

§ 181.74 Verification visit procedures.

(a) *Written consent required.* Prior to conducting a verification visit in Canada or Mexico pursuant to § 181.72(a)(2)(iii) of this part, Customs shall obtain the written consent of the Canadian or Mexican exporter or producer of the good or producer of the material whose premises are to be visited.

(b) *Written consent procedures.* The written consent provided for in paragraph (a) of this section shall be delivered by certified or registered mail, or by any other method that generates a reliable receipt, to the Customs officer who gave the notification provided for in § 181.73 of this part.

(c) *Failure to provide written consent or to cooperate or to maintain records.* Except as otherwise provided in paragraph (d) of this section, where a Canadian or Mexican exporter or producer of a good, or a Canadian or Mexican producer of a material, has not given its written consent to a proposed verification visit within 30 calendar days of receipt of notification pursuant to § 181.73 of this part, Customs may deny preferential tariff treatment to that good, or for purposes of determining whether a good is an originating good may consider as non-originating that material, that would have been the subject of the visit, provided that, as regards the good, notice of intent to deny such treatment is given to that exporter or producer of the good and to the U.S. importer thereof prior to taking such action. A failure on the part of the Canadian or Mexican exporter or producer of a good, or on the part of the Canadian or Mexican producer of a material, to maintain records or provide access to such records or otherwise cooperate during the verification visit shall mean that the verification visit never took place and may be treated by Customs in the same manner as a failure to give written consent to a verification visit. However, in the case of a Canadian or Mexican producer of a good who is found during a verification visit to have not maintained records in accordance with the Generally Accepted Accounting Principles applied in the producer's country, Customs may deny preferential tariff treatment on the

good based solely on a failure to so maintain those records only if the producer does not conform the records to those Principles within 60 calendar days after Customs informs the producer in writing of that failure.

(d) *Postponement of visit in Canada or Mexico.* Following receipt of the notification provided for in § 181.73 of this part, the Canadian or Mexican customs administration may, within 15 calendar days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 calendar days from the date of such receipt by providing written notice of the postponement to the Customs officer who issued the notification of the verification visit, unless a longer period is requested and agreed to by Customs. Such a postponement shall not constitute a failure to provide written consent within the meaning of paragraph (c) of this section and shall not otherwise by itself constitute a valid basis upon which Customs may:

(1) Consider a material that is used in the production of a good to be a non-originating material; or

(2) Deny preferential tariff treatment to a good.

(e) *Verification visits within the United States—(1) Notification and consent procedure.* When the Canadian or Mexican customs administration intends to conduct a verification visit in the United States, notification of such intent will be given, and consent will be required, as provided for under Article 506 of the NAFTA. For purposes of the required notification to Customs, such notification shall be sent to Project North Star Coordination Center, P.O. Box 400, Buffalo, New York 14225–0400.

(2) *Postponement of visit.* Following receipt of notification from the Canadian or Mexican customs administration of its intention to conduct a verification visit in the United States, Customs may, within 15 calendar days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 calendar days from the date of such receipt by providing written notice of the postponement to the Canadian or Mexican customs administration.

(3) *Designation of observers.* A U.S. exporter or producer, including a producer of a material, whose good or material is the subject of a verification visit by the Canadian or Mexican customs administration shall be allowed to designate two observers to be present during the visit, subject to the following conditions:

(i) The U.S. exporter or producer shall not be required to designate observers;

(ii) There shall be no restriction on the class of persons that may be designated as observers by the U.S. exporter or producer;

(iii) The observers to be present are designated in the written consent to the proposed visit or subsequent thereto;

(iv) The observers do not participate in the verification visit in a manner other than as passive observers;

(v) The presence of observers shall in no way affect the right to have legal counsel or other advisors present during the visit;

(vi) There shall be no obligation on the part of the United States government or on the part of the Canadian or Mexican government to designate observers from its staff, even when the U.S. exporter or producer fails to, or specifically declines to, designate observers; and

(vii) The failure of the U.S. exporter or producer to designate observers shall not result in the postponement of the visit.

§ 181.75 Issuance of origin determination.

(a) *General.* Except in the case of a pattern of conduct within the meaning of § 181.76(c) of this part, following receipt and analysis of the results of an origin verification initiated under § 181.72(a) of this part in regard to a good imported into the United States and prior to denying preferential tariff treatment on the import transaction which gave rise to the origin verification, Customs shall provide the exporter or producer whose good is the subject of the verification with a written determination of whether the good qualifies as an originating good. Subject to paragraph (b) of this section, the written origin determination shall

be sent within 60 calendar days after conclusion of the origin verification process, unless circumstances require additional time, and shall set forth:

(1) A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;

(2) Subject to the provisions of § 181.131 of this part and except in the case of a negative origin determination where specific findings of fact cannot be made because of a failure to respond to a follow-up verification letter or questionnaire sent under § 181.72 of this part, a statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(3) With specific reference to the rules applicable to originating goods as set forth in General Note 12, HTSUS, and in the appendix to this part, the legal basis for the determination.

(b) *Negative origin determinations.* If Customs determines, as a result of an origin verification initiated under § 181.72(a) of this part, that the good which is the subject of the verification does not qualify as an originating good, the written determination required under paragraph (a) of this section:

(1) Shall be sent by certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer, if so requested by the customs administration of Canada or Mexico from which the good was exported; and

(2) Shall, in addition to the information specified in paragraph (a) of this section, set forth the following:

(i) A notice of intent to deny preferential tariff treatment on the good which is the subject of the determination;

(ii) The specific date after which preferential tariff treatment will be denied, as established in accordance with § 181.76(a)(1) of this part;

(iii) The period, established in accordance with § 181.76(a)(1) of this part, during which the exporter or producer of the good may provide written comments or additional information regarding the determination; and

(iv) A statement advising the exporter or producer of the right to file a