



recordkeeping

AN INFORMED COMPLIANCE
PUBLICATION

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background

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “informed compliance” and “shared responsibility,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings (ORR) has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications, and videos, on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.



recordkeeping requirements

WHAT ARE RECORDS?

In Part 163, the term “records” means any information made or normally kept in the ordinary course of business which pertains to the following activities:

- any importation, declaration or entry;
- the transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;
- the filing of a drawback claim;
- the completion and signature of a NAFTA export Certificate of Origin pursuant to Part 181;
- the collection and payment of fees and taxes to CBP; and
- any other activity required to be undertaken pursuant to laws or regulations administered by CBP.

The term “records” includes any information required for the entry of merchandise (see discussion of the “(a)(1)(A) list” below) 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 an activity described above. The term includes, but is not limited to:

- statements, declarations, documents;
- electronically generated or machine-readable data;
- electronically stored or transmitted information or data;
- books, papers, correspondence;
- accounts, financial accounting data;
- technical data; and
- computer programs necessary to retrieve information in a usable form.

WHO IS SUBJECT TO RECORDKEEPING REQUIREMENTS?

In general, the following persons are required to maintain records and make them available for examination by CBP:

- an owner, importer, consignee, importer of record, entry filer or other person who:
- imports merchandise into the customs territory of the United States;
- files a drawback claim;

- transports or stores merchandise carried or held under bond; or
- knowingly cause the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;
- an agent of any person described above; or
- a person whose activities require the filing of a declaration or entry, or both.

However, a traveler who has physically cleared the CBP facility after making a baggage declaration or oral declaration upon arrival in the United States, is not required to maintain supporting records regarding non-commercial merchandise acquired abroad which falls within the traveler's personal exemptions or which is covered by a flat rate of duty.

A person who orders merchandise from an importer in a domestic transaction knowingly causes merchandise to be imported (and thus is required to maintain and produce records) only if the person ordering the merchandise a) controls the terms and conditions of the importation, or b) furnishes technical data, molds, equipment, other production assistance, material, components, or parts with knowledge that they will be used in the manufacture or production of the imported merchandise.

In addition to the persons listed above who are subject to the general recordkeeping requirements in Part 163, the following persons are subject to special recordkeeping requirements:

- any person who completes and signs a Certificate of Origin for goods exported to Canada or Mexico pursuant to NAFTA must also maintain records in accordance with Part 181; and
- customs brokers must also comply with the additional requirements of Part 111.

HOW LONG MUST RECORDS BE KEPT?

As a general rule, any record required to be made, kept and rendered for examination or inspection under Part 163 must be kept for **5 years from the date of entry** (which includes a reconciliation), if the record relates to an entry, or **5 years from the date of the activity which required creation of the record**. There are some exceptions to this general rule, however:

- records relating to drawback claim must be retained until the third anniversary of the date of payment of the claim;

- packing lists must be retained for a period of 60 calendar days from the end of the release or conditional release period, whichever is later, or, if demand for return to CBP custody (“redelivery”) has been issued, for a period of 60 calendar days either from the date the goods are redelivered or from the date specified in the demand as the latest redelivery date if redelivery has not taken place;
- a consignee who is not the owner or purchaser and who appoints a customs broker shall keep records pertaining to merchandise covered by an informal entry for 2 years from the date of the informal entry;
- records pertaining to articles that are admitted free of duty and tax pursuant to 19 U.S.C. §1321(a)(2) and 19 CFR 10.151-10.153 and carriers’ records pertaining to manifested cargo that is exempt from entry under the provisions of 19 CFR shall be kept for 2 years from the date of entry or other activity which required creation of the record; or
- if another provision of the CBP Regulations sets forth a different retention period for a specific type of record, the other provision controls. For example:
 - 10.137 sets forth a retention period of 3 years from liquidation for records of use or disposition for certain goods whose rate of duty is dependent upon actual use; and
 - 181.12 requires that all supporting records relating to NAFTA Certificates of Origin for exports be maintained for 5 years from the date the certificate was signed.

MUST ORIGINAL RECORDS BE KEPT?

Unless a recordkeeper has adopted alternative storage methods pursuant to section 163.5, of the CBP Regulations, the recordkeeper must maintain the original records, whether paper or electronic. Even if proper alternative storage methods have been adopted, certain records must be kept in their original format for a limited time, or may not be alternatively stored at all:

- except in the case of packing lists, entry records must be maintained in their original format for a period of 120 calendar days from the end of the release or conditional release period, whichever is later, or, if demand for return to CBP custody (“redelivery”) has been issued, for a period of 120 calendar days either from the date the goods are redelivered or from the date specified in the demand as the latest redelivery date if redelivery has not taken place; and
- records required by other Federal agencies are subject to their record retention requirements.

Whether records are kept in their original format or under an alternative method of storage, they must be capable of being retrieved upon lawful request or demand by CBP.



WHAT ARE THE REQUIREMENTS FOR ALTERNATIVE METHODS OF STORAGE?

A recordkeeper may use an alternative storage method by providing advance written notification to the Director, Regulatory Audit Division, U.S. Customs and Border Protection, 2001 Cross Beam Drive, Charlotte, North Carolina 28217-2856. The notice must specify the storage method to be used and state that it complies with the standards set forth in section 163.5. Methods that are in compliance with generally accepted business standards will generally satisfy CBP requirements, provided that the method allows for retrieval of requested records within a reasonable time after the request and adequate safeguards are in place to prevent alteration, destruction or deterioration of the records. Common alternative methods include, but are not limited to, machine readable data, CD-ROM, and microfiche. If an alternative storage method covers records that pertain to goods under CBP seizure or detention or that relate to a matter that is currently the subject of an inquiry or investigation or administrative or court proceeding, the appropriate CBP office may instruct the person in writing that those records must be maintained as original records and therefore may not be converted to an alternative format until specific written authorization is received from that office. Any such instruction must describe the records with reasonable specificity but need not identify the underlying basis for the instruction and will not preclude application of the planned alternative storage method to other records.

In order to use an alternative storage method, a recordkeeper must meet the following standards:

- operational and written procedures are in place to ensure that the imaging and/or other media storage process preserves the integrity, readability, and security of the information contained in the original records;
- the procedures must include a standardized retrieval process;
- vendor specifications/documentation and benchmark data must be available for CBP review;

- there must be an effective labeling, naming, filing, and indexing system;
- internal testing of the system must be performed on a yearly basis;
- the recordkeeper must have the capability to make, and bear the cost of, hard-copy reproductions of alternatively stored records required by CBP;
- the recordkeeper must keep one working copy and one back-up copy of the records in a secure location for the required record retention period;
- entry records must be maintained in their original formats for a period of 120 calendar days from the end of the release or conditional release period, whichever is later, or, if demand for return to CBP custody (“redelivery”) has been issued, for a period of 120 calendar days either from the date the goods are redelivered or from the date specified in the demand as the latest redelivery date if redelivery has not taken place; and
- CBP must be notified in writing at least 30 calendar days before implementing any change to the alternative storage procedures

A failure to meet the requirements may result in the recordkeeper being notified by CBP that alternative storage is not permitted.

PRODUCTION, INSPECTION AND EXAMINATION

CBP officers may require the production of entry records by any recordkeeper required to maintain such records, pursuant to written, oral or electronic notice, even if the entry records were required at the time of entry. An oral demand for entry records must be followed by a written or electronic request. The entry records must be produced within 30 calendar days of receipt of the demand or within any shorter period prescribed by CBP when the records are required in connection with a determination of admissibility or release of the merchandise. If a recordkeeper encounters a problem in timely complying with the demand, he should notify CBP in writing or electronically, before the expiration of the production period, with a request for approval of a specific additional time in which to produce the records. The recordkeeper must include an explanation for the inability to comply. CBP will promptly advise the requesting party either that the request is denied or that the additional time requested, or a shorter period deemed appropriate by CBP, is approved. A request for additional time does not preclude the imposition of penalties or other sanctions, but no such sanctions will be imposed if the request is approved and the records produced before expiration the additional time granted by CBP.

WHAT IF ENTRY RECORDS ARE NOT PRODUCED?

If a recordkeeper fails to produce an entry record upon lawful demand, the consequences can be severe:

- if the failure is the result of a willful failure to maintain, store or retrieve a demanded record, CBP may assess an administrative penalty for each release of merchandise, not to exceed \$100,000 or an amount equal to 75% of the appraised value of the merchandise, whichever is less; or
- if the failure is the result of a negligent failure to maintain, store or retrieve a demanded record, CBP may assess an administrative penalty for each release of merchandise, not to exceed \$10,000 or an amount equal to 40% of the appraised value of the merchandise, whichever is less; and
- in addition, if the demanded record relates to eligibility for an HTSUS column 1 special rate of duty, the entry
- if unliquidated, shall be liquidated at the HTSUS column 1 general rate (or column 2 rate, if applicable); or
- if liquidated within the 2-year period preceding the date of demand, shall be reliquidated at the HTSUS column 1 general rate (or column 2 rate, if applicable) notwithstanding the time limits in 19 U.S.C. §1514 or §1520.

Penalties cannot be assessed if the person who fails to comply with a lawful demand can show:

- that the loss of the demanded record was the result of an act of God or other natural casualty or disaster beyond the fault of such person or his agent;
- on the basis of other evidence satisfactory to CBP, that the demand was substantially complied with;
- that the record demanded was presented to and retained by CBP at the time of entry, or pursuant to an earlier demand; or
- that he is a certified participant in the Recordkeeping Compliance Program (see below), that he is generally in compliance with the appropriate procedures and that the violation in question is his first violation and was non-willful.

The penalties for failure to maintain or produce entry records are in addition to any other penalty except for:

- a penalty under 19 U.S.C. §1592 for a material omission of any information in the demanded record; or
- disciplinary action taken under 19 U.S.C. §1641.

Penalties assessed for recordkeeping violations must take into account the degree of compliance compared to the total number of importations, the nature of the demanded records and the recordkeeper's cooperation. Any administrative penalty assessed under the recordkeeping provisions may be remitted or mitigated pursuant to 19 U.S.C. §1618.

RECORDKEEPING COMPLIANCE PROGRAM

The Recordkeeping Compliance Program is a voluntary program established by law under which "certified" recordkeepers are eligible for alternatives to first time penalties for failing to maintain or produce entry records and may be entitled to greater mitigation of subsequent penalties for failing to maintain or produce entry records.

Any person required to maintain and produce entry records may apply for certification by filing an application, in accordance with the guidelines set forth in the *Recordkeeping Compliance Handbook*, with the Field Director, Regulatory Audit, U. S. Customs and Border Protection, 2001 Cross Beam Drive, Charlotte, North Carolina 28217-2856. The *Recordkeeping Compliance Handbook* may be downloaded from the Customs and Border Protection, Office of Strategic Trade, Regulatory Audit web site located at: http://www.cbp.gov/xp/cgov/import/regulatory_audit_program

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