

U.S. Customs and Border Protection, DHS; Treasury

§ 163.1

APPENDIX TO PART 163—INTERIM (a)(1)(A) LIST

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

Section 163.2 also issued under 19 U.S.C. 3904, 3907.

SOURCE: T.D. 98-56, 63 FR 32946, June 16, 1998, unless otherwise noted.

§ 163.0 Scope.

This part sets forth the record-keeping requirements and procedures governing the maintenance, production, inspection, and examination of records. It also sets forth the procedures governing the examination of persons in connection with any investigation, audit or other inquiry conducted for the purposes of ascertaining the correctness of any entry, for determining the liability of any person for duties, fees and taxes due or that may be due, for determining liability for fines, penalties and forfeitures, or for ensuring compliance with the laws and regulations administered or enforced by Customs. Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters, and producers under the United States-Canada Free Trade Agreement and the North American Free Trade Agreement are contained in parts 10 and 181 of this chapter, respectively.

[T.D. 98-56, 63 FR 32946, June 16, 1998, as amended by CBP Dec. 11-20, 76 FR 65960, Oct. 25, 2011]

§ 163.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *Records*—(1) *In general.* The term “records” means any information made or normally kept in the ordinary course of business that pertains to any activity listed in paragraph (a)(2) of this section. The term includes any information required for the entry of merchandise (the (a)(1)(A) list) and other information pertaining to, or from which is derived, any information element set forth in a collection of information required by the Tariff Act of 1930, as amended, in connection with any activity listed in paragraph (a)(2) of this section. The term includes, but is not limited to, the following: State-

ments; declarations; documents; electronically generated or machine readable data; electronically stored or transmitted information or data; books; papers; correspondence; accounts; financial accounting data; technical data; computer programs necessary to retrieve information in a usable form; and entry records (contained in the (a)(1)(A) list).

(2) *Activities.* The following are activities for purposes of paragraph (a)(1) of this section:

(i) Any importation, declaration or entry;

(ii) The transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;

(iii) The filing of a drawback claim;

(iv) The completion and signature of a NAFTA Certificate of Origin pursuant to §181.11(b) of this chapter;

(v) The collection, or payment to Customs, of duties, fees and taxes; or

(vi) The completion and signature of a Chile FTA certification of origin and any other supporting documentation pursuant to the United States-Chile Free Trade Agreement.

(vii) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Singapore Free Trade Agreement (SFTA), including a SFTA importer's supporting statement if previously required by the port director.

(viii) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Jordan Free Trade Agreement (US-JFTA), including a US-JFTA declaration.

(ix) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Morocco Free Trade Agreement (MFTA), including a MFTA importer's declaration.

(x) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-

DR), including a CAFTA-DR importer's certification.

(xi) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Bahrain Free Trade Agreement (BFTA), including a BFTA importer's declaration.

(xii) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Oman Free Trade Agreement (OFTA), including an OFTA importer's declaration.

(xiii) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Peru Trade Promotion Agreement (PTPA), including a PTPA importer's certification.

(xiv) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Korea Free Trade Agreement (UKFTA), including a UKFTA importer's certification.

(xv) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Colombia Trade Promotion Agreement (CTPA), including a CTPA importer's certification.

(xvi) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Panama Trade Promotion Agreement (PANTPA), including a PANTPA importer's certification.

(xvii) Any other activity required to be undertaken pursuant to the laws or regulations administered by Customs.

(b) *(a)(1)(A) list.* See the definition of "entry records".

(c) *Audit.* "Audit" means an evaluation by CBP under 19 U.S.C. 1509 of records required to be maintained and/or produced by persons listed in §163.2, or pursuant to other applicable laws or regulations administered by CBP, for the purpose of furthering any investigation or review conducted to: ascertain the correctness of any entry; determine the liability of any person for

duties, taxes, and fees due, or revenue due, or which may be due the United States; determine liability for fines, penalties, and forfeitures; ensure compliance with the laws of the United States administered by CBP; or determine that information submitted or required is accurate, complete, and in accordance with any laws and regulations administered or enforced by CBP. An audit does not include a quantity verification for a customs bonded warehouse or general purpose foreign trade zone. An audit may be as extensive or simple as CBP determines is warranted to achieve the audit's purpose under applicable laws and regulations.

(d) *Certified recordkeeper.* A "certified recordkeeper" is a person who is required to keep records under this chapter and who is a participant in the Recordkeeping Compliance Program provided for in §163.12.

(e) *Entry records/(a)(1)(A) list.* The terms "entry records" and "(a)(1)(A) list" refer to records required by law or regulation for the entry of merchandise (whether or not Customs required their presentation at the time of entry). The (a)(1)(A) list is contained in the Appendix to this part.

(f) *Inquiry.* An "inquiry" is any formal or informal procedure, other than an investigation, through which a request for information is made by a Customs officer.

(g) *Original.* The term "original", when used in the context of maintenance of records, has reference to records that are in the condition in which they were made or received by the person responsible for maintaining the records pursuant to 19 U.S.C. 1508 and the provisions of this chapter, including records consisting of the following:

(1) Electronic information which was used to develop other electronic records or paper documents;

(2) Electronic information which is in a readable format such as a facsimile paper format or an electronic or hardcopy spreadsheet;

(3) In the case of a paper record that is part of a multi-part form where all parts of the form are made by the same impression, one of the carbon-copy parts or a facsimile copy or photocopy of one of the parts; and

(4) A copy of a record that was provided to another government agency which retained it, provided that, if required by Customs, a signed statement accompanies the copy certifying it to be a true copy of the record provided to the other government agency.

(h) *Party/person*. The terms “party” and “person” refer to a natural person, corporation, partnership, association, or other entity or group.

(i) *Summons*. “Summons” means any summons issued under this part that requires the production of records or the giving of testimony, or both.

(j) *Technical data*. “Technical data” are records which include diagrams and other data with regard to a business or an engineering or exploration operation, whether conducted inside or outside the United States, and whether on paper, cards, photographs, blueprints, tapes, microfiche, film, or other media or in electronic or magnetic storage.

(k) *Third-party recordkeeper*. “Third-party recordkeeper” means any attorney, any accountant or any customs broker other than a customs broker who is the importer of record on an entry.

[T.D. 98-56, 63 FR 32946, June 16, 1998]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §163.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§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.