

### Subpart C—Review and Disposition of Protests

#### § 174.21 Time for review of protests.

(a) *In general.* Except as provided in paragraph (b) of this section, the port director shall review and act on a protest filed in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), within 2 years from the date the protest was filed. If several timely filed protests are treated as part of a single protest pursuant to § 174.15, the 2-year period shall be deemed to run from the date the last such protest was filed in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514).

(b) *Protests relating to exclusion of merchandise.* If the protest relates to an administrative action involving exclusion of merchandise from entry or delivery under any provision of the Customs laws, the port director shall review and act on a protest filed in accordance with section 514(a)(4), Tariff Act of 1930, as amended (19 U.S.C. 1514(a)(4)), within 30 days from the date the protest was filed. Any protest filed pursuant to this paragraph shall clearly so state on its face. Any protest filed pursuant to this paragraph which is not allowed or denied in whole or in part before the 30th day after the day on which the protest was filed shall be treated as having been denied on such 30th day for purposes of 28 U.S.C. 1581.

[T.D. 74-37, 39 FR 2470, Jan. 22, 1974, as amended by T.D. 99-65, 64 FR 43612, Aug. 11, 1999]

#### § 174.22 Accelerated disposition of protest.

(a) *Request for accelerated disposition.* Accelerated disposition of a protest filed in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) may be obtained at any time after 90 days from the filing of such protest, by filing by registered or certified mail a written request for accelerated disposition with the port director to whom the protest was addressed.

(b) *Contents of request.* A request for accelerated disposition of protest shall contain the following information:

(1) The name, address, and importer number of the protestant, i.e., the im-

porter of record or consignee, and the name and address of his agent or attorney if filed by one of these; and

(2) The date of filing and number of the protest for which accelerated disposition is requested.

(c) *Review following request.* The port director shall review the protest which is the subject of the request within 30 days from the date of mailing of a request for accelerated disposition filed in accordance with the provisions of this section, and may allow or deny the protest in whole or in part.

(d) *Failure to allow or deny protest within 30-day period.* If the port director fails to allow or deny a protest which is the subject of a request for accelerated disposition within 30 days from the date of mailing of such request, the protest shall be deemed to have been denied at the close of the 30th day following such date of mailing.

(e) *Multiple protests.* If several protests by different persons are timely filed and treated as part of a single protest pursuant to § 174.15, a request for accelerated disposition filed by any one of the protesting parties shall be treated as a request for accelerated disposition by all the parties.

#### § 174.23 Further review of protests.

A protesting party may seek further review of a protest in lieu of review by the port director by filing, on the form prescribed in § 174.25, an application for such review within the time allowed and in the manner prescribed by § 174.12 for the filing of a protest. The filing of an application for further review shall not preclude a preliminary examination by the port director whose decision is the subject of the protest for the purpose of determining whether the protest may be allowed in full. If such preliminary examination indicates that the protest would be denied in whole or in part by the port director in the absence of an application for further review, however, he shall forward the protest and application for consideration in accordance with § 174.26.

#### § 174.24 Criteria for further review.

Further review of a protest which would otherwise be denied by the port director shall be accorded a party filing an application for further review

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which meets the requirements of § 174.25 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 at 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, United States Customs Service, refused to consider in the form of a request for internal advice pursuant to § 177.11(b)(5) of this chapter.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 71-133, 36 FR 8732, May 12, 1971; T.D. 75-186, 40 FR 31928, July 30, 1975]

## § 174.25 Application for further review.

(a) *Form and number of copies.* An application for further review may be filed on the same Customs Form 19 used for filing the protest for which further review is requested, or on a separate Customs Form 19. In either case, the Customs Form 19 shall be filed in quadruplicate. If a fifth copy of the application is presented for the purpose of having recorded thereon the date of its receipt, such information shall be recorded thereon and the fifth copy shall be returned to the person filing the application.

(b) *Contents.* An application for further review shall contain the following information:

(1) Information identifying the protest to which it applies and the protesting party and his importer number;

(2) Allegations that the protesting party:

(i) Has not previously received an adverse administrative decision from the Commissioner of Customs or his designee nor has presently pending an ap-

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plication for an administrative decision on the same claim with respect to the same category of merchandise; and

(ii) Has not received a final adverse decision from the Customs courts on the same claim with respect to the same category of merchandise and does not have an action involving such a claim pending before the Customs courts.

(3) A statement of any facts or additional legal arguments, not part of the record, upon which the protesting party relies, including the criterion set forth in § 174.24 which justifies further review. A showing of facts that support the allegation of a criterion set forth in § 174.24(c) will constitute a ground for the granting of further review in circumstances where the applicant's inability to affirmatively make the allegations described in paragraph (b)(2) of this section would otherwise result in its denial.

[T.D. 70-81, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 78-99, 43 FR 13062, Mar. 29, 1978]

## § 174.26 Review of protest after application for further review.

(a) *Protest allowed.* If upon examination of a protest for which an application for further review was filed the port director is satisfied that the claim is valid, he shall allow the protest.

(b) *Other protests.* If upon examination of a protest for which an application for further review was filed the port director decides that the protest in his judgment should be denied in whole or in part, he shall forward the application together with the protest and appropriate documents to be reviewed as follows:

(1) A protest shall be reviewed by the Commissioner of Customs or his designee under Customs Delegation Order No. 1 (Revision 1), T.D. 69-126 (34 FR 8208), as amended from time to time, if the protest and application for review raise an issue involving either:

(i) Lack of uniformity of treatment;

(ii) The existence of an established and uniform practice;

(iii) The interpretation of a court decision or ruling of the Commissioner of Customs or his designee; or

(iv) Questions which have not been the subject of a Headquarters, U.S.