

MEMORANDUM D20-1-5

Ottawa, January 1, 1994

SUBJECT

**MAINTENANCE OF RECORDS AND BOOKS IN CANADA
BY EXPORTERS AND PRODUCERS**

This Memorandum provides information relative to the records and books that must be maintained in Canada by exporters and producers.

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Statutory Instrument

REGULATIONS RESPECTING THE KEEPING OF RECORDS BY PERSONS WHO EXPORT OR CAUSE TO BE EXPORTED GOODS FOR SALE OR FOR ANY INDUSTRIAL, OCCUPATIONAL, COMMERCIAL, INSTITUTIONAL OR OTHER LIKE USE, OR BY OTHER PERSONS WHO HAVE COMPLETED AND SIGNED A CERTIFICATE IN ACCORDANCE WITH SUBSECTION 97.01(1) OF THE *CUSTOMS ACT*

Short Title

1. These Regulations may be cited as the *Exporters' and Producers' Records Regulations*.

Interpretation

2. In these Regulations,

“Act” means the *Customs Act*; (*Loi*)

“advance ruling” means an advance ruling referred to in Article 509 of the NAFTA; (*décision anticipée*)

“commercial goods” means goods exported from Canada for sale or for any industrial, occupational, commercial, institutional or other like use; (*marchandises commerciales*)

“indirect materials” has the same meaning as in subsection 2(1) of the *NAFTA Rules of Origin Regulations*; (*matière indirecte*)

“materials” has the same meaning as in subsection 2(1) of the *NAFTA Rules of Origin Regulations*; (*matière*)

“producer” has the same meaning as in subsection 2(1) of the *NAFTA Rules of Origin Regulations*; (*producteur*)

“production” has the same meaning as in subsection 2(1) of the *NAFTA Rules of Origin Regulations*. (*production*)

General

3. Every person who exports or causes to be exported commercial goods and who is required by subsection 97.2(1) of the Act to keep records in respect of those commercial goods shall keep, for the period of six years following the exportation of the commercial goods, all records that relate to:

- (a) the origin, purchase, importation, costs and value of the commercial goods;
- (b) payment for the commercial goods;
- (c) the usage to which the commercial goods are put in Canada; and
- (d) the exportation of the commercial goods.

4. Every exporter of commercial goods who has completed and signed a certificate in accordance with subsection 97.01(1) of the Act and who is required by subsection 97.2(1) of the Act to keep records in respect of those commercial goods shall keep, for the period of six years following the date on which the certificate was signed, in addition to the records described in section 3:

- (a) all records that relate to an application for, or receipt of, any advance ruling by the customs administration of a NAFTA country on the origin or marking of the commercial goods; and
- (b) all written representations received from the producer of the commercial goods that state that the commercial goods meet the rules of origin set out in or contemplated by the NAFTA.

5. Every producer of commercial goods who has completed and signed a certificate in accordance with subsection 97.01(1) of the Act and who is required by subsection 97.2(1) of the Act to keep records in respect of those commercial goods shall keep, for the period of six years following the date on which the certificate was signed, all records that relate to the production of the commercial goods, including all records that relate to:

- (a) the purchase, cost and value of, and payment for, the commercial goods;
- (b) the purchase, cost and value of, and payment for, all materials and indirect materials used in the production of the commercial goods; and
- (c) an application for, or receipt of, any advance ruling by the customs administration of a NAFTA country on the origin or marking of the commercial goods or of any materials and indirect materials used in the production thereof.

6. The records referred to in section 3 to 5 may be kept on microfilm by means of any photographic or microphotographic process that is in accordance with National Standards of Canada CAN2-72.11-79, *Microfilm as Documentary Evidence*, published by the Canadian General Standards Board in August 1979, as amended from time to time.

7. The records referred to in sections 3 to 5 may be kept on machine-sensible data media if the media can be related back to the supporting source documents and are supported by a system capable of producing accessible and readable copy.

Inspection of Records

8. Every person who is required to keep records in accordance with sections 3 to 5 shall make those records available for inspection at all reasonable times by an officer of the customs administration of a NAFTA country other than Canada conducting a verification visit in accordance with Article 506 of the NAFTA and shall provide a facility for the inspection thereof.

GUIDELINES AND GENERAL INFORMATION

1. These requirements are equally applicable to both non-resident and resident exporters and producers, including persons abroad who ship to themselves from Canada. Non-resident exporters and producers generally do not maintain an office in this country but provide instructions to agents who, under authority of the exporter or producer, prepare export documentation and arrange for shipment of the goods.
2. If the exporter or producer does not maintain an office in Canada, a Customs broker, accountant, or some other authorized responsible agent may be designated by the exporter or producer to maintain the appropriate records (e.g., exporter's Certificate of Origin) on the distinct understanding that it is obligatory that the books and records required by section 97.2(1) of the *Customs Act* be maintained in Canada.
3. Requests for permission to maintain records at locations in Canada at a place other than the exporter's or producer's place of business, where only one Customs region is involved, are to be forwarded to the Manager, Operational Services, for the region concerned. Requests which involve more than one region are to be addressed to the Director, Inspection and Control Division, Ottawa, Ontario, K1A 0L5.

Record Keeping Requirements for the *North American Free Trade Agreement*

4. Persons who export or cause to be exported goods as eligible for benefits under the *North American Free Trade Agreement* are required to keep records for a period of six years following the exportation. Records relating to the origin, purchase, importation, costs and value of the goods; the Canadian usage of the goods; payment for the goods; and the exportation of the goods must be maintained. The following guidelines will assist the exporter in maintaining the appropriate records:
 - (a) Certificates of Origin;
 - (b) accounting records capable of identifying the purchase, importation, costs, value, payment and use of the commercial goods;
 - (c) transportation documents relating to the exportation of the commercial goods.
5. Persons who export and have completed a Certificate of Origin are required to keep records in respect of the goods for a period of six years following the date on which the certificate was signed, in addition to the records mentioned in paragraph 4. Records relating to the application and receipt of advance rulings and written representation obtained from the producer of the goods stating that the goods meet the rules of origin set out in NAFTA must be maintained. The following guidelines will assist the exporter in maintaining the appropriate records:
 - (a) all correspondence, requests and submissions relating to an application for, and receipt of, any advance ruling requested or issued by the the customs administration of a NAFTA country on the origin or marking of the goods;
 - (b) all correspondence, requests and written representations that are received from the producer of the goods that state the goods meet the rules of origin set out in the *North American Free Trade Agreement*.
6. Producers of goods who have completed and signed a Certificate of Origin are required to keep records in respect of the commercial goods for a period of six years following the date on which the certificate was

signed. All records that relate to the production of the commercial goods must be maintained. The following guidelines will assist the producer in maintaining the appropriate records:

- (a) accounting records that identify the source, quantity, purchase, costs, value and payment of the commercial goods;
- (b) accounting records that identify the source, quantity, purchase, costs, value, and payment of all materials and indirect materials used in the production of the commercial goods;
- (c) all correspondence, requests, and application for, or receipt of, any advance ruling by the customs administration of a NAFTA country on the origin or marking of the commercial goods or of any materials and indirect materials used in the production of the goods.

Microfilmed Records

7. In accordance with the Department's policy pertaining to the retention and disposal of records and books of account in microfilmed form, every exporter or manufacturer is required to have an acceptable microfilm program. The important factors which are necessary for the implementation of a credible program are that:

- (a) the program is authorized in writing by someone in authority in the exporter's or manufacturer's organization who confirms that the program will be part of the usual and ordinary activity of the business of the organization;
- (b) systems and procedures are established and documented;
- (c) a log will be kept showing
 - (1) the date of microfilming,
 - (2) the signatures of the persons authorizing and performing the microfilming, and
 - (3) a concise description of the records microfilmed;
- (d) an index will be maintained which will make any particular record readily available;
- (e) the microfilm records will be of commercial quality and will exhibit a high degree of legibility and readability when displayed on a microfilm reader or reproduced on paper;
- (f) a system of inspection and quality control will be established to ensure that (c), (d) and (e) above are maintained; and
- (g) equipment, in good working order, will be made available upon reasonable notification to view, or to reproduce hard copy of the microfilm.

8. Permission to microfilm books and records of account must be obtained by exporters or manufacturers from the Manager, Operational Services, in the region concerned, to ensure they can meet the standard of an acceptable microfilm program.

Electronic Data Processed Records

9. Books and records maintained in machine-sensible data medium are recognized as records and books of account, provided the medium can be related back to the supporting source documents and is supported by a system capable of producing accessible and readable copy.

Availability for Inspection and Delivery

10. Persons required to keep books and records referred to in sections 3 to 5 shall, at all reasonable times, make their records, books of account and other supporting documents available for inspection by officers of the Department of National Revenue and provide every facility necessary to inspect them.

11. The Minister may require from any person the production of any book, record, writing or other document or any information, for any purpose related to the administration or enforcement of the *Customs Act* or any other law relating to Customs, within such reasonable time as stipulated by a registered letter or a demand served personally.

Breach of Requirements

12. Where it is determined that an exporter or manufacturer has failed to comply with any or all of the requirements for the maintenance of records in Canada, the exporter or manufacturer will be requested to fulfil these requirements within a reasonable period of time. If the exporter or manufacturer does not comply with the requirements for record maintenance under subsections 97.2(1) and 97.2(2) of the *Customs Act*, the penalty provisions of section 160 or 161 of the Act may be applied.

Additional Information

13. Where the exporter or manufacturer is confronted with difficulty in adequately observing these requirements, questions may be directed to the Manager, Operational Services, of the nearest regional Customs office.

REFERENCES

EFFECTIVE DATE —

January 1, 1994

ISSUING OFFICE —

Inspection and Control Division

LEGISLATIVE REFERENCES —

Customs Act, sections 97.2(1), 97.2(2), and 160 and 161

HEADQUARTERS FILE —

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SUPERSEDED MEMORANDA “D” —

D20-1-5, December 1988

OTHER REFERENCES —

N/A