" includes all present and former officers and employees of the United States Customs Service.

(c) *Customs documents.* For purposes of this subpart, the term "Customs documents" includes any document (including copies thereof), no matter what media, produced by, obtained by, furnished to, or coming to the knowledge of, any Customs employee while acting in his/her official capacity, or because of his/her official status, with

respect to the administration or enforcement of laws administered or enforced by the Customs Service.

(d) *Originating component.* For purposes of this subpart, the term "originating component" references the Customs official, or the official's designee, in charge of the office responsible for the collection, assembly, or other preparation of the information demanded or that, at the time the person whose testimony is demanded acquired the information in question, employs or employed the person whose testimony is demanded.

(e) *Disclosure to government law enforcement or regulatory agencies.* Nothing in this subpart is intended to impede the appropriate disclosure of information by Customs to federal, state, local, and foreign law enforcement or regulatory agencies, in accordance with the confidentiality requirements of the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905), and other applicable statutes.

(f) *Disclosure to federal attorneys and the Court of International Trade.* Nothing in this subpart is intended to restrict the disclosure of Customs information requested by the Court of International Trade, U.S. Attorneys, or attorneys of the Department of Justice, for use in cases which arise under the laws administered or enforced by, or concerning, the Customs Service and which are referred by the Department of the Treasury to the Department of Justice for prosecution or defense.

(g) *Disclosure of non-Customs information.* Nothing in the subpart is intended to impede the appropriate disclosure of non-Customs information by Customs employees in any proceeding in which they are a party or witness solely in their personal capacities.

(h) *Failure of Customs employee to follow procedures.* The failure of any Customs employee to follow the procedures specified in this subpart neither creates nor confers any rights, privileges, or benefits on any person or party.

(i) *In camera inspection of records.* Nothing in this subpart authorizes Customs personnel to withhold records from a federal court, whether civil or criminal, pursuant to its order for such

records appropriately made, for purposes of *in camera* inspection of the records to determine the propriety of claimed exemption(s) from disclosure.

**§ 103.22 Procedure in the event of a demand for Customs information in any federal, state, or local civil proceeding or administrative action.**

(a) *General prohibition against disclosure.* In any federal, state, or local civil proceeding or administrative action in which the Customs Service is not a party, no Customs employee shall, in response to a demand for Customs information, furnish Customs documents or testimony as to any material contained in Customs files, any information relating to or based upon material contained in Customs files, or any information or material acquired as part of the performance of that person's official duties (or because of that person's official status) without the prior written approval of the Chief Counsel, as described in paragraph (b) of this section.

(b) *Employee notification to Counsel.* Whenever a demand for information is made upon a Customs employee, that employee shall immediately prepare a report that specifically describes the testimony or documents sought and notify the Assistant Chief Counsel or Associate Chief Counsel for the area where the employee is located. If the employee is located at Headquarters or outside of the United States, the employee shall immediately notify the Chief Counsel. The Customs employee shall then await instructions from the Chief Counsel concerning the response to the demand.

(c) *Requesting party's initial burden.* A party seeking Customs information shall serve on the appropriate Customs employee the demand, a copy of the Summons and Complaint, and provide an affidavit, or, if that is not feasible, a statement that sets forth a summary of the documents or testimony sought and its relevance to the proceeding. Any disclosure authorization for documents or testimony by a Customs employee shall be limited to the scope of the demand as summarized in such affidavit or statement. The Chief Counsel may, upon request and for good cause

shown, waive the requirements of this paragraph.

(d) *Requesting party's notification requirement.* The demand for Customs information, pursuant to the provisions of paragraph (c) of this section, shall be served at least ten (10) working days prior to the scheduled date of the production of the documents or the taking of testimony.

(e) *Counsel notification to originating component.* Upon receipt of a proper demand for Customs information, one which complies with the provisions of paragraph (c) of this section, if the Chief Counsel believes that it will comply with any part of the demand, it will immediately advise the originating component.

(f) *Conditions for authorization of disclosure.* The Chief Counsel, subject to the provisions of paragraph (h) of this section, may authorize the production of Customs documents or the appearance and testimony of a Customs employee if:

(1) Production of the demanded documents or testimony, in the judgment of the Chief Counsel, are appropriate under the factors specified in § 103.23(a) of this subpart; and

(2) None of the factors specified in § 103.23(b) of this subpart exist with respect to the demanded documents or testimony.

(g) *Limitations on the scope of authorized disclosure.* (1) The Chief Counsel shall authorize the disclosure of Customs information by a Customs employee without further authorization from Customs officials whenever possible, *provided that*:

(i) If necessary, Counsel has consulted with the originating component regarding disclosure of the information demanded;

(ii) There is no objection from the originating component to the disclosure of the information demanded; and

(iii) Counsel has sought to limit the demand for information to that which would be consistent with the factors specified in § 103.23 of this part.

(2) In the case of an objection by the originating component, the Chief Counsel shall make the disclosure determination.

(h) *Disclosure of commercial information.* In the case of a demand for commercial information or commercial documents concerning importations or exportations, the Chief Counsel shall obtain the authorization of the Assistant Commissioner (Field Operations) or his/her designee prior to the Chief Counsel authorizing the production/disclosure of such documents/information.

**§ 103.23 Factors in determining whether to disclose information pursuant to a demand.**

(a) *General considerations.* In authorizing disclosures pursuant to a proper demand for Customs information, one which complies with the provisions of §103.22(c), the Chief Counsel should consider the following factors:

(1) Whether the disclosure would be appropriate under the relevant substantive law concerning privilege;

(2) Whether the disclosure would be appropriate under the rules of procedure governing the case or matter in which the demand arose; and,

(3) Whether the requesting party has demonstrated that the information requested is:

(i) Relevant and material to the action pending, based on copies of the summons and complaint that are required to be attached to the subpoena *duces tecum* or other demand;

(ii) Genuinely necessary to the proceeding, *i.e.*, a showing of substantial need has been made;

(iii) Unavailable from other sources; and,

(iv) Reasonable in its scope, *i.e.*, the documents, information, or testimony sought are described with particularity.

(4) Whether consultation with the originating component requires that the Chief Counsel make a separate determination as to the disclosure of the information requested.

(b) *Circumstances where disclosure will not be made.* Among the demands in response to which disclosure will not be authorized by the Chief Counsel are those demands with respect to which any of the following factors exist:

(1) Disclosure would violate a treaty, statute (such as the Privacy Act, 5 U.S.C. 552a, the Trade Secrets Act, 18 U.S.C. 1905, or the income tax laws, 26

U.S.C. 6103 and 7213), or a rule of procedure, such as the grand jury secrecy rule, Fed.R.Crim.Proc. rule 6(e) (18 U.S.C.App.);

(2) Disclosure would violate a specific regulation;

(3) Disclosure would reveal classified or confidential information;

(4) Disclosure would reveal a confidential source or informant;

(5) Disclosure would reveal investigatory records compiled for law enforcement purposes, interfere with enforcement proceedings, or disclose investigative techniques and procedures;

(6) Disclosure would improperly reveal confidential commercial information without the owner's consent (*e.g.*, entry information);

(7) Disclosure relates to documents which were produced by another agency or entity;

(8) Disclosure would unduly interfere with the orderly conduct of Customs business;

(9) Customs has no interest, records, or other official information regarding the matter in which disclosure is sought;

(10) There is a failure to make proper service upon the United States; or

(11) There is a failure to comply with federal, state, or local rules of discovery.

**§ 103.24 Procedure in the event a decision concerning a demand is not made prior to the time a response to the demand is required.**

If response to a demand is required before the instructions from the Chief Counsel are received, the U.S. Attorney, his/her assistant, or other appropriate legal representative shall be requested to appear with the Customs employee upon whom the demand has been made. The U.S. Attorney, his/her assistant, or other appropriate legal representative shall furnish the court or other authority with a copy of the regulations contained in this subpart, inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of the Chief Counsel, and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

**§ 103.25 Procedure in the event of an adverse ruling.**

If the court or other authority declines to stay the demand in response to a request made in accordance with § 103.24 pending receipt of instructions, or rules that the demand must be complied with irrespective of instructions rendered in accordance with §§ 103.22, 103.23, 103.26, or 103.27 of this subpart not to produce the documents or disclose the information sought, the Customs employee upon whom the demand has been made shall, pursuant to this subpart, respectfully decline to comply with the demand. *See, United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

**§ 103.26 Procedure in the event of a demand for Customs information in a state or local criminal proceeding.**

Port directors, special agents in charge, and chiefs of field laboratories may, in the interest of federal, state, and local law enforcement, upon receipt of demands of state or local authorities, and at the expense of the State, authorize employees under their supervision to attend trials and administrative hearings on behalf of the government in any state or local criminal case, to produce records, and to testify as to facts coming to their knowledge in their official capacities. However, in cases where a defendant in a state or local criminal case demands testimony or the production of Customs documents or information, authorization from the Chief Counsel is required as under § 103.22 of this subpart. No disclosure of information under this section shall be made if any of the factors listed in § 103.23(b) of this subpart are present.

**§ 103.27 Procedure in the event of a demand for Customs information in a foreign proceeding.**

(a) *Required prior approval for disclosure.* In any foreign proceeding in which the Customs Service is not a party, no Customs employee shall, in response to a demand, furnish Customs documents or testimony as to any material contained in Customs files, any information relating to or based upon material contained in Customs files, or any information or material acquired as part of the performance of that per-

son's official duties (or because of that person's official status) without the prior approval of the Chief Counsel, as described in paragraph (b) of this section.

(b) *Employee notification to Counsel.* Whenever a demand in a foreign proceeding is made upon a Customs employee concerning pre-clearance activities within the territory of the foreign country, that employee shall immediately notify the appropriate Associate Chief Counsel responsible for the pre-clearance location. All other demands in a foreign proceeding shall be reported by Customs employees to the Chief Counsel. The Customs employee shall then await instructions from the Chief Counsel concerning the response to the demand.

(c) *Counsel notification to originating component.* Upon receipt of a proper demand for Customs information, one which complies with the provisions of § 103.22(c), if the Chief Counsel believes that it will comply with any part of the demand, it will immediately advise the originating component.

(d) *Conditions for authorization of disclosure.* The Chief Counsel, subject to the terms of paragraph (e) of this section, may authorize the disclosure of Customs documents or the appearance and testimony of a Customs employee if:

(1) Production of the demanded documents or testimony, in the judgment of the Chief Counsel, are appropriate under the factors specified in § 103.23(a) of this subpart; and

(2) None of the factors specified in § 103.23(b) of this subpart exist with respect to the demanded documents or testimony.

(e) *Limitations on the scope of authorized disclosure.* (1) The Chief Counsel shall authorize the disclosure of Customs information by a Customs employee without further authorization from Customs officials whenever possible, provided that:

(i) If necessary, Counsel has consulted with the originating component regarding disclosure of the information demanded;

(ii) There is no objection from the originating component to the disclosure of the information demanded; and

(iii) Counsel has sought to limit the demand for information to that which would be consistent with the factors specified in § 103.23 of this part.

(2) In the case of an objection by the originating component, the Chief Counsel shall make the disclosure determination.

### Subpart C—Other Information Subject to Restricted Access

#### § 103.31 Information on vessel manifests and summary statistical reports.

(a) *Disclosure to members of the press.* Accredited representatives of the press, including newspapers, commercial magazines, trade journals, and similar publications shall be permitted to examine vessel manifests and summary statistical reports of imports and exports and to copy therefrom for publication information and data subject to the following rules:

(1) Of the information and data appearing on outward manifests, only the name and address of the shipper, general character of the cargo, number of packages and gross weight, name of vessel or carrier, port of exit, port of destination, and country of destination may be copied and published. However, if the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure of the above information is likely to pose a threat of personal injury or property damage, that information shall not be disclosed to the public.

(2) Commercial or financial information, such as the names of the consignees, and marks and numbers shall not be copied from outward manifests or any other papers.

(3) All the information appearing on the cargo declaration (Customs Form 1302) of the inward vessel manifest may be copied and published. However, if the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that the disclosure of the information contained on the cargo declaration is likely to pose a threat of personal injury or property damage, that information shall not be disclosed to the press.

(b) *Review of data.* All copies and notations from inward or outward mani-

fest shall be submitted for examination by a Customs officer designated for that purpose.

(c) *Disclosure to the public.* Members of the public shall not be permitted to examine vessel manifests. However, they may request and obtain from Customs, information from vessel manifests, subject to the rules set forth in paragraph (a) of this section. However, importers and exporters, or their duly authorized brokers, attorneys, or agents may be permitted to examine manifests with respect to any consignment of goods in which they have a proper and legal interest as principal or agent, but shall not be permitted to make any general examination of manifests or make any copies or notations from them except with reference to the particular importation or exportation in which they have a proper and legal interest.

(d) *Confidential treatment—(1) Inward manifest.* An importer or consignee may request confidential treatment of its name and address contained in inward manifests, to include identifying marks and numbers. In addition, an importer or consignee may request confidential treatment of the name and address of the shipper or shippers to such importer or consignee by using the following procedure:

(i) An importer or consignee, or authorized employee, attorney or official of the importer or consignee, must submit a certification (as described in paragraph (d)(1)(ii) of this section) claiming confidential treatment of its name and address. The name and address of an importer or consignee includes marks and numbers which reveal the name and address of the importer or consignee. An importer or consignee may file a certification requesting confidentiality for all its shippers.

(ii) There is no prescribed format for a certification. However, the certification shall include the importer's or consignee's Internal Revenue Service Employer Number, if available. There is no requirement to provide sufficient facts to support the conclusion that the disclosure of the names and addresses would likely cause substantial harm to the competitive position of the importer or consignee.

(iii) The certification must be submitted to the Disclosure Law Officer, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

(iv) Each initial certification will be valid for a period of two years from the date of receipt. Renewal certifications should be submitted to the Regulations and Disclosure Law Branch at least 60 days prior to the expiration of the current certification. Information so certified may be copied, but not published, by the press during the effective period of the certification. An importer or consignee shall be given written notification by Customs of the receipt of its certification of confidentiality.

(2) *Outward manifest.* If a shipper wishes to request confidential treatment by Customs of the shipper's name and address contained in an outward manifest, the following procedure shall be followed:

(i) A shipper, or authorized employee or official of the shipper, must submit a certification claiming confidential treatment of the shipper's name and address. The certification shall include the shipper's Internal Revenue Service Employer Number, if available.

(ii) There is no prescribed format for a certification.

(iii) The certification must be submitted to the Disclosure Law Officer, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

(iv) Each certification will be valid for a period of two (2) years from the date of its approval.

(3) If any individual shall abuse the privilege granted him to examining inward and outward manifests or shall make any improper use of any information or data obtained from such manifests or other papers filed in the customhouse, both he and the party or publication which he represents shall thereafter be denied access to such papers.

(e) *Availability of manifest data on magnetic tapes*—(1) *Availability.* Manifest data acquired from the Automated Manifest System (AMS) is available to interested members of the public on magnetic tape. This data, compiled daily, will contain all manifest transactions made on the nationwide system

within the last 24 hour period. Data for which parties have requested confidential treatment in accordance with §103.14(d) will not be included on the tapes. These tapes may be purchased at the government's production cost. Tapes are available for specific days or on a subscription basis.

(2) *Requests and subscriptions.* Requests for tapes must be in writing and submitted to: U.S. Customs Service, Accounting Services—Accounts Receivable, P.O. Box 68907, Indianapolis, Indiana 46278. Requests must include a check to cover the cost of the tapes requested. Actual costs and other specific information should be ascertained by contacting the Accounting Services—Accounts Receivable at (317) 298-1330. Bills for subscriptions will be issued monthly, with the first month's fee due in advance. Requested tapes will be mailed from the Customs Data Center, first class, on the next business day after compilation. Parties desiring another form of delivery will have to make their own arrangements and notify Customs in advance. Subscriptions may be canceled provided Customs receives written notice at least 10 days prior to the end of the month. The U.S. Customs Data Center must be notified in writing within seven days of technical problems with tapes or non-receipt of tapes in order to receive a replacement or credit towards future tape purchases. Refunds will not be provided. Information regarding the technical specifications of the tapes, problem tapes or the non-receipt of tapes should be directed to U.S. Customs Data Center, on (703) 644-5200.

(3) *Data elements.* The following are the data elements from the AMS manifest which will be provided to the public via magnetic tape:

1. Carrier code.
2. Vessel country code.
3. Vessel name.
4. Voyage number.
5. District/port of unloading.
6. Estimated arrival date.
7. Bill of lading number.
8. Foreign port of lading.
9. Manifest quantity.
10. Manifest units.
11. Weight.
12. Weight unit.

13. Shipper name.<sup>1</sup>
14. Shipper address.<sup>1</sup>
15. Consignee name.<sup>1</sup>
16. Consignee address.<sup>1</sup>
17. Notify party name.<sup>1</sup>
18. Notify party address.<sup>1</sup>
19. Piece count.
20. Description of goods.
21. Container number.
22. Seal number.

[T.D. 81-168, 46 FR 32565, June 24, 1981, as amended by T.D. 84-111, 49 FR 19953, May 10, 1984; 49 FR 23340, June 6, 1984; T.D. 85-123, 50 FR 29954, July 23, 1985; T.D. 91-77, 56 FR 46114-46115, Sept. 10, 1991; T.D. 92-92, 57 FR 44089, Sept. 24, 1992. Redesignated by T.D. 96-36, 61 FR 19838, May 3, 1996]

**§ 103.32 Information concerning fines, penalties, and forfeitures cases.**

Except as otherwise provided in these regulations or in other directives (including those published as Treasury Decisions), port directors and other Customs officers shall refrain from disclosing facts concerning seizures, investigations, and other pending cases until Customs action is completed. After the penalty proceeding is closed by payment of the claim amount, payment of a mitigated amount, or judicial action, the identity of the violator, the section of the law violated, the amount of penalty assessed, loss of revenue, mitigated amount (if applicable), and the amount of money paid may be disclosed to the public by the appropriate port director. Public disclosure of any other item of information concerning such cases, whether open or closed, shall only be made in conformance with the procedures provided in § 103.5.

[T.D. 81-168, 46 FR 32565, June 24, 1981. Redesignated by T.D. 96-36, 61 FR 19838, May 3, 1996]

**§ 103.33 Release of information to foreign agencies.**

(a) The Commissioner or his designee may authorize Customs officers to exchange information or documents with foreign customs and law enforcement agencies if the Commissioner or his designee reasonably believes the exchange of information is necessary to—

<sup>1</sup>Designates data element which will be deleted where confidentiality has been requested.

(1) Ensure compliance with any law or regulation enforced or administered by Customs;

(2) Administer or enforce multilateral or bilateral agreements to which the U.S. is a party;

(3) Assist in investigative, judicial and quasi-judicial proceedings in the U.S.; and

(4) An action comparable to any of those described in paragraphs (a) (1) through (3) of this section undertaken by a foreign customs or law enforcement agency, or in relation to a proceeding in a foreign country.

(b)(1) Information may be provided to foreign customs and law enforcement agencies under paragraph (a) of this section only if the Commissioner or his designee obtains assurances from such agencies that such information will be held in confidence and used only for the law enforcement purposes for which such information is provided to such agencies by the Commissioner or his designee.

(2) No information may be provided under paragraph (a) of this section to any foreign customs or law enforcement agency that has violated any assurances described in paragraph (b)(1) of this section.

[T.D. 86-196, 51 FR 40792, Nov. 10, 1986. Redesignated by T.D. 96-36, 61 FR 19838, May 3, 1996]

**§ 103.34 Sanctions for improper actions by Customs officers or employees.**

(a) The improper disclosure of the confidential information contained in Customs documents, or the disclosure of information relative to the business of one importer or exporter that is acquired by a Customs officer or employee in an official capacity to any person not authorized by law or regulations to receive this information is a ground for dismissal from the United States Customs Service, suspension, or other disciplinary action, and if done for a valuable consideration subjects that person to criminal prosecution.

(b) Sanctions for improper denials of information by Customs officers or employees are set forth in § 103.9(c).

[T.D. 81-168, 46 FR 32565, June 24, 1981. Redesignated by T.D. 96-36, 61 FR 19838, May 3, 1996]