



DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

PORT OF CHICAGO PIPELINE

NO. 98-

24

July 8, 1998

TO : Customhouse Brokers, Importers and Others Concerned

SUBJECT: Protest and Petition Procedures

The purpose of this pipeline is to update procedures for filing protests and petitions in the Port of Chicago. These procedures are in compliance with Customs Headquarters Directive 099 3550-065 dated August 4, 1993.

TYPES OF FILINGS

514 Protest

A protest is the legal means by which a party may challenge a decision made by Customs. Most protests involve classification of the merchandise and the amount of duties assessed. Other issues can be protested, such as failure to release merchandise (inadmissibility notices) or refusal to allow a claim for drawback. Protests must be filed within 90 days after the date of liquidation or the date of the decision which is being challenged.

Protests may be filed by the importer or consignee or his surety; a person paying a charge or exaction; a person seeking entry or delivery; a person filing a claim for drawback; or the authorized agents of the parties described above.

Protests are filed on paper by submitting Customs Form 19, PROTEST, or electronically through the Automated Broker Interface (ABI). All attachments to the protest, other than samples or similar exhibits, must be filed in quadruplicate. For more information on protests, refer to Part 174 of the Customs Regulations.

520(c) Petition

A 520(c) petition is a request to correct a clerical error, inadvertence or mistake of fact. Issues involving construction of law or issues which are not obvious from documentary evidence cannot be addressed with a petition. The petition must be filed within one year after the date of liquidation or

exaction. 520(c) petitions are filed in the form of a letter, or electronically through ABI. For more information, refer to Part 173 of the Customs Regulations.

520(d) Petition

A 520(d) petition is a request for liquidation or reliquidation to obtain a refund of duties when a claim for preferential tariff treatment under the North American Free Trade Agreement (NAFTA) was not made at the time of entry. These petitions must be filed within one year after the date of importation. 520(d) petitions are filed in the form of a letter, or electronically through ABI. For more information, refer to Part 181.31 of the Customs Regulations.

520(a)(4) Administrative Refund

Administrative refunds and supplemental information letters (described below) are not protests or petitions in the traditional sense. They are included here for informational purposes only, and are not subject to the procedures identified in this pipeline.

A 520(a)(4) administrative refund is a request for relief prior to liquidation. It is typically used when an entry cannot be liquidated, such as those suspended from liquidation for dumping or countervailing duty. Relief may be granted only for clerical errors. Inadvertence, mistake of fact, or construction of the law cannot be addressed under this provision. If an entry is scheduled to liquidate in 30 days or less, the request will be returned to the filer to be addressed under the protest provision.

Supplemental Information Letter

A Supplemental Information Letter is a request for relief on an entry scheduled for a future no-change liquidation. This program was created by Headquarters to reduce the waiting time for requesting relief after Customs modified the no-change liquidation cycle from 90 to 314 days. 520(a)(4) requests and Supplemental Information Letters are filed on paper. They cannot be submitted electronically.

Filing requirements for administrative refunds and supplemental information letters can be found in Chicago Pipeline No. 97-26, Supplemental Information Letters, dated September 23, 1997.

PARTIES INVOLVED IN PROTESTS & PETITIONS

Customs categorizes the involved parties as the protestant, protest filer, and refund care/of, as described below.

Protestant is the party who is challenging the Customs decision.

Protest Filer may be the same party as the protestant, or may be the protestant's authorized agent (e.g. broker or attorney).

Refund Care/of is the party to whom any refunds with respect to the entry under protest should be mailed.

FILING PROCEDURES

Filing location. Protests and petitions are normally filed with the Port Director whose decision is being challenged. If filed in the wrong port, the protest or petition will be returned to the filer for submission to the proper location. This may affect the timeliness of the filing.

Assignment of unique number. Upon receipt, the protest or petition is input into Customs computer system, assigned a unique number, and a copy returned to the filer. 520(c) petitions filed within 90 days of liquidation will be treated as protests under Section 514, even if not filed on Customs Form 19. Receipt copies for these petitions will be annotated with "This document is being processed as a protest filed under 19 U.S.C. 1514 and Part 174 C.R."

Untimely filings. If the protest or petition is filed late, it will be denied immediately without regard to the substance of the claim. If filed prematurely (prior to liquidation), the protest or petition will be returned to the filer.

Missing/Incorrect Data. If identifying information is missing or incorrect, such as an incorrect entry number, the filer will be notified. If the needed information is not provided within 30 days, the protest or petition will be processed based on the available information, often resulting in a denial.

Missing entries. If an entry cannot be located, or if a paperless summary was not submitted with the protest, the filer will be notified. If the requested entry summary is not received within 30 days, the protest or petition may be denied with respect to the entry summaries not provided.

Amendments. A protest or petition may be amended at any time prior to the expiration of the 90-day or one-year filing period, respectively. The amendment may assert additional claims pertaining to the decision being challenged, or may challenge an additional decision relating to the same category of merchandise.

Additional Arguments. Additional grounds or arguments may be submitted for consideration at any time prior to disposition of the protest or petition.

Decision. After review of the protest or petition, Customs notifies the filer or designated party of the decision by mail or electronically.

APPLICATION FOR FURTHER REVIEW

An application for further review in lieu of review by the port director may be filed at any time during the 90 day filing period for a 514 protest. AFRs will only be approved when the decision against which the protest was filed:

- a. Is alleged to be inconsistent with a ruling of the Commissioner of Customs or his designee, or with a decision made in any port with respect to the same or substantially similar merchandise;

- b. Is alleged to involve questions of law or fact which have not been ruled upon by the Commissioner of Customs or his designee or by the Customs courts;
- c. Involves matters previously ruled upon by the Commissioner of Customs or his designee or by the Customs courts but facts are alleged or legal arguments presented which were not considered at the time of the original ruling; or
- d. Is alleged to involve questions which the headquarters office, U.S. Customs Service, refused to consider in the form of a request for internal advice pursuant to Section 177.11(b)(5), Customs Regulations.

A justification for further review, clearly citing one or more of the criteria mentioned above, must be included in the application. The AFR boxes on Customs Form 19 should not be filled in unless the protestant is actually requesting further review.

ACCELERATED DISPOSITION

Requests for accelerated disposition can be made any time after 90 days from the filing of a 514 protest. The request must be filed via certified mail, or electronically via ABI. The protest shall be reviewed within 30 days of the date of the request. If the protest is not reviewed within 30 days, it shall be deemed denied. This means that even if the protest would have been allowed, but the 30-day deadline is not met, the protest is denied.

FILING TIPS

Send all protests and petitions to the Protest & Files Unit at the Customhouse. Requests directed to the wrong office are delayed.

Do not combine liquidated and unliquidated entries. If an entry is scheduled for a future liquidation, it is **not** liquidated. Refer to Pipeline No. 97-26, dated September 23, 1997, regarding the use of Supplemental Information Letters for entries scheduled for a future no-change liquidation.

Limit each protest or petition to no more than ten entries whenever possible.

The importer name on the protest or petition should match the name and number on the entry. Large companies have different divisions and importer number suffixes.

Do not send in duplicate requests. If you did not receive a numbered receipt copy from the Protest & Files Unit, call the unit (312) 353-6112 for assistance.

If the refund is to be mailed in care/of the importer's agent, be sure to include the IR number of the agent in block 11 (December 4, 1995 edition) of Customs Form 19.

CONTENT TIPS FOR PROTESTS

The filer has 90 days to perfect a protest. Customs is not obligated to request supporting documentation or clarification after the submission of the protest. The following tips on the content of protests may be beneficial for all protest filers. Please use this information as a guide to assist you in preparing a protest.

Customs Form 19 is to be submitted in quadruplicate pursuant to 19 C.F.R.174.12(b) of the Customs Regulations. Supporting documentation should also be submitted in quadruplicate.

Value Issues

Issues involving corrected invoices, terms of sale errors, any other deductions to the price actually paid or payable should include proof of payment between the buyer and seller of the goods. Examples of proof of payment include: debit memos for letters of credit, copies of bank drafts, documentation showing the amount of wire transfers, etc. If payment of goods is included in a multiple listing of purchase orders, documentation showing the purchase orders, invoices, and payment applicable will be acceptable.

Issues involving buying or selling commissions should include copies of the buying or selling agent agreement.

The aforementioned documentation is not necessary for currency conversions.

Classification Issues

Examples of supporting information for classification issues include samples, brochures, schematics, photographs and descriptive literature.

Please note that for U.S. fabricated components assembled abroad claims, please provide the importer's affidavit and the Foreign Assembler's declaration with the protest package. For repair claims, please submit the repair affidavit.

PURSUING DENIALS

Denials of Section 514 protests can be further addressed by the protestant by filing suit against Customs in the U.S. Court of International Trade within 180 days of the notice of denial. Customs is notified of this action through a summons issued by the court. Customs must then forward the protest and all associated materials, including the entries, to the court.

Denials of petitions under Section 520(c) can be protested under Section 514 within 90 days of denial. However, the **only** issue that can be protested is the denial of the petition. No additional arguments can be made.

Supplemental Information Letters are not protests or petitions, and as such do not affect the filer's right to file a protest within 90 days after liquidation if the requested refund is not agreed to by Customs.

MOD ACT CHANGES

The Customs modernization legislation included certain further administrative action on protests, as described below.

AFR denials. If an application for further review is denied and the protestant believes the denial was erroneous, improper, or done without due authority, the protestant has 60 days from the notice of the AFR denial to request a review of such denial. 19 U.S.C. 1515(c)

Protest denials. If a protest is timely and properly filed, but is denied contrary to proper instructions, Customs may void the denial of a protest. This may be done on Customs' own initiative, or pursuant to a written request by the protestant filed with the appropriate port director within 90 days after the date of protest denial. 19 U.S.C. 1515(d)

EXPEDITED PROCESSING

Abolishment of Expedited Processing. The Port of Chicago implemented a local program in 1993 to expedite the processing of protests and petitions involving routine or minor errors (see Pipeline Nos. 93-09 and 94-05, dated May 17, 1993 and January 14, 1994, respectively). This program is hereby abolished due to a combination of non-participation and numerous filing errors.

REVIEWS BY ENTRY SPECIALISTS

Protests and petitions involving the following issues are normally reviewed by Entry Specialists, rather than the commodity teams:

1. Duplicate entry/entry summaries
2. Errors in currency conversions
3. Incorrect calculation or payment of the merchandise processing fee or the harbor maintenance fee.

In order to properly route protests and petitions to the correct reviewing team, we recommend the filer clearly indicate at the beginning of the narrative that one of the above issues is being addressed.

SUPERSEDED MATERIAL

Chicago Pipeline No. 94-05, entitled Protest, Petition and Administrative Refund Procedures, dated January 14, 1994, is hereby superseded.

Questions concerning this pipeline should be referred to the Protest & Files Unit at (312) 353-6112.

Kevin Weeks

Port Director