

PART 174—PROTESTS

Sec.

174.0 Scope.

Subpart A—General Provisions

- 174.1 Definitions.
 174.2 Applicability of provisions.
 174.3 Power of attorney to file protest.

Subpart B—Protests

- 174.11 Matters subject to protest.
 174.12 Filing of protests.
 174.13 Contents of protest.
 174.14 Amendment of protests.
 174.15 Consolidation of protests filed by different parties.
 174.16 Limitation on protests after reliquidation.

Subpart C—Review and Disposition of Protests

- 174.21 Time for review of protests.
 174.22 Accelerated disposition of protest.
 174.23 Further review of protests.
 174.24 Criteria for further review.
 174.25 Application for further review.
 174.26 Review of protest after application for further review.
 174.27 Disposition after further review.
 174.28 Consideration of additional arguments.
 174.29 Allowance or denial of protests.
 174.30 Notice of denial of protest.
 174.31 Judicial review of denial of protest.
 174.32 Publication.

AUTHORITY: 19 U.S.C. 66, 1514, 1515, 1624.

Section 174.21 also issued under 19 U.S.C. 1499.

SOURCE: T.D. 70-181, 35 FR 13429, Aug. 22, 1970, unless otherwise noted.

§ 174.0 Scope.

This part deals with the administrative review of decisions of the port director, including the requirements for the filing of protests against such decisions, amendment of protests, review and accelerated disposition, and provisions dealing with further administrative review. Provisions applicable to Canadian and Mexican exporters and producers regarding administrative review and appeal of adverse marking decisions under the North American Free Trade Agreement are contained in part 181 of this chapter.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 94-1, 58 FR 69472, Dec. 30, 1993]

Subpart A—General Provisions**§ 174.1 Definitions.**

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

Further review. “Further review” means review of the decision which is the subject of the protest by Customs officers on a level higher than the district, and in Region II by Customs officers who did not participate directly in the decision which is the subject of the protest.

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 95-77, 60 FR 50020, Sept. 27, 1995]

§ 174.2 Applicability of provisions.

(a) *In general.* The provisions of this part shall be applicable to protests against decisions involving:

(1) Articles excluded from entry or entered or withdrawn from warehouse for consumption on or after October 1, 1970;

(2) Articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, for which appraisal has not become final by October 1, 1970;

(3) Articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, for which the appraisal has become final but with respect to which the entry has not been liquidated prior to October 1, 1970;

(4) Articles entered or withdrawn from warehouse for consumption with respect to which the entry has been liquidated prior to October 1, 1970, if

(i) The time for filing a protest has not expired and a protest has not been filed prior to October 1, 1970; or

(ii) A protest has been filed and has not been disallowed in whole or in part before October 1, 1970; or

(5) Articles excluded from entry before October 1, 1970, with respect to which

(i) The time for filing a protest has not expired and a protest has not been filed prior to October 1, 1970; or

(ii) A protest has been filed and has not been disallowed in whole or in part before October 1, 1970.

(b) *Limitation*—(1) *Appraisal not final.* When the appraisal of articles entered or withdrawn from warehouse for consumption prior to October

1, 1970, is not final by October 1, 1970, because an appeal for reappraisal was timely filed prior to such date, the provisions of this part relating to protests shall be applicable to a protest filed after the court's decision on the appeal to reappraisal has become final. Such protest shall not include issues which were raised or could have been raised on the appeal for reappraisal.

(2) *Appraisal final.* When the appraisal of articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, has become final prior to October 1, 1970, but the entry has not been liquidated by such date, a protest filed in accordance with the provisions of this part after such liquidation shall not include issues which were raised or could have been raised on an appeal to reappraisal before the appraisal became final.

(3) *Protest not disallowed.* When a protest filed prior to October 1, 1970, has not been disallowed in whole or in part before such date, the provisions of this part shall be applicable to such protests. The time within which any action must be taken under the provisions of this part with respect to such a protest shall commence on the date the protest was in fact filed.

[T.D. 70-181, 35 FR, 13429, Aug. 22, 1970, as amended by T.D. 71-60, 36 FR 3116, Feb. 18, 1971]

§ 174.3 Power of attorney to file protest.

(a) *When required.* When a protest is filed by a person acting as agent or attorney in fact for the principal, other than an attorney at law or a customhouse broker or his authorized employee acting in his behalf, there shall have been filed or shall be filed with the protest a power of attorney which either specifically authorizes such agent to make, sign, and file the protest or grants unlimited authority to such agent. No power of attorney to file a protest shall be required in the following cases:

(1) *Attorney at law.* When the protest is filed by an attorney at law as agent or attorney for the principal, the signing of the protest as agent or attorney for the principal by the attorney at law

shall be considered a declaration by him that he is currently a member in good standing of the highest court of a State, possession, territory, commonwealth, or the District of Columbia, and has been authorized to sign and file the protest for the principal.

(2) *Customhouse broker or his employee.* When a protest is filed by a customhouse broker, or an authorized employee acting in his behalf, as agent or attorney in fact for the principal, the signing of the protest by the customhouse broker or an authorized employee in his behalf shall be considered a declaration by the broker that he or the employee signing in his behalf, is authorized to sign and file the protest for the principal. The customhouse broker shall have, however, a general power of attorney to transact Customs business for the principal on Customs Form 5291.

(b) *Execution of power of attorney—(1) Corporation.* A corporate power of attorney to file protests shall be signed by a duly authorized officer or employee of the corporation. If the port director is otherwise satisfied as to the authority of such corporate officer or employee to grant such power of attorney, compliance with the requirements of § 141.37 of this chapter may be waived with respect to such power.

(2) *Partnership.* A partnership power of attorney to file protests may be signed by one member in the name of the partnership, provided the power recites the name of all the members.

(c) *Duration.* Powers of attorney issued by a partnership shall be limited to a period not to exceed 2 years from the date of receipt thereof by the port director. All other powers of attorney may be granted for an unlimited period.

(d) *Revocation.* Any power of attorney shall be subject to revocation at any time by written notice given to and received by the port director.

(Secs. 514, 515, 46 Stat. 734, as amended; 19 U.S.C. 1514, 1515)

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 70-224, 35 FR 16243, Oct. 16, 1970; T.D. 73-175, 38 FR 17487, July 2, 1973]