

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 amended, 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

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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