

Proposed Amendments to Rule 73.1

Rule 73.1 is amended as follows:

Rule 73.1. Documents in an Action Described in 28 U.S.C. § 1581 (a) or (b)

(a) For any case commenced after the effective date of this rule, unless otherwise ordered by the court, within 90 days after the filing of the summons, U.S. Customs and Border Protection (“CBP”) must file the following items electronically if they were provided to or created by CBP prior to the filing of the court action:

(1) information contained in the entry summary;

(2) commercial invoice and any other relevant documents associated with the entry, submitted by or on behalf of the importer;

(3) protest or petition, including any attachments and supplements; **and**

(4) decision on the protest or petition; ~~and~~

~~—— (5) a statement as to whether samples taken from the entry and/or other representative samples were provided to CBP.~~

(b) For any case described in subparagraph (a), CBP shall file simultaneously with the items specified in (a)(1)-(4) a statement as to whether samples were taken from the entry and/or provided to CBP in conjunction with the protest in the subject case prior to the filing of the court action. Within 90 days following the electronic filing of the items set forth in subparagraph (a), CBP shall file manually with the Court **at least one exemplar of each such sample received or taken.** ~~any samples taken from the entry and other representative samples~~

(c) The requirements of this rule may be modified upon motion and for good cause shown.

PRACTICE COMMENT: Extensions should be freely given if a complaint has not been filed.

(Added Sept. 30, 2003, eff. Jan. 1, 2004; and amended Nov. 25, 2009, eff. Jan. 1, 2010; Sept. 19, 2017, eff. Apr. 23, 2018; amended _____, eff. _____.)

Advisory Committee Note

The revisions clarify the requirements for filing samples with the CIT pursuant to Rule 73.1. The revisions clarify that CBP is to file, simultaneously with the filing of the items specified in (a)(1)-(4), a statement indicating whether samples were taken by or provided to CBP prior to the filing of the court action. The requirement that samples be filed within 90 days of the statement is retained. The revisions avoid the confusing structure of the current rule by removing the language regarding samples currently in subparagraph (a)(5) and combining it with subparagraph (b). The revisions also replace the phrase “samples taken from the entry and/or other representative samples were provided to CBP” with “samples were taken from the entry and/or provided to CBP in conjunction with the protest in the subject case.” This revision eliminates the ambiguity associated with the word “representative” and creates consistency with the items listed in subparagraph (a)(1)-(4), which are limited to the entries and protests listed on the summons over which the court has jurisdiction.