

entry of merchandise which has been liquidated, or in connection with any other completed NAFTA transaction, may not be the subject of an advance ruling request under this subpart.

(4) *Oral advice.* Customs will not issue an advance ruling in response to an oral request. Oral opinions or advice of Customs personnel are not binding on Customs. However, oral inquiries may be made to Customs offices regarding existing advance rulings, the scope of such advance rulings, the types of transactions with respect to which Customs will issue advance rulings, the scope of the advance rulings which may be issued, or the procedures to be followed in submitting advance ruling requests, as prescribed in this subpart.

(5) *Who may request an advance ruling.* An advance ruling may be requested by any of the following persons (individuals, corporations, partnerships, associations, or other entities or groups) having a direct and demonstrable interest in the question or questions presented in the advance ruling request, or by the authorized agent of any such person:

- (i) An importer in the United States;
- (ii) An exporter or a producer of a good in Canada or Mexico; or
- (iii) A Canadian or Mexican producer of a material that is used in the production of a good imported into the United States, but only with regard to that material and only in regard to a matter described in paragraphs (b)(6)(i) through (v) and (vii) of this section.

(6) *Subject matter of advance rulings.* Customs shall issue advance rulings under this subpart concerning the following:

(i) Whether materials imported from a country other than the United States, Canada or Mexico and used in the production of a good undergo an applicable change in tariff classification set forth in General Note 12, HTSUS, as a result of production occurring entirely in the United States, Canada and/or Mexico;

(ii) Whether a good satisfies a regional value-content requirement under the transaction value method or under the net cost method as provided for in General Note 12, HTSUS, and in this part;

(iii) For purposes of determining whether a good satisfies a regional value-content requirement under General Note 12, HTSUS, and under this part, the appropriate basis or method for value to be applied by an exporter or a producer in Canada or Mexico, in accordance with the principles set forth in the appendix to this part, for calculating the transaction value of the good or of the materials used in the production of the good;

(iv) For purposes of determining whether a good satisfies a regional value-content requirement under General Note 12, HTSUS, and under this part, the appropriate basis or method for reasonably allocating costs, in accordance with the allocation methods set forth in the appendix to this part, for calculating the net cost of the good or the value of an intermediate material;

(v) Whether a good qualifies as an originating good under General Note 12, HTSUS, and under the appendix to this part;

(vi) Whether a good that re-enters the United States after having been exported from the United States to Canada or Mexico for repair or alteration qualifies for duty-free treatment in accordance with §181.64 of this part;

(vii) Whether the proposed or actual marking of a good satisfies country of origin marking requirements under part 134 of this chapter and under the Marking Rules set forth in part 102 of this chapter;

(viii) Whether an originating good qualifies as a good of Canada or Mexico under Annex 300-B, Annex 302.2 and Chapter Seven of the NAFTA; and

(ix) Whether a good is a qualifying good under Chapter Seven of the NAFTA.

§ 181.93 Submission of advance ruling requests.

(a) *Form.* A request for an advance ruling should be written in the English language and in the form of a letter. For any subject matter specified in §181.92(b)(6) (i), (v), (vi), (vii), (viii) or (ix) of this part, the request may be directed either to the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229, or to the National Commodity

Specialist Division, United States Customs Service, 6 World Trade Center, New York, NY 10048. For any subject matter specified in § 181.92(b)(6)(ii), (iii) or (iv) of this part, the request must be directed to the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229.

(b) *Content*—(1) *General*. Each request for an advance ruling must identify the specific subject matter under § 181.92(b)(6) of this part to which the request relates, must contain a complete statement of all relevant facts relating to the NAFTA transaction and must state that the information presented is accurate and complete. The following facts must be included: the names, addresses, and other identifying information of all interested parties (if known); the name of the port or place at which any good involved in the transaction will be imported or which will otherwise have jurisdiction with respect to the act or activity described in the transaction; and a description of the transaction itself, appropriate in detail to the subject matter of the requested advance ruling. Where the request for an advance ruling is submitted by or on behalf of the importer of the good involved in the transaction, the request must include the name and address of the exporter and, if known, producer of the good. Where the request for an advance ruling is submitted by or on behalf of the exporter of the good involved in the transaction, the request must include the name and address of the producer and importer of the good, if known. Where the request for an advance ruling is submitted by or on behalf of the producer of the good involved in the transaction, the request must include the name and address of the exporter and importer of the good, if known. In addition, where relevant to the issue that is the subject of the request for an advance ruling, and regardless of the specific nature of the advance ruling requested, the request must include:

(i) A copy of any advance ruling or other ruling with respect to the tariff classification of the good that has been issued by Customs to the person submitting the request; or

(ii) Sufficient information to enable Customs to classify the good where no

advance ruling or other ruling with respect to the tariff classification of the good has been issued by Customs to the person submitting the request. Such information includes a full description of the good, including, where relevant, the composition of the good, a description of the process by which the good is manufactured, a description of the packaging in which the good is contained, the anticipated use of the good and its commercial, common or technical designation, and product literature, drawings, photographs or schematics.

(2) *Description of transaction*—(i) *General*. The prospective Customs transaction to which the advance ruling request relates must be described in sufficient detail to permit proper application of the relevant NAFTA provisions.

(ii) *Tariff change rulings*—(A) *General*. If the transaction involves the importation of a good or material for which a ruling is requested as to whether a change in tariff classification has occurred, the request should set forth: The principal or chief use of the good or material in the United States and the commercial, common, or technical designation of the good or material; if the good or material is composed of two or more substances, the relative quantity (by both weight and by volume) and value of each substance; any applicable special invoicing requirements set forth in part 141 of this chapter (if known); and any other information which may assist in determining the appropriate tariff classification of the good or material. The advance ruling request should also note, whenever germane, the purchase price of the good or material, and its approximate selling price in the United States. Each individual request for an advance ruling must be limited to five merchandise items, all of which must be of the same class or kind. Only NAFTA tariff change rulings will be issued under this subpart. Tariff classification rulings which do not involve the application of the NAFTA shall be issued under part 177 of this chapter.

(B) *Issues involving a change in tariff classification of a material*. Where the request for the advance ruling involves the application of a rule of origin that

requires an assessment of whether materials used in the production of an imported good undergo an applicable change in tariff classification, the request must list each material used in the production of the good and must:

(1) Identify each material which is claimed to be an originating material and provide a complete description of each such material, including the basis for the claim as to originating status;

(2) Identify each material which is a non-originating material, or for which the origin is unknown, and provide a complete description of each such material, including its tariff classification if known; and

(3) Describe all processing operations employed in the production of the good, the location of each operation and the sequence in which the operations occur.

(iii) *NAFTA rulings on regional value content.* NAFTA advance ruling requests, if involving the issue of whether a good satisfies a regional value content requirement under the transaction value method or under the net cost method, or under both methods, as provided for in General Note 12, HTSUS, and in the appendix to this part, must specify each method under which eligibility is sought. Where the transaction value method is specified, the advance ruling request must include: information sufficient to calculate the transaction value of the good in accordance with schedule II of the appendix to this part with respect to the transaction of the producer of the good, adjusted to an F.O.B. basis; information sufficient to calculate the value of each non-originating material, or material the origin of which is unknown, that is used by the producer in the production of the good in accordance with the provisions of section 7 and, where applicable, section 6(10) of the appendix to this part; a complete description of each material that is claimed to be an originating material and that is used in the production of the good, including the basis for the claim as to originating status; information sufficient to permit an examination of the factors enumerated in schedule III or VIII of the appendix to this part where the advance ruling request involves an issue of whether, with respect to the good or

material under the applicable schedule, the transaction value is acceptable; and information sufficient for any other circumstance to make any determination relevant to the application of the regional value content requirement to the good. Where the net cost method is specified, the advance ruling request must include: a list of all product, period and other costs relevant to determining the total cost of the good as defined in the appendix to this part; a list of all excluded costs to be subtracted from the total cost of the good as provided in the appendix to this part; information sufficient to calculate the value of each non-originating material, or material the origin of which is unknown, that is used in the production of the good, in accordance with section 7 of the appendix to this part; the basis for any allocation of costs in accordance with schedule VII of the appendix to this part; the period over which the net cost calculation is to be made; and any other information relevant to determining the appropriate value of any cost under this part. Where the advance ruling request concerns only the calculation of an element of a regional value content formula, and with regard to the information specified in paragraphs (b)(1) through (b)(5) of this section, the request need only contain the following: the information in paragraph (b)(1), other than the information specified in paragraph (b)(1)(i) or (b)(1)(ii); the information in paragraph (b)(5); and any information in this paragraph (b)(2)(iii) which is relevant to the issue that is the subject of the request.

(iv) *NAFTA rulings on producer materials.* Where the advance ruling request involves an issue with respect to an intermediate material under Article 402(10) of the NAFTA (see section 7(4) of the appendix to this part), the request must contain sufficient information to determine the origin and value of the material in accordance with Article 402(11) of the NAFTA (see section 7(6) of the appendix to this part). Where the advance ruling request is submitted by a Canadian or Mexican producer of a material under § 181.92(b)(5)(iii) of this part and concerns only the origin of such material, and with regard to the information

specified in paragraphs (b)(1) through (b)(5) of this section, the request need only include the following: the information in paragraph (b)(1), including any information specified in paragraph (b)(1)(i) or (b)(1)(ii) which is relevant to the issue that is the subject of the request; any information in paragraph (b)(2)(ii)(B) which is relevant to the issue that is the subject of the request; a sample as provided for in paragraph (b)(3) if relevant to the issue that is the subject of the request; and the information in paragraph (b)(5).

(3) *Samples.* Each request for an advance ruling should be accompanied by photographs, drawings, or other pictorial representations of the good and, whenever possible, by a sample of the good unless a precise description of the good is not essential to the advance ruling requested. Any good consisting of materials in chemical or physical combination for which a laboratory analysis has been prepared by or for the manufacturer should include a copy of that analysis, flow charts, CAS number, and related information. A sample submitted in connection with a request for an advance ruling becomes a part of the Customs file in the matter and will be retained until the advance ruling is issued or the advance ruling request is otherwise disposed of. A sample should only be submitted with the understanding that all or a part of it may be damaged or consumed in the course of examination, testing, analysis, or other actions undertaken in connection with the advance ruling request.

(4) *Related documents.* If the question or questions presented in the advance ruling request directly relate to matters set forth in any invoice, contract, agreement, or other document, a copy of the document must be submitted with the request. (Original documents should not be submitted inasmuch as any documents or exhibits furnished with the advance ruling request become a part of the Customs file in the matter and cannot be returned.) The relevant facts reflected in any documents submitted, and an explanation of their bearing on the question or questions presented, must be expressly set forth in the advance ruling request.

(5) *Prior or current transactions—(i) General.* Each request for an advance ruling must state:

(A) Whether, to the knowledge of the person submitting the request, the same transaction or issue, or one identical to it, has ever been considered, or is currently being considered by any Customs office;

(B) Whether, to the knowledge of the person submitting the request, the issue involved has ever been, or is currently, the subject of:

(1) Review by the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom, or review by a judicial or quasi-judicial body in Canada or Mexico;

(2) A verification of origin performed in the United States, Canada or Mexico;

(3) An administrative appeal in the United States, Canada or Mexico; or

(4) A request for an advance ruling under this subpart, or a request for an advance ruling in Canada or Mexico under an appropriate authority referred to in §181.76(e)(1) of this part;

(C) The status or disposition of any matter on which an affirmative statement is made under paragraph (b)(5)(i)(B) of this section; and

(D) Whether the transaction described in the advance ruling request is but one of a series of similar and related transactions.

(ii) *Change in status of transaction.* If a prospective transaction which is the subject of an advance ruling request becomes a current transaction, the person who submitted the request shall so notify the office processing the request.

(6) *Statement of position.* If the request for an advance ruling asks that a particular determination or conclusion be reached in the advance ruling letter, a statement must be included in the request setting forth the basis for that determination or conclusion, together with a citation of all relevant supporting authority.

(7) *Privileged or confidential information.* Information which is claimed to constitute trade secrets or privileged or confidential commercial or financial information regarding the business

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transactions of private parties the disclosure of which would cause substantial harm to the competitive position of the person making the request (or of another interested party) must be identified clearly, and the reasons such information should not be disclosed, including, where applicable, the reasons the disclosure of the information would prejudice the competitive position of the person making the request (or of another interested party), must be set forth. An advance ruling will not be issued until all trade secret, privilege or confidentiality issues are resolved (see § 181.99(a)(3) of this part).

(c) *Signing; instruction as to reply.* The request for an advance ruling must be signed by a person authorized to make the request, as described in § 181.92(b)(5) of this part. An advance ruling requested by a principal or authorized agent may direct that the advance ruling letter be addressed to the other.

(d) *Requests for immediate consideration.* Customs will normally process requests for advance rulings in the order they are received and as expeditiously as possible, as specified in § 181.99 of this part. However, a request that a particular matter be given consideration ahead of its regular order, if made in writing at the time the request is submitted, or subsequent thereto, and showing a clear need for such treatment, will be given consideration as the particular circumstances warrant and permit. Requests for special consideration made by telegram or electronic transmission will be treated in the same manner as requests made by letter, but advance rulings will not be issued by telegram or electronic transmission. A telegram or electronic transmission must be followed up with a signed original within 14 calendar days of the submission of the telegram or electronic transmission. In no event can any assurance be given that a particular request for an advance ruling will be acted upon by the time requested.

[T.D. 95-68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 99-64, 64 FR 43267, Aug. 10, 1999]

§ 181.94 Nonconforming requests for advance rulings.

A person submitting a request for an advance ruling that does not comply with all of the provisions of this subpart will be so notified in writing, and the requirements that have not been met will be pointed out. Such person will be given a period of 30 calendar days from the date of the notice (or such longer period as the notice may provide) to supply any additional information that is requested or otherwise conform the advance ruling request to the requirements referred to in the notice. The Customs file with respect to advance ruling requests which are not brought into compliance with the provisions of this subpart within the period of time allowed will be administratively closed and the request removed from active consideration. A request for an advance ruling that is removed from active consideration by reason of failure to comply with the provisions of this subpart may be treated as withdrawn. A failure to comply with the provisions of this subpart will result in the rejection of the advance ruling request with the notice specifying the deficiencies.

§ 181.95 Oral discussion of issues.

(a) *General.* A person submitting a request for an advance ruling and desiring an opportunity to orally discuss the issue or issues involved should indicate that desire in writing at the time the advance ruling request is filed. Such a discussion will only be scheduled when, in the opinion of the Customs personnel by whom the advance ruling request is under consideration, a conference will be helpful in deciding the issue or issues involved or when a determination or conclusion contrary to that advocated in the advance ruling request is contemplated. Conferences are scheduled for the purpose of affording the parties an opportunity to freely and openly discuss the matters set forth in the advance ruling request. Accordingly, the parties will not be bound by any argument or position advocated or agreed to, expressly or by implication, during the conference unless either party subsequently agrees to be so