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# Title 19—Customs Duties

(This book contains parts 141 to 199)

*Part*

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# CHAPTER I—BUREAU OF CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF THE TREASURY (CONTINUED)

EDITORIAL NOTE: Nomenclature changes to chapter I appear by T.D. 95–78, 60 FR 50021, Sept. 27, 1995.


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AUTHORITY: 19 U.S.C. 66, 1448, 1484, 1624.

Subpart F also issued under 19 U.S.C. 1481;

Subpart G also issued under 19 U.S.C. 1505;

Section 141.1 also issued under 11 U.S.C. 507(a)(7)(F), 31 U.S.C. 191, 192;

Section 141.4 also issued under 19 U.S.C. 1202 (General Note 3(e); Chapter 86, Additional U.S. Note 1; Chapter 89, Additional U.S. Note 1; Chapter 98, Subchapter III, U.S. Notes 3 and 4; Harmonized Tariff Schedule of the United States), 1498;

Section 141.19 also issued under 19 U.S.C. 1485, 1486;

Section 141.20 also issued under 19 U.S.C. 1485, 1623;

Section 141.66 also issued under 19 U.S.C. 1490, 1623;

Section 141.68 also issued under 19 U.S.C. 1315;

Section 141.69 also issued under 19 U.S.C. 1315;

Section 141.88 also issued under 19 U.S.C. 1401a(d), 1402(f);

Section 141.90 also issued under 19 U.S.C. 1487;

Section 141.112 also issued under 19 U.S.C. 1564;

Section 141.113 also issued under 19 U.S.C. 1499, 1623.

SOURCE: T.D. 73–175, 38 FR 17447, July 2, 1973, unless otherwise noted.

### § 141.0 Scope.

This part sets forth general requirements and procedures for the entry of imported merchandise, except entries under carnet, and entries for transportation in bond or exportation, for foreign-trade zones, or for trade fairs, which are covered in parts 114, 18, 146, and 147 of this chapter. More specific requirements and procedures in addition to those in this part are set forth in parts 143, 144, and 145 of this chapter for consumption, appraisement and informal entries, for warehouse entries, and for mail entries.

### § 141.0a Definitions.

Unless the context requires otherwise or a different definition is prescribed, the following terms shall have the meanings indicated when used in connection with the entry of merchandise:

(a) *Entry*. ''Entry'' means that documentation required by § 142.3 of this chapter to be filed with the appropriate Customs officer to secure the release of imported merchandise from Customs custody, or the act of filing that documentation. ''Entry'' also means that documentation required by § 181.53 of this chapter to be filed with Customs to withdraw merchandise from a duty-deferral program in the United States for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico.

(b) *Entry summary*. ''Entry summary'' means any other documentation necessary to enable Customs to assess duties, and collect statistics on imported merchandise, and determine whether other requirements of law or regulation are met.

(c) *Submission*. ''Submission'' means the voluntary delivery to the appropriate Customs officer of the entry summary documentation for preliminary review or of entry documentation for other purposes.

(d) *Filing*. ''Filing'' means:

(1) The delivery to Customs of the entry documentation required by section 484(a), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)), to obtain the release of merchandise, or

(2) The delivery to Customs, together with the deposit of estimated duties, of the entry summary documentation required to assess duties, collect statistics, and determine whether other requirements of law and regulation are met, or

(3) The delivery to Customs, together with the deposit of estimated duties, of the entry summary documentation which shall serve as both the entry and the entry summary.

(e) *Presentation*. ''Presentation'' is used only in connection with quota-class merchandise and is defined in § 132.1(d) of this chapter.

(f) *Entered for consumption*. ''Entered for consumption'' means that an entry summary for consumption has been filed with Customs in proper form, with estimated duties attached. ''Entered for consumption'' also means the necessary documentation has been filed with Customs to withdraw merchandise from a duty-deferral program in the United States for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico (see § 181.53 of this chapter).

(g) *Entered for warehouse*. ''Entered for warehouse'' means that an entry summary for warehouse has been filed with Customs in proper form.

(h) *Entered temporarily under bond*. ''Entered temporarily under bond'' means that an entry summary supporting a temporary importation under

bond has been filed with Customs in proper form.

(i) *Released conditionally*. ''Released conditionally'' means any release from Customs custody before liquidation.

[T.D. 79–221, 44 FR 46816, Aug. 9, 1979, as amended by T.D. 84–213, 49 FR 41184, Oct. 19, 1984; T.D. 96–14, 61 FR 2911, Jan. 30, 1996]

## Subpart A—Liability for Duties and Requirement To Enter Merchandise

### § 141.1 Liability of importer for duties.

(a) *Time duties accrue*. Duties and the liability for their payment accrue upon imported merchandise on arrival of the importing vessel within a Customs port with the intent then and there to unlade, or at the time of arrival within the Customs territory of the United States if the merchandise arrives otherwise than by vessel, unless otherwise specially provided for by law.

(b) *Payment of duties*—(1) *Personal debt of importer*. The liability for duties, both regular and additional, attaching on importation, constitutes a personal debt due from the importer to the United States which can be discharged only by payment in full of all duties legally accruing, unless relieved by law or regulation. Payment to a broker covering duties does not relieve the importer of liability if the duties are not paid by the broker. The liability may be enforced notwithstanding the fact that an erroneous construction of law or regulation may have enabled the importer to pass his goods through the customhouse without payment. Delivery of a Customs bond with an entry is solely to protect the revenue of the United States and does not relieve the importer of liabilities incurred from the importation of merchandise into the United States.

(2) *Means of payment*. An importer or his agent may pay Customs by using any of the applicable means provided in § 24.1(a).

(3) *Methods of payment*. An importer may pay duties either:

(i) Directly to Customs whether or not a licensed customhouse broker is used; or

(ii) Through a licensed customhouse broker. When an importer uses a broker and elects to pay by check or bank draft, the importer may issue the broker either:

(A) One check or bank draft payable to the broker covering both duties and the broker's fees and charges, in which case the broker shall pay the duties to Customs on behalf of the importer, or

(B) Separate checks or bank drafts, one covering duties payable to the ''U.S. Customs Service,'' for transmittal by the broker to Customs, and the other covering the broker's fees and charges. The importer's check or bank draft for duties shall be delivered to Customs by the broker.

(c) *Claim against estate of importer*. The claim of the Government for unpaid duties against the estate of a deceased or insolvent importer has priority over obligations to creditors other than the United States. To the extent that a broker or a surety pays duties on behalf of an importer which files for bankruptcy protection, the broker or surety shall be entitled to assume the priority status of Customs under section 507(a)(7) of the Bankruptcy Code for that portion of Customs claim which the surety or broker has paid.

(d) *Lien against merchandise*. The liability for duties also constitutes a lien upon the merchandise imported which may be enforced while such merchandise is in the custody or subject to the control of the United States.

(e) *States and their instrumentalities*. Neither the States nor their instrumentalities are entitled to any constitutional exemption from the payment of Customs duties.

(f) *Unordered merchandise*. There shall be no liability for the payment of duties on the part of anyone to whom merchandise is consigned without his authority, if he refuses it. Such merchandise shall be treated as unclaimed (see part 27 of this chapter).

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 82–134, 47 FR 32419, July 27, 1982; T.D. 92–58, 57 FR 27160, June 18, 1992; T.D. 97–82, 62 FR 51770, Oct. 3, 1997]

### § 141.2 Liability for duties on reimportation.

Dutiable merchandise imported and afterwards exported, even though duty thereon may have been paid on the

first importation, is liable to duty on every subsequent importation into the Customs territory of the United States, but this does not apply to the following:

(a) Personal and household effects taken abroad by a resident of the United States and brought back on his return to this country (see § 148.31 of this chapter);

(b) Professional books, implements, instruments, and tools of trade, occupation, or employment taken abroad by an individual and brought back on his return to this country (see § 148.53 of this chapter);

(c) Automobiles and other vehicles taken abroad for noncommercial use (see § 148.32 of this chapter);

(d) Metal boxes, casks, barrels, carboys, bags, quicksilver flasks or bottles, metal drums, or other substantial outer containers exported from the United States empty and returned as usual containers or coverings of merchandise, or exported filled with products of the United States and returned empty or as the usual containers or coverings of merchandise (see § 10.7(b), (c), (d), and (e) of this chapter);

(e) Articles exported from the United States for repairs or alterations, which may be returned upon the payment of duty on the value of repairs or alterations at the rate or rates which would otherwise apply to the articles in their repaired or altered conditions (see § 10.8 of this chapter);

(f) Articles exported for exhibition under certain conditions (see §§ 10.66 and 10.67 of this chapter);

(g) Domestic animals taken abroad for temporary pasturage purposes and returned within 8 months (see § 10.74 of this chapter);

(h) Articles exported under lease to a foreign manufacturer (see § 10.108 of this chapter); or

(i) Any other reimported articles for which free entry is specifically provided.

### § 141.3 Liability for duties includes liability for taxes.

The importer's liability for duties includes a liability for any internal revenue taxes which attach upon the importation of merchandise, unless otherwise provided by law or regulation.

### § 141.4 Entry required.

(a) *General.* All merchandise imported into the United States is required to be entered, unless specifically excepted.

(b) *Exceptions.* The following are the exceptions to the general rule:

(1) The exemptions listed in General Note 3(e) to the Harmonized Tariff Schedule of the United States (HTSUS).

(2) Vessels (not including vessels classified in headings 8903 and 8907 and subheadings 8905.90.10 and 8906.00.10 or in Chapter 98, HTSUS, such as under subheadings 9804.00.35 or 9813.00.35). See also Chapter 89, Additional U.S. Note 1, HTSUS.

(3) Instruments of international traffic described in § 10.41a and § 10.41b(b) of this chapter, under the conditions provided for in those sections. See also Chapter 98, Subpart III, U.S. Notes 3 and 4, HTSUS.

(4) Railway locomotives classified in heading 8601 or 8602, HTSUS, and freight cars classified in heading 8606, HTSUS, on which no duty is owed (see paragraph (d) of this section). See Chapter 86, Additional U.S. Note 1, HTSUS; see also 19 CFR part 123 for reporting requirements for railway equipment brought into the United States from Canada or Mexico.

(c) *Undeliverable articles.* The exemption from entry for undeliverable articles under General Note 19(e), HTSUS, is subject to the following conditions:

(1) The person claiming the exemption must submit a certification (documentary or electronic) that:

(i) The merchandise was intended to be exported to a foreign country;

(ii) The merchandise is being returned within 45 days of departure from the United States;

(iii) The merchandise did not leave the custody of the carrier or foreign customs;

(iv) The merchandise is being returned to the United States because it was undeliverable to the foreign consignee; and

(v) The merchandise was not sent abroad to receive benefit from, or fulfill obligations to, the United States as a result of exportation.

(2) Upon request by CBP, the person claiming the exemption shall provide

evidence required to support the claim for exemption.

(d) *Railway locomotives and freight cars.* For railway locomotives and freight cars described in Additional U.S. Note 1 of Chapter 86, HTSUS, to be excepted and released in accordance with paragraph (b)(4) of this section, the importer must first file a bond on CBP Form 301, containing the bond conditions set forth in either § 113.62 or 113.64 of this chapter.

(e) *Informal entry.* Merchandise qualifying for informal entry by regulation, pursuant to 19 U.S.C. 1498, is exempt from formal entry under 19 U.S.C. 1484 and this part, but must be entered as required under applicable regulations (see part 143, subpart C, and §§ 10.151 through 10.153, 128.24, 145.31, 145.32, 148.12, 148.13, 148.51, and 148.62 of this chapter).

[T.D. 94–51, 59 FR 30295, June 13, 1994; T.D. 95–29, 60 FR 18348, Apr. 11, 1995; 60 FR 21043, May 1, 1995; T.D. 97–82, 62 FR 51770, Oct. 3, 1997; T.D. 00–81, 65 FR 68887, Nov. 15, 2000; T.D. 02–14, 67 FR 15098, Mar. 29, 2002; T.D. 02–28, 67 FR 36097, May 23, 2002; CBP Dec. 04–28, 69 FR 52600, Aug. 27, 2004; CBP Dec. 05–31, 70 FR 53062, Sept. 7, 2005]

### § 141.5 Time limit for entry.

Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond. Merchandise for which timely entry is not made will be treated in accordance with § 4.37 or § 122.50 or § 123.10 of this chapter.

[T.D. 02–65, 67 FR 68035, Nov. 8, 2002]

## Subpart B—Right To Make Entry and Declarations on Entry

### § 141.11 Evidence of right to make entry for importations by common carrier.

(a) *Merchandise not released directly to carrier.* Except where merchandise is released directly to the carrier in accordance with paragraph (b) of this section, one of the following types of evidence of the right to make entry shall be filed in connection with the entry of merchandise imported by common carrier:

(1) A bill of lading or air waybill, presented by the holder thereof, properly endorsed when endorsement is required under the law. A nonnegotiable bill of lading, or air waybill, may not be endorsed by the named consignee to give someone else the right to make entry. If the person making entry intends to use the original bill of lading or air waybill to obtain a duplicate bill of lading, duplicate air waybill, or carrier's certificate from the carrier, the exchange shall be made before the entry is filed, and the duplicate bill of lading, duplicate air waybill, or carrier's certificate shall be used to make entry in accordance with paragraph (a)(3) or (4) of this section. For purposes of this part, the rights of the consignor relating to an air waybill as prescribed by the Warsaw Convention (49 Stat. 3017) shall be protected.

(2) An extract from a bill of lading or air waybill certified to be genuine by the carrier bringing the merchandise to the port of entry. Customs officers shall not certify extracts from bills of lading or air waybills.

(3) A certified duplicate bill of lading or air waybill, with the carrier's certificate being in substantially the following form:

DUPLICATE BILL OF LADING OR AIR WAYBILL CERTIFICATE

_____, 19—

The undersigned carrier, bringing the within-described merchandise to this port, hereby certifies that this signed copy of the bill of lading or air waybill is genuine and may be used for the purpose of making Customs entry as provided for in section 484(i), Tariff Act of 1930.

_____
(Name of carrier)

_____
(Agent)

(4) A carrier's certificate, which may be executed on the official entry form, or, in appropriate cases, by means of a rubber-stamped or typewritten combined carrier's certificate and release order with one signature on a copy of the bill of lading, airway bill, shipping receipt, or other comparable document. The rubber-stamped or typewritten certificate shall be in substantially the following form, which may be varied to

include any of the qualifications on release shown in § 141.111(d):

Date _____

The undersigned carrier, to whom or upon whose order the articles described herein or in the attached document must be released, hereby certifies that the consignee named in this document is the owner or consignee of such articles within the purview of section 484(h), Tariff Act of 1930. In accordance with the provisions of section 484(j), Tariff Act of 1930, authority is hereby given to release the articles covered by the aforementioned statement to such consignee.

_____
(Name of carrier)

_____
(Agent)

(5) A blanket carrier's release order on an appropriately modified bill of lading or air waybill covering any or all shipments which will arrive at the port on the carrier's conveyance during the period specified in the release order.

(6) A shipping receipt or other document presented in lieu of a bill of lading or air waybill shall be accepted as authority for making entry only if it bears a carrier's certificate in accordance with paragraph (a)(4) of this section, or if entry is made by the actual consignee in person or in his name by a duly authorized agent.

(b) *Merchandise released directly to carrier*. Where, in accordance with subsection (j) of section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), merchandise is released from Customs custody (either under immediate delivery procedures in accordance with the provisions of subpart C of part 142 of this chapter, or after an entry has been filed in accordance with subpart A of part 142 of this chapter, or after an entry summary, which shall serve as both the entry and entry summary has been filed with estimated duties attached where appropriate in accordance with subpart B of part 142 of this chapter), to the carrier by whom the merchandise was brought to the port, the delivery of the merchandise by the carrier to the person filing the entry summary with estimated duties attached shall be deemed to be the certification required by subsection (h), section 484, Tariff Act of 1930. Customs responsibility under this optional entry procedure is limited to the collection of duties, and constitutes no representation whatsoever regarding the right of any person to obtain possession of the merchandise from the carrier. Consequently, no Customs official shall be liable to any person in respect to the delivery of merchandise released from Customs custody in accordance with the provisions of this paragraph.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 78–394, 43 FR 49787, Oct. 25, 1978; T.D. 82–224, 47 FR 53727, Nov. 29, 1982; T.D. 87–75, 52 FR 20068, May 29, 1987; T.D. 90–87, 55 FR 47052, Nov. 9, 1990; T.D. 97–82, 62 FR 51770, Oct. 3, 1997]

### § 141.12 Right to make entry of importations by other than common carrier.

When merchandise is not imported by a common carrier, possession of the merchandise at the time of arrival in the United States shall be deemed sufficient evidence of the right to make entry.

### § 141.13 Right to make entry of abandoned or salvaged merchandise.

Underwriters of abandoned merchandise or salvors of merchandise saved from a wreck who are unable to produce a bill of lading, air waybill, certified duplicate bill of lading or air waybill, or carrier's certificate, shall produce evidence satisfactory to the port director of their right to act.

[T.D. 78–394, 43 FR 49787, Oct. 25, 1978]

### § 141.14 Deceased or insolvent consignees and court-appointed administrators.

The executor or administrator of the estate of a deceased consignee, the receiver or other legal representative of an insolvent consignee, or the representative appointed in any action or proceeding at law to act for a consignee shall not be permitted to make entry unless he produces a duly endorsed bill of lading or air waybill, a carrier's certificate, or a duplicate bill of lading or air waybill, executed in accordance with subsections (h) or (i) of section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), showing him to be the consignee for Customs purposes.

[T.D. 78–394, 43 FR 49787, Oct. 25, 1978]

### § 141.15 Bond for production of bill of lading or air waybill.

(a) *When appropriate.* If the person desiring to make entry is unable to present a bill of lading, air waybill, or other evidence of right to make entry in accordance with § 141.11, the port director may accept a bond for the production of a bill of lading or air waybill under the provisions of section 484(c), Tariff Act of 1930, as amended (19 U.S.C. 1484(c)). The bond shall be for the production of a bill of lading or air waybill, unless the person making entry intends to produce a carrier's certificate or certified duplicate bill of lading or air waybill. In that case, no bond is required because section 484(c) does not apply to entries made on a carrier's certificate or certified duplicate bill of lading or air waybill. If the port director is in doubt as to the propriety of accepting entry on a bond for the production of a bill of lading or air waybill, he shall request authority to do so from the Commissioner of Customs.

(b) *Form.* The bond shall be on Customs Form 301 and contain the bond conditions set forth in § 113.69 of this chapter.

(c) *Documents acceptable to satisfy bond.* A bond given for the production of a bill of lading or air waybill shall be considered as canceled upon production of a bill of lading or air waybill, and may be considered as satisfied but shall not be canceled upon the production of a carrier's certificate or certified duplicate bill of lading or air waybill.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978; T.D. 84–213, 49 FR 41184, Oct. 19, 1984]

### § 141.16 Disposition of documents.

(a) *Bill of lading or air waybill.* When the return of the bill of lading or air waybill to the person making entry is requested in accordance with section 484(j), Tariff Act of 1930, as amended (19 U.S.C. 1484(j)), the port director shall obtain a receipt showing sufficient data from the bill of lading or air waybill to completely identify it and enable the auditor to verify the production of proper evidence of the right to make entry. The receipt shall also show any freight charges and weights that appear on the bill of lading or air waybill. The port director shall then return the bill of lading or air waybill to the person making entry with a notation thereon to the effect that entry has been made for the merchandise.

(b) *Other documents.* When any of the other documents specified in § 141.11(a)(2) through (6) is used in making entry, it shall be retained by the port director as evidence that the person making entry is authorized to do so.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978]

### § 141.17 Entry by nonresident consignee.

A nonresident consignee has the right to make entry, but any bond taken in connection with the entry shall have a resident corporate surety or, when a carnet issued under part 114 of this chapter is used as an entry form, an approved resident guaranteeing association.

### § 141.18 Entry by nonresident corporation.

A nonresident corporation (*i.e.*, one which is not incorporated within the Customs territory of the United States or in the Virgin Islands of the United States) shall not enter merchandise for consumption unless it:

(a) Has a resident agent in the State where the port of entry is located who is authorized to accept service of process against such corporation; and

(b) Files a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter having a resident corporate surety to secure the payment of any increased and additional duties which may be found due.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 84–213, 49 FR 41184, Oct. 19, 1984]

### § 141.19 Declaration of entry.

(a) *Declaration by consignee.* The consignee in whose name an entry is made under the provisions of section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), shall execute the declaration specified in section 485(a), Tariff Act of 1930, as amended (19 U.S.C. 1485(a)) on:

(1) The entry summary for merchandise entered for consumption, for warehouse, or for temporary importation under bond, or

(2) The rewarehouse or the bonded manufacturing warehouse entry.

The declaration need not be under oath. When the consignee is a partnership, any partner may execute the declaration, and when the consignee is a corporation any officer of the corporation may execute the declaration.

(b) *Declaration by agent of consignee*—(1) *Authorized agent with knowledge of the facts.* When entry is made in a consignee's name by an agent who has knowledge of the facts and who is authorized under a proper power of attorney by that consignee to make declarations in accordance with section 485(f), Tariff Act of 1930, as amended (19 U.S.C. 1485(f)), a declaration on the entry or entry summary executed by that agent is sufficient and no bond to produce a declaration of the consignee is required.

(2) *Other agents.* When entry is made in a consignee's name by an agent who does not meet the qualifications in paragraph (b)(1) of this section either:

(i) A declaration of the consignee on Customs Form 3347–A shall be filed with the entry documentation or entry summary or

(ii) A charge for the production of the declaration shall be made against the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. No separate bond of the agent shall be required, since a charge against the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter satisfies the requirements of section 485(c), Tariff Act of 1930, as amended (19 U.S.C. 1485(c)).

(3) *Nominal consignee.* A nominal consignee who makes entry in his own name is not considered an agent within the purview of section 485(c), Tariff Act of 1930, as amended (19 U.S.C. 1485(c)), and he shall execute a declaration in accordance with paragraph (a) of this section.

(c) *Books, newspapers, and periodicals.* In the case of successive importations of books, magazines, newspapers, and periodicals within the scope of section 485(b), Tariff Act of 1930, as amended (19 U.S.C. 1485(b)), one declaration filed at the time of arrival of the first importation will be sufficient.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 79–221, 44 FR 46816, June 4, 1979; T.D. 84–213, 49 FR 41184, Oct. 19, 1984]

### § 141.20 Actual owner's declaration and superseding bond of actual owner.

(a) *Filing*—(1) *Declaration of owner.* A consignee in whose name an entry summary for consumption, warehouse, or temporary importation under bond is filed, or in whose name a rewarehouse entry or a manufacturing warehouse entry is made, and who desires, under the provisions of section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)), to be relieved from statutory liability for the payment of increased and additional duties shall declare at the time of the filing of the entry summary or entry documentation, as provided in § 141.19(a), that he is not the actual owner of the merchandise, furnish the name and address of the owner, and file with the port director within 90 days from the time of entry (see § 141.68) a declaration of the actual owner of the merchandise acknowledging that the actual owner will pay all additional and increased duties. The declaration of owner shall be filed on Customs Form 3347.

(2) *Bond of actual owner.* If the consignee desires to be relieved from contractual liability for the payment of increased and additional duties voluntarily assumed by him under the single-entry bond which he filed in connection with the entry documentation and/or entry summary, or under his continuous bond against which the entry and/or entry summary is charged, he shall file a bond of the actual owner on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, with the port director within 90 days from the time of entry.

(b) *Appropriate party to execute and file.* Neither the declaration of the actual owner nor the bond of the actual owner shall be accepted unless executed by the actual owner or his duly authorized agent, and filed by the nominal consignee or his duly authorized agent.

(c) *Nonresident actual owner*. If the actual owner is a nonresident, the actual owner's declaration shall not be accepted as compliance with section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)), unless there is filed therewith the owner's bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, with a resident corporate surety.

(d) *Filing of declaration of owner for purposes other than relief from liability*. Nothing in this section shall be construed to prevent the nominal consignee from filing the actual owner's declaration without the superseding bond for purposes other than relief from statutory liability for the payment of increased and additional duties under the provisions of section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)).

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 74–212, 39 FR 28420, Aug. 7, 1974; T.D. 79–221, 44 FR 46816, Aug. 9, 1979; T.D. 84–213, 49 FR 41184, Oct. 19, 1984]

## Subpart C—Powers of Attorney

### § 141.31 General requirements and definitions.

(a) *Limited or general power of attorney*. A power of attorney may be executed for the transaction by an agent or attorney of a specified part or all the Customs business of the principal.

(b) [Reserved]

(c) *Minor agents*. A power of attorney to a minor shall not be accepted.

(d) *Definitions of resident and nonresident*. For the purposes of this subpart, ''resident'' means an individual who resides within, or a partnership one or more of whose partners reside within, the Customs territory of the United States or the Virgin Islands of the United States, or a corporation incorporated in any jurisdiction within the Customs territory of the United States or in the Virgin Islands of the United States. A ''nonresident'' means an individual, partnership, or corporation not meeting the definition of ''resident.''

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 84–93, 49 FR 17754, Apr. 25, 1984]

### § 141.32 Form for power of attorney.

Customs Form 5291 may be used for giving power of attorney to transact Customs business. If a Customs power of attorney is not on a Customs Form 5291, it shall be either a general power of attorney with unlimited authority or a limited power of attorney as explicit in its terms and executed in the same manner as a Customs Form 5291. The following is an example of an acceptable general power of attorney with unlimited authority:

KNOW ALL MEN BY THESE PRESENTS, THAT

_____
(Name of principal)

_____ ,
(State legal designation, such as corporation, individual, etc.) residing at _____ and doing business under the laws of the State of _____, hereby appoints _____

_____
(Name, legal designation, and address)

as a true and lawful agent and attorney of the principal named above with full power and authority to do and perform every lawful act and thing the said agent and attorney may deem requisite and necessary to be done for and on behalf of the said principal without limitation of any kind as fully as said principal could do if present and acting, and hereby ratify and confirm all that said agent and attorney shall lawfully do or cause to be done by virtue of these presents until and including _____, (date) or until notice of revocation in writing is duly given before that date.

Date _____, 19____;.

_____
(Principal's signature)

### § 141.33 Alternative form for noncommercial shipment.

An individual (but not a partnership, association, or corporation) who is not a regular importer may appoint another individual as his unpaid agent for Customs purposes by executing a power of attorney applicable to a single noncommercial shipment by writing, printing, or stamping on the invoice, or on a separate paper attached thereto, the following statement:

_____; of
(Name)

_____
(Address)

is hereby authorized to execute, as an unpaid agent who has knowledge of the facts, pursuant to the provisions of section 485(f), Tariff Act of 1930, as amended, the consignee's and owner's declarations provided for in section 485 (a) and (d), Tariff Act of 1930, as amended, and to enter on my behalf or for my account the goods described in the attached invoice which contains a true and complete statement of the facts concerning the shipment.

Date _____, 19____.

_____

(Signature of importer)

_____

(Address)

### § 141.34 Duration of power of attorney.

Powers of attorney issued by a partnership shall be limited to a period not to exceed 2 years from the date of execution. All other powers of attorney may be granted for an unlimited period.

[T.D. 84–93, 49 FR 17754, Apr. 25, 1984]

### § 141.35 Revocation of power of attorney.

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

### § 141.36 Nonresident principals in general.

A power of attorney executed by a nonresident principal shall not be accepted unless the agent designated thereby is a resident and is authorized to accept service of process against such nonresident.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 84–93, 49 FR 17754, Apr. 25, 1984]

### § 141.37 Additional requirements for nonresident corporations.

If a nonresident corporation has not qualified to conduct business under state law in the state in which Customs district the agent is empowered to perform the delegated authority, the power of attorney shall be supported by documentation establishing the authority of the grantor designated to execute the power of attorney on behalf of the corporation.

[T.D. 84–93, 49 FR 17754, Apr. 25, 1984]

### § 141.38 Resident corporations.

A power of attorney shall not be required if the person signing Customs documents on behalf of a resident corporation is known to the port director to be the president, vice president, treasurer, or secretary of the corporation. When a power of attorney is required for a resident corporation, it shall be executed by a person duly authorized to do so.

[T.D. 84–93, 49 FR 17754, Apr. 25, 1984]

### § 141.39 Partnerships.

(a)(1) *General.* A power of attorney granted by a partnership shall state the names of all members of the partnership. One member of the partnership may execute a power of attorney in the name of the partnership for the transaction of all its Customs business.

(2) *Limited partnership.* A power of attorney granted by a limited partnership need only state the names of the general partners who have authority to bind the firm unless the partnership agreement provides otherwise. A copy of the partnership agreement must accompany the power of attorney. For this purpose, a partnership or limited partnership means any business association recognized as such under the laws of the state where the association is organized.

(b) *Change in partners.* When a new firm is formed by a change in membership, no power of attorney filed by the antecedent firm shall thereafter be recognized for any Customs purpose.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 86–204, 51 FR 42999, Nov. 28, 1986]

### § 141.40 Trusteeships.

A trustee may execute a power of attorney for the transaction of Customs business incident to the trusteeship.

### § 141.41 Surety on Customs bonds.

Powers of attorney to sign as surety on Customs bonds are subject to the requirements set forth in part 113 of this chapter.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 74–227, 39 FR 32023, Sept. 4, 1974]

### § 141.42 Protests.

Powers of attorney to file protests are subject to the requirements set forth in § 174.3 of this chapter.

### § 141.43 Delegation to subagents.

(a) *Resident principals.* Except as otherwise provided for in paragraph (c) of this section, the holder of a power of attorney for a resident principal cannot appoint a subagent except for the purpose of executing shippers' export declarations. A subagent so appointed cannot delegate his power.

(b) *Nonresident principals.* Except as otherwise provided for in paragraph (c) of this section, an agent who has power of attorney for a nonresident principal may execute a power of attorney delegating authority to a subagent only if the original power of attorney contains express authority from the principal for the appointment of a subagent or subagents. Any subagent so appointed must be a resident authorized to accept service of process in accordance with § 141.36.

(c) *Customhouse brokers.* A power of attorney executed in favor of a licensed customhouse broker may specify that the power of attorney is granted to the broker to act through any of its licensed officers or authorized employees as provided in part 111 of this chapter.

### § 141.44 Designation of Customs ports in which power of attorney is valid.

Unless a power of attorney specifically authorizes the agent to act thereunder at all Customs ports, the name of each port where the agent is authorized to act thereunder shall be stated in the power of attorney. The power of attorney shall be filed with any port director, in a sufficient number of copies for distribution to each port where the agent is to act, unless exempted from filing by § 141.46. The port director with whom a power of attorney is filed, irrespective of whether his port is named therein, shall approve it, if it is in the correct form and the provisions of this subpart are complied with, and forward any copies intended for other ports as appropriate.

### § 141.45 Certified copies of power of attorney.

Upon request of a party in interest, a port director having on file an original power of attorney document (which is not limited to transactions in a specific Customs location) will forward a certified copy of the document to another port director.

[T.D. 95–77, 60 FR 50020, Sept. 27, 1995]

### § 141.46 Power of attorney retained by customhouse broker.

Before transacting Customs business in the name of his principal, a customhouse broker is required to obtain a valid power of attorney to do so. He is not required to file the power of attorney with a port director. Customhouse brokers shall retain powers of attorney with their books and papers, and make them available to representatives of the Department of the Treasury as provided in subpart C of part 111 of this chapter.

## Subpart D—Quantity of Merchandise To Be Included in an Entry

### § 141.51 Quantity usually required to be in one entry.

All merchandise arriving on one conveyance and consigned to one consignee must be included on one entry, except as provided in § 141.52. In addition, a shipment of merchandise that arrives by separate conveyances at the same port of entry in multiple portions, as a split shipment, may be processed under a single entry, as prescribed in § 141.57.

[T.D. 03–09, 68 FR 8719, Feb. 25, 2003]

### § 141.52 Separate entries for different portions.

If the port director is satisfied that there will be no prejudice to: Import admissibility enforcement efforts; the revenue; and the efficient conduct of Customs business, separate entries may be made for different portions of all merchandise arriving on one vessel or vehicle and consigned to one consignee under any of the following circumstances:

(a) Each portion of a consolidated shipment addressed to one consignee

for various ultimate consignees may be entered separately under the procedure set forth in § 141.54.

(b) One or more of the enclosed packages in a packaged package may be entered separately under any appropriate form of formal or informal entry. No entry is required for an enclosed package which contains merchandise unconditionally free of duty and not exceeding $250 in value. A packed package is an outer package in which are contained inner packages addressed for delivery to two or more different persons, as described in section 484(f), Tariff Act of 1930, as amended (19 U.S.C. 1484(f)). Each outer container shall be marked to indicate that it is a packed package.

(c) The consignee desires to enter different portions under different forms of entry, for transportation to different ports of entry, or for warehousing in separate warehouses.

(d) Appraisement is being withheld upon merchandise of the class or kind for which a separate entry is tendered.

(e) The several portions of the consignment for which separate entries are tendered are covered by separate bills of lading.

(f) The consignment consists of different classes of merchandise which are to be processed by different Customs commodity specialist teams.

(g) The consignment contains merchandise subject to entry under a bond given to assure accounting for final disposition, such as a temporary importation under bond.

(h) The consignment consists of different importations which arrived under a consolidated entry for immediate transportation made pursuant to § 18.11(g) of this chapter.

(i) A special application is submitted to the Commissioner of Customs with the recommendation of the port director concerned and is approved by the Commissioner.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 84–171, 49 FR 31253, Aug. 3, 1984; T.D. 84–213, 49 FR 41184, Oct. 19, 1984; T.D. 85–38, 50 FR 8723, Mar. 5, 1985]

### § 141.53 Procedure for separate entries.

When separate entries for one consignment are made in accordance with § 141.52 (b) through (i), the following procedures shall apply:

(a) The entries shall be presented simultaneously when practicable.

(b) A separate consignee's declaration shall be filed for each entry.

(c) Each entry shall cover whole packages or not less than 1 ton of bulk merchandise, except when a portion of the merchandise is entered under a temporary importation bond in accordance with Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(d) When separate entries are made for merchandise covered by a single bill of lading or air waybill, the provisions of § 141.54 shall be complied with, except that the endorsement on the bill of lading or air waybill required by § 141.54(b) shall read as follows:

As portions of the within-described merchandise will be covered by separate entries, the undersigned consignee expressly waives the right granted by section 484(j), Tariff Act of 1930, as amended, to have this bill of lading or air waybill returned.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978; T.D. 89–1, 53 FR 51256, Dec. 21, 1988]

### § 141.54 Separate entries for consolidated shipments.

When separate entries for consolidated shipments are made in accordance with § 141.52(a), the following procedures shall apply except where the merchandise is released directly to the carrier in accordance with § 141.11(b):

(a) *Deposit of evidence of right to make entry*. The nominal consignee of a consolidated shipment covering merchandise for various ultimate consignees who desire to make separate entries shall deposit with the port director evidence of the right to make entry as set forth in § 141.11(a), and such evidence shall be permanently retained by the port director.

(b) *Waiver of right to have bill of lading or air waybill returned*. If a bill of lading or air waybill is filed, it shall contain the following endorsement signed by the consignee named therein:

As the within-described merchandise belongs to various ultimate consignees who desire to make separate entries therefor, the undersigned consignee thereof hereby expressly waives the right granted by section

484(j), Tariff Act of 1930, as amended, to have this bill of lading or air waybill returned.

(c) *Certificate by nominal consignee.* Except when an authority to make entry for a portion of a consolidated shipment is executed on the entry form in the space provided, at the time of depositing the bill of lading, air waybill, or other document, the named consignee shall produce a certificate prepared and signed by him for each portion of the shipment for which separate entry is desired. The authority to make entry carried by such a certificate may be transferred by endorsement. The certificate shall be in the following form:

Port of _____
_____, 19____

AUTHORITY TO MAKE ENTRY

Of merchandise imported at _____, 19___, per _____, from _____ shipped by _____, consigned to _____, endorsed to _____, covered by[1] _____ dated _____, 19___, at _____ on file with the port director at _____.

| Marks | Numbers | Description |
|---|---|---|
| | | |

(We) (I) _____, the consignee(s) in the above-mentioned document covering merchandise for various ultimate consignees, hereby authorize _____ or order to make Customs entry for the above described merchandise.

_____
(Consignee(s))

(d) *Verification of certificate.* When a certificate on a separate document as described in paragraph (c) of this section is presented, it shall be compared with the supporting document and after being initialed by the ministerial clerk shall be returned to the consignee for transmittal to the person who will make entry. When an entry is received having executed in the space provided thereon an authority to make entry for a portion of a consolidated shipment, such authority shall be compared with the supporting document.

[1] Insert ''bill of lading,'' ''air waybill,'' ''certified duplicate bill of lading,'' ''certified duplicate air waybill,'' ''carrier's certificate,'' or ''shipping receipt.''

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978]

### § 141.55 Single entry summary for shipments arriving under one transportation entry.

Except for merchandise subject to a quantitative or tariff-rate quota, port directors are authorized to accept one entry summary for consumption or for warehouse for the entire quantity of merchandise covered by an entry for immediate transportation after the arrival of any part of the merchandise at the port of destination or at a place of deposit outside the port as may be authorized in accordance with § 18.11(c) of this chapter.

[T.D. 79–221, 44 FR 46817, Aug. 9, 1979]

### § 141.56 Single entry summary for multiple transportation entries consigned to the same consignee.

(a) *Requirement.* Port directors may accept one entry summary for consumption or for warehouse for merchandise covered by multiple entries for immediate transportation, subject to the requirements of § 142.17(a) of this chapter, provided the merchandise covered by each immediate transportation entry is released at the port of destination under a separate entry, in accordance with § 142.3 of this chapter.

(b) *Limitation.* A single entry summary for multiple transportation entries shall not be accepted for any merchandise listed in § 142.17(b) of this chapter.

(c) *Information on the entry summary.* Each entry for immediate transportation shall be identified separately on the entry summary by the immediate transportation entry number and the corresponding entry number.

[T.D. 79–221, 44 FR 46817, Aug. 9, 1979]

### § 141.57 Single entry for split shipments.

(a) *At election of importer of record.* At the election of the importer of record, Customs may process a split shipment, pursuant to section 484(j)(2), Tariff Act

of 1930 (19 U.S.C. 1484(j)(2)), under a single entry, as prescribed under the procedures set forth in this section.

(b) *Split shipment defined.* A ''split shipment'', for purposes of this section, means a shipment:

(1) Which may be accommodated on a single conveyance, and which is delivered to and accepted by a carrier in the exporting country under one bill of lading or waybill, and is thus intended by the importer of record to arrive in the United States as a single shipment;

(2) Which is thereafter divided by the carrier, acting on its own, into different portions which are transported and consigned to the same party in the United States; and

(3) Of which the first portion and all succeeding portions arrive at the same port of entry in the United States, as listed in the original bill of lading or waybill; and all the succeeding portions arrive at the port of entry within 10 calendar days of the date of the first portion. If any portion of the shipment arrives at a different port, such portion must be transported in-bond to the port of destination where entry of the shipment is made.

(c) *Notification by importer of record.* The importer of record must notify Customs, in writing, that the shipment has been split at the carrier's initiative, that the remainder of the shipment will arrive by subsequent conveyance(s), and that an election is being made to file a single entry for all portions. The required notification must be given as soon as the importer of record becomes aware that the shipment has been split, but in all cases notification must be made before the entry summary is filed.

(d) *Entry or special permit for immediate delivery.* In order to make a single entry for a split shipment or obtain a special permit for the release of a split shipment under immediate delivery, an importer of record may follow the procedure prescribed in paragraph (d)(1) or (d)(2) of this section, as applicable.

(1) *Entry or special permit after arrival of entire shipment.* An importer of record may file an entry at such time as all portions of the split shipment have arrived at the port of entry (see paragraph (b)(3) of this section). In the alternative, again after the arrival of all portions of a split shipment at the port of entry, the importer of record may instead file a special permit for immediate delivery provided that the merchandise is eligible for such a permit under § 142.21(a)—(f) and (h) of this chapter. In either case, the importer of record must file Customs Form (CF) 3461 or CF 3461 alternate (CF 3461 ALT) as appropriate, or electronic equivalent, with Customs. The entry or special permit must indicate the total number of pieces in, as well as the total value of, the entire shipment as reflected on the invoice(s) covering the shipment.

(2) *Special permit prior to arrival of entire shipment.* As provided in § 142.21(g) of this chapter, an importer of record may also file a special permit for immediate delivery after the arrival of the first portion of a split shipment at the port of entry (see paragraph (b)(3) of this section), but before the arrival of the entire shipment at such port, thus qualifying the split shipment for incremental release, under paragraph (e) of this section, as each portion of the shipment arrives at the port of entry (see paragraph (g)(2)(ii) of this section). In such case, a CF 3461 or CF 3461 ALT as appropriate, or electronic equivalent, must be filed with Customs. As each portion arrives at the port of entry, the importer of record must submit a copy of the CF 3461/CF 3461 ALT, adjusted to reflect the quantity of that particular portion relative to the quantity contained in the entire split shipment (see paragraph (b)(1) of this section); however, if both the carrier and the importer of record are automated, such adjustments may instead be made electronically through the Customs ACS (Automated Commercial System). In the event that an entry has been pre-filed with Customs (see § 142.2(b) of this chapter), notification to Customs by the importer of record that a single entry will be filed for shipments released incrementally will serve as a request that the pre-filed entry be converted to an application for a special permit for immediate delivery (see § 142.21(g) of this chapter). The special permit must indicate the total number of pieces in, as well as the total value of, the entire shipment as reflected on the invoice(s) covering

the shipment. Customs may limit the release of each portion of the split shipment upon arrival at the port of entry, as permitted under this paragraph, due to the need to examine the merchandise in accordance with paragraph (f) of this section.

(e) *Release*. To secure the separate release upon arrival of each portion of a split shipment at the port of destination under paragraph (d)(2) of this section, the carrier responsible for initially splitting the shipment must present to Customs, either on a paper manifest or through an authorized electronic data interchange system, manifest information relating to the shipment that reflects exact information for each portion of the split shipment. The carrier responsible for splitting the shipment must notify other obligated entities (such as another carrier or freight forwarder) that have submitted electronic manifest information to Customs about the shipment that was split so that these parties can update their manifest information to Customs.

(f) *Examination*. Customs may require examination of any or all parts of the split shipment. For split shipments subject to the immediate delivery procedure of paragraph (d)(2) of this section, Customs reserves the right to deny incremental release should such an examination of the merchandise be necessary. The denial of incremental release does not preclude the use of the procedures specified in paragraph (d)(1) of this section.

(g) *Entry summary*—(1) *Entry*. For merchandise entered under paragraph (d)(1) of this section, the importer of record must file an entry summary within 10 working days from the time of entry.

(2) *Release for immediate delivery*—(i) *Release under paragraph (d)(1) of this section*. For merchandise released under a special permit for immediate delivery pursuant to paragraph (d)(1) of this section, the importer of record must file the entry summary, which serves as both the entry and the entry summary, within 10 working days after the merchandise or any part of the merchandise is authorized for release under the special permit or, for quota class merchandise, within the quota period, whichever expires first (see §142.23 of this chapter).

(ii) *Release under paragraph (d)(2) of this section*. For merchandise released under a special permit for immediate delivery pursuant to paragraph (d)(2) of this section, the importer of record must file the entry summary, which serves as both the entry and the entry summary, within 10 working days from the date of the first release of a portion of the split shipment. The filed entry summary must reflect all portions of the split shipment which have been released, to include quantity, value, correct classification and rate of duty. The entry summary cannot include any portions of the split shipment which have not been released.

(3) *Duty payment*. With the entry summary filed under paragraphs (g)(1) and (g)(2)(i) and (g)(2)(ii) of this section, the importer of record must attach estimated duties, taxes and fees applicable to the released merchandise. If the entry summary is filed electronically, the estimated duties, taxes and fees must be scheduled for payment at such time pursuant to the Automated Clearinghouse (see §24.25 of this chapter).

(h) *Classification*. For purposes of section 484(j)(2), Tariff Act of 1930 (19 U.S.C. 1484(j)(2)), the merchandise comprising the separate portions of a split shipment included on one entry will be classified as though imported together.

(i) *Separate entry required*—(1) *Untimely arrival*. The importer of record must enter separately those portions of a split shipment that do not arrive at the port of entry within 10 calendar days of the portion that arrived there first (see paragraph (b)(3) of this section).

(2) *Different rates of duty for identically classified merchandise*. An importer of record will be required to file a separate entry for any portion of a split shipment if necessary to preclude the application of different rates of duty on a split shipment entry for merchandise that is classifiable under the same subheading of the Harmonized Tariff Schedule of the United States (HTSUS).

(j) *Requirement of importer of record to review entry and maintain evidence substantiating splitting of shipment*—(1) *Review of entry*. The importer of record will be responsible for reviewing the total manifested quantity shown on the CF 3461/CF 3461 ALT, or electronic equivalent, in relation to all portions of the split shipment that arrived at the port of entry under paragraph (b)(3) of this section within the specified 10 calendar day period. At the conclusion of the specified 10 calendar day period, the importer of record must make any adjustments necessary to reflect the actual amount, value, correct classification and rate of duty of the merchandise that was released incrementally under the split shipment procedures. If all portions of the split shipment do not arrive within the required 10 calendar day period, the importer of record must file an additional entry or entries as appropriate to cover any remaining portions of the split shipment that subsequently arrive (see paragraph (i)(1) of this section).

(2) *Evidence for splitting of shipment; recordkeeping*. The importer of record must maintain sufficient documentary evidence to substantiate that the splitting of the shipment was done by the carrier acting on its own, and not at the request of the foreign shipper and/or the importer of record. This documentation should include a copy of the originating bill of lading or waybill under which the shipment was delivered to the carrier in the country of exportation or other supporting documentary evidence, such as a letter from the carrier confirming that the splitting of the shipment was done by the carrier on its own initiative. This documentary evidence as well as all other necessary records received or generated by or on behalf of the importer of record under this section must be maintained and produced, if requested, in accordance with part 163 of this chapter.

(k) *Single entry limited; exclusions from single entry under incremental release procedure*—(1) *Quota/visa merchandise*. Merchandise subject to quota and/or visa requirements is excluded from incremental release under the immediate delivery procedure set forth in paragraph (d)(2) of this section and § 142.21(g) of this chapter. Additionally, if by splitting a shipment any portion of it is subject to quota, no portion of the split shipment may be released incrementally.

(2) *Other merchandise*. In addition, the port director may deny the use of the incremental release procedure set forth in paragraph (d)(2) of this section and § 142.21(g) of this chapter, as circumstances warrant.

(3) *Limited single entry available*. For merchandise described in paragraphs (k)(1) and (k)(2) of this section, that is excluded from the immediate delivery procedure of paragraph (d)(2) of this section and § 142.21(g) of this chapter, the importer of record may still file a single entry or special permit for immediate delivery under paragraph (d)(1) of this section covering the entire split shipment of such merchandise following, and to the extent of, its arrival within the required 10 calendar day period.

[T.D. 03–09, 68 FR 8719, Feb. 25, 2003]

## Subpart E—Presentation of Entry Papers

### § 141.61 Completion of entry and entry summary documentation.

(a) *Preparation*. (1) Entry and entry summary documentation shall be prepared on a typewriter, or with ink, indelible pencil, or other permanent medium. The entry summary shall be signed by the importer (see § 101.1 of this chapter). Entries, entry summaries, and accompanying documentation shall be on the appropriate forms specified by the regulations and shall set forth clearly all required information. All copies shall be legible.

(2) An importer may omit from entry summary, Customs Form 7501, the marks and numbers previously provided for packages released or withdrawn.

(b) *''Signing of the entry''*. The signing of the consignee's declaration on the entry summary for merchandise entered for consumption, for warehouse, or for temporary importation under bond, in accordance with § 141.19, shall be regarded as the ''signing of the entry'' required by section 484(d), Tariff Act of 1930, as amended (19 U.S.C.

1484(d)). For a rewarehouse or a bonded manufacturing warehouse entry, the signing of the consignee's declaration on the entry documentation shall satisfy 19 U.S.C. 1484(d).

(c) *Identification number for merchandise subject to an antidumping or countervailing duty order*. The entry summary filed for merchandise subject to an antidumping or countervailing duty order shall include the unique identifying number assigned by the Department of Commerce, International Trade Administration. Any entry summary filed for merchandise subject to an antidumping or countervailing duty order not containing the identifying number shall be rejected.

(d) *Importer number*. The importer number shall be reported on Customs Form 7501 as follows:

(1) *Generally*. Except as provided in paragraph (d)(2) of this section, the importer number of the importer of record and the consignee number of the ultimate consignee shall be reported for each entry summary and for each drawback entry. When the importer of record and the ultimate consignee are the same, the importer number may be entered in both spaces provided on Customs Form 7501 (boxes 10 and 12) or the importer number may be entered in the space provided for the importer (box 12) and the word ''SAME'' may be entered in the space provided for the ultimate consignee (box 10).

(2) *Exception*. In the case of a consolidated entry summary covering the merchandise of more than one ultimate consignee, the importer number shall be reported on Customs Form 7501 (box 12) and the notation ''CONSOLIDATED'' shall be made in the space provided for the consignee number (box 10).

(3) *When refunds, bills, or notices of liquidation are to be mailed to agent*. If an importer of record desires to have refunds, bills, or notices of liquidation mailed in care of his agent, the agent's importer number shall be reported on Customs Form 7501 in the box designated ''Reference No'' (box 22). In this case, the importer of record shall file, or shall have filed previously, a Customs Form 4811 authorizing the mailing of refunds, bills, or notices of liquidation to the agent.

(4) *Broker No*. If a broker is used, the broker's number shall be reported in the appropriate location on Customs Form 7501.

(e) *Statistical information*—(1) *Information required on entry summary or withdrawal form*—(i) *Where form provides space*—(A) *Single invoice*. For each class or kind of merchandise subject to a separate statistical reporting number, the applicable information required by the General Statistical Notes, Harmonized Tariff Schedule of the United States (HTSUS), shall be shown on the entry summary, Customs Form 7501; the transportation entry and manifest of goods, Customs Form 7512, when used to document an incoming vessel shipment proceeding to a third country by means of an entry for transportation and exportation, or immediate exportation.

(B) *Multiple invoices*. If a class or kind of merchandise from the same country of origin subject to the same statistical reporting number is included in more than one invoice, the importer may, at his option (*1*) list each invoice separately on the appropriate form listed under paragraph (e)(1)(i)(A) of this section and for each class or kind of merchandise within each invoice subject to a separate statistical reporting number, report the applicable information required by the General Statistical Notes, HTSUS; or (*2*) combine the information for each class or kind of merchandise and report it under one statistical reporting number for all invoices. When consolidating information from several invoices under one reporting number, a worksheet itemizing the entered value of the merchandise from each invoice in the manner prescribed in paragraph (f)(2)(ii) of this section shall be attached to the appropriate form.

(ii) *Where form does not provide space*. In addition to the information required by paragraph (e)(1)(i) of this section, statistical information for which spaces are not provided on the appropriate form, shall be shown as follows:

(A) The name, the abbreviated designation or 4 digit code of the country of registry (flag) of the vessel expressed in terms of Annex B, HTSUS, shall be

placed in the block on the entry document for the name of the importing vessel or carrier.

(B) The notation ''Y'' or ''N'' as appropriate, shall be placed in column 33 of Customs Form 7501, and in the top right hand portion of Customs Form 7519, to identify the transaction as one between a buyer and a seller who are related in any manner, or as one between a buyer and a seller who are not so related.

(C) The charges (aggregate cost of freight, insurance and all other charges), shall be listed on Customs Form 7501 in column 33. The charges shall be listed on Customs Form 7519 in the rate column.

(2) *Responsibility*. The person filing the form is responsible for providing the information required by paragraph (e)(1) of this section. If the information required by subparagraph General Statistical Note 1(a)(xiv)(xvii), HTSUS, cannot be obtained readily, the person filing the form shall provide reasonable estimates of the required information. The acceptance of an estimate for a particular transaction does not relieve the person filing the form from obtaining the necessary information for similar future transactions. The port director may require additional documentation to substantiate the statistical information required by paragraph (e)(1) of this section. The importer shall give an appropriate bond for the production of the required documentation, as follows:

(i) Except for merchandise entered for warehouse, the documentation shall be produced within 50 days after the entry summary (or the entry, if there is no entry summary) is required to be filed.

(ii) If merchandise is entered for warehouse, the documentation shall be produced within 2 months after the date of withdrawal, except that if an invoice is part of the documentation, the invoice shall be produced within 50 days after the entry summary for warehouse is required to be filed.

The port director may grant a reasonable extension of time to produce the required documentation for good cause shown. (See §141.91(d) for bond requirements relating to failure to produce an invoice.)

(3) *Estimates of statistical information*. When the person filing the form estimates any of the values or charges, as provided for in General Statistical Note 1(b)(ii), HTSUS, except Canadian rail and truck charges, he shall place either ''(estimate)'', ''(est)'', or (''E'') after the amount of each value or charge.

(4) *Rejection of form*. The port director shall reject a form for failure to provide required statistical information if the information is omitted or if the information provided clearly appears on its face, or is known to the Customs officer, to be erroneous.

(5) *Penalty procedures; when not invoked*. Penalty procedures relating to erroneous statistical information shall not be invoked against any person who in good faith attempts to comply with the statistical requirements of the General Statistical Note, HTSUS.

(f) *Value of each invoice*—(1) *Single invoice*. If the entry, entry summary, or withdrawal documentation, as specified in paragraph (e)(1)(i) of this section, covers a single invoice, the invoice information shall be restated to show:

(i) Gross amount of the invoice;

(ii) Deduction of the aggregate amount of any non-dutiable charges involved in the amount;

(iii) Further deduction of the aggregate of any deductions from the invoice values to make entered values; and

(iv) Addition of the aggregate of any dutiable charges not included in the gross amount of the invoice and of any other additions to the invoice values to make entered values. The final amount in the summary computations shall represent the aggregate of the entered values of all the merchandise covered by the invoice. The required information shall be shown on a worksheet attached to the form or placed across columns 30 and 31 on Customs Form 7501 and in the same general location on Customs Forms 7505, 7506.

(2) *Multiple invoices*. (i) If the importer or his agent elects the first option specified in paragraph (e)(1)(i)(B) of this section, the information required to be restated by paragraph (f)(1) of this section for a single invoice shall be restated for each invoice. The required information shall be shown on

a worksheet attached to the form or placed across columns 30 and 31 on Customs Form 7501.

(ii) If the importer or his agent elects the second option specified in paragraph (e)(1)(i)(B) of this section, the information required to be restated by paragraph (f)(1) of this section for a single invoice shall be restated for each invoice. The final amount in the summary computation shall represent the aggregate of the entered values of all the merchandise on each of the multiple invoices. The required information shall be shown on an attached worksheet.

(iii) The worksheet also shall contain:

(A) A statistical reporting number restatement for the merchandise from each invoice subject to the same statistical reporting number from the same country of origin, and

(B) An aggregate total value which represents the entered value.

(iv) To permit the identification of the merchandise entered under each reporting number, each class or kind of merchandise, from one country reported under a single statistical reporting number shall be coded identically on each invoice and on the worksheet.

[T.D. 79–221, 44 FR 46817, Aug. 9, 1979, as amended by T.D. 81–260, 46 FR 49841, Oct. 8, 1981; T.D. 84–129, 49 FR 23167, June 5, 1984; T.D. 84–192, 49 FR 35486, Sept. 10, 1984; T.D. 87–75, 52 FR 20068, May 29, 1987; T.D. 89–1, 53 FR 51256, Dec. 21, 1988; T.D. 95–81, 60 FR 52295, Oct. 6, 1995; T.D. 97–82, 62 FR 51770, Oct. 3, 1997]

### § 141.62 Place and time of filing.

(a) *Place*. An application for immediate delivery and entry, entry summary, or withdrawal documentation shall be filed at the customhouse or at any other Customs location approved by the director of the port where the merchandise is to be or has been released.

(b) *Time*—(1) *Normal business hours*. (i) Except as provided in paragraph (b)(2) of this section, an application for immediate delivery or entry documentation shall be filed when the customhouse is open for the general transaction of business, or when Customs has established a regular tour of duty in accordance with § 101.6(f) of this chapter.

(ii) Except as provided in paragraph (b)(2) of this section, entry summary or withdrawal documentation shall be filed when the customhouse is open for the general transaction of business, as provided in § 101.6 of this chapter.

(2) *Overtime services*—(i) *Generally*. Except as provided in paragraph (b)(2)(ii) of this section, an application for immediate delivery or entry documentation may be filed when the customhouse is not open for the general transaction of Customs business and no regular tour of duty has been established; and entry summary or withdrawal documentation may be filed when the customhouse is not open for the general transaction of business, if:

(A) The person desiring to transact business has applied for and received authorization for overtime services on a reimbursable basis, as provided for in § 24.16 of this chapter, and

(B) Overtime services of Customs officers are available.

(ii) *Quota-class merchandise*. Overtime shall not be authorized for the presentation of entry summary documentation which serves as both the entry and entry summary or withdrawal documentation, for quota-class merchandise without Headquarters authorization. If Headquarters authorization is granted, the time of delivery of the entry summary or withdrawal documentation, with the estimated duties attached, or without the estimated duties attached, if the entry/entry summary information and a scheduled statement date have been successfully received by Customs via the Automated Broker Interface, shall be the time of presentation for quota purposes. However, if an entry summary or withdrawal for quota-class merchandise is delivered inadvertently during overtime hours without Headquarters authorization, the time of presentation for quota purposes shall be the opening of business on the next business day.

[T.D. 79–221, 44 FR 46818, Aug. 9, 1979, as amended by T.D. 89–104, 54 FR 50498, Dec. 7, 1989]

### § 141.63 Submission of entry summary documentation for preliminary review.

(a) *Before arrival of merchandise.* Entry summary documentation may be submitted at the customhouse for preliminary review, without estimated duties attached, within such time before arrival of the merchandise as may be fixed by the port director—

(1) If the entry summary documentation will be filed at time of entry to serve as both the entry and the entry summary, as provided in § 142.3(b) of this chapter, or

(2) In the case of quota-class merchandise, if the entry summary for consumption will be presented at time of entry, as provided in § 132.11a of this chapter. Estimated duties shall not be accepted before arrival of the merchandise within the port limits.

(b) *After arrival of merchandise.* Entry summary documentation may be submitted at the customhouse for preliminary review, without estimated duties attached, within such time after arrival of quota-class merchandise as may be fixed by the port director, if the entry summary for consumption will be presented at the opening of the quota period, as provided in § 132.12(a) of this chapter. Estimated duties shall not be accepted before the opening of the quota period.

(c) *For merchandise entered other than at port of arrival.* If merchandise is to arrive or has arrived at one port and the importer wishes to file his entry documentation at another port to which the merchandise is destined, he may do so upon approval of the port director at the port of destination. The director of the destination port may then authorize release of the merchandise, after its importation at the port of arrival, or postpone its release if he believes it is necessary for examination or other purposes.

[T.D. 79–221, 44 FR 46819, Aug. 9, 1979, as amended by T.D. 87–78, 52 FR 24155, June 29, 1987]

### § 141.64 Review and correction of entry and entry summary documentation.

Entry and entry summary documentation may be reviewed before acceptance to ensure that all entry and statistical requirements are complied with and that the indicated values and rates of duty appear to be correct. If any errors are found, the entry and the entry summary documentation shall not be considered to have been filed in proper form and shall be returned to the importer for correction.

[T.D. 79–221, 44 FR 46819, Aug. 9, 1979, as amended by T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

### § 141.65 [Reserved]

### § 141.66 Bond for missing documents.

Unless otherwise prescribed in these regulations, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 or § 113.69 of this chapter, as appropriate, may be given for the production of any required document which is not available at the time of entry. (See § 141.91 for the procedure applicable to incomplete or missing invoices.)

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 84–213, 49 FR 41184, Oct. 19, 1984]

### § 141.67 Recall of documentation.

The importer may recall the entry and entry summary documentation at any time before the effective time of entry set forth in § 141.68. The entry shall be considered canceled, and documents shall be returned to the importer.

[T.D. 79–221, 44 FR 46819, Aug. 9, 1979]

### § 141.68 Time of entry.

(a) *When entry documentation is filed without entry summary.* When the entry documentation is filed in proper form without an entry summary, the ''time of entry'' shall be:

(1) The time the appropriate Customs officer authorizes the release of the merchandise or any part of the merchandise covered by the entry documentation, or

(2) The time the entry documentation is filed, if requested by the importer on the entry documentation at the time of filing, and the merchandise already has arrived within the port limits; or

(3) The time the merchandise arrives within the port limits, if the entry documentation is submitted before arrival, and if requested by the importer on the entry documentation at the time of submission.

(b) *When entry summary serves as entry and entry summary*. When an entry summary serves as both the entry documentation and entry summary, in accordance with § 142.3(b) of this chapter, the time of entry shall be the time the entry summary is filed in proper form with estimated duties attached except as provided in § 142.13(b).

(c) *When merchandise is released under the immediate delivery procedure*. The time of entry of merchandise released under the immediate delivery procedure shall be the time the entry summary is filed in proper form, with estimated duties attached.

(d) *Quota-class merchandise*. The time of entry for quota-class merchandise shall be the time of presentation of the entry summary or withdrawal for consumption in proper form, with estimated duties attached, or if the entry/entry summary information and a valid scheduled statement date (pursuant to § 24.25 of this chapter) have been successfully received by Customs via the Automated Broker Interface, without the estimated duties attached, as provided in § 132.11a of this chapter.

(e) *When merchandise has not arrived*. Merchandise shall not be authorized for release, nor shall an entry or an entry summary which serves as both the entry and entry summary be considered filed or presented, until the merchandise has arrived within the port limits with the intent to unlade.

(f) *Informal mail entry*. The time of entry of merchandise under an informal mail entry, Customs Form 3419 or 3419A or Customs Form 368 or 368A, is the time the preparation of the entry documentation by a Customs employee is completed.

(g) *Withdrawal from warehouse for consumption*. The time of entry of merchandise withdrawn from warehouse for consumption (the process preparatory to the issuance of a permit for the release of the merchandise to or upon the order of the warehouse proprietor) is when:

(1) Customs Form 7501 is executed in proper form and filed together with any related documentation required by these regulations to be filed at the time of withdrawal, and

(2) Estimated duties, if any, required to be paid at the time of withdrawal have been deposited.

Unless the requirements of this paragraph and section 315(a), Tariff Act of 1930, as amended (19 U.S.C. 1315(a)), including the deposit of estimated duties, if any, are completed within 60 days from the date of presentation of Customs Form 7501, the request for withdrawal shall be considered abandoned.

(h) *Appraisement entry, informal entry, combined entry for rewarehouse and withdrawal for consumption, and entry under carnet*. The time of entry of merchandise under an appraisement entry, or informal entry, Customs Form 7501, an informal entry, Customs Form 368 or 368A (serially numbered) (or other form prescribed in § 143.23 or elsewhere in the chapter for use as an informal entry), a combined entry for rewarehouse and withdrawal for consumption, Customs Form 7519, or an A.T.A. carnet issued under part 114 of this chapter, shall be the time the specified form is executed in proper form and filed, together with any related documents required by these regulations, and estimated duties, if any, have been deposited. If merchandise eligible for informal entry is released under a special permit for immediate delivery and Customs Form 368 or 368A (serially numbered) or 7501 is filed in accordance with § 142.23 of this chapter, the time of entry shall be the time Customs Form 368 or 368A or 7501 is filed in proper form, together with any related documents required by this chapter, and estimated duties, if any, have been deposited. However, if merchandise eligible for informal entry is released under the entry documentation set forth in § 142.3(a) of this chapter and Customs Form 368 or 368A (serially numbered) or 7501 is filed in accordance with § 142.23, the time of entry shall be in accordance with paragraph (a) of this section.

(i) *Exportation to Canada or Mexico of goods imported into the United States under a duty-deferral program defined in § 181.53 of this chapter*. When merchandise in a U.S. duty-deferral program is

withdrawn for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, the date of entry is the date the entry is required to be filed under § 181.53(a)(2)(iii) of this chapter.

[T.D. 79–221, 44 FR 46819, Aug. 9, 1979, as amended by T.D. 84–129, 49 FR 23167, June 5, 1984; T.D. 87–75, 52 FR 26142, July 13, 1987; T.D. 89–104, 54 FR 50498, Dec. 7, 1989; T.D. 91–73, 56 FR 42527, Aug. 28, 1991; T.D. 92–56, 57 FR 24944, June 12, 1992; T.D. 95–81, 60 FR 52295, Oct. 6, 1995; T.D. 96–14, 61 FR 2911, Jan. 30, 1996; T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

### § 141.69 Applicable rates of duty.

The rates of duty applicable to merchandise shall be the rates in effect at time of entry, as specified in § 141.68, except as otherwise specifically provided for by Executive Order, and in the following cases:

(a) *Warehouse entries*. Merchandise entered for warehouse is dutiable at the rates in effect at the time withdrawal from warehouse for consumption is made in accordance with § 141.68(g).

(b) *Merchandise entered for immediate transportation*. Merchandise which is not subject to a quantitative or tariff-rate quota and which is covered by an entry for immediate transportation made at the port of original importation, if entered for consumption at the port designated by the consignee or his agent in such transportation entry without having been taken into custody by the port director for general order under section 490, Tariff Act of 1930, as amended (19 U.S.C. 1490), shall be subject to the rates in effect when the immediate transportation entry was accepted at the port of original importation.

(c) *Overcarried merchandise returned to port of entry*. If merchandise which has been entered for consumption, but not yet released from Customs custody, is removed from the port or place of intended release because of overcarriage, inaccessibility, strike, act of God, or unforeseen contingency, and is returned to such port or place within 90 days after removal, such merchandise shall be subject to the rates in effect at the time of the original entry, provided the merchandise is identified with the original entry by the usual Customs examination and by any documentary evidence as to its movement between its removal and return which the port director may reasonably require. A new entry shall be required, unless the original entry has not been liquidated and the consignee at the time of original importation and at the time of return is the same person.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 79–221, 44 FR 46820, Aug. 9, 1979; T.D. 90–34, 55 FR 17597, Apr. 26, 1990; T.D. 97–82, 62 FR 51771, Oct. 3, 1997]

## Subpart F—Invoices

### § 141.81 Invoice for each shipment.

A commercial invoice shall be presented for each shipment of merchandise at the time the entry summary is filed, subject to the conditions set forth in these regulations. Except in the case of installment shipments provided for in § 141.82, an invoice shall not represent more than one distinct shipment of merchandise by one consignor to one consignee by one vessel or conveyance.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 78–53, 43 FR 6069, Feb. 13, 1978; T.D. 79–221, 44 FR 46820, Aug. 9, 1979; T.D. 85–39, 50 FR 9612, Mar. 11, 1985; T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

### § 141.82 Invoice for installment shipments arriving within a period of 10 days.

(a) *One invoice sufficient*. Installments of a shipment covered by a single order or contract and shipped from one consignor to one consignee may be included in one invoice if the installments arrive at the port of entry by any means of transportation within a period of not to exceed 10 consecutive days.

(b) *Preparation of invoice*. The invoice shall be prepared in the manner provided for in this subpart and, when practicable, shall show the quantities, values, and other invoice data with respect to each installment, the date of shipment of each installment, and the car number or other identification of the importing conveyance in which it was shipped.

(c) *Pro forma invoice*. If the required invoice is not filed with the first entry of an installment series, a pro forma

invoice shall be filed with each entry made before the required invoice is produced, and in accordance with § 141.91 a bond shall be given, or charge against a continuous bond made, for the production of the required invoice. Liquidated damages will accrue in the case of each entry if more than 6 months expire without the production of an invoice for such entry.

(d) *Informal entry*. Any bona fide installment valued at not over $2,000 (except for articles valued in excess of $250 classified in Sections VII, VIII, XI, and XII; Chapter 94; and Chapter 99, Subchapters III and IV. Harmonized Tariff Schedule of the United States may be entered on an informal entry in accordance with subpart C of part 143 of this chapter, in which case such installment need not be considered in connection with invoice requirements for the balance of the series.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 75–27, 40 FR 3449, Jan. 22, 1975; T.D. 78–53, 43 FR 6069, Feb. 13, 1978; T.D. 84–213, 49 FR 41184, Oct. 19, 1984; T.D. 85–123, 50 FR 29954, July 23, 1985; T.D. 89–1, 53 FR 51256, Dec. 21, 1988; T.D. 89–82, 54 FR 36026, Aug. 31, 1989; T.D. 93–66, 58 FR 44130, Aug. 19, 1993; T.D. 98–28, 63 FR 16417, Apr. 3, 1998]

### § 141.83 Type of invoice required.

(a)–(b) [Reserved]

(c) *Commercial invoice*. (1) A commercial invoice shall be filed for each shipment of merchandise not exempted by paragraph (d) of this section. The commercial invoice shall be prepared in the manner customary in the trade, contain the information required by §§ 141.86 through 141.89, and substantiate the statistical information required by § 141.61(e) to be given on the entry, entry summary, or withdrawal documentation.

(2) The port director may accept a copy of a required commercial invoice in place of the original. A copy, other than a photostatic or photographic copy, shall contain a declaration by the foreign seller, the shipper, or the importer that it is a true copy.

(d) *Commercial invoice not required*. A commercial invoice shall not be required in connection with the filing of the entry, entry summary, or withdrawal documentation for merchandise listed in this paragraph. The importer, however, shall present any invoice, memorandum invoice, or bill pertaining to the merchandise which may be in his possession or available to him. If no invoice or bill is available, a pro forma (or substitute) invoice, as provided for in § 141.85, shall be filed, and shall contain information adequate for the examination of merchandise and the determination of duties, and information and documentation which verify the information required for statistical purposes by § 141.61(e). The merchandise subject to the foregoing requirements is as follows:

(1) [Reserved]

(2) Merchandise not intended for sale or any commercial use in its imported condition or any other form, and not brought in on commission for any person other than the importer.

(3)–(4) [Reserved]

(5) Merchandise returned to the United States after having been exported for repairs or alteration under subheadings 9802.00.40 and 9802.00.60, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(6) Merchandise shipped abroad, not delivered to the consignee, and returned to the United States.

(7) Merchandise exported from continuous Customs custody within 6 months after the date of entry.

(8) Merchandise consigned to, or entered in the name of, any agency of the U.S. Government.

(9) Merchandise for which an appraisement entry is accepted.

(10) Merchandise entered temporarily into the Customs territory of the United States under bond or for permanent exhibition under bond.

(11) Merchandise provided for in section 466, Tariff Act of 1930 (19 U.S.C. 1466), which pertain to certain equipment, repair parts, and supplies for vessels.

(12) Merchandise imported as supplies, stores, and equipment of the importing carrier and subsequently made subject to entry pursuant to section 446, Tariff Act of 1930, as amended (19 U.S.C. 1446).

(13) Ballast (not including cargo used for ballast) landed from a vessel and delivered for consumption.

(14) Merchandise, whether privileged or nonprivileged, resulting from manipulation or manufacture in a foreign trade zone.

(15) Screenings contained in bulk importations of grain or seeds.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 78–53, 43 FR 6069, Feb. 13, 1978; T.D. 79–221, 44 FR 46820, Aug. 9, 1979; T.D. 82–224, 47 FR 53728, Nov. 29, 1982; T.D. 84–213, 49 FR 41184, Oct. 19, 1984; T.D. 85–39, 50 FR 9612, Mar. 11, 1985; T.D. 89–1, 53 FR 51256, Dec. 21, 1988; T.D. 93–66, 58 FR 44130, Aug. 19, 1993; T.D. 94–24, 59 FR 13200, Mar. 21, 1994; T.D. 97–82, 62 FR 51771, Oct. 3, 1997]

### § 141.84 Photocopies of invoice for separate entries of same shipment.

(a) *Entries at one port.* If by reason of accident or short shipment a portion of the quantity covered by one invoice fails to arrive, or if for any other reason only a portion of the quantity covered by one invoice is entered under one entry, a photocopy of the commercial invoice used in connection with the first entry, covering the quantity to be entered under another entry, may be used in connection with the subsequent entry of any portion of the merchandise not cleared under the first entry.

(b) *Entries from foreign-trade zone at one port.* A photocopy of the invoice filed with the first entry for consumption from a foreign-trade zone of a portion of the merchandise shown on the invoice will not be required for any subsequent entry for consumption from that zone at the same port of a portion of any merchandise covered by such invoice, if a pro forma invoice is filed and identifies the entry first made and the invoice then filed.

(c) *Entries at different ports.* When portions of a single shipment requiring a commercial invoice are entered at different ports, the importer may submit to the port director where the original invoice or latest photocopy of the original invoice is on file, two photocopies of the latest of such invoices to be certified as to merchandise previously received, and the official seal affixed thereto.

(d) *Pro forma invoice.* In a case in which a portion of the shipment is entered at the first port on a pro forma invoice, an entry at a subsequent port may be made by means of a new pro forma invoice which may cover only the merchandise then entered.

(e) *Photocopy to satisfy bond for invoice.* A properly certified photocopy of a commercial invoice presented within 6 months after the date of entry may be accepted to cancel the charges against the bond given for the production of the commercial invoice.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 84–213, 49 FR 41184, Oct. 19, 1984; T.D. 85–39, 50 FR 9612, Mar. 11, 1985]

### § 141.85 Pro forma invoice.

A pro forma invoice submitted in accordance with any provision of this chapter shall be in substantially the following form:

PRO FORMA INVOICE

IMPORTERS STATEMENT OF VALUE OR THE PRICE PAID IN THE FORM OF AN INVOICE

Not being in possession of a commercial seller's or shipper's invoice I request that you accept the statement of value or the price paid in the form of an invoice submitted below:

Name of shipper _____
address _____

Name of seller _____
address _____;.

Name of consignee _____
address _____.

Name of purchaser _____
address _____.

The merchandise (has) (has not) been purchased or agreed to be purchased by me.

The prices, or in the case of consigned goods the values, given below are true and correct to the best of my knowledge and belief, and are based upon: (Check basis with an "X")

(a) The price paid or agreed to be paid (__) as per order dated _____.

(b) Advices from exporter by letter (—) by cable (__) dated _____.

(c) Comparative values of shipments previously received (__) dated _____.

(d) Knowledge of the market in the country of exportation (__) _____.

(e) Knowledge of the market in the United States (if U.S. Value) (__) _____.

(f) Advices of the Port Director (__) _____.

(g) Other (__) _____.

| A—Case marks numbers | B—Manufacturer's item No. symbol or brand | C—Quantities and full description | D—Unit purchase price (currency) | E—Total purchase price (currency) | F—Unit foreign value | G—Total foreign value |
|---|---|---|---|---|---|---|
| | ..... | ..... | ..... | ..... | ..... | ..... |
| | ..... | ..... | ..... | ..... | ..... | ..... |

Check which of the charges below are, and which are not included in the prices listed in columns "D" and "E":

| Amount | Included | Not included |
|---|---|---|
| Packing | ..... | ..... |
| Cartage | ..... | ..... |
| Inlandfreight | ..... | ..... |
| Wharfage and loading abroad | ..... | ..... |
| Lighterage | ..... | ..... |
| Ocean freight | ..... | ..... |
| U.S. duties | ..... | ..... |
| Other charges (identify by name and amount) | ..... | ..... |
| Total | ..... | ..... |

Country of origin _____.

If any other invoice is received, I will immediately file it with the Port Director.

_____
(Signature of person making invoice)

_____
(Title and firm name)

Date _____

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 85–39, 50 FR 9612, Mar. 11, 1985]

### § 141.86 Contents of invoices and general requirements.

(a) *General information required on the invoice.* Each invoice of imported merchandise, shall set forth the following information:

(1) The port of entry to which the merchandise is destined;

(2) The time when, the place where, and the person by whom and the person to whom the merchandise is sold or agreed to be sold, or if to be imported otherwise than in pursuance of a purchase, the place from which shipped, the time when and the person to whom and the person by whom it is shipped;

(3) A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers, and symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;

(4) The quantities in the weights and measures of the country or place from which the merchandise is shipped, or in the weights and measures of the United States;

(5) The purchase price of each item in the currency of the purchase, if the merchandise is shipped in pursuance of a purchase or an agreement to purchase;

(6) If the merchandise is shipped otherwise than in pursuance of a purchase or an agreement to purchase, the value for each item, in the currency in which the transactions are usually made, or, in the absence of such value, the price in such currency that the manufacturer, seller, shipper, or owner would have received, or was willing to receive, for such merchandise if sold in the ordinary course of trade and in the usual wholesale quantities in the country of exportation;

(7) The kind of currency, whether gold, silver, or paper;

(8) All charges upon the merchandise itemized by name and amount, including freight, insurance, commission, cases, containers, coverings, and cost of packing; and if not included above, all charges, costs, and expenses incurred in bringing the merchandise from alongside the carrier at the port of exportation in the country of exportation and placing it alongside the carrier at the first United States port of entry. The cost of packing, cases, containers, and inland freight to the port of exportation need not be itemized by amount if included in the invoice price, and so identified. Where the required information does not appear on the invoice as originally prepared, it shall be shown on an attachment to the invoice;

(9) All rebates, drawbacks, and bounties, separately itemized, allowed upon the exportation of the merchandise;

(10) The country of origin of the merchandise; and,

(11) All goods or services furnished for the production of the merchandise (e.g., assists such as dies, molds, tools, engineering work) not included in the invoice price. However, goods or services furnished in the United States are

excluded. Annual reports for goods and services, when approved by the port director, will be accepted as proof that the goods or services were provided.

(b) *Nonpurchased merchandise shipped by other than manufacturer*. Each invoice of imported merchandise shipped to a person in the United States by a person other than the manufacturer and otherwise than pursuant to a purchase or agreement to purchase shall set forth the time when, the place where, the person from whom such merchandise was purchased, and the price paid therefor in the currency of the purchase, stating whether gold, silver, or paper.

(c) *Merchandise sold in transit*. If the merchandise is sold on the documents while in transit from the port of exportation to the port of entry, the original invoice reflecting the transaction under which the merchandise actually began its journey to the United States, and the resale invoice or a statement of sale showing the price paid for each item by the purchaser, shall be filed as part of the entry, entry summary, or withdrawal documentation. If the original invoice cannot be obtained, a pro forma invoice showing the values and transaction reflected by the original invoice shall be filed together with the resale invoice or statement.

(d) *Invoice to be in English*. The invoice and all attachments shall be in the English language, or shall have attached thereto an accurate English translation containing adequate information for examination of the merchandise and determination of duties.

(e) *Packing list*. Each invoice shall state in adequate detail what merchandise is contained in each individual package.

(f) *Weights and measures*. If the invoice or entry does not disclose the weight, gage, or measure of the merchandise which is necessary to ascertain duties, the consignee shall pay the expense of weighing, gaging, or measuring prior to the release of the merchandise from Customs custody.

(g) *Discounts*. Each invoice shall set forth in detail, for each class or kind of merchandise, every discount from list or other base price which has been or may be allowed in fixing each purchase price or value.

(h) *Numbering of invoices and pages*—(1) *Invoices*. When more than one invoice is included in the same entry, each invoice with its attachments shall be numbered consecutively by the importer on the bottom of the face of each page, beginning with No. 1.

(2) *Pages*. If the invoice or invoices filed with one entry consist of more than two pages, each page shall be numbered consecutively by the importer on the bottom of the face of each page. The page numbering shall begin with No. 1 for the first page of the first invoice and continue in a single series of numbers through all the invoices and attachments included in one entry.

(3) *Both invoices and pages*. When applicable, both the invoice number and the page number shall be shown at the bottom of each page. For example, if an entry covers one invoice of one page and a second invoice of two pages, the numbering at the bottom of the pages shall be as follows:

Inv. 1, p. 1.
Inv. 2, p. 2.
Inv. 2, p. 3.

(i) *Information may be on invoice or attached thereto*. Any information required on an invoice by any provision of this subpart may be set forth either on the invoice or on an attachment thereto.

(j) *Name of responsible individual*. Each invoice of imported merchandise shall identify by name a responsible employee of the exporter, who has knowledge, or who can readily obtain knowledge, of the transaction.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 79–221, 44 FR 46820, Aug. 9, 1979; T.D. 85–39, 50 FR 9612, Mar. 11, 1985]

### § 141.87 Breakdown on component materials.

Whenever the classification or appraisement of merchandise depends on the component materials, the invoice shall set forth a breakdown giving the value, weight, or other necessary measurement of each component material in sufficient detail to determine the correct duties.

### § 141.88 Computed value.

When the port director determines that information as to computed value is necessary in the appraisement of any class or kind of merchandise, he shall so notify the importer, and thereafter invoices of such merchandise shall contain a verified statement by the manufacturer or producer of computed value as defined in § 402(e), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a(e)).

[T.D. 87–89, 52 FR 24445, July 1, 1987]

### § 141.89 Additional information for certain classes of merchandise.

(a) Invoices for the following classes of merchandise, classifiable under the Harmonized Tariff Schedule of the United States (HTSUS), shall set forth the additional information specified: [75–42, 75–239, 78–53, 83–251, 84–149.]

*Aluminum and alloys of aluminum* classifiable under subheadings 7601.10.60, 7601.20.60, 7601.20.90, or 7602.00.00, HTSUS (T.D. 53092, 55977, 56143)—Statement of the percentages by weight of any metallic element contained in the article.

*Articles manufactured of textile materials,* Coated or laminated with plastics or rubber, classifiable in Chapter(s) 39, 40, and 42—Include a description indicating whether the fabric is coated or laminated on both sides, on the exterior surface or on the interior surface.

*Bags manufactured of plastic sheeting* and not of a reinforced or laminated construction, classified in Chapter 39 or in heading 4202—Indicate the gauge of the plastic sheeting.

*Ball or roller bearings* classifiable under subheading 8482.10.50 through 8482.80.00, HTSUS (T.D. 68–306)—(1) Type of bearing (*i.e.*, whether a ball or roller bearing); (2) If a roller bearing, whether a spherical, tapered, cylindrical, needled or other type; (3) Whether a combination bearing (*i.e.*, a bearing containing both ball and roller bearings, etc.); and (4) If a ball bearing (not including ball bearing with integral shafts or parts of ball bearings), whether or not radial, the following: (a) outside diameter of each bearing; and (b) whether or not a radial bearing (the definition of radial bearing is, for Customs purposes, an antifriction bearing primarily designed to support a load perpendicular to shaft axis).

*Beads* (T.D. 50088, 55977)—(1) The length of the string, if strung; (2) The size of the beads expressed in millimeters; (3) The material of which the beads are composed, *i.e.*, ivory, glass, imitation pearl, etc.

*Bed linen and Bedspreads*—Statement as to whether or not the article contains any embroidery, lace, braid, edging, trimming, piping or applique work.

*Chemicals*—Furnish the use and Chemical Abstracts Service number of chemical compounds classified in Chapters 27, 28 and 29, HTSUS.

*Colors, dyes, stains and related products* provided for under heading 3204, HTSUS—The following information is required: (1) Invoice name of product; (2) Trade name of product; (3) Identity and percent by weight of each component; (4) Color Index number (if none, so state); (5) Color Index generic name (if none so state); (6) Chemical Abstracts Service number of the active ingredient; (7) Class of merchandise (state whether acid type dye, basic dye, disperse dye, fluorescent brightener, soluble dye, vat dye, toner or other (describe); (8) Material to which applied (name the material for which the color, dye, or toner is primarily designed).

*Copper* (T.D. 45878, 50158, 55977) articles classifiable under the provisions of Chapter 74, HTSUS—A statement of the weight of articles of copper, and a statement of percentage of copper content and all other elements—by weight—to articles classifiable according to copper content.

*Copper ores and concentrates* (T.D. 45878, 50158, 55977) classifiable in heading 2603, and subheadings 2620.19.60, 2620.20.00, 2620.30.00, and heading 7401—Statement of the percentages by weight of the copper content and any other metallic elements.

*Cotton fabrics* classifiable under the following HTSUS headings: 5208, 5209, 5210, 5211, and 5212—(1) Marks on shipping packages; (2) Numbers on shipping packages; (3) Customer's call number, if any; (4) Exact width of the merchandise; (5) Detailed description of the merchandise; trade name, if any; whether bleached, unbleached, printed, composed of yarns of different color, or dyed; if composed of cotton and other materials, state the percentage of each component material by weight; (6) Number of single threads per square centimeter (All ply yarns must be counted in accordance with the number of single threads contained in the yarn; to illustrate: a cloth containing 100 two-ply yarns in one square centimeter must be reported as 200 single threads); (7) Exact weight per square meter in grams; (8) Average yarn number use this formula:

$$\frac{100 \times (\text{Total Single Yarns Per Square Centimeter})}{(\text{Number of Grams Per Square Meter})}$$

(9) Yarn size or sizes in the warp; (10) Yarn size or sizes in the filling; (11) Specify whether the yarns are combed or carded; (12) Number of colors or kinds (different yarn sizes or materials) in the filling; (13) Specify whether the fabric is napped or not napped; and (14) Specify the type of weave, for example, plain, twill, sateen, oxford, etc., and (15) Specify the type of machine on which woven: if with Jacquard (Jacq), if with Swivel (Swiv), if with Lappet (Lpt.), if with Dobby (Dobby).

*Cotton raw* See § 151.82 of this chapter for additional information required on invoices.

*Cotton waste* (T.D. 5044)—(1) The name by which the cotton waste is known, such as ''cotton card strips''; ''cotton comber waste''; ''cotton lap waste''; ''cotton sliver waste''; ''cotton roving waste''; ''cotton fly waste''; etc.; (2) Whether the length of the cotton staple forming any cotton card strips covered by the invoice were made is less than 3.016 centimeters (1 3/16 inches) or is 3.016 centimeters (1 3/16 inches) or more.

*Earthenware or crockeryware* composed of a nonvitrified absorbent body (including white granite and semiporcelain earthenware and cream-colored ware, stoneware, and terra cotta, but not including common brown, gray, red, or yellow earthenware), embossed or plain; common salt-glazed stoneware; stoneware or earthenware crucibles; Rockingham earthenware; china, porcelain, or other vitrified wares, composed of a vitrified nonabsorbent body which, when broken, shows a vitrified, vitreous, semi-vitrified, or semivitreous fracture; and bisque or parian ware (T.D. 53236)—(1) If in sets, the kinds of articles in each set in the shipment and the quantity of each kind of article in each set in the shipment; (2) The exact maximum diameter, expressed in centimeters, of each size of all plates in the shipment; (3) The unit value for each style and size of plate, cup, saucer, or other separate piece in the shipment.

*Fish or fish livers* (T.D. 50725, 49640, 55977) imported in airtight containers classifiable under Chapter 3, HTSUS—(1) Statement whether the articles contain an oil, fat, or grease which has had a separate existence as an oil, fat, or grease, (2) The name and quantity of any such oil, fat, or grease.

*Footwear*, classifiable in headings 6401 through 6405 of the HTSUS—

1. Manufacturer's style number.
2. Importer's style and/or stock number.
3. Percent by area of external surface area of upper (excluding reinforcements and accessories) which is:

Leather a. _____%
Composition Leather b. _____%
Rubber and/or plastics c. _____%
Textile materials d. _____%
Other (give separate e. _____%
Percent for each f. _____%
Type of material)

4. Percent by area of external Surface area of outersole (excluding reinforcements and accessories) which is:

Leather a. _____%
Composition Leather b. _____%
Rubber and/or plastics c. _____%
Textile materials d. _____%
Other (give separate e. _____%
Percent for each f. _____%
Type of material)

You may skip this section if you choose to answer *all* questions A through Z below.

I. If 3(a) is larger than any other percent in 3 and if 4(a) is larger than any other percent in 4, answer questions F, G, L, M, O, Q, R, S, and X.

II. If 3(a) is larger than any other percent in 3 and if 4(c) is larger than any other percent in 4, answer questions F, G, L, M, N, O, Q, S and X.

III. If 3(a) plus 3(b) is larger than any single percent in 3 and if 4(d), 4(e) or 4(f) is larger than any other percent in 4, stop.

IV. If 3(c) is larger than any other percent in 3 and if 4(a) or 4(b) is larger than any other percent in 4, stop.

V. If 3(c) is larger than any other percent in 3 and if 4(c) is larger than any other percent in 4, answer questions B, E, F, G, H, J, K, L, M, N, O, P, T and W.

VI. If 3(d) is larger than any other percent in 3 and if 4(a) plus 4(b) is larger than any single percent in 4, answer questions C and D.

VII. If 3(d) is larger than any other percent in 3 and if 4(c) is larger than any other percent in 4, answer questions A, C, J, K, M, N, P and T.

VIII. If 3(d) is larger than any other percent in 3 and if 4(d) is larger than any other percent in 4, answer questions U, Y and Z.

IX. If the article is made of paper, answer questions V and Z.

If the article does not meet any of conditions I through IX above, answer all questions A through Z, below.

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A Percent of external surface area of upper (including leather reinforcements and accessories)
Which is leather _____%

B Percent by area of external surface area of upper (*including* all reinforcements and accessories).
Which is rubber and/or plastics _____%
C Percent by weight of rubber and/or plastics is _____%
D Percent by weight of textile materials plus rubber and/or plastics is _____%
E Is it waterproof?
F Does it have a protective metal toe cap?
G Will it cover the wearer's ankle bone?
H Will it cover the wearer's knee cap?
I [Reserved.]
J Is it designed to protect against water, oil, grease, or chemicals, or cold or inclement weather?
K Is it a slip-on?
L Is it a downhill or cross-country skiboot?
M Is it serious sports footwear other than skiboots? (Chapter 64 subheading note defines sports footwear.)
N Is it a tennis, basketball, gym, or training shoe or the like?
O Is it made on a base or platform of wood?
P Does it have open toes or open heels?
Q Is it made by the (lipped insole) welt construction?
R Is it made by the turned construction?
S Is it worn exclusively by men, boys or youths?
T Is it made by an exclusively adhesive construction?
U Are the fibers of the upper, by weight, predominately vegetable fibers?
V Is it disposable, *i.e.*, intended for one-time use?
W Is it a ''Zori''?
X Is the leather in the upper pigskin?
Y Are the sole and upper made of woolfelt?
Z Is there a line of demarcation between the outer sole and upper?

The information requested above may be furnished on CF 5523 or other appropriate format by the exporter, manufacturer or shipper.

Also, the following information must be furnished by the importer or his authorized agent if classification is claimed under one of the subheadings below:

If subheading 6401.99.80, 6402.19.10, 6402.30.30, 6402.91.40, 6402.99.15, 6402.99.30, 6406.11.40, 6404.11.60, 6404.19.35, 6404.19.40, or 6404.19.60 is claimed:

Does the shoe have a foxing or foxing-like band? If so, state its materials(s).

Does the sole overlap the upper other than just at the front of the toe and/or at the back of the heel?

*Definitions* for some of the terms used in questions A to Z above: For the purpose of this section, the following terms have the approximate definitions below. If either a more complete definition or a decision as to its application to a particular article is needed, the maker or importer of record (or the agent of either) should contact Customs prior to entry of the article.

a. In an *exclusively adhesive construction*, all of the piece(s) of the bottom would separate from the upper or from each other if all adhesives, cements, and glues were dissolved. It includes shoes in which the pieces of the upper are stitched to each other, but not to any part of the bottom. Examples include:

1. Vulcanized construction footwear;

2. Simultaneous molded construction footwear;

3. Molded footwear in which the upper and the bottom are one piece of molded rubber or plastic, and

4. Footwear in which staples, rivets, stitching, or any of the methods above are either primary or just extra or auxiliary, even though adhesive is a major part of the reason the bottom will not separate from the upper.

b. *Composition leather* is made by binding together leather fibers or small pieces of natural leather. It does not include imitation leathers not based on natural leather.

c. *Leather* is the tanned skin of any animal from which the fur or hair has been removed. Tanned skins coated or laminated with rubber and/or plastics are ''leather'' only if the leather gives the material its essential character.

d. A *line of demarcation* exists if one can indicate where the sole ends and the upper begins. For example, knit booties do not normally have a line of demarcation.

e. *Men's, boys' and youths'* sizes cover footwear of American youths sizes 11½ and larger for males, and do not include footwear commonly worn by both sexes. If more than 4% of the shoes sold in a given size will be worn by females, that size is ''commonly worn by both sexes.''

f. Footwear is designed to *protect* against water, oil or cold or inclement weather only if it is substantially more of a protection against those items than the usual shoes of that type. For example, leather oxfords will clearly keep one's feet warmer and drier than going barefoot, but they are not a protection in this sense. On the other hand the snow-jobber is the protective version of the nonprotective jogging shoe.

g. *Rubber and/or plastics* includes any textile material visibly coated (or covered) externally with one or both of those materials.

h. *Slip-on* includes:

1. A boot which must be pulled on.

2. Footwear with elastic cores which must be stretched to get it on, but not bootwear having a separate piece of elasticized fabric which forms a full circle around the foot or ankle.

i. *Sports footwear* includes only:

(1) Footwear which is designed for a sporting activity and has, or has provision for, the attachment of spikes, sprigs, cleats, stops, clips, bars or the like;

(2) Skating boots (without skates attached), ski boots and cross-country ski footwear, wrestling boots, boxing boots and cycling shoes.

j. *Tennis shoes, basketball shoes, gym shoes, training shoes and the like* covers athletic footwear other than sports footwear, whether or not principally used for such athletic games or purposes.

k. *Textile materials* are made from cotton, other vegetable fibers, wool, hair, silk or man-made fibers. Note: Cork, wood carboard and leather are not textile materials.

l. In *turned* construction, the upper is stitched to the leather sole wrong side out and the shoe is then turned right side out.

m. *Vegetable fibers* include cotton, flax and ramie, but do not include either rayon or plaiting materials such as rattan or wood strips.

n. *Waterproof footwear* includes footwear designed to protect against penetration by water or other liquids, whether or not such footwear is primarily designed for such purposes.

o. *Welt footwear* means footwear constructed with a welt, which extends around the edge of the outer sole, and in which the welt and shoe upper are sewed to a lip on the surface of the insole, and the outer sole is sewed or cemented to the welt.

p. A *zori* has an upper consisting only of straps or thongs of molded rubber or plastic. This upper is assembled to a foamed rubber or plastic sole by means of plugs.

*Fur products and furs* (T.D. 53064)—(1) Name or names (as set forth in the Fur Products Name Guide (16 CFR 301.0) of the animal or animals that produced the fur, and such qualifying statements as may be required pursuant to § 7(c) of the Fur Products Labeling Act (15 U.S.C. 69e(c)); (2) A statement that the fur product contains or is composed of used fur, when such is the fact; (3) A statement that fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact; (4) A statement that the fur product is composed wholly or in substantial part of paws, tails, bellies, or waste fur, when such is the fact; (5) Name and address of the manufacturer of the fur product; (6) Name of the country of origin of the furs or those contained in the fur product.

*Glassware and other glass products* (T.D. 53079, 55977)—Classifiable under Heading 7013 HTSUS—Statement of the separate value of each component article in the set.

*Gloves*— State if the merchandise has a plastics or a rubber exterior. (See Chapter 59, Note 2(a)(3)).

*Grain or grain and screenings* (T.D. 51284)—Statement on Customs invoices for cultivated grain or grain and screenings that no screenings are included with the grain, or, if there are screenings included, the percentage of the shipment which consists of screenings commingled with the principal grain.

*Handkerchiefs*—(1) State the exact dimensions (length and width) of the merchandise; (2) If of cotton indicate whether the handkerchief is hemmed and whether it contains lace or embroidery.

*Hats or headgear*—(1) If classifiable under subheading 6502.00.40 or 6502.00.60, HTSUS—Statement as to whether or not the article has been bleached or colored; (2) If classifiable under subheadings 6502.00.20 through 6502.00.60 or 6504.00.30 through 6504.00.90, HTSUS—Statement as to whether or not the article is sewed or not sewed, exclusive of any ornamentation or trimming.

*Hosiery*—(1) Indicate whether a single yarn measures less than 67 decitex. (2) Indicate whether the hosiery is full length, knee length, or less than knee length. (3) Indicate whether it contains lace or net.

*Iron or steel* classifiable in Chapter 72 or headings 7301 to 7307, HTSUS (T.D. 53092, 55977)—Statement of the percentages by weight or carbon and any metallic elements contained in the articles, in the form of a mill analysis or mill test certificate.

*Iron oxide* (T.D. 49989, 50107)—For iron oxide to which a reduced rate of duty is applicable, a statement of the method of preparation of the oxide, together with the patent number, if any.

*Machines, equipment and apparatus*— Chapters 84 and 85, HTSUS—A statement as to the use or method of operation of each type of machine.

*Machine parts* (T.D. 51616)—Statement specifying the kind of machine for which the parts are intended, or if this is not known to the shipper, the kinds of machines for which the parts are suitable.

*Machine tools:* (1) Headings 8456 through 8462—machine tools covered by these headings equipped with a CNC (Computer Numerical Control) or the facings (electrical interface) for a CNC must state so; (2) Headings 8458 through 8463—machine tools covered by these headings if used or rebuilt must state so; (3) Subheading 8456.30.10—EDM: (Electical Discharge Machines) if a Traveling Wire (Wire Cut) type must state so. Wire EDM's use a copper or brass wire for the electrode; (4) Subheading 8457.10.00—Machining Centers. Must state whether or not they have an ATC (Automatic Tool Changer). Vertical spindle maching centers with an ATC must also indicate the Y-travel; (5) Subheading 8458.11.0030 through 8458.11.0090—horizontal lathes: numerically controlled. Must indicate the rated HP (or KW rating) of the main spindle motor. Use the continuous rather than the 30 minute rating.

*Madeira embroideries* (T.D. 49988)—(1) With respect to the materials used, furnish: (a)

country of production; (b) width of the material in the piece; (c) name of the manufacturer; (d) kind of material, indicating manufacturer's quality number; (e) landed cost of the material used in each item; (f) date of the order; (g) date of the invoice; (h) invoice unit value in the currency of the purchase; (i) discount from purchase price allowed, if any; (2) With respect to the finished embroidered articles, furnish: (a) manufacturers's name, design number, and quality number; (b) importer's design number, if any; (c) finished size; (d) number of embroidery points per unit of quantity; (e) total for overhead and profit added in arriving at the price or value of the merchandise covered by the invoice.

*Motion-picture films*—(1) Statement of footage, title, and subject matter of each film; (2) Declaration of shipper, cameraman, or other person with knowledge of the facts identifying the films with the invoice and stating that the basic films were to the best of his knowledge and belief exposed abroad and returned for use as newsreel; (3) Declaration of importer that he believes the films entered by him are the ones covered by the preceding declaration and that the films are intended for use as newsreel.

*Paper* classifiable in Chapter 48—Invoices covering paper shall contain the following information, or will be accompanied by specification sheets containing such information:

(1) Weight of paper in grams per square meter; (2) Thickness, in micrometers (microns); (3) If imported in rectangular sheets, length and width of sheets, in cm; (4) if imported in strips, or rolls, the width, in cm. In the case of rolls, the diameter of rolls in cm; (5) Whether the paper is coated or impregnated, and with what materials; (6) Weight of coating, in grams per square meter; (7) Percentage by weight of the total fiber content consisting of wood fibers obtained by a mechanical process, chemical sulfate or soda process, chemical sulfite process, or semichemical process, as appropriate; (8) Commercial designation, as ''Writing'', ''Cover'', ''Drawing'', ''Bristol'', ''Newsprint'', etc.; (9) Ash content; (10) Color; (11) Glaze, or finish; (12) Mullen bursting strength, and Mullen index; (13) Stretch factor, in machine direction and in cross direction; (14) Tear and tensile readings; in machine direction, in cross direction, and in machine direction plus cross direction; (15) Identification of fibers as ''hardwood'' where appropriate; (16) Crush resistance; (17) Brightness; (18) Smoothness; (19) If bleached, whether bleached uniformly throughout the mass; (20) Whether embossed, perforated, creped or crinkled.

*Plastic plates, sheets, film, foil and strip* of headings 3920 and 3921—(1) Statement as to whether the plastic is cellular or noncellular; (2) Specification of the type of plastic; (3) Indication of whether or not flexible and whether combined with textile or other material.

*Printed matter* classifiable in Chapter 49—Printed matter entered in the following headings shall have, on or with the invoices covering such matter, the following information: (1) *Heading 4901*—(a) Whether the books are: dictionaries, encyclopedias, textbooks, bound newspapers or journals or periodicals, directories, bibles or other prayer books, technical, scientific or professional books, art or pictorial books, or ''other'' books; (b) if ''other'' books, whether hardbound or paperbound; (c) if ''other'' books, paperbound, other than ''rack size'': number of pages (excluding covers). (2) *Heading 4902*—(a) Whether the journal or periodical appears at least four times a week. If the journal or periodical appears other than at least four times a week, whether it is a newspaper supplement printed by a gravure process, is it a newspaper, business or professional journal or periodical, or other than these; (3) *Heading 4904*—Whether the printed or manuscript music is sheet music, not bound (except by stapling or folding); (4) *Heading 4905*—(a) Whether globes or not; (b) if not globes, whether in book form or not; (c) in any case, whether or not in relief; (5) *Heading 4908*—Whether or not vitrifiable; (6) *Heading 4904*—Whether post cards, greeting cards, or other; (7) *Heading 4910*—(a) Whether or not printed on paper by a lithographic process; (b) if printed on paper by a lithographic process, the thickness of the paper, in mm; (8) *Subheading 4911.91*—(a) Whether or not printed over 20 years at time of importation; (b) if printed not over 20 years at time of importation, whether suitable for use in the production of articles of heading 4901; (c) if not printed over 20 years at time of importation, and not suitable for use in the production of articles of heading 4901, whether the merchandise is lithographs on paper or paperboard; (d) if lithographs on paper or paperboard, under the terms of the immediately preceding description, thickness of the paper or paperboard, and whether or not posters; (e) in any case, whether or not posters; (f) in any case, whether or not photographic negatives or positives on transparent bases; (g) *Subheading 4911.99*—If not carnets, or parts thereof, in English or French, whether or not printed on paper in whole or in part by a lithographic process.

*Pulp* classifiable in Chapter 47—(1) Invoices covering chemical woodpulp, dissolving grades, in *Heading 4702* shall state the insoluble fraction (as a percentage) after 1 hour in a caustic soda solution containing 18% sodium hydroxide (NaOH) at 20 °C; (2) *Subheading 4702.00.0020*—Pulp entered under this subheading shall in addition contain on or with the invoice the ash content as a percentage to the third decimal point, by weight.

*Refrigeration equipment* (1) Refrigerator-freezers classifiable under subheading 8418.10.00 and (2) refrigerators classifiable under subheading 8418.21.00—(a) Statement as to whether they are compression or absorption type; (b) Statement of their refrigerated volume in liters. (3) Freezers classifiable under subheading 8418.30.00 and 8418.40.00—Statement as to whether they are chest or upright type. (4) Liquid chilling refrigerating units classifiable under subheadings 8418.69.0045 through 8418.69.0060—Statement as to whether they are centrifugal open-type, centrifugal hermetic-type, absorption-type or reciprocating type.

*Rolling mills*—Subheadings 8455.30.0005 through 8455.30.0085. Rolls for rolling mills: Indicate the composition of the roll—gray iron, cast steel or other—and the weight of each roll.

*Rubber products of Chapter 40*—(1) Statement as to whether combined with textile or other material; (2) Statement whether the rubber is cellular or noncellular, unvulcanized or vulcanized, and if vulcanized, whether hard rubber or other than hard rubber.

*Screenings or scalpings of grains or seeds* (T.D. 51096)—(1) Whether the commodity is the product of a screening process; (2) If so, whether any cultivated grains have been added to such commodity; (3) If any such grains have been added, the kind and percentage of each.

*Textile fiber products* (T.D. 55095)—(1) The constituent fiber or combination of fibers in the textile fiber product, designating with equal prominence each natural or manufactured fiber in the textile fiber product by its generic name in the order of predominance by the weight thereof if the weight of such fiber is 5 per centum or more of the total fiber weight of the product; (2) The percentage of each fiber present, by weight, in the total fiber content of the textile fiber product; (3) The name, or other identification issued and registered by the Federal Trade Commission, of the manufacturer of the product or one or more persons subject to §3 of the Textile Fiber Products Identification Act (15 U.S.C. 70a) with respect to such product; (4) The name of the country where processed or manufactured. *See also* ''Wearing Apparel'' below.

*Tires and tubes for tires,* of rubber or plastics—(1) Specify the kind of vehicle for which the tire is intended, *i.e.*, airplane, bicycle, passenger car, on-the-highway light or heavy truck or bus, motorcycle; (2) If designed for tractors provided for in subheading 8701.90.10 or for agricultural or horticultural machinery or implements provided for in Chapter 84 or in subheading 8716.80.10, designate whether the tire is new, recapped, or used; pneumatic or solid; (3) Indicate whether the tube is designed for tires provided for in subheading 4011.91.10, 4011.99.10, 4012.10.20, or 4012.20.20.

*Tobacco (including tobacco in its natural state)* (T.D. 44854, 45871)—(1) Specify in detail the character of the tobacco in each bale by giving (a) country and province of origin, (b) year of production, (c) grade or grades in each bale, (d) number of carrots or pounds of each grade if more than one grade is packed in a bale, (e) the time when, place where, and person from whom purchased, (f) price paid or to be paid for each bale or package, or price for the vega or lot if purchased in bulk, or if obtained otherwise than by purchase, state the actual market value per bale; (2) If an invoice covers or includes bales of tobacco which are part of a vega or lot purchased in bulk, the invoice must contain or be accompanied by a full description of the vega or lot purchased; or if such description has been furnished with a previous importation, the date and identity of such shipment; (3) Packages or bales containing only filler leaf shall be invoiced as filler; when containing filler and wrapper but not more than 35 percent of wrapper, they shall be invoiced as mixed; and when containing more than 35 percent of wrapper, they shall be invoiced as wrapper.

*Watches and watch movements* classifiable in Chapter 91 of the HTSUS—For all commercial shipments of such articles, there shall be required to be shown on the invoice, or on a separate sheet attached to and constituting a part of the invoice, such information as will reflect with respect to each group, type, or model, the following:

(A) For watches, a thorough description of the composition of the watch cases, the bracelets, bands or straps; the commercial description (ebauche caliber number, ligne size and number of jewels) of the movements contained in the watches; and the type of battery (manufacturer's name and reference number), if the watch is battery-operated;

(B) For watch movements, the commercial description (ebauche caliber number, ligne size and number of jewels). If battery-operated, the type of battery (manufacturer's name and reference number);

(C) The name of the manufacturer of the exported watch movements and the name of the country in which the movements were manufactured.

*Wearing apparel*—(1) All invoices for textile wearing apparel should indicate a component material breakdown in percentages by weight for all component fibers present in the entire garment, as well as separate breakdowns of the fibers in the (outer) shell (exclusive of linings, cuffs, waistbands, collars and other trimmings) and in the lining. (2) For garments which are constructed of more than one component or material (combinations of knit and not knit fabric or combinations of knit and/or not knit fabric with leather, fur, plastic including vinyl, etc.),

the invoice must show a fiber breakdown in percentages by weight for each separate textile material in the garment and a breakdown in percentages by weight for each nontextile material for the entire garment; (3) For woven garments—Indicate whether the fabric is yarn dyed and whether there are ''two or more colors in the warp and/or filling''; (4) For all-white T-shirts and singlets—Indicate whether or not the garment contains pockets, trim, or embroidery; (5) For mufflers—State the exact dimensions (length and width) of the merchandise.

*Wood products*—(1) Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm (lumber), classifiable under Chapter 44, heading 4407, HTSUS, and wood continuously shaped along any of its edges or faces, whether or not planed, sanded or finger-jointed: Coniferous: Subheading 4409.10.90 and Nonconiferous: Subheading 4409.20.90, HTSUS, and dutiable on the basis of cubic meters—

Quantity in cubic meters (m) before dressing; (2) Fiberboard of wood or other ligneous materials whether or not bonded with resins or other organic substances, under Chapter 44, Heading 4411, HTSUS, and classifiable according to its density—Density in grams per cubic centimeter (cm); (3) Plywood consisting solely of sheets of wood, classifiable under Chapter 44, Subheading 4412.11, 4412.12, and 4412.19, HTSUS, and classifiable according to the thickness of the wood sheets—Thickness of each ply in millimeter (mm).

*Wool and hair*—See § 151.62 of this chapter for additional information required on invoices.

*Wool products,* except carpets, rugs, mats, and upholsteries, and wool products made more than 20 years before importation (T.D. 50388, 51019)—(1) The percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (a) wool; (b) reprocessed wool; (c) reused wool; (d) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; and (e) the aggregate of all other fibers; (2) the maximum percentage of the total weight of the wool product, of any nonfibrous loading, filling, or adulterating matter; and (3) the name of the manufacturer of the wool product, except when such product consists of mixed wastes, residues, and similar merchandise obtained from several suppliers or unknown sources.

*Woven fabric of man-made fibers* in headings 5407, 5408, 5512, 5513, 5514, 5515, 5516—

(1) State the exact width of the fabric;

(2) Provide a detailed description of the merchandise, (trade name, if any);

(3) Indicate whether bleached, unbleached, dyed, of yarns of different colors and/or printed;

(4) If composed of more than one material, list percentage by weight in each;

(5) Identify the man-made fibers as artificial or synthetic, filament or staple, and state whether the yarns are high tenacity. Specify the number of turns per meter in each yarn;

(6) Specify yarn sizes in warp and filling;

(7) Specify how the fabric is woven (plain weave, twill, sateen, dobby, jacquard, swivel, lappet, etc.);

(8) Indicate the number of single threads per square centimeter in both warp and filling;

(9) Supply the weight per square meter in grams;

(10) Provide the average yarn number using this formula:

$$\frac{100 \times \text{number of single threads per square centimeter}}{\text{(number of grams per square meter)}};$$

(11) For spun yarns, specify whether combed or carded.

(12) For filament yarns, specify whether textured or not textured.

*Yarns*—(1) All yarn invoices should show: (a) Fiber content by weight; (b) whether single or plied; (c) whether or not put up for retail sale (*See* Section XI, Note 4, HTSUS); (d) whether or not intended for use as sewing thread;

(2) If chief weight of silk—show whether spun or filament;

(3) If chief weight of cotton—show:

(a) Whether combed or uncombed

(b) Metric number (mn)

(c) Whether bleached and/or mercerized;

(4) If chief weight of man-made fiber—show:

(a) Whether filament, or spun, or a combination of filament and spun

(b) If a combination of filament and spun—give percentage of filament and spun by weight.

(5) If chief weight of filament man-made fiber—show:

(a) Whether high tenacity (See Section XI, note 6 HTSUS).

(b) Whether monofilament, multifilament or strip

(c) Whether texturized

(d) Yarn number in decitex

(e) Number of turns per meter

(f) For monofilaments—show cross sectional dimension in millimeters

(g) For strips—show the width of the strip in millimeters (measure in folded or twisted condition if so imported).

[T.D. 73–175, 38 FR 17447, July 2, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 141.89, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 141.90 Notation of tariff classification and value on invoice.

(a) [Reserved]

(b) *Classification and rate of duty*. The appropriate subheading of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), and the rate of duty shall be noted by the importer in the left-hand portion of the invoice, next to the articles to which they apply.

(c) *Value*. The importer shall show in clear detail on the invoice or on an attached statement the computation of all deductions from total invoice value, such as nondutiable charges, and all additions to invoice value which have been made to arrive at the aggregate entered value. In addition, the entered unit value for each article on the invoice shall be shown where it is different from the invoiced unit value.

(d) *Importer's notations in blue or black ink*. All notations made on the invoice by the importer or broker shall be in blue or black ink.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 89–1, 53 FR 51262, Dec. 21, 1988; T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

### § 141.91 Entry without required invoice.

If a required invoice is not available in proper form at the time the entry or entry summary documentation is filed and a waiver is not granted in accordance with § 141.92, the entry or entry summary documentation shall be accepted only under the following conditions:

(a) The port director is satisfied that the failure to produce the required invoice is due to a cause beyond the control of the importer;

(b) The importer files:

(1) A written declaration that he is unable to produce such invoice, and

(2) Any seller's or shipper's invoices available to him or, if none are available, a pro forma invoice in accordance with § 141.85;

(c) The invoices and other documents contain information adequate for the examination of merchandise, the determination of estimated duties, if any, and statistical purposes; and

(d) The importer files a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in an amount equal to one and one-half the invoice value of the merchandise, for the production of the required invoice, which must be produced within 120 days after the date of the filing of the entry summary (or the entry, if there is no entry summary) documentation, unless the invoice is needed for statistical purposes. If needed for statistical purposes, the invoice shall be produced within 50 days after the date of the entry summary (or the entry, if there is no entry summary) is required to be filed, unless a reasonable extension of time is granted by the port director for good cause shown.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 79–221, 44 FR 46821, Aug. 9, 1979; T.D. 84–213, 49 FR 41184, Oct. 19, 1984; T.D. 85-167, 50 FR 40363, Oct. 3, 1985; T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

### § 141.92 Waiver of invoice requirements.

(a) *When waiver may be granted*. The port director may waive production of a required invoice when he is satisfied that either:

(1) The importer cannot by reason of conditions beyond his control furnish a complete and accurate invoice; or

(2) The examination of merchandise, final determination of duties, and collection of statistics can be effected properly without the production of the required invoice.

(b) *Documents to be filed by importer*. As a condition to the granting of a waiver, the importer shall file the following documents with the entry:

(1) Any invoice or invoices received from the seller or shipper;

(2) A statement pointing out in exact detail any inaccuracies, omissions, or other defects in such invoice or invoices;

(3) An executed pro forma invoice in accordance with § 141.85; and

(4) Any other information required by the port director for either appraisement or classification of the merchandise, or for statistical purposes.

(c) *Satisfaction of bond liability*. The liability under the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production of a correct invoice shall be deemed satisfied when a waiver has been granted pursuant to this section.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 78–53, 43 FR 6070, Feb. 13, 1978; T.D. 79–221, 44 FR 46821, Aug. 9, 1979; T.D. 84–213, 49 FR 41184, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984; T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

## Subpart G—Deposit of Estimated Duties

### § 141.101 Time of deposit.

Estimated duties shall either be deposited with the Customs officer designated to receive the duties at the time of the filing of the entry documentation or the entry summary documentation when it serves as both the entry and entry summary, or be transmitted to Customs according to the statement processing method as described in § 24.25 of this chapter, except in the following cases:

(a) *Merchandise released under entry documentation*. In the case of merchandise released under the entry documentation listed in § 142.3 of this chapter before filing of the entry summary, deposit of estimated duties shall be made at the time the entry summary is filed unless the merchandise is entered for warehouse. If the merchandise is entered for warehouse, estimated duties shall be deposited in accordance with paragraph (b) of this section.

(b) *Warehouse entry*. In the case of merchandise entered for warehouse, deposit of estimated duties shall be made at the time the withdrawal for consumption is presented.

(c) *Informal mail entry*. In the case of merchandise entered under an informal mail entry, duties shall be paid to the postal employee at the time he delivers the merchandise to the addressee (see part 145 of this chapter).

(d) *Appraisement entries*. In the case of merchandise entered under an appraisement entry, deposit of estimated duties shall be made immediately after notification by the appropriate Customs officer of the amount of duties due.

(e) *Entry for transportation or under bond*. No deposit of estimated duties is applicable in the case of merchandise entered for transportation or temporarily imported under bond, entered for permanent exhibition under bond, entered for a trade fair under bond or entered under bond for similar reasons.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 79–221, 44 FR 46821, Aug. 9, 1979; T.D. 84–213, 49 FR 41184, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984; T.D. 89–104, 54 FR 50498, Dec. 7, 1989]

### § 141.102 When deposit of estimated duties, estimated taxes, or both not required.

Entry or withdrawal for consumption in the following situations may be made without depositing the estimated Customs duties, or estimated taxes, or both, as specifically noted:

(a) *Cigars and cigarettes*. A qualified dealer or manufacturer may enter or withdraw for consumption cigars, cigarettes, and cigarette papers and tubes without payment of internal revenue tax in accordance with § 11.2(a) of this chapter.

(b) *Bulk distilled spirits transferred to the bonded premises of a distilled spirits plant*. An importer may transfer distilled spirits in bulk to the bonded premises of a distilled spirits plant, without the payment of tax, under the provisions of section 5232(a), Internal Revenue Code of 1986 (26 U.S.C. 5232(a)), and the regulations of the Bureau of Alcohol, Tobacco and Firearms (27 CFR part 251).

(c) *Deferral of payment of taxes on alcoholic beverages*. An importer may pay on a semimonthly basis the estimated internal revenue taxes on all the alcoholic beverages entered or withdrawn for consumption during that period, under the procedures set forth in § 24.4 of this chapter.

(d) *Government entries*. If a shipment is entered or withdrawn for consumption by a U.S. Government department

or agency, or an authorized representative thereof, no deposit of estimated Customs duties or taxes shall be required if a stipulation is furnished in lieu of the bond. The proper department or agency will then be billed after liquidation of the entry for any duties or charges due. The stipulation shall be in the following form:

I, _____ (title), a duly authorized representative of the _____

_____

(name of U.S. Government department or agency) stipulate and agree on behalf of such department or agency that all applicable provisions of the Tariff Act of 1930, as amended, and the regulations thereunder, and of all other laws and regulations, relating to _____

_____

(type of entry)

_____

entry No. _____, of _____ (date) will be observed and complied with in all respects.

_____

(Signature)

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 78–329, 43 FR 43455, Sept. 26, 1978; T.D. 84–213, 49 FR 41184, Oct. 19, 1984; T.D. 89–65, 54 FR 28414, July 6, 1989; T.D. 92–31, 57 FR 10989, Apr. 1, 1992]

### § 141.103 Amount to be deposited.

Estimated duties shall be deposited in an amount to sufficiently cover the prospective duties on each item being entered or withdrawn.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

### § 141.104 Computation of duties.

In computing estimated duties, fractional parts of dollars and quantities shall be rounded off in accordance with § 159.3 of this chapter.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

### § 141.105 Voluntary deposit of additional duties.

If either the importer of record or the actual owner whose declaration and superseding bond have been filed in accordance with § 141.20 desires, he may estimate, on the basis of information contained in the entry papers or obtainable from the port director, the probable amount of unpaid duties which will be found due on the entire entry and deposit them in whole or in part with the port director. The deposit shall be tendered in writing in the following form in the number of copies required for the purposes of local administration, and an official receipt shall be given for the deposit:

Date _____.

To the Port Director, _____

_____.

Tender is hereby voluntarily made of $_____ as a supplemental deposit of estimated duties and taxes on _____ entry No. _____, dated _____, in the name of _____. Please provide an official receipt.

_____

(Importer of record) or (actual owner)

_____

(Street address)

_____

(City) (State)

## Subpart H—Release of Merchandise

### § 141.111 Carrier's release order.

(a) *When required.* Except where release is made directly to the carrier in accordance with § 141.11(b), no merchandise shall be released from Customs custody until a release order has been executed by the carrier, or, in the case of merchandise in a bonded warehouse, by the warehouse proprietor.

(b) *Form of release.* The release order may be executed on any of the following documents:

(1) [Reserved]

(2) The official entry form;

(3) A combined carrier's certificate and release order issued in accordance with § 141.11(a)(4); or

(4) If a certified duplicate bill of lading or air waybill is used for entry purposes in accordance with § 141.11(a)(3), the carrier's release order may be endorsed thereon in substantially the following form:

In accordance with the provisions of section 484(j), Tariff Act of 1930, authority is hereby given to release the articles covered by this certified duplicate bill of lading or air waybill to: _____.

(c) *Blanket release order.* Merchandise may be released to the person named in the bill of lading or air waybill in the absence of a specific release order from

the carrier, if the carrier concerned has filed a blanket order authorizing release to the owner or consignee in such cases. A carrier's certificate in the form shown in §141.11(a)(4), may be modified and executed to make it a blanket release order for the shipments covered by a blanket carrier's release order under §141.11(a)(5).

(d) *Qualified release order*. In the case of merchandise which is entered for warehousing, for transportation in bond, for exportation, or is to be admitted to a foreign trade zone, the release order may be qualified as follows:

(1) ''For transfer to the bonded warehouse designated in the warehouse entry,'' if the merchandise is entered for warehousing;

(2) ''For transfer to the bonded carrier designated in the transportation entry,'' if the merchandise is entered for transportation in bond;

(3) ''For transfer to the carrier designated in the export entry,'' if the merchandise is entered for exportation; or

(4) ''For transfer to the foreign trade zone designated in Customs Form 214,'' if the merchandise is to be admitted to a foreign trade zone.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978; T.D. 86–16, 51 FR 5063, Feb. 11, 1986; T.D. 87–75, 52 FR 20068, May 29, 1987; T.D. 90–87, 55 FR 47052, Nov. 9, 1990]

### §141.112 Liens for freight, charges, or contribution in general average.

(a) *Definitions*. The following are general definitions for the purposes of this section:

(1) *Freight*. ''Freight'' means the charges for the transportation of the goods from the place of shipment in the foreign country to the final destination in the United States.

(2) *Charges*. ''Charges'' means the charges due to or assumed by the claimant of the lien which are incident to the shipment and forwarding of the goods to the destination in the United States, but does not include the purchase price, whether advanced or to be collected, nor other claims not connected with the transportation of the goods.

(3) *General average*. ''General average'' means the liability to contribution of the owners of a cargo which arises when a sacrifice of a part of such cargo has been made for the preservation of the residue or when money is expended to preserve the whole. It only arises from actions impelled by necessity.

(4) *Claimant*. ''Claimant'' means a carrier, customs broker or the successors or assigns of either.

(b) *Notice of lien*. A notice of lien for freight, charges, or contribution in general average pursuant to section 564, Tariff Act of 1930, as amended (19 U.S.C. 1564), shall be filed with the port director on Customs Form 3485, signed by the authorized agent of the claimant and certified by him.

(c) *Preliminary notice of lien for contribution in general average*. When the cargo of a vessel is subject to contribution in general average, a preliminary notice thereof may be filed with the port director and individual notices of lien filed thereafter. Upon receipt of a preliminary notice, the port director shall withhold release of any merchandise imported in the vessel for 2 days (exclusive of Sunday and holidays) after such merchandise is taken into Customs custody, unless proof is submitted that the claim for contribution in general average has been paid or secured.

(d) *Merchandise entered for immediate transportation*. A notice of lien upon merchandise entered for immediate transportation shall be filed by the claimant with the port director at the destination.

(e) *Limitations on acceptance of notice of lien*. A notice of lien shall be rejected and returned with the reason for rejection noted thereon if it is filed after any of the following actions have been taken concerning the merchandise:

(1) Release from Customs custody;

(2) Forfeiture under any provision of law;

(3) Sale as unclaimed or abandoned merchandise under section 491 or 559, Tariff Act of 1930, as amended (19 U.S.C. 1491 or 1559); or

(4) Receipt and acceptance of a notice of abandonment to the Government under section 506(1) or 563(b), Tariff Act of 1930, as amended (19 U.S.C. 1506(1) or 1563(b)).

(f) *Forfeited or abandoned merchandise.* The acceptance of a notice of lien shall not in any manner affect the order of disposition and accounting for the proceeds of sales of forfeited and abandoned property provided for in Subpart D of part 127 and §§ 158.44 and 162.51 of this chapter.

(g) *Bond may be required.* When any doubt exists as to the validity of a lien filed with the port director, he may require a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, to hold him harmless from any liability which may result from withholding the release of the merchandise.

(h) *Satisfaction of lien.* The port director shall not adjudicate any dispute respecting the validity of any lien, but when the amount of such lien depends upon the quantity or weight of merchandise actually landed, the port director shall hold the lien satisfied upon the payment of an amount computed upon the basis of the official Customs report of quantity and weight. In all other cases, proof that the lien has been satisfied or discharged shall consist of a written release or receipt signed by the claimant and filed with the port director, showing payment of the claim in full.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 74–114, 39 FR 32023, Apr. 3, 1974; T.D. 84–213, 49 FR 41184, Oct. 19, 1984; T.D. 88–7, 53 FR 4962, Feb. 19, 1988; T.D. 97–82, 62 FR 51771, Oct. 3, 1997]

### § 141.113 Recall of merchandise released from Customs custody.

(a) *Merchandise not legally marked.* Certain merchandise is required to be marked or labeled pursuant to the following provisions:

(1) Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), pertaining to marking with country of origin;

(2) Textile Fiber Products Identification Act (15 U.S.C. 70);

(3) Wool Products Labeling Act (15 U.S.C. 68);

(4) Fur Products Labeling Act (15 U.S.C. 69); and

(5) Chapter 91, Additional U.S. Note 4, Harmonized Tariff Schedule of the United States (HTSUS), pertaining to special marking for watch and clock movements, cases, and dials.

If such merchandise is found after release to be not legally marked, the port director may demand its return to Customs custody for the purpose of requiring it to be properly marked or labeled. The demand for marking or labeling shall be made not later than 30 days after the date of entry in the case of merchandise examined in public stores, and places of arrival, such as docks, wharfs, or piers. Demand may be made no later than 30 days after the date of examination in the case of merchandise examined at the importer's premises or such other appropriate places as determined by the port director.

(b) *Textiles and textile products.* For purposes of determining whether the country of origin of textiles and textile products subject to the provisions of § 102.21 or § 102.22 of this chapter, as applicable, has been accurately represented to Customs, the release from Customs custody of any such textile or textile product shall be deemed conditional during the 180-day period following the date of release. If the port director finds during the conditional release period that a textile or textile product is not entitled to admission into the commerce of the United States because the country of origin of the textile or textile product was not accurately represented to Customs, he shall promptly demand its return to Customs custody. Notwithstanding the provisions of paragraph (h) of this section and § 113.62(l)(1) of this chapter, a failure to comply with a demand for return to Customs custody made under this paragraph shall result in the assessment of liquidated damages equal to the value of the merchandise involved.

(c) *Other merchandise not entitled to admission.* If at any time after entry the port director finds that any merchandise contained in an importation is not entitled to admission into the commerce of the United States for any reason not enumerated in paragraph (a) or (b) of this section, he shall promptly demand the return to Customs custody of any such merchandise which has been released.

(d) *Request for samples or additional examination packages not complied with by importer.* If the importer has not promptly complied with a request for

samples or additional examination packages made by the port director pursuant to §151.11 of this chapter, the port director may demand the return of the necessary merchandise to Customs custody.

(e) *Demand to importer of record or actual owner*. A demand for the return of merchandise to Customs custody shall be made on the importer of record, except that it shall be made on the actual owner if an actual owner's declaration and superseding bond have been filed in accordance with §141.20 before the date of the demand.

(f) *Form of demand*. A demand for the return of merchandise to Customs custody shall be made on Customs Form 4647 or other appropriate form, or by letter. One copy, with the date of mailing or delivery noted thereon, shall be retained by the port director and made part of the entry record.

(g) *Time limitation*. A demand for the return of merchandise to Customs custody shall not be made after the liquidation of the entry covering such merchandise has become final.

(h) *Demand not complied with*. When the demand of the port director for return of merchandise to Customs custody is not complied with, liquidated damages shall be assessed, except in the case of merchandise entered under chapter 98, subchapter XIII, HTSUS (19 U.S.C. 1202), in an amount equal to the value of the merchandise not returned or three times the value of the merchandise not returned if the merchandise is restricted or prohibited merchandise or alcoholic beverages, as determined at the time of entry. The amount of liquidated damages to be assessed on merchandise entered under chapter 98, subchapter XIII, HTSUS is set forth in §10.39(d)(3) of this chapter.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 74–227, 39 FR 32023, Sept. 4, 1974; T.D. 89–1, 53 FR 51262, Dec. 21, 1988; T.D. 92–84, 57 FR 40607, Sept. 4, 1992; T.D. 93–66, 58 FR 44130, Aug. 19, 1993; T.D. 94–95, 59 FR 61800, Dec. 2, 1994; T.D. 99–64, 64 FR 43266, Aug. 10, 1999; T.D. 01–26, 66 FR 16854, Mar. 28, 2001; CBP Dec. 05–32, 70 FR 58016, Oct. 5, 2005]

# PART 142—ENTRY PROCESS

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AUTHORITY: 19 U.S.C. 66, 1448, 1484, 1624.

SOURCE: T.D. 79–221, 44 FR 46821, Aug. 9, 1979, unless otherwise noted.

### § 142.0 Scope.

This part sets forth requirements and procedures relating to (a) the entry of merchandise, as authorized by section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), and (b) special permits for immediate delivery of merchandise, as authorized by section 448(b), Tariff Act of 1930, as amended (19 U.S.C. 1448(b)).

## Subpart A—Entry Documentation

### § 142.1 Definitions.

For definitions of ''entry'', ''entry summary'', ''submission'', ''filing'', ''presentation'', ''entered for consumption'', ''entered for warehouse'', and ''entered temporarily under bond'', as these terms relate to the entry of merchandise, see § 141.0a of this chapter.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84–213, 49 FR 41184, Oct. 19, 1984]

### § 142.2 Time for filing entry.

(a) *General rule: After arrival of merchandise.* Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond.

(b) *Before arrival of merchandise*—(1) *Entry.* The entry documentation required by § 142.3(a) may be submitted before the merchandise arrives within the limits of the port where entry is to be made, in which case the time of entry shall be the time specified in § 141.68(a).

(2) *When entry summary serves as entry.* The entry summary when it will be filed at time of entry to serve as both the entry and the entry summary, as provided in § 142.3(b), may be submitted for preliminary review in accordance with §§ 141.63(a) and 142.12(a)(2).

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 02–65, 67 FR 68035, Nov. 8, 2002]

### § 142.3 Entry documentation required.

(a) *Contents.* Except as provided in paragraph (b) of this section, the entry documentation required to secure the release of merchandise shall consist of the following:

(1) *Entry.* Customs Form 3461 (appropriately modified), except that Customs Form 7533 (appropriately modified), in duplicate, may be used in place of Customs Form 3461 for merchandise imported from a contiguous country. The form used shall be prepared in accordance with § 141.61(a)(1) of this chapter.

(2) *Evidence of the right to make entry.* Evidence of the right to make entry, as set forth in § 141.11 of this chapter.

(3) *Commercial invoice.* A commercial invoice, except that in those instances listed in § 141.83(d) of this chapter where a commercial invoice is not required, a pro forma invoice or other acceptable documentation listed in that section may be submitted in place of a commercial invoice.

(4) *Packing list.* A packing list, where appropriate.

(5) *Other documentation.* Other documents which may be required by Customs or other Federal, State, or local agencies for a particular shipment.

(6) *Identification.* When merchandise is imported having been sold, or consigned, to a person in the United States, the name, street address, and appropriate identification number of that person, as provided in § 24.5 of this chapter, shall be shown on the entry documents (CF 3461, 3461 ALT, 7501). When, at the time of immediate delivery, entry or release, there is no known buyer, the name, street address, and appropriate identification number (as above) of the premises in the United States to which the merchandise is to be delivered must be shown on the entry or release documents.

(b) *Entry summary filed at time of entry.* When the entry summary is filed at time of entry, in accordance with § 142.12(a)(1) or § 142.13.

(1) Customs Form 3461 or 7533 shall not be required, and

(2) Customs Form 7501, or 3311, as appropriate (see § 142.11), shall serve as both the entry and the entry summary documentation if the additional documentation set out in paragraphs (a)(2), (3), (4), and (5) of this section and § 142.16(b) is filed.

(c) *Extra copies*. The port director may require additional copies of the documentation.

(R.S. 251, as amended (19 U.S.C. 66), secs. 484, 624, 46 Stat. 722, as amended, 759 (19 U.S.C. 1484, 1624); sec. 301, 80 Stat. 379 (5 U.S.C. 301), Pub. L. 95–410 (Oct. 3, 1978); Pub. L. 96–511 (Dec. 11, 1980))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84–129, 49 FR 23167, June 5, 1984; T.D. 90–92, 55 FR 49884, Dec. 3, 1990]

### § 142.3a Entry numbers.

(a) *Placement on Customs Forms*. The importer or broker shall place an 11 character entry number on the entry and corresponding entry summary documentation. For documentation prepared on data processing equipment, the number shall be printed directly on the form. For manually prepared documentation, the number shall be preprinted in a machine readable format specified by Customs. The same number shall not be used for more than one entry transaction.

(b) *Format*. The following format, including hyphens, must be used when showing the entry number:

XXX-NNNNNNN-N

XXX represents an entry filer code assigned by Customs, NNNNNNN is a unique number which is assigned by the broker or importer, and N is a check digit computed from the first 10 characters based on a formula provided by Customs.

(1) *Assignment of Entry Filer Code*. Customs will assign a unique 3 character (alphabetic, numeric, or alpha numeric) entry filer code to all licensed brokers filing Customs entries. Customs will assign an entry filer code to certain importers filing Customs entries based on importer entry volume, frequency of entry filing, and other considerations. The broker or importer shall use this assigned code as the beginning three characters of the number for all Customs entries, regardless of where the entries are filed.

(2) *Entry Filer Assigned Number*. For each entry, the broker or importer shall assign a unique 7 digit number. This number shall not be assigned to more than one transaction.

(3) *Check Digit*. The broker or importer is responsible for ensuring that the check digit is computed by data processing equipment.

(c) *Pulication of Entry Filer Codes*. Customs shall make available electronically a listing of filer codes and the importers, consignees, and customs brokers assigned those filer codes. The listing will be updated periodically.

(d) *Misuse of the Entry Filer Code*. The port director may refuse to allow use of an assigned entry filer code if it is misused by the importer or broker.

(e) *Alternative Procedure*. If an importer does not have an assigned entry filer code, or if the port director, in accordance with paragraph (d) of this section refuses to allow use of an assigned entry filer code, the importer or broker shall obtain forms with a Customs assigned pre-printed machine readable entry number with a computed check digit. These forms will be available for sale by Customs and must be obtained and used before the merchandise may be released from Customs custody.

[T.D. 86–106, 51 FR 19167, May 28, 1986, as amended by T.D. 98–25, 63 FR 12996, Mar. 17, 1998]

### § 142.4 Bond requirements.

(a) *At the time of entry*. Except as provided in § 10.101(d) of this chapter, or paragraph (c) of this section, merchandise shall not be released from Customs custody at the time Customs receives the entry documentation or the entry summary documentation which serves as both the entry and the entry summary, as required by § 142.3 unless a single entry or continuous bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, executed by an approved corporate surety, or secured by cash deposits or obligations of the United States, as provided for in § 113.40 of this chapter, has been filed. When any of the imported merchandise is subject to a tariff-rate quota and is to be released at a time when the applicable quota is

filled, the full rates shall be used in computing the estimated duties to determine the amount of the bond.

(b) *If entry summary is filed after entry.* (1) Except as provided in § 141.102(d) of this chapter, if the entry summary is filed after the entry, the bond filed at the time of entry, as required by paragraph (a) of this section or by § 142.19, shall continue to be obligated unless a superseding bond is filed, as provided in § 141.20 of this chapter, or unless a bond of the type described in paragraph (a) of this section is filed under the circumstances described in paragraph (b)(2) of this section. If a superseding bond is filed, or if a bond is filed under the circumstances described in paragraph (b)(2) of this section, the obligations of the initial bond shall be terminated as to any liability which may accrue after the superseding or other bond becomes effective.

(2) If entry is made in the name of an agent, supported by the agent's bond, or in the name of a principal, supported by the principal's bond, and the entry summary thereafter is filed in the name of the other party, the party named in the entry summary shall file a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. In this circumstance, the bond obligation of the party in whose name entry was made shall be terminated, as to liability which may accrue after the bond filed by the party named in the entry summary becomes effective, and the party filing the entry summary need not file the separate declaration of the actual owner and the superseding bond otherwise required under § 141.20 of this chapter.

(c) *Waiver of surety or cash deposit.* (1) The port director may waive the requirement for surety or cash deposit on the bond required by this section when (i) the value of the merchandise which the bond secures does not exceed $2,500, (ii) the entry summary documentation is filed and estimated duties, if any, are deposited prior to release of the merchandise and (iii) the importer has not been delinquent or otherwise remiss in any transaction with Customs.

(2) This authority to waive surety or cash deposit does not apply to (i) quota merchandise, (ii) any type of merchandise which, in the opinion of the port director, cannot be easily appraised or classified, or (iii) any type of merchandise where there may be, in the opinion of the port director based on past experience, a question of redelivery.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84–213, 49 FR 41184, Oct. 19, 1984; T.D. 85-161, 50 FR 38981, Sept. 26, 1985]

### § 142.5 [Reserved]

### § 142.6 Invoice requirements.

(a) *Contents.* The commercial invoice, or the documentation acceptable in place of a commercial invoice in those instances listed in § 141.83(d) of this chapter, shall be furnished with the entry and before release of the merchandise is authorized. The commercial invoice or other acceptable documentation shall contain:

(1) An adequate description of the merchandise.

(2) The quantities of the merchandise.

(3) The values or approximate values of the merchandise.

(4) The appropriate eight-digit subheading from the Harmonized Tariff Schedule of the United States. If the importer is uncertain of the appropriate subheading number, Customs shall assist him at his request. The port director may waive this requirement if he is satisfied that the information is not available at the time release of the merchandise is authorized.

(5) The name and complete address of the foreign individual or firm who is responsible for invoicing the merchandise, ordinarily the manufacturer/seller, but where the manufacturer is not the seller, the party who sold the merchandise for export to the U.S., or made the merchandise available for sale.

(b) *Information not required when filing entry.* In addition to the information specified in paragraph (a) of this section, the commercial invoice or substitute document filed with the entry documentation also may include any other invoice information required by §§ 141.86 through 141.89 of this chapter. However, if this information does not

appear on the invoice or substitute document filed with the entry documentation, it shall be included in the invoice or substitute document delivered at the time the entry summary documentation is filed.

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979; T.D. 80–26, 45 FR 3901, Jan. 21, 1980, as amended by T.D. 90–25, 55 FR 12343, Apr. 3, 1990; T.D. 90–78, 55 FR 40167, Oct. 2, 1990]

### § 142.7 Examination of merchandise.

No merchandise for which the entry documentation required by § 142.3 has been filed shall be released until it has been examined, or until adequate samples have been taken in the case of merchandise which is to be classified and appraised by means of samples, unless this requirement is waived by the port director in accordance with section 499, Tariff Act of 1930, as amended (19 U.S.C. 1499).

### § 142.8 Failure to file entry timely.

Merchandise for which timely entry is not filed as required by § 142.2 shall be treated in accordance with § 4.37 and part 127 of this chapter.

## Subpart B—Entry Summary Documentation

### § 142.11 Entry summary form.

(a) *Customs Form 7501*. The entry summary shall be on Customs Form 7501 unless a different form is prescribed elsewhere in this chapter. Customs Form 7501 shall be used for merchandise formally entered for consumption, formally entered for warehouse, or rewarehouse in accordance with § 144.11 of this chapter, and formally entered temporarily under bond under § 10.31 of this chapter. The entry summary for merchandise which may be entered free of duty in accordance with § 10.1 (g) or (h) of this chapter may be on Customs Form 3311 instead of on Customs Form 7501. For merchandise entitled to be entered under an informal entry, see § 143.23 of this chapter.

(b) *Extra copies*. The port director may require additional copies of the entry summary.

(R.S. 251, as amended (19 U.S.C. 66), secs. 484, 624, 46 Stat. 722, as amended, 759 (19 U.S.C. 1484, 1624); sec. 301, 80 Stat. 379 (5 U.S.C. 301), Pub. L. 95–410 (Oct. 3, 1978); Pub. L. 96–511 (Dec. 11, 1980))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84–129, 49 FR 23167, June 5, 1984; T.D. 84–213, 49 FR 41185, Oct. 19, 1984]

### § 142.12 Time for filing or submission for preliminary review.

(a) *At option of importer*—(1) *Filing*. Except as provided in § 142.13, the importer may file the entry summary documentation at the time of entry in which case the entry summary, with estimated duties attached, shall serve as both the entry and the entry summary.

(2) *Submission for preliminary review*. If the importer intends to file the entry summary documentation at the time of entry, he may submit the entry summary documentation for preliminary review before arrival of the merchandise, in accordance with § 141.63(a) of this chapter. After preliminary review is completed, the entry summary shall be returned to the importer for filing in accordance with paragraph (a)(1) of this section.

(b) *When required*. If the importer is not required to file the entry summary documentation at the time of entry under the provisions of § 142.13, or if he does not elect to do so, the entry summary documentation shall be filed, with estimated duties attached, within 10 working days after the time of entry.

(c) *Estimated duties*. Estimated duties, if any, shall be deposited in accordance with the provisions of subpart G of part 141 of this chapter.

### § 142.13 When entry summary must be filed at time of entry.

(a) *Authority of port director*. The port director may require that the entry summary documentation be filed and that estimated duties, if any, be deposited at the time of entry before the merchandise is released if the importer:

(1) Has failed repeatedly to file timely entry summary documentation without justification,

(2) Has not taken prompt action to settle a claim for liquidated damages issued under § 142.15 for failure to file entry summary documentation timely, or a claim for liquidated damages issued under the basic importation and entry bond for failure to deposit estimated duties, taxes and charges timely, as provided in such bond. ''Prompt action'' means that the importer, within the time specified in a claim for liquidated damages, shall petition for relief or pay the amount claimed and, in appropriate cases, file the entry summary documentation and deposit estimated duties, if any, or

(3) Has repeatedly delivered entry summary documentation, which is incomplete or which contains erroneous information.

(4) Is substantially or habitually delinquent in the payment of Customs bills. See § 142.14.

(b) *Special classes of merchandise*—(1) *Quota-class merchandise.* Quota-class merchandise shall not be released upon delivery of entry documentation before presentation of:

(i) An entry summary for consumption with estimated duties attached; or

(ii) A withdrawal for consumption with estimated duties attached; or

(iii) An entry summary for consumption, without the estimated duties attached, if the entry/entry summary information and a valid scheduled statement date have been successfully received by Customs via the Automated Broker Interface. (See part 132 and § 24.25 of this chapter.)

(2) *Other classes of merchandise.* Entry summary documentation, with estimated duties attached, or a withdrawal for consumption with estimated duties attached, or an entry summary for consumption, without the estimated duties attached if the entry/entry summary information and a valid scheduled statement date have previously been transmitted to Customs via the Automated Broker Interface (see § 24.25 of this chapter) shall be filed at the time of entry before release of any other merchandise of a class designated by Customs Headquarters.

(c) [Reserved]

(d) *Brokers; restriction.* A broker shall not circumvent an action taken under this section by applying for release of the importer's merchandise in the broker's name and under the broker's bond.

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 89–104, 54 FR 50498, Dec. 7, 1989; T.D. 93–37, 58 FR 30984, May 28, 1993; T.D. 95–77, 60 FR 50020, Sept. 27, 1995]

### § 142.14 Delinquent payment of Customs bills.

The following procedure shall be followed if an importer is substantially or habitually delinquent in the payment of Customs bills:

(a) *Notice.* The importer shall be advised in writing by the port director in which he is substantially or habitually delinquent that he shall file the entry summary documentation with estimated duties attached, before his merchandise may be released from Customs custody at that port. The notice shall state the reason for the action and advise the importer that if payment of all his delinquent Customs bills is not made within 10 working days from the date of the notice, he shall be required to file the entry summary document with estimated duties attached, before his merchandise may be released. In either case, the entry summary shall serve as both the entry and the entry summary.

(b) *Removal of requirement by port.* If the importer pays all his delinquent Customs bills within 10 working days after the date of the notice, the requirement shall be removed, and the importer need file only the entry documentation specified in § 142.3 to secure release of his merchandise.

(c) *Removal of requirement by Headquarters.* If the importer has not paid all his delinquent Customs bills within 10 working days after the date of the notice, he also shall be required to file the entry summary documentation, with estimated duties attached, at each Customs port. In this case, the entry summary shall serve as both the entry and the entry summary. This requirement shall remain in effect in each port of entry until notification is received from Headquarters that the requirement is removed and that the importer need submit only the entry

documentation listed in § 142.3 to secure release of his merchandise.

### § 142.15 Failure to file entry summary timely.

If the entry summary documentation is not filed timely, the port director shall make an immediate demand for liquidated damages in the entire amount of the bond in the case of a single entry bond. When the transaction has been charged against a continuous bond, the demand shall be for the amount that would have been demanded if the merchandise had been released under a single entry bond. Any application to cancel liquidated damages incurred shall be made in accordance with part 172 of this chapter.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84–213, 49 FR 41185, Oct. 19, 1984]

### § 142.16 Entry summary documentation.

(a) *Entry summary not filed at time of entry*. When the entry documentation is filed before the entry summary documentation, one copy of the entry document and the commercial invoice, or the documentation filed in place of a commercial invoice in the instances listed in § 141.83(d) of this chapter, shall be returned to the importer after Customs authorizes release of the Merchandise. The importer may use these documents in preparing the entry summary, Customs Form 7501, and shall file them with the entry summary documentation within the time period stated in § 142.12(b). The entry summary documentation also shall include any other documents required for a particular shipment unless a bond for missing documents is on file, as provided in § 141.66 of this chapter.

(b) *Entry summary filed at time of entry*. When the entry summary documentation is filed at time of entry, the documentation listed in § 142.3 shall be filed at the same time, except that Customs Form 3461 or 7533 shall not be required. The importer also shall file any additional invoice required for a particular shipment.

(R.S. 251, as amended (19 U.S.C. 66), secs. 484, 624, 46 Stat. 722, as amended, 759 (19 U.S.C. 1484, 1624); sec. 301, 80 Stat. 379 (5 U.S.C. 301), Pub. L. 95–410 (Oct. 3, 1978); Pub. L. 96–511 (Dec. 11, 1980))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979; T.D. 80–26, 45 FR 3901, Jan. 21, 1980, as amended by T.D. 84–129, 49 FR 23168, June 5, 1984]

### § 142.17 One entry summary for multiple entries.

(a) *Requirements*. Except as provided in paragraph (b) of this section, the port director may permit the filing of one entry summary for merchandise the subject of separate entries if:

(1) The merchandise has the same country of exportation, and the same country of origin,

(2) The merchandise arrives by land, by the same vessel or by the same air carrier,

(3) The merchandise is consigned to the same consignee,

(4) The time between the date of the first entry and the date of the last entry does not exceed 1 week,

(5) The entry summary document is filed within 10 working days from the date of the first entry, and

(6) Each entry is identified separately by entry number on the entry summary.

(b) *Merchandise not eligible*. One entry summary shall not be used for multiple entries of the following:

(1) Quota-class merchandise,

(2) Prohibited merchandise,

(3) Merchandise subject to restrictions which require processing and documentation more frequently than on a weekly basis,

(4) Merchandise for which liquidation has been withheld, and

(5) Merchandise classifiable under the same Harmonized Tariff Schedule of the United States subheading number, to the eight-digit level having different rates of duty for which entries or immediate transportation entries have been filed. However, this provision is not applicable in the following circumstances:

(i) *Entries*. Entries may be consolidated if the time of entry is:

(A) Before the date of change in rate of duty, or

(B) On or after the date of change in rate of duty.

(ii) *Immediate transportation entries.* Immediate transportation entries may be consolidated if the date of acceptance is:

(A) Before the date of change in the rate of duty, or

(B) On or after the date of change in rate of duty.

(c) *Entry documentation not in proper form.* If an entry summary covering multiple entries refers to entry documentation which is not in proper form, the entry summary and the entry documentation shall be returned for correction.

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 89–1, 53 FR 51262, Dec. 21, 1988]

### § 142.17a One consolidated entry summary for multiple ultimate consignees.

(a) *Applicability.* The port director may permit a broker as nominal consignee to file a consolidated entry summary in his own name under his own bond covering shipments of like or similar merchandise consigned to various ultimate consignees provided that all the merchandise is:

(1) Imported on the same day,

(2) Itemized as to each category of merchandise by Harmonized Tariff Schedule of the United States Annotated subheading to the ten-digit level, and

(3) Released on the same day, either under the entry documentation specified in § 142.3, or under a special permit for immediate delivery. A consolidated entry summary may be filed for merchandise arriving by land, by the same vessel, or by the same air carrier.

(b) *Information required on the entry summary*—(1) *Separate listing according to ultimate consignee.* The broker shall list separately on the face of the consolidated entry summary the merchandise for each ultimate consignee, together with the appropriate entry or special permit numbers.

(2) *If different land carriers are involved.* If merchandise arriving by different land carriers is included on one entry summary, necessary information pertaining to each carrier shall be shown on the face of the entry summary, related to the applicable shipment.

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 89–1, 53 FR 51262, Dec. 21, 1988]

### § 142.18 Entry summary not required for prohibited merchandise.

(a) *Exportation or destruction of prohibited merchandise.* If merchandise released at time of entry is later found to be prohibited, the port director shall demand its return to Customs custody in accordance with § 141.113 of this chapter, and an entry summary and the deposit of estimated duties, if any, shall not be required provided:

(1) An entry for exportation, Customs Form 7512, or an application to destroy the merchandise under Customs supervision is made within 10 days after the time of entry, and the exportation or destruction is accomplished promptly, or

(2) An entry for transportation and exportation, Customs Form 7512, is made within 10 days after the time of entry and domestic carriage of the merchandise does not conflict with the requirements of another Federal agency.

(b) *Procedures for exportation or destruction.* The exportation or destruction of prohibited merchandise as required by paragraph (a) shall be in accordance with §§ 158.41 and 158.45(c) of this chapter.

### § 142.19 Release of merchandise under the entry summary.

Merchandise, for which an entry summary serves as both an entry and an entry summary, shall not be released from Customs custody until a bond has been filed, or the entry has been liquidated, as follows:

(a) *Bond.* Merchandise not designated for examination may be released to, or upon the order of, the carrier if a bond is filed on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. Merchandise designated for examination may be released under the bond after examination has been completed if:

(1) It has been found to be truly and correctly invoiced,

(2) It is entitled to admission into the commerce of the United States, and

(3) Its release is not precluded by any law or regulation. If merchandise is entered by or on behalf of a United States Government department or agency, the stipulation prescribed in §141.102(d) of this chapter shall be accepted in place of a bond.

(b) *After liquidation*. If a bond has not been filed in accordance with paragraph (a) of this section, the merchandise shall not be released before:

(1) The entry has been liquidated and the full amount of all duties and taxes due, including dumping or other special duties and charges, has been paid, or the right to free entry established.

(2) The port director determines that the merchandise may be admitted into the commerce of the United States, and

(3) All documents relating to the merchandise which are required by law or regulation have been filed.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84–213, 49 FR 41185, Oct. 19, 1984]

## Subpart C—Special Permit for Immediate Delivery

### § 142.21 Merchandise eligible for special permit for immediate delivery.

Merchandise may be released under a special permit for immediate delivery, in accordance with section 448(b), Tariff Act of 1930, as amended (19 U.S.C. 1448(b)), in the following circumstances:

(a) *Contiguous countries*. At the discretion of the port director, merchandise arriving by land from Canada or Mexico may be released under a special permit for immediate delivery provided the importer has on file a bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter. An entry summary shall be filed in accordance with §142.22(b)(1), and estimated duties, if any, shall be deposited, within the time period specified in §142.23 for all merchandise from contiguous countries released under a special permit except for fresh fruits and vegetables for human consumption released under the provisions of paragraph (b) of this section.

(b) *Fresh fruits and vegetables*. (1) An application for a special permit for immediate delivery may be made for the transportation of fresh fruits and vegetables for human consumption arriving from Canada or Mexico to the importer's premises within the port of importation, but removed from the area immediately contiguous to the border.

(2) The application shall be accompanied by a continuous bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter.

(3) The fresh fruits and vegetables shall be transported to the importer's premises in the vehicles in which they crossed the border or, if transshipment is necessary in vehicles provided by the importer. The fresh fruits and vegetables may be examined at the importer's premises. Those portions without commercial value may be disposed of in accordance with the provisions of §158.11(b) of this chapter, and the balance shall be entered for consumption or transported in bond under an entry for immediate transportation without appraisement or under an entry for transportation and exportation.

(c) *Agency of U.S. Government*. Merchandise may be released under the immediate delivery procedure if the shipment is consigned to or for the account of any agency or office of the United States Government, or to an officer or official of any such agency in his official capacity, as provided in §10.101 of this chapter.

(d) *Articles of a trade fair*. Articles for a trade fair may be released under the immediate delivery procedure, as provided in §147.13 of this chapter.

(e) *Quota-class merchandise*—(1) *Tariff rate*. At the discretion of the port director, merchandise subject to a tariff-rate quota may be released under a special permit for immediate delivery provided the importer has on file a bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter. However, merchandise subject to a tariff-rate quota may not be incrementally released under a special permit for immediate delivery as provided in paragraph (g) of this section. Where a special permit is authorized, an entry summary will be properly presented pursuant to §132.1 of

this chapter within the time specified in § 142.23, or within the quota period, whichever expires first. If proper presentation is not made until after the tariff-rate quota is filled, the merchandise shall not be entitled to the quota rate of duty, and the importer shall pay duties at the over-quota rate.

(2) *Absolute.* At the discretion of the port director, perishable merchandise of a class approved by Customs Headquarters which is subject to an absolute quota may be released under a special permit for immediate delivery for removal to the importer's premises, or to any other location approved by the port director, until an entry summary is properly presented pursuant to § 132.1 of this chapter. However, merchandise subject to an absolute quota under this paragraph may not be incrementally released under a special permit for immediate delivery as provided in paragraph (g) of this section. Where a special permit is authorized, a proper entry summary must be presented for merchandise so released within the time specified in § 142.23, or within the quota period, whichever expires first. If the absolute quota is filled before the importer has properly presented an entry summary, he may either present an entry summary for warehouse or, under Customs supervision, export or destroy the merchandise.

(f) *Release from warehouse followed by warehouse withdrawal for consumption.* Merchandise may be released from warehouse under a special permit:

(1) At the discretion of the port director when:

(i) The warehouse is located a considerable distance from the customhouse and actual release of the merchandise from the warehouse may not be effected within the next full business day after the day of the payment of duty, and

(ii) The port has sufficient manpower to permit such practice;

(2) The importer shall have on file a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter; and

(3) The immediate delivery permit shall be annotated to state that a warehouse withdrawal for consumption will be filed for this merchandise.

(g) *Incremental release of split shipments.* Merchandise subject to § 141.57(d)(2) of this chapter, which is purchased and delivered to the carrier as a single shipment, but which is shipped by the carrier in separate portions to the same port of entry as provided in § 141.57(b)(3), may be released incrementally under a special permit. Incremental release means releasing each portion of such shipments separately as they arrive.

(h) *When authorized by Headquarters.* Headquarters may authorize the release of merchandise under the immediate delivery procedure in circumstances other than those described in paragraphs (a), (b), (c), (d), (e), (f) and (g) of this section provided a bond on Customs Form 301 containing the bond conditions set forth in § 113.62 of this chapter is on file.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 81–260, 46 FR 49842, Oct. 8, 1981; T.D. 84–213, 49 FR 41185, Oct. 19, 1984; T.D. 89–104, 54 FR 50499, Dec. 7, 1989; T.D. 03–09, 68 FR 8721, Feb. 25, 2003]

### § 142.22 Application for special permit for immediate delivery.

(a) *Form.* An application for a special permit for immediate delivery will be made on Customs Form 3461, Form 3461 ALT, or its electronic equivalent, supported by the documentation provided for in § 142.3. A commercial invoice will not be required, except for merchandise released under the provisions of 19 U.S.C. 1484(j). Instead of a commercial invoice, the importer may deliver to Customs a pro forma invoice, waybill, or other document setting forth an adequate description of the merchandise and the quantities, together with the values or approximate values when values are needed for the purpose of examination. If the merchandise is to be released under a term special permit, the documentation also shall show the term special permit number, as provided for in § 142.24.

(b) *Customs custody.* Merchandise for which a special permit for immediate delivery has been issued under § 142.21

of this part shall be considered to remain in Customs custody until the filing of one of the following:

(1) An entry summary for consumption, with estimated duties attached; an entry summary for consumption without estimated duties attached, if entry/entry summary information and a valid scheduled statement date (pursuant to § 24.25 of this chapter) have successfully been received by Customs via the Automated Broker Interface; an entry summary for warehouse; or an entry summary for entry temporarily under bond, which may be filed in any of the circumstances under § 142.21 of this part except for merchandise released from warehouse under § 142.21(f) of this part;

(2) A withdrawal for consumption, with estimated duties attached, which shall be filed only for merchandise released from warehouse under § 142.21(f) of this part;

(3) An entry for transportation and exportation, immediate transportation without appraisement, or direct exportation, which shall be filed in those circumstances under § 142.21(b) and (e)(2) of this part; or entry for transportation and exportation, or direct exportation, which shall be filed in the circumstances under § 142.28 of this part or

(4) An application to destroy, which shall be filed in those circumstances under §§ 142.21(b) and (e)(2), and § 142.28 of this part.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 81–260, 46 FR 49842, Oct. 8, 1981; T.D. 89–104, 54 FR 50499, Dec. 7, 1989; T.D. 03–09, 68 FR 8721, Feb. 25, 2003]

### § 142.23 Time limit for filing documentation after release.

The applicable documentation described in § 142.22(b) shall be filed, and estimated duties, if any, shall be deposited, within 10 working days after the merchandise or any part of the merchandise is authorized for release under a special permit for immediate delivery or, for quota class merchandise within the quota period, whichever expires first.

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979; T.D. 80–26, 45 FR 3901, Jan. 21, 1980; T.D. 98–34, 63 FR 19399, Apr. 20, 1998]

### § 142.24 Special permit.

(a) *Conditions for issuance.* At the discretion of the port director, a special permit for immediate delivery may be issued on Customs Form 3461, appropriately modified, for a class or classes of merchandise particularly described in the application for the permit.

(b) *Notation of value for each shipment.* When applying for the release of a shipment of merchandise under a special permit for immediate delivery, the importer shall note a value for the shipment on the documentation presented. The value so noted shall not be less than the invoice value.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84–213, 49 FR 41185, Oct. 19, 1984]

### § 142.25 Discontinuance of immediate delivery privileges.

(a) *Authority of port director.* The port director may discontinue immediate delivery privileges if the importer:

(1) Has failed repeatedly to file the applicable Customs documentation set forth in § 142.22(b) timely without justification, or

(2) Has not taken prompt action to settle a claim for liquidated damages issued under § 142.27 for failure to file the applicable Customs documentation set forth in § 142.22(b) timely, or a claim for liquidated damages issued under the basic importation and entry bond for failure to deposit estimated duties, taxes and charges timely, as provided in such bond. ''Prompt action'' means that the importer, within the time specified in a claim for liquidated damages shall petition for relief or pay the amount claimed and, file the applicable documentation and deposit estimated duties, if any.

(3) Has repeatedly delivered documentation required by § 142.22(b) which is incomplete or which contains erroneous information.

(4) Is substantially or habitually delinquent in the payment of Customs bills. See § 142.26.

(b) *Brokers; restriction.* A broker shall not circumvent an action taken under this section by applying for the immediate release of the importer's merchandise in the broker's name and under the broker's bond.

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 93–37, 58 FR 30984, May 28, 1993; T.D. 95–77, 60 FR 50020, Sept. 27, 1995]

### § 142.26 Delinquent payment of Customs bills.

The following procedures shall be followed if an importer is substantially or habitually delinquent in the payment of Customs bills:

(a) *Notice.* The importer shall be advised in writing by the director of the port in which he is substantially or habitually delinquent that his immediate delivery privileges have been suspended. The notice shall state the reason for the action and advise the importer that if payment of all his delinquent Customs bills is not made within 10 working days from the date of the notice, the importer's immediate delivery privileges also shall be suspended at all Customs ports.

(b) *Reinstatement of privileges by port.* If the importer pays all his delinquent Customs bills within 10 working days after the date of the notice, the suspension shall be removed, and the importer's immediate delivery privileges shall be reinstated.

(c) *Reinstatement of privileges by Headquarters.* If the importer has not paid all his delinquent Customs bills within 10 working days after the date of the notice, his immediate delivery privileges shall be suspended at all Customs ports. This suspension shall remain in effect in each port of entry until notification is received from Headquarters that the suspension is removed and that the importer's immediate delivery privileges have been reinstated.

### § 142.27 Failure to file documentation timely.

If the applicable Customs documentation set forth in § 142.22(b) is not filed within the time provided in § 142.23, the port director shall make an immediate demand for liquidated damages in the amount of the bond in the case of a single entry bond. When the transaction has been charged against a continuous bond, the demand shall be for the amount that would have been demanded if the merchandise had been released under a single entry bond. Any application for cancellation of liquidated damages incurred shall be made in accordance with part 172 of this chapter.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84–213, 49 FR 41185, Oct. 19, 1984]

### § 142.28 Withdrawal or entry summary not required for prohibited merchandise.

(a) *Exportation or destruction of prohibited merchandise.* If merchandise released under a special permit for immediate delivery later is found to be prohibited, the port director shall demand its recall in accordance with § 141.113 of this chapter (applicable to the recall of merchandise released from Customs custody), and withdrawal or entry summary documentation and the deposit of estimated duties, if any, shall not be required provided:

(1) The merchandise is exported or destroyed under Customs supervision within the time limit for entry specified in § 142.23, or

(2) An entry for exportation or for transportation and exportation on Customs form 7512, or an application to destroy the merchandise, is made within the specified time limit, and the exportation or destruction is accomplished promptly.

(b) *Procedures for exportation or destruction.* The exportation or destruction of prohibited merchandise required by paragraph (a) of this section shall be under the same procedures as exportation or destruction of prohibited merchandise covered by a consumption entry with remission or refund of duties. See §§ 158.41 and 158.45(c) of this chapter.

(c) *Notation on exportation entry.* An entry for exportation or for transportation and exportation of prohibited merchandise for which no entry summary for consumption has been filed

shall be stamped or imprinted conspicuously with the legend:

PROHIBITED MERCHANDISE, NO OTHER ENTRY FILED

### § 142.29 Other procedures applicable.

Merchandise released under a special permit for immediate delivery shall be subject to the same procedures applicable to all other imported merchandise, unless specific procedures are set forth in this subpart.

## Subpart D—Line Release

SOURCE: T.D. 92–93, 57 FR 44093, Sept. 24, 1992, unless otherwise noted.

### § 142.41 Line Release.

Line Release is an automated system designed to release and tract repetitive shipments. It is a method of entry or immediate delivery extended to importers of merchandise which Customs deems to be repetitive and high volume. Line Release may be used only at locations approved by Customs for handling Line Release. At certain high-risk locations along the land borders of the United States (the locations to be published in the FEDERAL REGISTER), which are approved by Customs for handling Line Release, the use of Line Release for particular shipments may be denied by Customs unless the imported merchandise is transported by carriers that participate in the Land Border Carrier Initiative Program (*see*, subpart H of part 123 of this chapter).

[T.D. 92–93, 57 FR 44093, as amended by T.D. 99–2, 64 FR 33, Jan. 4, 1999]

### § 142.42 Application for Line Release processing.

In order to obtain approval for processing import transactions through Line Release, a broker or importer filing its own entries (entry filer) must submit an application to the port director, signed by the entry filer, in a format described as a Line Release Data Loading Sheet. The application must be accompanied by a representative sample of an actual commercial invoice for the products sought to be processed under Line Release. The Line Release Data Loading Sheet must contain the following information with each information element appearing on a separate line.

(a) Port where application is being made.

(b) Initiating Company Information: name, address, city, state, contact person, phone number of contact person, and signature.

(c) Listing of all ports in which the initiating company has filed a similar application for Line Release.

(d) Country of origin codes (ISO codes from Annex B of HTSUS) for the merchandise.

(e) Shipper or manufacturer information: Name, address, city, province/state, country, postal code, indication by noting ''M'' or ''S'' whether this information relates to a manufacturer (M) or a shipper (S), and manufacturer identification number of the shipper or manufacturer.

(f) Importer information (if importer is different than filer): Name, address, city, state and country, zip code, importer number, bond number, and surety code.

(g) Entry filer information: Name, importer number, filer code, bond number, and surety code.

(h) Product information: Product description, manifest unit of measure, HTSUS number described to sub-heading level for particular product or range of HTSUS numbers at sub-heading levels for multiple products for which Line Release is sought.

(i) Election of whether the Line Release transaction is to be considered an entry or an immediate delivery.

### § 142.43 Line Release application approval process.

(a) *Port review*. The port director shall review each Line Release application to determine whether the shipments qualify for Line Release processing. The port director may contact the applicant for further information, if necessary. An application that fails to elect whether the Line Release transaction is to be considered an entry or an immediate delivery will be returned to the applicant. If all required information is submitted, the application will be forwarded to Headquarters for final processing.

(b) *Assignment of C–4 Codes.* A C–4 Code (Common Commodity Classification Code), which is a unique code identifying the shipper or manufacturer, importer, entry filer, and the product for each Line Release shipment, shall be assigned by Headquarters to each application approved for Line Release. Headquarters shall annotate each approved application with a C–4 Code and return the application to the port director who shall return the approved application to the entry filer.

(c) *Denial of Line Release application.* If the port director is considering the denial of a Line Release application, consideration shall be given to whether an application by the same filer for the same transaction has been approved at another port. If there is not an approved application at another port and the port director determines that the application shall be denied, the application shall be noted denied and returned to the entry filer without a C–4 Code annotation by the port director. If an application has been approved at another port, but the port director still questions whether the application should be approved at his port, the port director shall forward the application to the Assistant Commissioner, Office of Information Management. The Office of Information and Technology will review the application and will notify the port director of the final determination.

### § 142.44 Entry number range.

After an application for Line Release has received final approval, filers must provide the port director, in writing, with a range of entry numbers for use in the system so that an entry number can be assigned automatically to each Line Release transaction. For the purposes of this subpart, ''entry number'', when the release is an immediate delivery, merely refers to the Line Release transaction number; this number does not become the actual entry number until an entry for the merchandise released under the immediate delivery procedure is filed. A separate range must be provided for each Line Release site at the port. These entry numbers shall be used for assignment within the Line Release system. Entry filers shall not assign these numbers to other entry transactions.

### § 142.45 Use of bar code by entry filer.

(a) *Printing of C–4 Code.* Upon receipt of an approved Line Release application, the entry filer, in accordance with instructions from the port director, shall preprint invoices with the C–4 Code in bar code and alpha-numeric format or print labels with the necessary information. Bar codes shall be printed in accordance with the specifications stated in Customs Publication 561 (*Line Release Overview*). Labels or preprinted invoices also shall state the name of the shipper or manufacturer of the product and the name of the importer of record, if other than the entry filer, above the bar code and the name of the entry filer and a product description below the bar code.

(b) *Multiple commodity processing.* Multiple commodity processing allows more than one product to be released under one entry number. The shipper/manufacturer, importer of record and the entry filer must be the same. The product description is the only variable allowed. The commodities should be listed on one invoice with C–4 Code labels for each commodity attached to the invoice.

(c) *Distribution of labels.* If labels are used, the labels shall be affixed to the invoices in accordance with instructions from the port director. The entry filer may either affix the labels or distribute the labels to the shippers/manufacturers and instruct them in the use and placement of the labels.

### § 142.46 Presentation of invoice and assignment of entry number.

(a) *Presentation of invoice.* When merchandise that has been approved for Line Release is imported at a Line Release site, the carrier, importer or filer shall present Customs with an invoice with the bar code or codes printed or affixed and, according to the method of transportation, the appropriate manifest document.

(b) *Verification of data.* If after scanning the bar code at the Line Release site, the Customs officer verifies the data on the bar code with the information on the invoice, he will key the quantity on the invoice and an entry

number will be automatically assigned to the transaction. If there are any differences between the system data and the invoice and bar code, including any differences in entry filer, the Customs officer shall order an examination.

(c) *Other agency documentation*. If the Line Release shipment requires other agency documentation, the Customs officer at the Line Release site will be alerted to that requirement electronically when he verifies the data on the bar code with the information on the invoice. If the required form is presented to the officer with the documentation package, the shipment may be released.

### § 142.47 Examinations of Line Release transactions.

(a) *General*. Merchandise imported under Line Release generally may be released without further Customs processing. Customs, however, may choose to inspect any Line Release shipment. Examinations may be either specifically ordered by the Customs officer or random.

(b) *Voiding of Line Release Transaction*. Customs may void a Line Release transaction for the following reasons: Because of an examination, because a carrier transporting the Line Release merchandise is not a participant in the Land Border Carrier Initiative Program (LBCIP), or because a driver or conveyance is not authorized in accordance with the LBCIP. If this occurs, Customs will return the invoice to the carrier, and the entry filer, in order to enter merchandise, shall prepare and submit either a CF 3461 or 3461 Alternate.

[T.D. 92–93, 57 FR 44093, Sept. 24, 1992, as amended by T.D. 99–2, 64 FR 33, Jan. 4, 1999]

### § 142.48 Release procedure.

(a) *General*. When the Customs officer at the Line Release site determines that a shipment is ready for release, release data, consisting of the entry number, the date and time of release, the inspector's badge number, the quantity and unit of measure, and the C–4 Code will be printed on the invoice and the manifest document and, when other agency documentation is presented, may be printed on that documentation. The invoice shall be returned to the entry filer and the manifest document shall be retained by Customs.

(b) *Notification to non-ABI participants*. The returned invoice with the release data shall be the release notification to non-ABI participants.

(c) *Notification to ABI participants*. If the Line Release entry filer is an operational ABI participant, the filer shall receive an electronic notification of the release consisting of the importer of record number, the port of entry, the filer code, the entry number, the date and time of release, the manufacturer code, the quantity and unit of measure, the release site, the HTSUS number(s), the C–4 Code and the country or countries of origin.

### § 142.49 Deletion of C–4 Code.

(a) *By Customs*. A port director may temporarily or permanently delete an entry filer's C–4 Code without providing the participant with any justification and without prior notification in cases of willfulness or when public health, interest, or safety so requires, thereby revoking the filer's use of Line Release.

(b) *By entry filer*. Entry filers may delete C–4 Codes from Line Release by notifying the port director in writing on a Deletion Data Loading Sheet. Such notification shall state the C–4 Code which is to be deleted, the port where the C–4 Code is to be deleted and the reason for the requested deletion. A copy of the originally approved Data Loading Sheet must be submitted with the Deletion Data Loading Sheet. If only a temporary deletion is desired, the filer shall state the requested effective date for the deletion and the date the C–4 Code is requested to be returned to Line Release processing.

### § 142.50 Line Release data base corrections or changes.

The applicant shall notify the port director of any changes in names, importer or filer numbers or bond information on a Line Release Data Loading Sheet as soon as possible. Notification shall be accomplished by the submission of a copy of the original loading sheet with a Correction Data Loading Sheet.

### § 142.51 Changing election of entry or immediate delivery.

An applicant who has already received a C–4 Code and wishes to change the election chosen on his Line Release application as to whether the release should be considered an entry or an immediate delivery must submit a letter requesting such change to the port director where the C–4 Code is used. This letter must include the C–4 Code to be changed and the date the change is to be effective. If the requested change is for a temporary time period, the letter shall include the date the releases are to return to the release type originally requested. Applications that fail to state the effective dates of the changes requested will be returned to the applicant.

### § 142.52 Port-wide and multiple port acceptance of Line Release.

(a) *Port-wide processing.* If a C–4 Code has been approved by the port director, the C–4 Code may be used at any Line Release site at the port.

(b) *Multiple port processing.* In order for a C–4 Code approved at one port to be used at another port, the entry filer must submit an application to the port director of the other port. While uniform criteria shall be applied to approving similar shipments for Line Release at all ports, a port director may exercise his discretion to deny Line Release at his port even though a similar shipment may be approved at another port.

## PART 143—SPECIAL ENTRY PROCEDURES

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AUTHORITY: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

SOURCE: T.D. 73–175, 38 FR 17463, July 2, 1973, unless otherwise noted.

### § 143.0 Scope.

This part sets forth the requirements and procedures for participation in the Automated Broker Interface (ABI) and for the clearance of imported merchandise under appraisement and informal entries as well as under electronic entry filing, which are in addition to the general requirements and procedures for all entries set forth in part 141 of this chapter. More specific requirements and procedures are set forth elsewhere in this chapter; for example, in part 145 for importations by mail, and in part 10 for merchandise

conditionally free of duty or subject to a reduced rate.

[T.D. 73–175, 38 FR 17463, July 2, 1973, as amended by T.D. 90–92, 55 FR 49884, Dec. 3, 1990]

## Subpart A—Automated Broker Interface

SOURCE: T.D. 90–92, 55 FR 49884, Dec. 3, 1990, unless otherwise noted.

### § 143.1 Eligibility.

The Automated Broker Interface (ABI) is a module of the Customs Automated Commercial System (ACS) which allows participants to transmit data electronically to Customs through ABI and to receive transmissions through ACS. Its purposes are to improve administrative efficiency, enhance enforcement of Customs and related laws, lower costs and expedite the release of cargo. Participants in ABI may be:

(a) Customs brokers as defined in § 111.1 of this chapter;

(b) Importers as defined in § 101.1 of this chapter; and

(c) ABI service bureaus, that is, an individual, partnership, association or corporation which provides communications facilities and data processing services for brokers and importers, but which does not engage in the conduct of customs business as defined in § 111.1(c) of this chapter.

[T.D. 90–92, 55 FR 49884, Dec. 3, 1990, as amended by T.D. 97–82, 62 FR 51771, Oct. 3, 1997; T.D. 01–14, 66 FR 8767, Feb. 2, 2001]

### § 143.2 Application.

A prospective participant in ABI shall submit a letter of intent to the port director closest to his principal office, with a copy to the Assistant Commissioner, Information and Technology, or designee. The letter of intent shall set forth a commitment to develop, maintain and adhere to the performance requirements and operational standards of the ABI system in order to ensure the validity, integrity and confidentiality of the data transmitted. The letter of intent must also contain the following, as applicable:

(a) A description of the computer hardware, communications and entry processing systems to be used and the estimated completion date of the programming;

(b) If the participant has offices in more than one location, the location of each office and the estimated start-up date for each office listed;

(c) The name(s) of the participant's principal management and contact person(s) regarding the system;

(d) If the system is being developed or supported by a data processing company, the data processing company's name and the contact person;

(e) The software vendor's name and the contact person; and

(f) The participant's entry filer code and average monthly volume.

### § 143.3 Action on application.

(a) *Approval.* Permission to use ABI will be granted by the Assistant Commissioner, Information and Technology, or his designee, only to those applicants who are not delinquent or otherwise remiss in their transactions with Customs and are in compliance with the ABI system performance procedures and standards as described in § 143.5 of this subpart. If there is any cause to question the qualifications or fitness of the applicant to participate in ABI, the application may be referred for investigation and report. The investigation may include, but need not be limited to:

(1) The accuracy of the information provided in the letter of intent;

(2) The business integrity of the applicant;

(3) The character and reputation of an individual applicant or a member of a partnership or an officer of an association or corporation; and

(4) The character and reputation of the software vendor.

(b) *Denial.* If permission to use ABI is denied to an applicant by the Assistant Commissioner, Information and Technology, or his designee, written notice, including the grounds for the denial, will be given to him and to the port director. The applicant may appeal the denial in the manner prescribed in § 143.8 of this subpart and those procedures for handling an appeal shall apply.

**§ 143.4 Confidentiality of data.**

The electronic data received and exchanged by a service bureau shall be considered confidential, and the service bureau shall maintain the accuracy of data received in the process of formatting and transmitting such data on behalf of a filer, and shall not disclose this data or any information connected therewith to any persons other than the filer or Customs (see § 111.24 of this chapter).

**§ 143.5 System performance requirements.**

The performance requirements and operational standards for electronic data filing are detailed in Customs Publication 552, Customs And Trade Automated Interface Requirements (CATAIR), which is updated periodically. The User Support Services Division, Customs Headquarters, upon request, shall provide each prospective participant with a copy of this publication. Each prospective participant must demonstrate that his system can interface directly with the Customs computer and ensure accurate submission of required data. Such demonstration will include intensive testing of the participant's system and monitoring of its performance in accordance with Publication 552.

**§ 143.6 Failure to maintain performance standards.**

ABI participants must adhere to the performance requirements and operational standards of the ABI system and maintain a high level of quality in the transmission of data, as defined in Customs Publication 552 (CATAIR) and Customs directives and policy statements, in order to participate in ABI.

(a) *Probational status.* A participant who does not adhere to the requirements and standards of the ABI system or maintain a high level of quality as described above may be placed on probational status. The participant will be notified, electronically and in writing, by the Director, User Support Services Division, of any action to place the participant on probation. The notice will specifically set forth the grounds for the proposed probation, and advise the participant that he will have 15 days from the date of the notice to show cause why the probationary period should not take effect. If the participant fails to respond within the allotted time, or fails to show to the satisfaction of the Director, User Support Services Division, that the probationary period should not take effect, the Director will notify the participant of the effective date of the probationary period. The length of the probationary period may, in the discretion of the Director, User Support Services Division, be extended up to a maximum of 90 days, if the participant's performance remains below standard, but, except for immediate revocation under § 143.7, participation will not be suspended or revoked until the probationary period has lasted a minimum of 30 days. The participant's performance will be closely monitored during this time, which will include working with the participant and providing any necessary guidance to assist the participant in bringing his performance back to standard.

(b) *Suspension following probationary period.* If deficiencies are not corrected within the probationary period, the participant will be suspended from operational status. The participant will be notified, electronically and in writing, by the Director, User Support Services Division, of any action to suspend participation. The notice will specifically set forth the grounds and effective date for the suspension, and the right to appeal the suspension to the Assistant Commissioner, Information and Technology, within 10 days following the date of the written notice of suspension (see § 143.8).

(c) *Reinstatement following suspension.* To obtain reinstatement to operational status, a suspended participant must submit a letter to the Director, User Support Services Division, stating that the deficiencies for which the suspension was invoked have been corrected. If, after the participant has demonstrated compliance with the system performance requirements and operational standards specified in § 143.5 of this part, if required, the Director is satisfied that the deficiencies have been corrected, the participant will be reinstated.

**§ 143.7 Revocation of ABI participation.**

(a) *Fraud or misstatement of material fact.* If it is determined at any time that participation in the system was obtained through fraud or the misstatement of a material fact, the Director, Trade Compliance, will immediately revoke ABI participation.

(b) *Risk of significant harm to system.* If the participant's continued use of ABI would pose a potential risk of significant harm to the integrity and functioning of the system, the Director, User Support Services Division, will immediately revoke ABI participation.

(c) *Notification to participant.* The participant will be notified, electronically and in writing, by the applicable Director, of the revocation. The notice will specifically set forth the grounds and effective date of revocation, and the right to appeal the revocation to the Assistant Commissioner, Information and Technology, within 10 days following the date of the written notice of revocation.

**§ 143.8 Appeal of suspension or revocation.**

If the participant files a written appeal with the Assistant Commissioner, Information and Technology, within 10 days following the date of the written notice of action to suspend or revoke participation as provided in §§ 143.6 and 143.7, the suspension or revocation of participation shall not take effect until the appeal is decided, except in those cases where the Director, Trade Compliance, or the Director, User Support Services Division, respectively, determines that participation was obtained through fraud or the misstatement of a material fact, or that continued participation would pose a potential risk of significant harm to the integrity and functioning of the system. The Customs officer who receives the appeal shall stamp the date of receipt of the appeal and the stamped date is the date of receipt for purposes of the appeal. The Assistant Commissioner shall inform the participant of the date of receipt and the date that a response is due under this paragraph. The Assistant Commissioner shall render his decision to the participant, in writing, stating his reasons therefor, by letter mailed within 30 working days following receipt of the appeal, unless this period is extended with due notification to the participant.

## Subpart B—Appraisement Entry

**§ 143.11 Merchandise eligible for appraisement entry.**

(a) *Without Commissioner's approval.* An application for entry by appraisement may be approved by the port director without securing the approval of the Commissioner of Customs for any of the following merchandise:

(1) Merchandise damaged on the voyage of importation, by fire or through marine casualty or any other cause, without fault on the part of the shipper;

(2) Merchandise recovered from a wrecked or stranded vessel;

(3) Household effects used abroad and personal effects, not imported in pursuance of a purchase or agreement for purchase and not intended for sale;

(4) Articles sent by persons in foreign countries as gifts to persons in the United States;

(5) Tools of trade of a person arriving in the United States;

(6) Personal effects of citizens of the United States who have died in a foreign country; and

(7) Any of the following articles, which are deemed in accordance with section 498(a)(10), Tariff Act of 1930, as amended (19 U.S.C. 1498(a)(10)), to be articles the value of which cannot be declared:

(i) Articles which are secondhand;

(ii) Articles which have become deteriorated or damaged before importation otherwise than as specified in paragraph (a)(1) of this section;

(iii) Articles which are not the subject of a commercial transaction; and

(iv) So-called overages or dock accumulations which cannot be identified with any particular shipment.

(b) *With Commissioner's approval.* Entry by appraisement for merchandise not provided for in paragraph (a) of this section shall be allowed only with the approval of the Commissioner of Customs. Each request for such approval shall be filed in triplicate with

the port director and shall state in detail the reasons for the request for entry by appraisement.

(c) *Merchandise not eligible.* An application for an entry by appraisement shall not be approved after the merchandise has been appraised or released from Customs custody, nor for damaged merchandise when the damage occurs after importation.

### § 143.12 Form of entry.

Application for an entry by appraisement shall be made in triplicate on the entry summary, Customs Form 7501.

[T.D. 84–129, 49 FR 23168, June 5, 1984]

### § 143.13 Documents to be presented with entry.

The importer shall in all cases present:

(a) Any bills or statements of cost relating to the merchandise which may be in his possession; and

(b) A declaration that he has no other information as to the value of the articles and is unable to obtain such information or to determine the value of the articles for the purpose of making formal entry thereof.

### § 143.14 Payment of additional expenses.

Any additional expenses for cartage, storage, or labor occasioned by reason of an entry by appraisement shall be borne by the importer.

### § 143.15 Deposit of estimated duties and taxes.

Estimated duties shall be deposited in accordance with subpart G of part 141 of this chapter before the merchandise is released from Customs custody.

### § 143.16 Substitution of warehouse entry.

The importer may substitute an entry for warehouse at any time within 1 year from the date of importation, provided the merchandise has remained in continuous Customs custody.

## Subpart C—Informal Entry

### § 143.21 Merchandise eligible for informal entry.

The following types of merchandise are among those which may be entered under informal entry (see §§ 141.52 and 143.22 of this chapter):

(a) Shipments of merchandise not exceeding $2,000 in value (except for articles valued in excess of $250 classified in Sections VII, VIII, XI, and XII; Chapter 94 and Chapter 99, Subchapters III and IV, HTSUS);

(b) Any installment, not exceeding $2,000 in value, of a shipment arriving at different times, as described in § 141.82 of this chapter;

(c) A portion of one consignment, when such portion does not exceed $2,000 in value and may be entered separately pursuant to § 141.51 of this chapter. This paragraph does not apply to shipments of articles valued in excess of $250 classified under subheadings from Sections VII, VIII, XI, and XII; or in Chapter 94 and Chapter 99, Subchapters III and IV, HTSUS;

(d) Household or personal effects or tools of trade entitled to free entry under Chapter 98, Subchapter IV, HTSUS (19 U.S.C. 1202);

(e) Household effects used abroad and personal effects whether or not entitled to free entry, not imported in pursuance of a purchase or agreement for purchase and not intended for sale;

(f) Household and personal effects described in paragraph (e) of this section when entered under subheading 9802.00.40, HTSUS (19 U.S.C. 1202), and the value of the repairs and alterations thereto does not exceed $2,000;

(g) Personal effects not exceeding $2,000 in value of citizens of the United States who have died abroad;

(h) Books and other articles classifiable under subheadings 4903.00.00, 4904.00.00, 4905.91.00, 4905.99.00, 9701.10.00, 9701.90.00, 9810.00.05, HTSUS (19 U.S.C. 1202), imported by a library or other institution described in subheadings 9810.00.05 and 9810.00.30, HTSUS (19 U.S.C. 1202);

(i) Theatrical scenery, properties, and effects, motion-picture films, commercial travelers' samples and professional books, implements, instruments,

and tools of trade, occupation, or employment, as set forth in § 10.68 of this chapter;

(j) Merchandise which, upon written application to the Commissioner of Customs, is determined to be unique in character or design such that the value thereof cannot be declared and which is not intended for sale or imported in pursuance of a purchase or agreement for purchase; and

(k) Products of the United States, when the aggregate value of the shipment does not exceed $10,000 and the products are imported—

(1) For the purposes of repair or alteration prior to reexportation, or

(2) After having been either rejected or returned by the foreign purchaser to the United States for credit.

(l) Shipments of merchandise qualifying for the administrative exemptions under 19 U.S.C. 1321(a)(2) and provided for in—

(1) Section 10.151 or 145.31 of this chapter (certain importations not exceeding $200 in value);

(2) Section 10.152 or 145.32 of this chapter (certain bona-fide gifts not exceeding $100 in value ($200 in the case of articles sent from a person in the Virgin Islands, Guam, or American Samoa)); or

(3) Section 148.51 or 148.64 of this chapter (certain personal or household articles not exceeding $200 in value).

[T.D. 73–175, 38 FR 17463, July 2, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 143.21, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 143.22 Formal entry may be required.

The port director may require a formal consumption or appraisement entry for any merchandise if deemed necessary for: (a) Import admissibility enforcement purposes, (b) revenue protection, or (c) the efficient conduct of Customs business. Individual shipments for the same consignee, when such shipments are valued at $2,000 or less, may be consolidated on one such entry.

[T.D. 73–175, 38 FR 17463, July 2, 1973, as amended by T.D. 84–171, 49 FR 31253, Aug. 3, 1984; T.D. 85–38, 50 FR 8723, Mar. 5, 1985; T.D. 85–123, 50 FR 29955, July 23, 1985; T.D. 89–82, 54 FR 36026, Aug. 31, 1989; T.D. 98–28, 63 FR 16417, Apr. 3, 1998]

### § 143.23 Form of entry.

Except for the types of merchandise listed below which may be entered on the forms indicated, merchandise to be entered informally shall be entered on a Customs Form 368 or 368A, (serially numbered) or Customs Form 7501, or, if authorized by the port director, upon the presentation of a commercial invoice which contains the following declaration, signed by the importer or his agent:

I declare that the information on this invoice is accurate to the best of my knowledge and belief; that the invoice quantities are true and correct manifest quantities; and that I have not received and do not know of any invoice other than this one.

(a) Articles in passengers' baggage which may be cleared on a baggage declaration in accordance with subpart B of part 148 of this chapter;

(b) Products of the United States being returned for which clearance on Customs Form 3311 is prescribed by § 10.1 of this chapter;

(c) Personal effects and tools of trade for which clearance on Customs Form 3299 is prescribed by § 148.6 of this chapter; and

(d) Shipments not exceeding $2,000 in value (except for articles valued in excess of $250 classified in Sections VII, VIII, XI, and XII; Chapter 94; and Chapter 99, Subchapter III and IV, Harmonized Tariff Schedule of the United States) which are either (1) unconditionally free of duty and not subject to any quota or internal revenue tax, or (2) conditionally free (other than shipments of merchandise provided for in paragraph (g) of this section) and all conditions for free entry are met at the time of entry, which may be released upon the filing by the importer on Customs Form 7523, in duplicate, supported by evidence of the right to make entry.

(e) Merchandise for which informal entry can be made on a different form as prescribed elsewhere in this chapter.

(f) Merchandise released under the immediate delivery procedure or the entry documentation required by § 142.3(a), and entry is made on Customs Form 7501, annotated ''Informal Entry'' in the upper right hand corner.

(g) Merchandise, regardless of value, which is imported for noncommercial purposes, which qualifies for entry free of duty under the Generalized System of Preferences (see §§ 10.171 through 10.178 of this chapter), and for which informal entry may be made on Customs Form 7523, in duplicate.

(h) Products of the United States being returned for which informal entry is permitted by § 143.21(j) may be cleared as follows:

(1) For products of the United States returned for the purposes of repair or alteration prior to reexportation. Customs Form 3311 will serve as informal entry.

(2) For products of the United States after having been either rejected or returned by the foreign purchaser for credit, Customs Form 7501, annotated ''informal entry'' in the upper right hand corner, and Customs Form 3311 will serve as informal entry.

(i) A shipment of merchandise not exceeding $2,000 in value which is imported by an express consignment operator or carrier and which meets the requirements in § 128.24 of this chapter may be entered as provided in that section.

(j) Except for mail importations (see §§ 145.31 and 145.32 of this chapter), or in the case of personal written or oral declarations (see §§ 148.12, 148.13 and 148.62 of this chapter), a shipment of merchandise not exceeding $200 in value which qualifies for informal entry under 19 U.S.C. 1498 and meets the requirements in § 10.151 or § 10.152 of this chapter may be entered by presenting the bill of lading or a manifest listing each bill of lading (see §§ 10.151, 10.152 and 128.24(e) of this chapter). The following information is required to be filed as a part of such entry:

(1) Country of origin of the merchandise;

(2) Shipper name, address and country;

(3) Ultimate consignee name and address;

(4) Specific description of the merchandise;

(5) Quantity;

(6) Shipping weight; and

(7) Value.

[T.D. 73–175, 38 FR 17463, July 2, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 143.23, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 143.24 Preparation of Customs Form 7501 and Customs Form 368 or 368A (serially numbered).

Customs Form 7501 may be prepared by importers or their agents or by Customs officers when it can be presented to a Customs cashier for payment of duties and taxes and for numbering of the entry before the merchandise is examined by a Customs officer. Where there is no Customs cashier, Customs Form 368 or 368A (serially numbered) or Customs Form 7501 must be used, and it shall be prepared by a Customs officer unless the form can be prepared under his control by the importer or agent for immediate use in clearing merchandise under the informal entry procedure. The conditions for the preparation of Customs Form 7501 by importers or their agents, as described in the first sentence of this section, do not apply to the acceptance of these entries for shipments not exceeding $250 in value released under a special permit for immediate delivery in accordance with part 142 of this chapter.

[T.D. 84–129, 49 FR 23168, June 5, 1984, as amended by T.D. 87–75, 52 FR 26142, July 13, 1987; T.D. 89–82, 54 FR 36026, Aug. 31, 1989; T.D. 92–56, 57 FR 24944, June 12, 1992]

### § 143.25 Information on entry form.

Each Customs Form 368 or 368A (serially numbered) or, where used, Customs Form 7501 shall contain an adequate description of the merchandise and the item number of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), under which the merchandise is classified.

[T.D. 76–213, 41 FR 31812, July 30, 1976, as amended by T.D. 87–75, 52 FR 26142, July 13, 1987; T.D. 89–1, 53 FR 51263, Dec. 21, 1988; T.D. 92–56, 57 FR 24944, June 12, 1992]

### § 143.26 Party who may make informal entry of merchandise.

(a) *Shipments valued between $200 and $2,000*. A shipment of merchandise valued between $200 and $2,000 which qualifies for informal entry under 19 U.S.C. 1498 may be entered, using reasonable care, by the owner or purchaser of the shipment or, when appropriately designated by the owner, purchaser, or consignee of the shipment, a Customs broker licensed under 19 U.S.C. 1641.

(b) *Shipments valued at $200 or less*. A shipment of merchandise valued at $200 or less which qualifies for informal entry under 19 U.S.C. 1498 and meets the requirements in 19 U.S.C. 1321(a)(2) (see §§ 10.151, 10.152, 10.153, 145.31, 145.32, 148.51, 148.64, of this chapter) may be entered, using reasonable care, by the owner, purchaser, or consignee of the shipment or, when appropriatel y designated by one of these persons, a Customs broker licensed under 19 U.S.C. 1641.

[T.D. 94–51, 59 FR 30296, June 13, 1994, as amended by T.D. 95–31, 60 FR 18991, Apr. 14, 1995; T.D. 98–28, 63 FR 16417, Apr. 3, 1998]

### § 143.27 Invoices.

In the case of merchandise imported pursuant to a purchase or agreement to purchase, or intended for sale and entered informally, the importer shall produce the commercial invoice covering the transaction or, in the absence thereof, an itemized statement of value.

[T.D. 85–39, 50 FR 9612, Mar. 11, 1985]

### § 143.28 Deposit of duties and release of merchandise.

Unless statement processing and ACH are used pursuant to § 24.25 of this chapter, the estimated duties and taxes, if any, shall be deposited at the time the entry is presented and accepted by a Customs Officer, whether at the customhouse or elsewhere. If upon examination of the merchandise further duties or taxes are found due, they shall be deposited before release of the merchandise by Customs. When the entry is presented elsewhere than where the merchandise is to be examined, the permit copy shall be delivered through proper channels to the Customs officer who will examine the merchandise.

[T.D. 73–175, 38 FR 17463, July 2, 1973, as amended by T.D. 89–104, 54 FR 50499, Dec. 7, 1989]

## Subpart D—Electronic Entry Filing

SOURCE: T.D. 90–92, 55 FR 49886, Dec. 3, 1990, unless otherwise noted.

### § 143.31 Applicability.

This subpart sets forth general requirements for the entry of imported merchandise processed electronically through the Customs Automated Commercial System (ACS). Entries processed electronically are subject to the documentation, document retention and document retrievability requirements of this chapter as well as the general entry requirements of parts 141 and 142. Use of this system is voluntary and optional on behalf of the filer. Customs does not contemplate that processing of non-electronic filings shall be delayed.

### § 143.32 Definitions.

The following are definitions for purposes of this subpart D:

(a) *ACS*. ''ACS'' means the Automated Commercial System and refers to Customs integrated comprehensive tracking system for the acquisition, processing and distribution of import data.

(b) *ABI*. ''ABI'' means the Automated Broker Interface and refers to a module of ACS that allows entry filers to transmit immediate delivery, entry and entry summary data electronically to Customs through ACS and to receive transmissions from ACS.

(c) *AII*. ''AII'' means Automated Invoice Interface and is a method of transmitting detailed invoice data through ABI.

(d) *Broker*. ''Broker'' means a Customs broker licensed under part 111 of this chapter.

(e) *Certification*. ''Certification'' means the electronic equivalent of a signature for data transmitted through ABI. This electronic (facsimile) signature must be transmitted as part of the immediate delivery, entry or entry

summary data. Such data is referred to as ''certified''.

(f) *Data*. ''Data'' when used in conjunction with immediate delivery, entry and/or entry summary means the information required to be submitted with the immediate delivery, entry and/or entry summary, respectively, in accordance with the CATAIR and/or Customs Headquarters directives. It does not mean the actual paper documents, but includes all of the information required to be in such documents.

(g) *Documentation*. ''Documentation'' when used in conjunction with immediate delivery, entry and/or entry summary means the documents set forth in § 142.3 of this chapter, required to be submitted as part of an application for immediate delivery, entry and/or entry summary, but does not include the Customs Forms 7501, 3461 (or alternative forms).

(h) *EDIFACT*. ''EDIFACT'' means the Electronic Data Interchange for Administration, Commerce and Transport which provides an electronic capability to transmit detailed CF 3461, CF 7501 and invoice data.

(i) *Electronic immediate delivery*. ''Electronic immediate delivery'' means the electronic transmission of CF 3461 or CF 3461 alternate (CF 3461 ALT) data utilizing ACS in order to obtain the release of goods under immediate delivery.

(j) *Electronic entry*. ''Electronic entry'' means the electronic transmission of CF 3461, CF 3461 ALT, or CF 7501 data utilizing ACS in order to obtain the release of merchandise from Customs custody.

(k) *Electronic entry summary*. ''Electronic entry summary'' means the electronic transmission of CF 7501 data utilizing ACS for the purpose of duty assessment and the collection of statistical data.

(l) *Filer*. ''Filer'' means the party certifying the electronic filing of the application for immediate delivery, entry or entry summary. Filer may be a broker or an importer of record filing his own entries through ABI without the use of a broker.

(m) *Preclassification/binding ruling number*. ''Preclassification/binding ruling number'' means the system by which classifications are approved and assigned a unique identifying number. This number may be transmitted as part of the ABI data.

(n) *Records*. ''Records'' means the records as defined in part 163 of this chapter, which are required to be maintained pursuant to this chapter.

(o) *Selectivity criteria*. ''Selectivity criteria'' means the categories of information which guide Customs judgment in evaluating and assessing the risk of an immediate delivery, entry or entry summary transaction. Based upon these criteria, immediate delivery or entry transactions will be subject to either general examination, general examination with document review, or intensive examination. Entry summary transactions will be subject to either system review or summary document review. General examination (entry/immediate delivery) and system review (entry summary) procedures will constitute electronic processing provided all conditions necessary for electronic processing contained in this part are met.

(p) *Statement processing*. ''Statement processing'' means the method of collection and accounting within, ACS which allows a filer to pay for more than one entry summary with one payment. ACS/ABI generates the statement, which is transmitted electronically to the filer, consisting of a list of entry summaries and the amount of duties, taxes or fees, if any, due for payment. Upon payment and collection of the statement, those entry summaries designated as electronic will be scheduled for liquidation (see § 24.25 of this chapter).

[T.D. 90–92, 55 FR 49886, Dec. 3, 1990, as amended by T.D. 98–56, 63 FR 32945, June 16, 1998]

### § 143.33 Eligibility criteria for participation.

To be eligible for electronic immediate delivery, electronic entry and electronic entry summary, the filer must be qualified to use the ABI feature of ACS, as prescribed in § 143.5. To be eligible for electronic entry summary processing, filers must be authorized to use the ABI statement processing system. Filers not so authorized would have to follow the electronic entry summary with the submission of

an entry summary in paper form along with any duties, taxes or fees accruing.

### § 143.34 Procedure for electronic immediate delivery or entry.

To file immediate delivery or entry electronically, the filer will submit certified immediate delivery or entry data electronically through ABI. Data will be validated and, if found error-free, will be accepted. If it is determined through selectivity criteria and review of data that documentation is not required to be physically submitted in paper form, merchandise will be released and Customs will electronically notify the filer.

### § 143.35 Procedure for electronic entry summary.

In order to obtain entry summary processing electronically, the filer will submit certified entry summary data electronically through ABI. Data will be validated and, if the transmission is found error-free, will be accepted. If it is determined through selectivity criteria and review of data that documentation is required for further processing of the entry summary, Customs will so notify the filer. Documentation submitted before being requested by Customs will not be accepted or retained by Customs. The entry summary will be scheduled for liquidation once payment is made under statement processing (see § 24.25 of this chapter).

[T.D. 98–56, 63 FR 32945, June 16, 1998]

### § 143.36 Form of immediate delivery, entry and entry summary.

(a) *Electronic form of data.* If Customs determines that the immediate delivery, entry or entry summary data is satisfactory under §§ 143.34 and 143.35, the electronic form of the immediate delivery, entry or entry summary through ABI shall be deemed to satisfy all filing requirements under this part. Further, the filer will not be required to produce or physically submit any official Customs forms of immediate delivery, entry or entry summary. The filer is responsible for the accuracy of the data submitted electronically to the same extent as if the documents were produced, signed and physically submitted by the filer (see § 111.32 of this chapter).

(b) *Accuracy of data.* Participation constitutes declaration by the electronic filer that, to the best of his knowledge, all transactions filed electronically fully disclose prices, values, quantities, rebates, drawbacks, fees, commissions, and royalties, which are true and correct, and that all goods or services provided either free or at a reduced cost to the seller of the merchandise are fully disclosed (see § 111.32 of this chapter).

(c) *Submission of invoice.* The invoice will be retained by the filer unless requested by Customs. If the invoice is submitted by the filer before a request is made by Customs, it will not be accepted or retained by Customs. When Customs requests presentation of the invoice, invoice data must be submitted in one of the following forms:

(1) Paper form;

(2) AII or EDIFACT format.

(3) In appropriate cases where a party has obtained a preclassification/binding ruling number covering the merchandise being entered, or is a participant in a pre-approval program, and information is electronically transmitted which is adequate for the examination of the merchandise and the determination of duties, and for verifying the information required for statistical purposes by § 141.61(e) of this chapter, such information will satisfy the invoice requirement of this part and part 141 of this chapter.

[T.D. 90–92, 55 FR 49886, Dec. 3, 1990, as amended by T.D. 98–56, 63 FR 32945, June 16, 1998]

### § 143.37 Retention of records.

(a) *Record maintenance requirements.* All records received or generated by a broker or importer must be maintained in accordance with part 163 of this chapter.

(b) *Termination of broker's responsibility.* If the broker is discharged by the importer, he shall retain the documentation for those deliveries, entries or entry summaries filed by him prior to such discharge. Documentation in possession of a broker at the time of

permanent termination of the brokerage business shall be accounted for pursuant to § 111.30(e) of this chapter.

[T.D. 90–92, 55 FR 49886, Dec. 3, 1990, as amended by T.D. 98–56, 63 FR 32945, June 16, 1998]

### § 143.38 [Reserved]

### § 143.39 Penalties.

(a) *Brokers*. Brokers unable to produce records requested by Customs under this chapter will be subject to disciplinary action or penalties pursuant to part 111 or part 163 of this chapter.

(b) *Importers*. Importers unable to produce records requested by Customs under this chapter will be subject to penalties pursuant to part 163 of this chapter.

[T.D. 98–56, 63 FR 32945, June 16, 1998]

## PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

Sec.

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AUTHORITY: 19 U.S.C. 66, 1484, 1557, 1559, 1624.

Section 144.3 also issued under 19 U.S.C. 1563;

Section 144.33 also issued under 19 U.S.C. 1562;

Section 144.37 also issued under 19 U.S.C. 1555, 1562.

SOURCE: T.D. 73–175, 38 FR 17464, July 2, 1973, unless otherwise noted.

### § 144.0 Scope.

This part contains regulations pertaining to the entry and withdrawal of merchandise under the provisions of section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), which among other things provides that articles subject to duty may be entered for warehousing and deposited in a bonded warehouse at the expense and risk of the owner, importer, or consignee, and withdrawn from warehouse for consumption upon payment of duties and charges. The requirements and procedures set forth in this part are in addition to the general requirements and procedures for all entries set forth in part 141 of this chapter. Regulations pertaining to manipulation in warehouse, manufacturing warehouses, and smelting and refining warehouses are set forth in part 19 of this chapter.

## Subpart A—General Provisions

### § 144.1 Merchandise eligible for warehousing.

(a) *Types of merchandise.* Any merchandise subject to duty may be entered for warehousing except for perishable merchandise and explosive substances (other than firecrackers). Dangerous and highly flammable merchandise, though not classified as explosive, shall not be entered for warehouse without the written consent of the insurance company insuring the warehouse in which the merchandise is to be stored.

(b) [Reserved]

(c) *Merchandise previously entered.* If merchandise has been entered under other than a warehouse entry and has remained in continuous Customs custody, a warehouse entry may be substituted for the previous entry. If estimated duties were deposited with the superseded previous entry, that entry shall be liquidated for refund of the estimated duties without awaiting liquidation of the warehouse entry. All copies of the warehouse entry shall bear the following notation: This entry is in substitution of _____; entry No. _____, dated _____.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 82–204, 47 FR 49376, Nov. 1, 1982; T.D. 84–149, 49 FR 28699, July 16, 1984]

### § 144.2 Liability of importers and sureties.

The importer of merchandise entered for warehouse is liable for the payment of all unpaid duties not only as principal on the bond filed on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, but also by reason of his personal liability as consignee. Under the conditions of the bond, the sureties on the bond shall be held liable for the payment of duties and Customs charges not paid by the principal on the bond, whether such duties and charges are finally ascertained before the merchandise is withdrawn from Customs custody or thereafter. Liability may be transferred in part along with the right to withdraw the merchandise, in accordance with Subpart C of this part.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 84–213, 49 FR 41185, Oct. 19, 1984]

### § 144.3 Allowance for damage.

No abatement or allowance of duties shall be made on account of damage, loss, or deterioration of the merchandise while in warehouse, except as provided for by law (see part 158 of this chapter).

### § 144.4 Allowance for abandoned, destroyed, or exported merchandise.

Allowance in duties shall be made for merchandise in warehouse which is abandoned or destroyed in accordance with § 158.43 of this chapter or exported in accordance with § 144.37.

### § 144.5 Period of warehousing.

Merchandise shall not remain in a bonded warehouse beyond 5 years from the date of importation.

[T.D. 86–118, 51 FR 22516, June 20, 1986]

### § 144.6 [Reserved]

### § 144.7 Disposition of merchandise after expiration of warehousing period.

Merchandise remaining in a bonded warehouse after the expiration of the warehousing period shall be disposed of in accordance with § 127.14 of this chapter.

[T.D. 79–221, 44 FR 46828, Aug. 9, 1979]

## Subpart B—Requirements and Procedures for Warehouse Entry

### § 144.11 Form of entry.

(a) *Entry.* The documentation required by § 142.3 of this chapter shall be filed at the time of entry. If the entry summary, Customs Form 7501, is filed at the time of entry for merchandise to be entered for warehouse, it shall serve as both the entry and the entry summary, and Customs Form 3461 or 7533 shall not be required. If the entry summary is not filed at the time of entry, it shall be filed within the time limit prescribed by § 142.12 of this chapter. If

merchandise is released before the filing of the entry summary, the importer shall have a bond on file, as prescribed by § 142.4 of this chapter.

(b) *Customs Form 7501*. The entry summary for merchandise entered for warehouse shall be executed in triplicate on Customs Form 7501, appropriately modified, and shall include all of the statistical information required by § 141.61(e) of this chapter. The port director may require an extra copy or copies of Customs Form 7501, annotated ''PERMIT'' for use in connection with delivery of the merchandise to the bonded warehouse.

(c) *Designation of warehouse*. The importer shall designate on the entry summary, Customs Form 7501, the bonded warehouse in which he desires his merchandise deposited.

(d) *Specification list*. When packages which are not uniform in contents, quantities, values, or rates of duties are grouped together as one item on an entry summary, a specification list (original only) shall be furnished with the entry summary, showing separately opposite the marks or numbers of each package, the quantity of each class of merchandise, the entered value of each class, and the rates of duty claimed for each. However, a specification list is not needed if one withdrawal is to be filed for all the merchandise covered by the entry summary.

[T.D. 79–221, 44 FR 46828, Aug. 9, 1979, as amended by T.D. 84–129, 49 FR 23168, June 5, 1984]

### § 144.12 Contents of entry summary; estimated duties.

The entry summary, Customs Form 7501, shall show the value, classification, and rate of duty as approved by the port director at the time the entry summary is filed. However, no deposit of estimated duties shall be required until the merchandise is withdrawn for consumption.

[T.D. 79–221, 44 FR 46828, Aug. 9, 1979, as amended by T.D. 84–129, 49 FR 23168, June 5, 1984]

### § 144.13 Bond requirements.

A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be filed in the amount required by the port director to support the entry documentation.

[T.D, 84–213, 49 FR 41185, Oct. 19, 1984]

### § 144.14 Removal to warehouse.

When the entry summary, Customs Form 7501, and the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter have been filed, the merchandise shall be sent to the bonded warehouse, except for:

(a) Merchandise for which an immediate withdrawal if filed, or

(b) Packages designated for examination elsewhere than at the warehouse, which shall be sent to the warehouse after examination.

[T.D. 79–221, 44 FR 46828, Aug. 9, 1979, as amended by T.D. 84–129, 49 FR 23168, June 5, 1984; T.D. 84–213, 49 FR 41185, Oct. 19, 1984]

### § 144.15 Entry and withdrawal from Customs bonded warehouses of distilled spirits.

(a) *Distilled spirits entered in warehouse under section 5066(a), Internal Revenue Code*—(1) *General rule*. Except as otherwise provided in this section, distilled spirits entered into Customs bonded warehouse in accordance with section 5066(a), Internal Revenue Code, as amended (26 U.S.C. 5066(a)), shall be treated in the same manner as any other merchandise entered for warehouse.

(2) *Withdrawal from warehouse for domestic consumption*. Distilled spirits entered in warehouse under this paragraph may be withdrawn from warehouse for domestic consumption under section 5066(c), Internal Revenue Code, as amended (26 U.S.C. 5066(c)). In this case, the distilled spirits shall be subject to duty as American goods exported and returned under subheading 9801.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(b) *Distilled spirits transferred from a manufacturing warehouse to a storage warehouse under section 311, Tariff Act of 1930*—(1) *Prohibition on withdrawal from warehouse for domestic consumption*. Domestic distilled spirits which have been transferred from a Customs bonded manufacturing warehouse, Class 6, to a Customs bonded storage warehouse, Class 2 or 3, in accordance with section

311, Tariff Act of 1930, as amended (19 U.S.C. 1311), may not be withdrawn under section 5066(c) of the Internal Revenue Code, as amended (26 U.S.C. 5066(c)), for domestic consumption.

(2) *Procedure governing transfer of distilled spirits from manufacturing warehouse to storage warehouse.* For procedure concerning the transfer of such distilled spirits from Customs bonded manufacturing warehouse, Class 6, to Customs bonded storage warehouse, see § 19.15(g)(2) of this chapter.

(c) *Distilled spirits entered under section 5214(a)(9), Internal Revenue Code*—(1) *General rule.* Distilled spirits may be entered into a Customs bonded storage warehouse under section 5214(a)(9), Internal Revenue Code, as amended (26 U.S.C. 5214(a)(9)), in the same manner as any other merchandise is entered for warehouse, unless otherwise provided in this section.

(2) *Withdrawal only for exportation.* Distilled spirits warehoused under section 5214(a)(9), Internal Revenue Code, may be withdrawn only for the purpose of exportation, either directly or after rewarehousing at the same or another port. The distilled spirits may not be withdrawn for domestic consumption.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 78–298, 43 FR 38382, Aug. 28, 1978; T.D. 80–271, 45 FR 75641, Nov. 17, 1980; T.D. 84–213, 49 FR 41185, Oct. 19, 1984; T.D. 89–1, 53 FR 51263, Dec. 21, 1988]

## Subpart C—Transfer of Right To Withdraw Merchandise from Warehouse

### § 144.21 Conditions for transfer.

Under the provisions of section 557(b) Tariff Act of 1930, as amended (19 U.S.C. 1557(b)), the right to withdraw all or part of merchandise entered for warehouse may be transferred by appropriate endorsement on the withdrawal form, provided that the transferee files a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. Upon the deposit of the endorsed form, properly executed, and the transferee's bond with the Customs officer designated to receive such form and bond, the transferor and his sureties shall be relieved from all undischarged liability.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 84–213, 49 FR 41185, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

### § 144.22 Endorsement of transfer on withdrawal form.

Transfer of the right to withdraw merchandise entered for warehouse shall be established by an appropriate endorsement on the withdrawal form by the person primarily liable for payment of duties before the transfer is completed, *i.e.*, the person who made the warehouse or rewarehouse entry or a transferee of the withdrawal right of such person. Endorsement shall be made on whichever of the following withdrawal forms is applicable:

(a) Customs Form 7501 for:

(i) A duty paid warehouse withdrawal for consumption;

(ii) Withdrawal with no duty payment (diplomatic use);

(iii) Merchandise to be withdrawn as vessel or aircraft supplies and equipment under § 10.60 of this chapter or other conditionally free merchandise;

(b) Customs Form 7512 for merchandise to be withdrawn for transportion, exportation, or transportation and exportation; or

[T.D. 82–204, 47 FR 49376, Nov. 1, 1982, as amended by T.D. 95–81, 60 FR 52295, Oct. 6, 1995]

### § 144.23 Endorsement in blank.

If the transferor wishes to do so, he may endorse the withdrawal form to authorize the right to withdraw the merchandise specified thereon but leave the space for the name of the transferee blank. A holder of a withdrawal form so endorsed and otherwise fully executed may insert his own name in the blank space, deposit such form and his transferee's bond with the Customs officer designated to receive such form and bond, and thereby establish his right to withdraw the merchandise.

### § 144.24 Transferee's bond.

The transferee's bond shall be on Customs Form 301 and contain the

bond conditions set forth in § 113.62 of this chapter.

[T.D. 84–213, 49 FR 41185, Oct. 19, 1984]

### § 144.25 Deposit of forms.

Either the transferor or the transferee may deposit the endorsed withdrawal form and transferee's bond with the Customs officer designated to receive such form and bond.

### § 144.26 Further transfer.

The right of a transferee to withdraw the merchandise may not be revoked by the transferor but may be retransferred by the transferee.

### § 144.27 Withdrawal from warehouse by transferee.

At any time within the warehousing period, a transferee who has established his right to withdraw merchandise may withdraw all or part of the merchandise covered by the transfer by filing any authorized kind of withdrawal from warehouse in accordance with subpart D of this part.

### § 144.28 Protest by transferee.

(a) *Entries on or after January 12, 1971.* A transferee of merchandise entered for warehouse on or after January 12, 1971, shall have the right to file a protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), to the same extent that such right would have been available to the transferor.

(b) *Entries prior to January 12, 1971.* A transferee of merchandise entered for warehouse prior to January 12, 1971, shall have no right to file a protest, except under the conditions set forth in section 557(b), Tariff Act of 1930, as amended (19 U.S.C. 1557(b)), prior to the amendments made thereto by Pub. L. 91–685, effective January 12, 1971 (T.D. 71–55).

## Subpart D—Withdrawals from Warehouse

### § 144.31 Right to withdraw.

Withdrawals from bonded warehouse may be made only by the person primarily liable for the payment of duties on the merchandise being withdrawn, *i.e.*, the importer of record on the warehouse entry, the actual owner if an actual owner's declaration and superseding bond have been filed in accordance with § 141.20 of this chapter, or the transferee if the right to withdraw the merchandise has been transferred in accordance with subpart C of this part. No new declaration of the consignee or agent is required.

### § 144.32 Statement of quantity; charges and liens.

(a) *On each withdrawal.* Each withdrawal filed shall have indicated thereon, preferably in the lower part of the left-hand margin if there is no space designated on the form for such information, a summary statement of the account to which it is related. The statement shall indicate:

(1) The quantity (*i.e.*, the number of outer containers, or tons, etc.) in the warehouse account before the withdrawal;

(2) The quantity being withdrawn; and

(3) The quantity remaining in warehouse after the withdrawal. The quantity in each instance may be shown as a cumulative total event though it may include a group of varied units such as boxes, cases, or cartons, and may consist of more than one commodity, such as distilled spirits, chinaware, etc.

(b) *Transferred merchandise.* When all or a portion of an original lot has been transferred to a new owner in accordance with subpart C of this part, each withdrawal by the transferee shall show only the quantity on hand in the transferee's name before the withdrawal, the quantity being withdrawn by the transferee, and the transferred quantity remaining in the warehouse after the withdrawal. The quantity retained by the original importer and the quantity transferred shall be treated as separate accounts.

(c) *Charges and liens.* Upon receipt of an application to withdraw merchandise the appropriate Customs officer shall determine whether there are any cartage, storage, labor, or any other charges due the Government in connection with the goods remaining unpaid or whether there is on file any notice of lien filed by a carrier. If there are no charges or liens or all charges and liens

have been satisfied, and all other requirements of law or regulations have been met, the application to withdraw shall be approved.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 82–204, 47 FR 49376, Nov. 1, 1982; T.D. 86–118, 51 FR 22516, June 20, 1986]

### § 144.33 Minimum quantities to be withdrawn.

Unless by special authority of the Commissioner of Customs, merchandise shall not be withdrawn from bonded warehouse in quantities less than an entire bale, cask, box, or other package, or, if in bulk, in quantities less than 1 ton in weight or the entire quantity imported, whichever is smaller.

### § 144.34 Transfer to another warehouse.

(a) *At the same port.* With the concurrence of the proprietors of the delivering and receiving warehouses, merchandise may be transferred from one bonded warehouse to another at the same port under Customs supervision and at the expense of the importer upon his written request to the port director, who shall issue an order for such transfer on Customs Form 6043. However, the port director may require the filing of a rewarehouse entry under § 144.41 if he determines it necessary for proper control of the merchandise. All charges shall be paid before merchandise is transferred from a warehouse of class 1 (see § 19.1 of this chapter for classes of warehouses). The quantities of goods so transferred shall be subject to the joint determination of the warehouse proprietor and the cartman, lighterman, or private bonded carrier, as provided in §19.6 of this chapter.

(b) *At another port.* Merchandise may be transferred to a warehouse which is under the jurisdiction of another port by withdrawing the merchandise for transportation in accordance with § 144.36 and entering it for rewarehouse in accordance with § 144.41 upon arrival at destination. All charges shall be paid before merchandise is transferred from the warehouse of class 1 (see § 19.1 of this chapter for classes of warehouses).

(c) *Transfers between integrated bonded warehouses*—(1) *Eligibility.* (i) Only an importer who will transfer warehoused merchandise among Class 2 and 9 warehouses listed on the application in paragraph (c)(2) of this section is eligible to participate.

(ii) The importer must have a centralized inventory control system that shows the location of all of the warehoused merchandise at all times, including merchandise in transit.

(iii) The importer and its surety must sign the application. If the application to use this alternative procedure is approved by the appropriate port director, the importer's entry bond containing the conditions provided under § 113.62 of this chapter will continue to attach to any merchandise transferred under these alternative procedures.

(iv) Each proprietor of a warehouse listed on the application and each surety who underwrites that proprietor's custodial bond coverage under § 113.63 of this chapter shall sign the application.

(2) *Application.* Application must be made in writing to the port director of the port in which the applicant's centralized inventory control system exists, with copies to all affected port directors, for exemptions from the requirements for transfer of merchandise from one bonded warehouse to another set forth in paragraphs (a) and (b) of this section. The application must list all bonded warehouses to and from which the merchandise may be transferred; all such warehouses must be covered by the same centralized inventory control system. Only blanket exemption requests will be considered; exemptions will not be considered for individual transfers. The application may be in letter form, signed by all participants, and contain a certification to the port director by the applicant that he maintains accounting records, documents and financial statements and reports that adequately support Customs activities.

(3) *Operation.* An importer who receives approval to transfer merchandise between bonded warehouses in accordance with the provisions of this section may, after entry into the first warehouse, transfer that merchandise to any other warehouse without filing

a withdrawal from warehouse or a rewarehouse entry. The warehoused merchandise will be treated as though it remains in the first warehouse so long as the actual location of the merchandise at all times is recorded as provided under the provisions of this section.

(4) *Inventory control requirements.* The records required to be maintained must include a centralized inventory control system and supporting documentation which meets the following requirements:

(i) Provide Customs upon demand with the proper on-hand balance of each inventory item in each warehouse facility and each storage location within each warehouse;

(ii) Provide Customs upon demand with the proper on-hand balance for each open warehouse entry and the actual quantity in each warehouse facility;

(iii) If an alternative inventory system has been approved, provide Customs upon demand with the proper on-hand balance for each unique identifier and the quantity related to each open warehouse entry and the quantity in each warehouse facility;

(iv) Maintain documentation for all intracompany movements, including authorizations for the movement, shipping documents and receiving reports. These documents must show the appropriate warehouse entry number or unique identifier, the description and quantity of the merchandise transferred, and must be properly authorized and signed evidencing shipment from and delivery to each location;

(v) Maintain a consolidated permit file folder at the location where the merchandise was originally warehoused. The consolidated permit file folder must meet the requirements of § 19.12(d)(4) of this chapter regardless of the warehouse facility in which the action occurred. Documentation for all intracompany movements, including authorizations for movement, shipping documents, receiving reports, as well as documentation showing ultimate disposition of the merchandise must be filed in the consolidated permit file folder within seven business days;

(vi) Maintain a subordinate permit file at all intracompany locations where merchandise is transferred containing copies of documentation required by § 19.12(d)(4) of this chapter and by paragraph (c)(3)(v) of this section relating to merchandise quantities transferred to the location. A copy of all documents in the subordinate permit file folder must be filed in the consolidated permit file folder within seven business days; no exceptions will be granted to this requirement. When the final withdrawal is made on the respective entry, the subordinate permit file shall be considered closed and filed at the intracompany location to which the merchandise was transferred; and

(vii) File the withdrawal from Customs custody at the original warehouse location at which the merchandise was entered.

(5) *Waiver of permit file folder requirements.* The permit file folder requirements of paragraphs (c)(3)(v) and (c)(3)(vi) of this section may be waived if the proprietor's recordkeeping and inventory control system qualifies under the requirements of § 19.12(d)(4)(iii) of this chapter at all locations where bonded merchandise is stored.

(6) *Procedure not available*—(i) *Liens.* The transfer procedures permitted under paragraph (c) of this section shall not be available for merchandise with respect to which Customs is notified of the existence of a lien, as prescribed in § 141.112 of this chapter (see 19 U.S.C. 1564), until proof shall be produced at the original warehouse location that the lien has been satisfied or discharged.

(ii) *Restricted merchandise.* With the exception of alcohol and tobacco products, merchandise subject to a restriction on release such as covered by a licensing, quota or visa requirement, is not eligible.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 82–204, 47 FR 49376, Nov. 1, 1982; T.D. 97–19, 62 FR 15840, Apr. 3, 1997]

### § 144.35 Withdrawal of vessel and aircraft supplies and equipment.

Supplies and equipment for vessels and aircraft may be withdrawn from warehouse under the procedures set forth in this subpart and in §§ 10.59 through 10.65 of this chapter.

**§ 144.36 Withdrawal for transportation.**

(a) *Time limit.* Merchandise may be withdrawn from warehouse for transportation to another port of entry if withdrawal for consumption or exportation can be accomplished at the port of destination before the expiration of the warehousing period.

(b) *Physical deposit in warehouse not needed.* All or any part of the merchandise covered by an entry summary, Customs Form 7501 may be withdrawn for transportation without deposit in a bonded warehouse and may be permitted to remain on the vessel or other vehicle or on the pier in a constructive warehouse status pending examination. When any such merchandise not deposited in a warehouse is not forwarded under the withdrawal for transportation on account of damage or other cause, the importer shall be required to withdraw such merchandise immediately for consumption or exportation, or designate a warehouse to which it may be sent and, upon his failure to do so, it shall be treated as unclaimed.

(c) *Form.* (1) A withdrawal for transportation shall be filed on Customs Form 7512 in five copies. An extra copy or copies of the Customs Form 7512 may be required for use in connection with the delivery of the merchandise to the bonded carrier and, in the case of alcoholic beverages, two extra copies shall be required for use in furnishing the duty statement to the port director at destination.

(2) Separate withdrawals for transportation from a single warehouse, via a single conveyance, consigned to the same consignee, and deposited into a single warehouse, can be filed on one Customs Form 7512, under one control number, provided that there is an attachment, to be certified by a Customs officer, providing the information for each withdrawal, as required in paragraph (d) of this section. With the exception of alcohol and tobacco products, this procedure shall not be allowed for merchandise which is in any way restricted (for example, quota/visa).

(3) The requirement that a Customs Form 7512 be filed and the information required in paragraph (d) of this section be shown shall not be required if the merchandise qualifies under the exemption in § 144.34(c).

(d) *Information required.* In addition to the statement of quantity required by § 144.32, Customs Form 7512 shall show the following information for the merchandise being withdrawn:

(1) The original entry number, date of entry, date of entry summary, and port at which filed;

(2) The name of the consignee at the port of destination;

(3) Any ascertained weight, gauge, or measure;

(4) The entered value of the merchandise;

(5) Estimated duties, if any;

(6) A statement that the merchandise is or is not admissible for consumption and the reason for non-admissibility, if applicable; and

(7) The statistical information required by § 141.61(e) of this chapter.

When the withdrawal is made after the merchandise has been rewarehoused, the rewarehouse entry number, date, and port at which filed also shall be shown.

(e) *Duty on samples withdrawn.* The duty on any samples withdrawn at the original port from a shipment covered by a withdrawal for transportation shall be collected at such port and a notation thereof made on the withdrawal form. No separate invoice or extract from the original invoice shall be required to cover such samples.

(f) *Forwarding procedure.* The merchandise shall be forwarded in accordance with the general provisions for transportation in bond (§§ 18.1 through 18.8 of this chapter). However, when the alternate procedures under § 144.34(c) are employed, the merchandise need not be delivered to a bonded carrier for transportation, and an entry for transportation (Customs Form 7512) and a rewarehouse entry will not be required.

(g) *Procedure at destination.* Upon arrival at destination, the merchandise may be:

(1) Entered for rewarehouse in accordance with § 144.41;

(2) Entered for combined rewarehouse and withdrawal for consumption in accordance with § 144.42;

(3) Exported in accordance with paragraph (h) of this section;

(4) Forwarded to another port or returned to the port of origin in accordance with § 18.5 (c) or (d) of this chapter;

(5) Admitted to a foreign trade zone in zone-restricted status as provided in part 146 of this chapter; or

(6) Deposited into the proprietor's bonded warehouse or duty free store warehouse without rewarehouse entry as required in § 144.41, if the merchandise qualifies for the exemption specified in § 144.34(c).

(h) *Exportation.* A consignee of merchandise withdrawn for transportation who desires to export the merchandise upon arrival at destination shall so advise the port director at destination in writing. The port director shall then permit the exportation of the merchandise under Customs supervision in the same manner as a withdrawal for indirect exportation under § 144.37.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 79–221, 44 FR 46828, Aug. 9, 1979; T.D. 84–129, 49 FR 23168, June 5, 1984; T.D. 84–212, 49 FR 39047, Oct. 3, 1984; T.D. 86–16, 51 FR 5064, Feb. 11, 1986; T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 97–19, 62 FR 15841, Apr. 3, 1997]

### § 144.37 Withdrawal for exportation.

(a) *Form.* A withdrawal for either direct or indirect exportation shall be filed on Customs Form 7512 (Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit) in 5 copies or on Customs Form 7501 in 3 copies for merchandise being exported under cover of a TIR carnet. Customs Form 7512 or Customs Form 7501 shall contain all of the statistical information as provided in § 141.61(e) of this chapter. The port director may require an extra copy or copies of Customs Form 7512 or 7501 for use in connection with the delivery of merchandise to the carrier.

(b) *Procedure for indirect exportation*—(1) *Forwarding.* Merchandise withdrawn for indirect exportation (transportation and exportation) shall be forwarded to the port of exportation in accordance with the general provisions for transportation in bond (§§ 18.1—18.8 of this chapter).

(2) *Splitting of shipments.* If any part of a shipment is not exported or if a shipment is divided at the port of exportation, extracts in duplicate from the manifest on file in the customhouse shall be made on Customs Form 7512 for each portion, one copy to be sent to the discharging inspector and the other to the lading inspector to be used as report of exportation. The splitting up for exportation of shipments arriving under warehouse withdrawals for indirect exportation shall be permitted only when various portions of a shipment are destined to different destinations, when the export vessel cannot properly accommodate the entire quantity, or in other similar circumstances. In the case of merchandise moving under cover of a TIR carnet, if the merchandise is not to be exported or if the shipment is to be divided, appropriate entry shall be required and the carnet discharged. The provisions of §§ 18.23 and 18.24 of this chapter concerning change of destination or retention of merchandise on the dock shall also be followed in applicable cases.

(3) *Conversion to withdrawal for consumption.* A withdrawal for indirect exportation may be converted to a withdrawal for consumption upon request to the director of the port where the withdrawal for indirect exportation was made.

(c) *Exportation by mail.* Merchandise may be withdrawn from warehouse for exportation by mail in accordance with the provisions of subpart F of part 145 of this chapter.

(d) *Marks on packages.* The exportation shall be made under the original marks of importation. Port marks may be added by authority of the port director under Customs supervision. The original and port marks shall appear in all Customs papers pertaining to the exportation.

(e) *Weight, gauge, or measure.* Merchandise in bulk and packaged articles which are customarily bought and sold by weight, gauge, or measure may be withdrawn for exportation or transportation only at the actual quantities ascertained at the time of the original entry for warehouse, except as otherwise provided for by law. In any case, the port director may require a special report of weight, gauge, or measure of the merchandise being exported if he deems it necessary.

(f) *Merchandise not laden*. Merchandise withdrawn for exportation but not laden shall be sent to general order unless other disposition is prescribed by the port director.

(g) *Exportation at a foreign trade zone*. Merchandise may be withdrawn for exportation at a foreign trade zone in the same or at a different port. The merchandise will be considered exported upon admission to a zone in zone-restricted status, as provided in § 146.44(c) of this chapter.

(h) *Class 9 warehouse withdrawals for exportation*—(1) *Applicability of sales ticket procedure*. Merchandise in a Class 9 warehouse (duty-free store) may be withdrawn for any of the purposes set forth in this subpart. However, only conditionally duty-free merchandise in a Class 9 warehouse intended for exportation or for delivery to persons and organizations set forth in subpart I, part 148, of this chapter, will be eligible for withdrawal under the sales ticket procedure specified in this paragraph.

(2) *Sales ticket content and handling*. Sales ticket withdrawals shall be made only under a blanket permit to withdraw (see § 19.6(d) of this chapter) and the sales ticket shall serve as the equivalent of the supplementary withdrawal. A sales ticket is an invoice of the proprietor's design which will include:

(i) Serial number and date of preparation of each ticket;

(ii) Warehouse entry number or specific identifier, if approved by the port director;

(iii) Quantity of goods sold;

(iv) Brief description of the articles including the size of bottles;

(v) The full name and address of the purchaser. However, the port director may waive the address requirement for all merchandise except for alcoholic beverages in quantities in excess of 4 liters and cigarettes in quantities in excess of 3 cartons. Also, the address requirement is not applicable with respect to purchasers at airport duty-free enterprises; and

(vi) A statement on the original copy (purchaser's copy) of the effect that goods purchased in a duty-free store will be subject to duty and/or tax with personal exemption if returned to the United States. At the time of purchase, the sales ticket, in triplicate, shall be made out in the name of the purchaser. One copy shall be retained by the proprietor. A permit file copy will be attached to the parcel containing the articles, and the original given to the purchaser. Additional copies may be retained by the proprietor.

(3) *Sales ticket register*. In addition to the records required in § 19.12(a) of this chapter, Class 9 warehouse proprietors shall maintain a sales ticket register or similar accounting record for each warehouse entry. The sales ticket register of the proprietor shall include the following information:

(i) Warehouse entry number;

(ii) Specific identifier, if applicable;

(iii) Sales ticket date and number;

(iv) Description;

(v) Quantity; and

(vi) Current balance.

As each warehouse entry is closed out, the warehouse proprietor shall verify the sales ticket register total with the amount withdrawn so as to account for all merchandise so withdrawn and certify on the register that all the goods have been exported or sold to qualifying persons and organizations under part 148 of this chapter. The sales ticket register shall be included in the permit file folder with or in lieu of the blanket permit summary, as provided in § 19.6(d)(5) of this chapter. A copy of all sales tickets shall be retained by the proprietor for not less than 5 years after the date of the last sales ticket in the entry. In lieu of placing a copy of sales tickets in each permit file folder, the warehouse proprietor may keep all sales tickets in a readily retrievable manner in a separate file.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 73–312, 38 FR 30883, Nov. 8, 1973; T.D. 80–142, 45 FR 36383, May 30, 1980; T.D. 84–212, 49 FR 39047, Oct. 3, 1984; T.D. 86–16, 51 FR 5064, Feb. 11, 1986; T.D. 92–81, 57 FR 37701, Aug. 20, 1992; T.D. 95–81, 60 FR 52295, 52296, Oct. 6, 1995; T.D. 97–19, 62 FR 15842, Apr. 3, 1997; T.D. 99–64, 64 FR 43266, Aug. 10, 1999; T.D. 00–22, 65 FR 16518, Mar. 29, 2000]

### § 144.38 Withdrawal for consumption.

(a) *Form*. Withdrawals for consumption of merchandise in bonded warehouses shall be filed on Customs Form 7501, in triplicate, and shall contain all

of the statistical information as provided in § 141.61(e) of this chapter.

(b) *Withdrawal for exportation to Canada or Mexico.* A withdrawal for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico is considered a withdrawal for consumption pursuant to § 181.53 of this chapter.

(c) *Information to be shown on withdrawal.* Each withdrawal shall show all information for which spaces are provided on the withdrawal form, and shall also show the separate value of each package and the total dutiable value of the merchandise being withdrawn. In the case of merchandise in packages which are uniform in kind, quantity, value, and duty, the number of each package to be withdrawn need not be shown on the withdrawal if the lowest and highest numbers in the number series of such packages are shown. In the case of merchandise subject to quota, or textiles and textile products subject to levels of restraint, the description shall reflect any correction thereof reported after the filing of the warehouse entry. Additionally, on each withdrawal of cigars, cigarettes, or cigarette papers or tubes subject to internal revenue tax, the statement for tax purposes required by § 275.81 of the regulations of the Internal Revenue Service (26 CFR § 275.81) shall be made on the withdrawal form.

(d) *Deposit of estimated duties.* Estimated duties on the merchandise being withdrawn shall be deposited in accordance with subpart G of part 141 of this chapter. The port director may increase or decrease the amount of estimated duties to be deposited on the final withdrawal to bring the aggregate amount of duties deposited into balance with the amount which he estimates will be finally due upon liquidation.

(e) *Permit for release of merchandise.* When the duties and other charges have been paid, and all other requirements of law and regulations have been met, a permit on Customs Form 7501 shall be issued and delivered to the person making the warehouse withdrawal.

(f) *Textiles and textile products.* Textiles and textile products subject to quota, visa or export license requirements in their condition at the time of importation may not be withdrawn from warehouse for consumption if during the warehouse period there has been a change by manipulation or other means:

(1) In the country of origin of the merchandise as defined by § 102.21 or § 102.22 of this chapter, as applicable,

(2) To exempt from quota or visa or export license requirements other than a change brought about by statute, treaty, executive order or Presidential proclamation, or

(3) From one textile category to another textile category.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 73–312, 38 FR 30883, Nov. 8, 1973; T.D. 74–114, 39 FR 12095, Apr. 3, 1974; T.D. 78–329, 43 FR 43455, Sept. 26, 1978; T.D. 82–204, 47 FR 49376, Nov. 1, 1982; T.D. 84–171, 49 FR 31253, Aug. 3, 1984; T.D. 85–38, 50 FR 8723, Mar. 5, 1985; T.D. 95–81, 60 FR 52296, Oct. 6, 1995; T.D. 96–14, 61 FR 2911, Jan. 30, 1996; CBP Dec. 05–32, 70 FR 58016, Oct. 5, 2005]

### § 144.39 Permit to transfer and withdraw merchandise.

With the exception of merchandise transferred under the procedures of § 144.34(c), if all legal and regulatory requirements are met, the appropriate Customs officer shall approve the application to transfer or withdraw merchandise from a bonded warehouse by endorsing the permit copy and returning it to the applicant. The approved permit shall be presented by the withdrawer to the warehouse proprietor as evidence of Customs authorization of the transfer or withdrawal. The approved permit copy shall thereafter be retained in the warehouse entry file of the proprietor. Goods covered by permit may be retained in the bonded warehouse at the option of the proprietor.

[T.D. 82–204, 47 FR 49376, Nov. 1, 1982, as amended by T.D. 97–19, 62 FR 15842, Apr. 3, 1997]

## Subpart E—Rewarehouse Entries

### § 144.41 Entry for rewarehouse.

(a) *Applicability.* When merchandise which has been withdrawn from warehouse for transportation to another port has arrived at the port of destination, it may be entered for rewarehouse

by the consignee named in the withdrawal.

(b) *Form of entry*. An entry for rewarehouse shall be made in duplicate on Customs Form 7501 and shall contain all of the statistical information as provided in § 141.61(e) of this chapter. The port director may require an extra copy or copies of Customs Form 7501, annotated ''PERMIT,'' for use in connection with the delivery of the merchandise to the warehouse. No declaration is required on the entry.

(c) *Combining separate shipments*. (1) Separate shipments consigned to the same consignee and received under separate withdrawals for transportation may be combined into one rewarehouse entry if the warehouse withdrawals are from the same original warehouse entry.

(2) Shipments covered by multiple warehouse entries, and shipped from a single warehouse under separate withdrawals for transportation, via a single conveyance, may be combined into one rewarehouse entry if consigned to the same consignee and deposited into a single warehouse. With the exception of alcohol and tobacco products, this procedure shall not be allowed for merchandise which is in any way restricted (for example, quota/visa). The combined rewarehouse entry shall have attached either copies of each warehouse entry package which is being combined into the single rewarehouse entry or a summary with pertinent information, that is, the date of importation, commodity description, size, HTSUS and entry numbers, for all entries withdrawn for consolidation as one rewarehouse entry. Any combining of separate withdrawals into one rewarehouse entry shall result in the rewarehouse entry being assigned the import date of the oldest entry being combined into the rewarehouse entry.

(3) Combining of separate shipments shall be prohibited in all other circumstances.

(d) *Bond*. A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be filed before a permit is issued on Customs Form 7501 for sending the merchandise to the bonded warehouse. However, no bond shall be required if the merchandise is entered by the consignee named in the original bond filed at the original port of entry, or if it is entered by a transferee who has established his right to withdraw the merchandise and has filed a bond in accordance with subpart C of this part.

(e) *Value and classification*. The duties determined at the port where the original warehouse entry was filed shall be the duties chargeable under the rewarehouse entry, except in the cases provided for in §§ 159.7 (a) and (b) of this chapter, which pertain to certain classes of merchandise excluded from the liquidation of the original warehouse entry and merchandise on which rates of duty or tax are changed by an act of Congress or by a proclamation by the President.

(f) *Examination*. Any examination necessary for identification of the merchandise, determination of shortages, or other purposes shall be made.

(g) *Failure to enter*. If the rewarehouse entry is not filed within 15 calendar days after its arrival, the merchandise shall be disposed of in accordance with the applicable procedures in § 4.37 or § 122.50 or § 123.10 of this chapter. However, merchandise sent to a general order warehouse shall not be sold or otherwise disposed of as unclaimed until the expiration of the original 5-year period during which the merchandise may remain in warehouse under bond.

(h) *Protest*. A protest may be filed at the port where the rewarehouse entry is made against a liquidation made at that port under § 159.7 (a) or (b) of this chapter, or against a refusal of the director of that port to liquidate pursuant to said sections. In all other cases, any protest shall be filed against the original warehouse entry.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 82–204, 47 FR 49376, Nov. 1, 1982; T.D. 84–129, 49 FR 23168, June 5, 1984; T.D. 84–213, 49 FR 41185, Oct. 19, 1984; T.D. 97–19, 62 FR 15842, Apr. 3, 1997; T.D. 98–74, 64 FR 15303, Mar. 31, 1999]

### § 144.42 Combined entry for rewarehouse and withdrawal for consumption.

(a) *Applicability*. If the consignee of merchandise withdrawn for transportation wishes to pay duty and obtain

possession of the merchandise immediately upon arrival at destination, he may make a combined entry for rewarehouse and withdrawal for consumption.

(b) *Procedure for entry*. The procedures set forth in § 144.41 are applicable to this type of entry, with the following exceptions:

(1) *Form of entry*. A combined entry for rewarehouse and withdrawal for consumption shall be made on Customs Form 7501 (Consumption Entry), in 4 copies, and shall contain all of the statistical information as provided in § 141.61(e) of this chapter, one copy to be used as the permit. No declaration is required on the entry;

(2) *Extra copy for Internal Revenue*. An additional copy of Customs Form 7501, marked or stamped ''For Internal Revenue Purposes,'' shall be presented for each entry of cigars, cigarettes, or cigarette papers or tubes, when the release from Customs custody of those articles is subject to part 275 of the regulations of the Internal Revenue Service (26 CFR part 275) and tax is payable to Customs; and

(3) *Deposit of duties*. Estimated Customs duties, taxes, and other charges, as set forth in subpart G of part 141 of this chapter, shall be deposited upon presentation of the combined entry. The port director shall then issue a permit for release on Customs Form 7501.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 73–312, 38 FR 30884, Nov. 8, 1973; T.D. 87–75, 52 FR 20068, May 29, 1987]

# PART 145—MAIL IMPORTATIONS

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POLICY STATEMENT TO PART 145—EXAMINATION OF SEALED LETTER CLASS MAIL
APPENDIX TO PART 145

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624;

Section 145.4 also issued under 18 U.S.C. 545, 19 U.S.C. 1618;

Section 145.11 also issued under 19 U.S.C. 1481, 1485, 1498;

Section 145.12 also issued under 19 U.S.C. 1315, 1484, 1498;

Sections 145.22 through 145.23 also issued under 19 U.S.C. 1501, 1514;

Section 145.31 also issued under 19 U.S.C. 1321;

Section 145.32 also issued under 19 U.S.C. 1321, 1498;

Sections 145.35 through 145.38, 145.41, also issued under 19 U.S.C. 1498;

Section 145.51 also issued under 19 U.S.C. 1305;

Section 145.54 also issued under 19 U.S.C. 1618.

SOURCE: T.D. 73–135, 38 FR 13369, May 21, 1973, unless otherwise noted.

### § 145.0 Scope.

The provisions of this part apply only to mail subject to Customs examination as set forth in § 145.2. This part contains regulations pertaining specifically to the importation of merchandise through the mails but does not contain all the regulations applicable to mail importations. Importations by mail are subject to the same requirements and restrictions as importations by any other means, except where more specific procedures for mail importations are set forth in this part. The fee applicable to each item of dutiable mail for which Customs prepares documentation is set forth in § 24.22 of this chapter.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 78–102, 43 FR 14454, Apr. 6, 1978; T.D. 93–85, 58 FR 54286, Oct. 21, 1993]

## Subpart A—General Provisions

### § 145.1 Definitions.

(a) *Mail article.* ''Mail article'' means any posted parcel, packet, package, envelope, letter, aerogramme, box, card, or similar article or container, or any contents thereof, which is transmitted in mail subject to customs examination.

(b) *Letter class mail.* ''Letter class mail'' means any mail article, including packages, post cards, and aerogrammes, mailed at the letter rate or equivalent class or category of postage.

(c) *Sealed letter class mail.* ''Sealed letter class mail'' means letter class mail sealed against postal inspection by the sender.

[T.D. 78–102, 43 FR 14454, Apr. 6, 1978]

### § 145.2 Mail subject to Customs examination.

(a) *Restrictions.* Customs examination of mail as provided in paragraph (b) of this section is subject to the restrictions and safeguards relating to the opening of letter class mail set forth in § 145.3.

(b) *Generally.* All mail arriving from outside the Customs territory of the United States which is to be delivered within the Customs territory of the United States and all mail arriving from outside the U.S. Virgin Islands which is to be delivered within the U.S. Virgin Islands, is subject to Customs examination, except:

(1) Mail known or believed to contain only official documents addressed to officials of the U.S. Government;

(2) Mail addressed to Ambassadors and Ministers (Chiefs of Diplomatic Missions) of foreign countries; and

(3) Letter class mail known or believed to contain only correspondence or documents addressed to diplomatic missions, consular posts, or the officers thereof, or to international organizations designated by the President as public international organizations pursuant to the International Organizations Act (see § 148.87(b) of this chapter). Mail, other than letter class mail, addressed to the designated international organizations is subject to Customs examination except where the organization certifies under its official seal that the mail contains no dutiable or prohibited articles. Any Customs examination made shall, upon request of the addressee international organization, take place in the presence of an appropriate representative of that organization.

[T.D. 78–102, 43 FR 14454, Apr. 6, 1978]

### § 145.3 Opening of letter class mail; reading of correspondence prohibited.

(a) *Matter in addition to correspondence.* Except as provided in paragraph (e), Customs officers and employees

may open and examine sealed letter class mail subject to Customs examination which appears to contain matter in addition to, or other than, correspondence, provided they have reasonable cause to suspect the presence of merchandise or contraband.

(b) *Only correspondence.* No Customs officer or employee shall open sealed letter class mail which appears to contain only correspondence unless prior to the opening:

(1) A search warrant authorizing that action has been obtained from an appropriate judge of United States magistrate, or

(2) The sender or the addressee has given written authorization for the opening.

(c) *Reading of correspondence.* No Customs officer or employee shall read, or authorize or allow any other person to read, any correspondence contained in any letter class mail, whether or not sealed, unless prior to the reading:

(1) A search warrant authorizing that action has been obtained from an appropriate judge or United States magistrate, or

(2) The sender or the addressee has given written authorization for the reading.

(d) *Other types of correspondence.* The provisions of paragraph (c) shall also apply to correspondence between school children and correspondence of the blind which are authorized to be mailed at other than the letter rate of postage in international mail.

(e) *Certain Virgin Islands mail.* First class mail originating in the Customs territory of the United States and arriving in the U.S. Virgin Islands, which is to be delivered within the U.S. Virgin Islands, shall not be opened unless:

(1) A search warrant authorizing that action has been obtained from an appropriate judge or United States magistrate, or

(2) The sender or the addressee has been given written authorization for the opening.

[T.D. 78–102, 43 FR 14454, Apr. 6, 1978]

## § 145.4 Dutiable merchandise without declaration or invoice, prohibited merchandise, and merchandise imported contrary to law.

(a) *Subject to seizure and forfeiture.* When, upon Customs examination, a mail article is found to contain merchandise subject to duty or tax, and the mail article is not accompanied by an appropriate Customs declaration and invoice or statement of value required by § 145.11, or is found to contain material prohibited importation or imported contrary to law, the merchandise is subject to seizure and forfeiture.

(b) *Mitigation of forfeiture.* Any claimant incurring a forfeiture of merchandise for violation of this section may file a petition for relief pursuant to part 171 of this chapter. Mitigation of that forfeiture may occur consistent with mitigation guidelines.

(c) *Collection of mitigated forfeiture.* When the shipment does not exceed $2,000 in value, Customs Form 3419 or 3419A or Customs Form 368 or 368A (serially numbered) or Customs Form 7501 shall be used for the entry of the merchandise, and the duty, any tax, and the amount of the mitigated forfeiture shall be entered as separate items thereon. If a mail article for which a mail fine entry has been issued in accordance with this paragraph is undeliverable, it will be returned to the director of the port where the entry was issued, for disposition in accordance with § 145.59 relating to articles subject to seizure.

(d) *Petition for relief.* The addressee or sender may file a petition with the Fines, Penalties, and Forfeitures Officer having jurisdiction over the port where the mail fine entry was issued in accordance with part 171 of this chapter for relief from the forfeiture incurred and for release of the seized merchandise, or for additional relief from a mitigated forfeiture.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 78–102, 43 FR 14454, Apr. 6, 1978; T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 87–75, 52 FR 26142, July 13, 1987; T.D. 91–73, 56 FR 42527, Aug. 28, 1991; T.D. 92–56, 57 FR 24944, June 12, 1992; T.D. 98–28, 63 FR 16417, Apr. 3, 1998; T.D. 99–27, 64 FR 13675, Mar. 22, 1999; T.D. 00–57, 65 FR 53575, Sept. 5, 2000]

### § 145.5 Undeliverable packages.

Mail articles which are refused or undeliverable, except mail articles for which a mail fine entry has been issued in accordance with § 145.4(c), will be marked by the postmaster to show why delivery was not made, and will be forwarded to the proper exchange post office for return to the country of origin. Mail entries will be removed from the mail articles and returned to Customs for cancellation. If, for any reason, an undeliverable mail article known or supposed to be dutiable is not returned to the country of origin or forwarded to another country in accordance with the Postal regulations, it will be delivered to Customs for disposition under the Customs laws and regulations governing seized or unclaimed merchandise.

## Subpart B—Requirements and Procedures

### § 145.11 Declarations of value and invoices.

(a) *Customs declaration.* A clear and complete Customs declaration on the form provided by the foreign post office, giving a full and accurate description of the contents and value of the merchandise, shall be securely attached to at least one mail article of each shipment, including shipments of special classes of merchandise treated in subpart D of this part. Although a Customs declaration is required to be attached to only one mail article of each shipment, examination and release of the merchandise will be expedited if such a declaration is attached to each individual mail article.

(b) *Invoice or statement of commercial value.* Each shipment of merchandise shall have an invoice or bill of sale (or, in the case of merchandise not purchased or consigned for sale, a statement of the fair retail value in the country of shipment), giving an accurate description and the purchase price of the merchandise, securely attached to the outside of the mail article or enclosed therein. If the shipment consists of more than one mail article, a copy of the invoice should accompany each mail article, or else the invoice shall accompany the mail article bearing the declaration, and that mail article shall be marked ''Invoice enclosed.''

(c) [Reserved]

(d) *Shipments without declaration and invoice.* Shipment of merchandise which are not accompanied by a Customs declaration and invoice in accordance with paragraphs (a) through (b) of this section may be subject to seizure and forfeiture in accordance with § 145.4.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 76–103, 41 FR 14731, Apr. 7, 1976; T.D. 78–102, 43 FR 14454, Apr. 6, 1978; T.D. 85–39, 50 FR 9612, Mar. 11, 1985]

### § 145.12 Entry of merchandise.

(a) *Formal entries*—(1) *Discretionary.* The port director may require formal entry of any mail shipment regardless of value if in his opinion it is necessary to protect the revenue.

(2) *Required.* Formal entry at the customhouse shall be required for every importation in the mails which exceeds $2,000 in value, except for special classes of merchandise which can be released without entry (see subpart D of this part), and except as provided in subparts B and C of part 143 and § 10.1 of this chapter.

(3) *Separate shipments.* Separate shipments not exceeding $2,000 in value, if mailed abroad at different times (as shown by the declaration or other mailing indicia), shall not be combined for the purpose of requiring formal entry, even though they reach Customs at the same time and are covered by a single order or contract in excess of $2,000, unless there was a splitting of shipments in order to avoid the payment of Customs duty.

(4) *Notice of formal entry requirement.* When a formal entry is required, the addressee shall be notified of the arrival of the shipment and of the place at which entry is to be made. If the shipment is addressed to a point which is not a Customs port or station, the port of entry specified in the notice shall be the port nearest the destination of the shipment. When a formal entry is filed, it shall contain all the statistical information as provided in § 141.61(e) of this chapter.

(b) *Mail and informal entries*—(1) *Preparation of entry form.* Except as provided in paragraphs (c) and (e) of this

section, Customs officers shall prepare and attach a mail entry (Customs Form 3419 or 3419A) for each shipment not exceeding $2,000 in value which is to be delivered by the Postal Service, and return the shipment to the Postal Service for delivery and collection of duty. If the addressee has arranged to pick up such a shipment at the Customs office where it is being processed, the Customs officer shall prepare an informal entry (Customs Form 368 or 368A (serially numbered), or an entry summary, Customs Form 7501, and collect the duty in accordance with subpart C of part 143 of this chapter.

(2) *Rates of duty*. Merchandise released under a mail or informal entry shall be dutiable at the rates of duty in effect when the preparation of the entry is completed by a Customs employee, ready for transmittal with the merchandise to the addressee.

(c) *Dutiable shipments not over $2,000 for Government agencies*. When a dutiable shipment not exceeding $2,000 in value is addressed to a U.S. Government department or agency, the port director may release the merchandise prior to the payment of duties under an entry on Customs Form 368 or 368A (serially numbered) or Customs Form 7501, upon the receipt of a stipulation in the form set forth in §141.102(d) of this chapter. If the stipulation does not accompany the shipment, the port director shall notify the Government department or agency of the arrival of the shipment and request the stipulation. Upon receipt of the completed stipulation and preparation of the entry form, the port director shall stamp all mail articles in the shipment to show that they have received Customs treatment and shall return the shipment to the Postal Service for delivery, unless the addressee has arranged to pick up the shipment at the Customs office where it is being processed. The proper Government department or agency shall be billed later for any duties and taxes due.

(d) *Release without entry*. Certain types of merchandise may be passed free of duty without issuing an entry (see subpart D of this part).

(e) *Unaccompanied shipments*—(1) *Mail entry to be attached*. If the requirements of §148.115(a) of this chapter are met, Customs officers shall prepare and attach a mail entry, Customs Form 3419 or 3419A, for each shipment for which entry is claimed under subheading 9816.00.40, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), which is to be delivered by the Postal Service, and return the shipment to the Postal Service for delivery and collection of duty. If the addressee has arranged to pick up the shipment at the Customs office where it is being processed, the Customs officer shall prepare an informal entry, Customs Form 368 or 368A (serially numbered), or entry summary, Customs Form 7501, and collect the duty in accordance with subpart C of part 143 of this chapter if the requirements of §148.115(a) of this chapter are met.

(2) *Disposition of Customs Form 255*. The Declaration of Unaccompanied Articles, Customs Form 255, affixed to the shipment shall be removed by the Customs officer and retained for Customs purposes. If a mail entry, Customs Form 3419 or 3419A, has been prepared, the mail entry number shall be noted on the Customs Form 255.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 73–175, 38 FR 17469, July 2, 1973; T.D. 73–312, 38 FR 30884, Nov. 8, 1973; T.D. 78–102, 43 FR 14454, Apr. 6, 1978; T.D. 78–394, 43 FR 49788, Oct. 25, 1978; T.D. 85–123, 50 FR 29955, July 23, 1985; T.D. 87–75, 52 FR 26142, July 13, 1987; T.D. 89–1, 53 FR 51263, Dec. 21, 1988; T.D. 89–82, 54 FR 36026, Aug. 31, 1989; T.D. 91–73, 56 FR 42527, Aug. 28, 1991; T.D. 92–56, 57 FR 24944, June 12, 1992; T.D. 98–28, 63 FR 16417, Apr. 3, 1998]

### §145.13 Internal revenue tax on mail entries.

(a) *Method of collection*. Any internal revenue tax assessed on a mail entry shall be shown as a separate item on the entry, and collected in the same manner as Customs duties.

(b) *Release without payment of tax*. A mail entry may not be used to release a shipment of cigars, cigarettes, or cigarette papers or tubes for a manufacturer without payment of tax as provided for in 27 CFR part 275 and §11.2a of this chapter. If a claim for release without payment of tax is made by the addressee at the time of delivery, the shipment will be returned by the Postal Service to the port of entry or sent to the nearest Customs office at which

appropriate release as claimed may be arranged by the addressee.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 78–329, 43 FR 43455, Sept. 26, 1978]

### § 145.14 Marking requirements.

(a) *Country of origin.* Merchandise imported by mail shall be marked with the country of origin in accordance with part 134 of this chapter. If merchandise without the required marking is to be delivered from the post office where it has been given Customs examination, the Customs officer shall require compliance with the marking law and regulations. If it is to be delivered from another post office, the Customs officer shall place in the envelope containing the mail entry a copy of Customs Form 3475, containing instructions to the postmaster concerning the marking to be required before delivery.

(b) *Other marking requirements.* Certain types of merchandise are subject to special marking requirements, such as those contained in the Textile Fiber Products Identification Act, the Wool Products Labeling Act, and the Trademark Act. Since there is no provision for post office supervision of these types of marking, the port director shall require compliance with the law and regulations (see parts 11 and 133 of this chapter).

(c) *Failure to mark.* If the addressee fails to comply with the marking requirements, the mail article will be treated as undeliverable in accordance with § 145.5.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 78–102, 43 FR 14454, Apr. 6, 1978]

## Subpart C—Administrative Review of Mail Entries

### § 145.21 Administrative review.

Requests for adjustment of the amount of duty assessed under mail entries shall be handled as requests for administrative review in accordance with this subpart.

### § 145.22 Procedures for obtaining administrative review.

If an addressee is dissatisfied with the amount of duty assessed under a mail entry, he may obtain administrative review in the following ways:

(a) He may pay the assessed duty, take delivery of the merchandise, and send a copy of the mail entry to the issuing Customs office indicated on the mail entry, together with a statement of the reason it is believed the duty assessed is incorrect. Any invoices, bills of sale, or other evidence should be submitted with the statement. The addressee may show the mail entry number and date on his statement instead of sending a copy of the mail entry, but this may result in delay.

(b) He may postpone acceptance of the shipment, and within the time allowed by the Postal regulations provide the postmaster with a written statement of his objections. The postmaster will forward the mail entry together with the addressee's statement and any invoices, bills of sale, or other evidence submitted by the addressee to the port director who issued the entry, and retain custody of the shipment until advice is received from the port director as to the disposition to be made. If the addressee is located near one of the ports at which Customs officers are authorized to review mail entries (see 39 CFR 10.5), the postmaster may send the mail entry to that port, together with the addressee's statement and evidence, for reconsideration by the port director.

(c) He may pay the assessed duty and take delivery of the merchandise, and file a protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), in the form and manner prescribed in part 174 of this chapter.

[T.D. 73–175, 38 FR 13369, May 21, 1973, as amended by T.D. 78–99, 43 FR 13061, Mar. 29, 1978]

### § 145.23 Time limits.

A mail entry may be amended under section 520(c), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)), only if the addressee requests such amendment within the time limits prescribed therein (see §§ 173.4 and 173.5 of this chapter), and the claim is allowable under section 520(c). Requests for adjustment in the amount of duty assessed under mail entries made under § 145.22(a) shall be made in such time that the request can be acted upon by

the port director within 90 days after receipt of the mail article and payment of the duties by the addressee. Protests under § 145.22(c) must be filed not later than 90 days after payment of the duties by the addressee, but may be acted upon after the expiration of that 90-day period.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 78–102, 43 FR 14454, Apr. 6, 1978]

### § 145.24 Amendment of entry.

If the port director is satisfied that the objection is valid and timely, he shall amend the mail entry. If the duty has already been paid, Customs shall issue an appropriate refund of duty.

### § 145.25 Entry correct.

If the port director believes the duty originally assessed was correct, he shall send the addressee a notice in writing that the request for refund of duty has been denied. If the duty has not been paid, the mail entry shall be returned to the postmaster concerned, together with a copy of the notice sent to the addressee. The postmaster will then collect the duty and deliver the shipment, or, if the addressee refuses to pay the duty, will treat the shipment as undeliverable.

### § 145.26 Rates of duty not binding.

Rates of duty assessed on a mail entry, whether assessed on the original entry or as amendments under § 145.24, are not binding for future importations. A binding ruling on tariff classification may be obtained in accordance with the procedures set forth in part 177 of this chapter.

[T.D. 73–175, 38 FR 13369, May 21, 1973, as amended by T.D. 73–175, 38 FR 17469, July 2, 1973; T.D. 78–99, 43 FR 13061, Mar. 29, 1978]

## Subpart D—Special Classes of Merchandise

### § 145.31 Importations not over $200 in value.

The port director shall pass free of duty and tax, without preparing an entry as provided for in § 145.12, packages containing merchandise having an aggregate fair retail value in the country of shipment of not over $200, subject to the requirements set forth in §§ 10.151 and 10.153 of this chapter.

[T.D. 94–51, 59 FR 30296, June 13, 1994]

### § 145.32 Bona-fide gifts.

The port director shall pass free of duty and tax, without preparing an entry as provided for in § 145.12, articles sent as bona-fide gifts from persons in foreign countries to persons in the United States having an aggregate fair retail value in the country of shipment not exceeding $100 ($200, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa), subject to the requirements set forth in §§ 10.152 and 10.153 of this chapter.

[T.D. 94–51, 59 FR 30296, June 13, 1994]

### § 145.34 Personal and household effects and tools of trade.

(a) *U.S. military and civilian personnel returning from extended duty abroad.* Section 148.74 of this chapter sets forth specific requirements for exemptions from duty under subheading 9805.00.50, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), for personal and household effects of military and civilian personnel of the United States returning upon the completion of extended duty abroad. A copy of the official travel orders shall be attached to or enclosed in each mail article and the outside of each mail article shall be clearly marked to show that exemption from duty is being claimed.

(b) *Other personal and household effects, and tools of trade.* Certain personal and household effects and tools of trade may be passed free of duty without issuing an entry, in accordance with § 148.53 of this chapter.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 78–102, 43 FR 14454, Apr. 6, 1978; T.D. 89–1, 53 FR 51263, Dec. 21, 1988]

### § 145.35 United States products returned.

Products of the United States returned after having been exported, which have not been advanced in value or improved in condition while abroad, may be passed free of duty without issuing an entry and without the declarations provided for in § 10.1(a) of this

chapter, provided the shipment is valued at not over $2,000 and the port director is satisfied that the merchandise is free of duty under subheading 9801.00.10, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 85–123, 50 FR 29955, July 23, 1985; T.D. 89–1, 53 FR 51263, Dec. 21, 1988; T.D. 89–82, 54 FR 36026, Aug. 31, 1989; T.D. 94–47, 59 FR 25570, May 17, 1994; T.D. 98–28, 63 FR 16417, Apr. 3, 1998]

### § 145.36 Articles for institutions.

Books and other articles classifiable under subheading 4903.00.00, 4904.00.00, 4905.91.00, 4905.99.00, 9701.10.00, 9701.90.00, 9810.00.05, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), imported by and addressed directly to a library or other institution described in subheading 9810.00.05 or 9101.30, HTSUS may be passed free of duty without issuing an entry, if the port director is satisfied that the merchandise is entitled to free entry. A declaration may be required in accordance with § 10.43 of this chapter under the procedure specified in § 145.42.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 85–123, 50 FR 29955, July 23, 1985; T.D. 89–1, 53 FR 51263, Dec. 21, 1988]

### § 145.37 Articles for the U.S. Government.

(a) *Mail articles for copyright.* Mail articles marked for copyright which are addressed to the Library of Congress, to the U.S. Copyright Office, or to the office of the Register of Copyrights, Washington, DC, shall be passed free of duty without issuing an entry.

(b) *Books, engravings, and other articles.* Books, classifiable under subheading 4903.00.00, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), and engravings, etchings, and other articles enumerated in subheading 9808.00.10, HTSUS, shall be passed free of duty without issuing an entry when they are addressed to the Library of Congress or any department or agency of the U.S. Government.

(c) *Official Government documents.* Other mail articles addressed to offices or officials of the U.S. Government, believed to contain only official documents, shall be passed free of duty without issuing an entry. Such mail articles, when believed to contain merchandise, shall be treated in the same manner as other mail articles of merchandise so addressed.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 78–102, 43 FR 14454, Apr. 6, 1978; T.D. 89–1, 53 FR 51263, Dec. 21, 1988; T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

### § 145.38 Diplomatic pouches.

Mail articles bearing the official seal of a foreign government with which the United States has diplomatic relations, accompanied by certificates bearing such seal to the effect that they contain only official communications or documents, shall be admitted free of duty without Customs examination.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 78–102, 43 FR 14454, Apr. 6, 1978]

### § 145.39 Articles for diplomatic officers, representatives of international organizations, and foreign military personnel.

Free entry of articles in mail articles addressed to diplomatic officers, representatives of certain international organizations, and similar persons is governed by subpart I of part 148 of this chapter.

[T.D. 73–175, 38 FR 13369, May 21, 1973, as amended by T.D. 73–227, 38 FR 22548, Aug. 22, 1973; T.D. 78–102, 43 FR 14454, Apr. 6, 1978]

### § 145.40 Plant material imported for immediate exportation.

Plant material may be imported by mail free of duty for immediate exportation by mail subject to the following regulations, which have been approved by the Department of Agriculture and the Postal Service. This procedure shall not affect the movement of plant material in the internal mails through the United States:

(a) *Permit for entry.* Each shipment shall be dispatched in the mails from abroad, accompanied by a yellow and green special mail tag bearing the serial number of the permit for entry for immediate exportation or immediate transportation and exportation, issued by the U.S. Department of Agriculture, and also by the postal form of Customs declaration.

(b) *Place of inspection.* Upon arrival, the shipment shall be detained by or

redispatched to the postmaster at Washington, DC, Brownsville, Tex., Hoboken, NJ, Honolulu, Hawaii, Laredo, Tex., Miami, Fla., San Francisco, Calif., San Juan, P.R., San Pedro, Calif., or Seattle, Wash., as may be appropriate, according to the address on the green and yellow tag, and there submitted to the Customs officer and the Federal quarantine inspector. The merchandise shall be accorded special handling only at these cities, and under no circumstances shall it be permitted to enter the commerce of the United States.

(c) *Special handling*. After inspection by the Customs and quarantine officers, and with their approval, the addressee or his authorized agent shall repack and readdress the mail package under Customs supervision; endorse and sign on the package a waiver of the addressee's right to withdraw the mail article from the mails; affix to the mail article the necessary postage; and comply with any other mailing and export requirements, after which the package shall be delivered under Customs supervision to the postmaster for exportation by mail in accordance with § 145.71.

(d) *Entry not required*. It will not be necessary to issue a Customs mail entry nor to require a formal entry of the shipment.

[T.D. 73–175, 38 FR 13369, May 21, 1973, as amended by T.D. 78–102, 43 FR 14455, Apr. 6, 1978]

### § 145.41 Other conditionally and unconditionally free merchandise.

Shipments of conditionally or unconditionally free merchandise not specifically treated elsewhere in this part may be passed free of duty and tax without issuing an entry, if the value is not over $2,000 and the port director is satisfied that the merchandise is entitled to free entry.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 85–123, 50 FR 29955, July 23, 1985; T.D. 89–82, 54 FR 36026, Aug. 31, 1989; T.D. 98–28, 63 FR 16417, Apr. 3, 1998]

### § 145.42 Proof for conditionally free merchandise.

The port director may, at his discretion, require appropriate proof of duty-free status before releasing conditionally free merchandise. This proof may be obtained by either of the following methods:

(a) *Retain shipment and request proof*. The shipment may be retained by the port director while the necessary proof is requested from the addressee. If the requested proof is not received within 30 days, a mail entry shall be issued at the ordinary rate of duty which would apply if the merchandise were not conditionally free, and the mail entry shall be forwarded with the shipment for collection of duties.

(b) *Send shipment with form and entry*. If the only proof required for free entry is a declaration signed by the addressee, the port director may issue a mail entry at the ordinary duty which would apply if the merchandise were not conditionally free. The shipment shall then be forwarded together with the mail entry, a copy of the appropriate declaration form, and instructions to the postmaster to deliver the shipment free of duty if the importer executes the declaration, and to collect the full duty shown on the mail entry if the importer does not execute the declaration.

### § 145.43 Unaccompanied tourist shipments

Unaccompanied tourist shipments for which entry is claimed under subheading 9804.00.70, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), may be passed free of duty and tax if the requirements of § 148.115(a) of this chapter are met. The Declaration of Unaccompanied Articles, Customs Form 255, shall be removed by the Customs officer from the shipment and retained for Customs purposes.

[T.D. 78–394, 43 FR 49788, Oct. 25, 1978, as amended by T.D. 89–1, 53 FR 51263, Dec. 21, 1988]

## Subpart E—Restricted and Prohibited Merchandise

### § 145.51 Articles prohibited by section 305, Tariff Act of 1930.

(a) *Types of articles*. Various articles, as described in section 305, Tariff Act of 1930, as amended (19 U.S.C. 1305), and

in part 12 of this chapter, are prohibited from importation. This prohibition includes the following types of articles:

(1) Obscene matter;

(2) Articles for causing unlawful abortion (see § 145.52 for the treatment of literature pertaining to such articles);

(3) Matter advocating treason or insurrection against the United States or forcible resistance to any law of the United States;

(4) Matter containing any threat to take the life of or inflict bodily harm upon any person in the United States; and

(5) Lottery matter, except any lottery ticket, printed paper that may be used as a lottery ticket, or advertisement of any lottery, that is printed in Canada for use in connection with a lottery conducted in the United States.

(b) *Disposition of articles.* Mail found to contain lottery matter shall be disposed of by the Postal Service under the postal laws and regulations. Mail found to contain any of the other prohibited articles described in paragraphs (a)(1) through (a)(4) of this section shall be given appropriate treatment by Customs under the Customs laws and regulations (see § 12.40 of this chapter).

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 92–80, 57 FR 37702, Aug. 20, 1992]

### § 145.52 Literature concerning devices for unlawful abortion.

Mail articles containing literature or advertisements concerning devices to produce unlawful abortions, are prohibited from the mails by 18 U.S.C. 1461, and shall be retained by, or delivered to, the Postal Service for disposition under the postal laws and regulations. If the Postal Service determines in any case that it is proper to release the material to the addressee, it shall be submitted for Customs treatment before delivery.

[T.D. 78–99, 43 FR 13061, Mar. 29, 1978, as amended by T.D. 78–102, 43 FR 14455, Apr. 6, 1978]

### § 145.53 Firearms and munitions of war.

Importations of firearms, munitions of war, and related articles are subject to the import permit requirements and other restrictions set forth in 27 CFR parts 47, 178, 179.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 78–329, 43 FR 43455, Sept. 26, 1978]

### § 145.54 Alcoholic beverages.

(a) *Nonmailable.* Alcoholic beverages are nonmailable, with certain exceptions (see 18 U.S.C. 1716 and the postal regulations), and when imported in the mails are subject to seizure and forfeiture under 18 U.S.C. 545.

(b) *Seizure.* When alcoholic beverages are received in the mails, they shall be seized, and the addressee shall be advised that they are subject to forfeiture and that he has a right to file a petition for their release (see part 171 of this chapter).

(c) *Conditions for release.* If the port director is satisfied that there was no fraudulent intent involved, he may release the alcoholic beverages to the addressee upon the following conditions:

(1) Applicable duty and internal revenue tax shall be paid.

(2) The addressee shall comply with the alcoholic beverage laws of the State to which the shipment is destined.

(3) Any other conditions the port director may impose under his authority to remit or mitigate fines, penalties, and forfeitures shall be complied with.

(4) The addressee, his representative, or a common carrier shall pick up the merchandise at the Customs office where it is being held. Since the merchandise is nonmailable, it cannot be delivered by the Postal Service.

### § 145.55 Trademarks, trade names, and copyrights.

Merchandise bearing a trademark or trade name entitled to protection against imports, merchandise bearing a mark or name that copies or simulates such a trademark or trade name, and merchandise which is in violation of copyright law is subject to the restrictions and prohibitions set forth in part 133 of this chapter.

### § 145.56 Foreign Assets Control.

Merchandise subject to regulations of the Office of Foreign Assets Control of the Treasury Department prohibiting

or restricting entry of unlicensed importations of articles directly or indirectly from certain designated countries shall be detained until licensed or the question of its release, seizure, or other disposition has been determined under the Foreign Assets Control or Cuban Assets Control regulations (31 CFR parts 500 and 515) (See also 19 CFR 12.150).

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 96–42, 61 FR 24889, May 17, 1996]

### § 145.57 Regulations of other agencies.

Certain types of plants and plant products, food, drugs, cosmetics, hazardous or caustic and corrosive substances, viruses, serums, and various harmful articles are subject to examination and clearance by appropriate agencies before release to the addressee (see part 12 of this chapter).

### § 145.58 Other restricted and prohibited merchandise.

Other restrictions and prohibitions pertaining to certain types of imported merchandise are set forth in part 12 of this chapter and are applicable to importations by mail.

### § 145.59 Seizures.

(a) *Articles prohibited and contrary to law.* All mail shipments containing articles the importation of which is prohibited, or articles imported into the United States in any manner contrary to law, shall be seized or detained as appropriate and held by Customs officers for appropriate treatment, except for certain articles which will be handled by the Postal Service as specified in §§ 145.51 and 145.52.

(b) *Notification of seizure or detention.* In all cases where articles are seized or detained by Customs officers, the addressee shall be notified of the seizure or detention, of the reason for such action, and, if appropriate, of his right to petition for relief (see part 171 of this chapter).

## Subpart F—Exportation by Mail

### § 145.71 Exportation from continuous Government custody.

(a) *Relief from duties.* Merchandise imported into the United States, unless nonmailable, may be exported by any class of mail without the payment of duties, if:

(1) The merchandise has remained continuously in the custody of the Government (Customs or postal authorities); and

(2) The mail articles containing such merchandise are inspected and mailed under Customs supervision.

(b) *Waiver of right to withdraw.* Waiver of the right to withdraw the mail article from the mails shall be endorsed on each mail article to be so exported and signed by the exporter.

(c) *Export entry or withdrawal required.* An export entry in accordance with § 18.25 of this chapter or a warehouse withdrawal for exportation in accordance with § 144.37 of this chapter, whichever is appropriate, shall be filed for merchandise being exported under this section, except for merchandise imported by mail which is either:

(1) Unclaimed or refused and being returned by the Postal Service to the country of origin as undeliverable mail; or

(2) For which a formal entry has not been filed and which is being remailed from continuous Customs or postal custody to Canada.

[T.D. 73–175, 38 FR 13369, May 21, 1973, as amended by T.D. 73–175, 38 FR 17470, July 2, 1973; T.D. 78–102, 43 FR 14455, Apr. 6, 1978]

### § 145.72 Delivery to Customs custody for exportation.

In certain cases where merchandise has not been in continuous Government custody, delivery to Customs custody is appropriate before exportation by mail, as set forth in the following sections of this chapter:

(a) Section 10.8 (articles exported for repairs or alterations).

(b) Section 10.9 (articles exported for processing).

(c) Section 148.33 (merchandise which was imported free of duty under a personal exemption, found to be unsatisfactory, and is being exported for replacement).

(d) Section 10.38 (exportation of imported merchandise which was entered temporarily under bond).

(e) Section 191.42 (exportation of rejected imported merchandise, with drawback of duties).

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 98–16, 63 FR 11005, Mar. 5, 1998]

## POLICY STATEMENT TO PART 145—EXAMINATION OF SEALED LETTER CLASS MAIL

A. Customs officers and employees shall not open first class mail arriving in the U.S. Virgin Islands for delivery there, if it originated in the Customs territory of the United States, unless a search warrant or written authorization of the sender or addressee is obtained. Customs officers or employees may open and examine all other sealed letter class mail which is subject to the Customs mail regulations (see 19 CFR part 145) and which appears to contain matter in addition to, or other than, correspondence, provided they have ''reasonable cause to suspect'' the presence of merchandise or contraband.

B. Customs officers and employees shall not open any sealed letter class mail which appears to contain only correspondence unless a search warrant or written authorization of the sender or addressee is obtained in advance of the opening.

C. Customs officers and employees are prohibited from reading, or authorizing or allowing others to read, any correspondence contained in any letter class mail unless there has been obtained in advance either a search warrant or written authorization of the sender or addressee. This prohibition, which will continue to be strictly enforced, also applies to correspondence between school children and correspondence of the blind which are authorized to be mailed at other than the letter rate of postage in international mail.

D. If a violation of law is discovered upon opening any mail article referred to in paragraph C, and it is believed that the correspondence may provide additional information concerning the violation and is therefore needed for further investigation or use in court, a search warrant shall be obtained before any correspondence is seized, read, or referred to another agency. Search warrants shall be promptly sought. Correspondence may be detained while a search warrant is being sought.

E. If no controlled delivery is arranged and correspondence is not to be otherwise seized pursuant to a search warrant (see ''F'' below), the item which constitutes the violation shall be removed and any correspondence shall be replaced in the wrapper, or in a new wrapper if the original wrapper has been seized pursuant to 19 U.S.C. 1595a. The wrapper shall then be resealed, marked to indicate it was opened by Customs, and returned to postal channels. Appropriate seizure notices shall be sent in accordance with 19 CFR 145.59(b).

F. No mail article may be referred to another agency without a search warrant unless—

(1) Any correspondence has been removed and the mail article is being referred for examination and clearance under 19 CFR 145.57,

(2) Any correspondence has been removed and the mail article has been lawfully seized by Customs,

(3) The mail article is being referred to Postal Service channels to effect a controlled delivery in cooperation with other law enforcement agencies, or

(4) The mail article is being returned to Postal Service channels for normal processing.

G. Whenever sealed letter class mail is opened, the factors giving the Customs officer or employee ''reasonable cause to suspect'' the presence of merchandise or contraband shall be recorded on the appropriate form and on the opened envelope or other container by means of appropriate coded symbols. Should a seizure result, these factors shall also be recorded on the seizure report.

H. Sealed letter class mail with the green Customs label on a Customs declaration may be opened without additional cause. Correspondence in such mail is subject to the restrictions regarding the detention, reading, and referral of mail to other agencies found in paragraphs C through F.

I. Whenever any sealed letter class mail is opened for any of the reasons set forth in the above paragraphs, a Postal Service employee shall be present and shall observe the opening.

J. Any violation of the Customs mail regulations or any of these policies will lead to appropriate administrative sanctions, as well as possible criminal prosecution pursuant to 18 U.S.C. 1702.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 84–213, 49 FR 41185, Oct. 19, 1984]

## APPENDIX TO PART 145

A. *Scope*. The Customs Service is authorized to examine, with certain exceptions for diplomatic and governmental mail, all mail arriving from outside the Customs territory of the United States (CTUS) which is to be delivered within the CTUS, and all mail arriving from outside the U.S. Virgin Islands which is to be delivered within the U.S. Virgin Islands. The term ''Customs territory of the United States'' is limited to the States, the District of Columbia, and Puerto Rico. Consequently, mail arriving from other U.S. territories and possessions is subject to Customs examination even though it is designated ''domestic'' mail for Postal Service

purposes. Likewise, mail in the APO/FPO military postal system is subject to Customs examination, even though it also is designated ''domestic'' mail for Postal Service purposes. The Customs Service therefor is responsible for examining all international mail to be delivered in the CTUS and certain limited categories of so-called ''domestic mail''.

B. *Definitions.* Under various international conventions and bilateral agreements, international mail falls within two main classes, Parcel Post and Postal Union mail.

Parcel Post is not permitted to contain correspondence but is to be used for the transmission of merchandise and is fully subject to Customs examination in the same manner as other merchandise shipments (e.g., luggage, cargo, containers, etc.). Postal Union mail is divided into ''LC'' mail (Lettres et Cartes) and ''AO'' mail (Aures Objets).

''LC mail consists of letters, packages paid at the letter rate of postage, post cards, and aerogrammes. The term ''letter class mail'' as used in the Customs Regulations and in this policy statement means ''LC'' mail as well as equivalent articles in ''domestic'' mail subject to Customs examination. Equivalent articles in ''domestic'' mail would include articles mailed at the letter rate, or equivalent class or category, in the APO/FPO military system or from a U.S. territory or possession outside the CTUS. Since the term ''letter class mail'' thus includes packages and bulky envelopes as long as they are mailed at the letter rate, or equivalent class or category, the restrictions relating to opening and reading of correspondence apply equally to such packages or bulky envelopes.

''AO'' mail is to be treated in the same manner as Parcel Post mail since the Universal Postal Union Convention requires that they ''be made up in such a manner that they may be easily examined'' and generally are not permitted to ''contain any document having the character of current and personal correspondence.'' Exceptions to the latter requirement exist for matter for the blind and certain correspondence between school children. Because of these exceptions, the prohibition against reading correspondence without a search warrant or authorization of the sender or addressee applies to correspondence of the blind and correspondence between school children contained in ''AO'' mail. ''AO'' mail can usually be identified by the following words: ''Imprime'' or ''Printed Matter'', ''Cecogramme'' or ''Literature for the Blind'', ''Petit Paquet'' or ''Small Packet'' or similar terms or their equivalents.

C. *Reasonable Cause to Suspect.* Determining whether there is ''reasonable cause to suspect'' that merchandise or contraband is contained in sealed letter class mail is ultimately a matter of judgment for each Customs official, based on all relevant facts and circumstances. This judgment should be exercised within the framework of the Customs regulation that sealed letter class mail which appears to contain only correspondence is not to be opened unless a search warrant or written authorization from either the sender or the addressee has been obtained in advance of the opening.

Past practice indicates that the following circumstances (which are illustrative and not exhaustive) provide ''reasonable cause to suspect'' and permit the opening of sealed letter class mail without a search warrant or authorization of the sender or addressee.

1. A detector dog has alerted to the presence of narcotics or explosives in a specific mail article.

2. X-ray of fluoroscope examination indicates the presence of merchandise or contraband.

3. The weight, shape, feel, or sound of the mail article or its contents may indicate that merchandise or contraband (e.g., a hard object which may be jewelry, a stack of paper which may be counterfeit money, or coins) could be in the mail article. Contents of a mail article which feel lumpy, powdery, or spongy may, for example, indicate the presence of narcotics.

4. Information from a source previously shown to be reliable indicates that an identifiable mail article contains merchandise or contraband.

5. The mail article is insured.

6. The mail article is a box, carton, or wrapper other than a thin envelope.

7. The sender or addressee of the mail article is known to be fictitious.

On the other hand, certain facts standing alone generally will not provide ''reasonable cause to suspect'' the presence of merchandise or contraband and therefore do not permit the opening of sealed letter class mail. For example, sealed letter class mail may not be opened merely because:

1. The mail article is registered.

2. The feel of a letter-size envelope suggests that it contains one or a limited number of photographs.

3. The mail article appears to be part of a mass mailing.

4. The mail article is from a particular country, whether or not a known source country of contraband.

5. A detector dog has alerted to the presence of narcotics or explosives somewhere within a tray of mail ( the individual articles of mail must then be examined individually).

6. The sender of addressee of the mail article is known to have mailed or received contraband or merchandise in violation of law in the past.

7. The wrapper contains writing or typing similar to that previously found on articles of mail which contained contraband or merchandise in violation of law.

In case where any one of the above facts is present, additional evidence must exist which in conjunction with that fact provides reasonable cause to suspect the presence of merchandise or contraband.

[T.D. 78–102, 43 FR 14454, Apr. 6, 1978, as amended by T.D. 83–212, 48 FR 46771, Oct. 14, 1983]

# PART 146—FOREIGN TRADE ZONES

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APPENDIX TO PART 146—GUIDELINES FOR DETERMINING PRODUCIBILITY AND RELATIVE VALUES FOR OIL REFINERY ZONES

AUTHORITY: 19 U.S.C. 66, 81a–81u, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624.

SOURCE: T.D. 86–16, 51 FR 5049, Feb. 11, 1986, unless otherwise noted.

**§ 146.0 Scope.**

Foreign trade zones are established under the Foreign Trade Zones Act and the general regulations and rules of procedure of the Foreign Trade Zones Board contained in 15 CFR part 400. This part 146 of the Customs Regulations governs the admission of merchandise into a foreign trade zone, manipulation, manufacture, or exhibition in a zone; exportation of the merchandise from a zone; and transfer of merchandise from a zone into Customs territory.

## Subpart A—General Provisions

**§ 146.1 Definitions.**

(a) The following words, defined in section 1 of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a), are given the same meaning when used in this part, unless otherwise stated: ''Board'', ''Grantee'', and ''Zones''.

(b) The following are general definitions for the purpose of this part:

*Act*. ''Act'' means the Foreign-Trade Zones Act of June 18, 1934, as amended (48 Stat. 998–1003; 19 U.S.C. 81a-u).

*Activation*. ''Activation'' means approval by the grantee and port director for operations and for the admission and handling of merchandise in zone status.

*Admit*. ''Admit'' means to bring merchandise into a zone with zone status.

*Alteration*. ''Alteration'' means a change in the boundaries of an activated zone or subzone; activation of a separate site of an already-activated zone or subzone with the same operator at the same port; or the relocation of an already-activated site with the same operator.

*Conditionally admissible merchandise*. ''Conditionally admissible merchandise'' is merchandise which may be imported into the U.S. under certain conditions. Merchandise which is subject to permits or licenses, or which may be reconditioned to bring it into compliance with the laws administered by various Federal agencies, is an example of conditionally admissible merchandise.

*Constructive transfer*. ''Constructive transfer'' is a legal fiction which permits acceptance of a Customs entry for merchandise in a zone before its physical transfer to the Customs territory.

*Customs territory*. ''Customs territory'' is the territory of the U.S. in which the general tariff laws of the U.S. apply. ''Customs territory of the United States'' includes only the States, the District of Columbia, and Puerto Rico. (General Note 2, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202)).

*Deactivation*. ''Deactivation'' means voluntary discontinuation of the activation of an entire zone or subzone by the grantee or operator. Discontinuance of the activated status of only a part of a zone site is an alteration.

*Default*. ''Default'' means an action or omission that will result in a claim for duties, taxes, charges, or liquidated damages under the Foreign Trade Zone Operator Bond.

*Domestic merchandise*. ''Domestic merchandise'' is merchandise which has been (i) produced in the U.S. and not exported therefrom, or (ii) previously imported into Customs territory and properly released from Customs custody.

*Foreign merchandise*. ''Foreign merchandise'' is imported merchandise which has not been properly released from Customs custody in Customs territory.

*Fungible merchandise*. ''Fungible merchandise'' means merchandise which for commercial purposes is identical and interchangeable in all situations.

*Merchandise*. ''Merchandise'' includes goods, wares and chattels of every description, except prohibited merchandise. Building materials, production equipment, and supplies for use in operation of a zone are not ''merchandise'' for the purpose of this part.

*Operator*. ''Operator'' is a corporation, partnership, or person that operates a zone or subzone under the terms of an agreement with the zone grantee. Where used in this part, the term ''operator'' also applies to a ''grantee'' that operates its own zone.

*Port Director*. For those foreign trade zones located within the geographical limits of a port of entry, the term ''port director'' means the director of that port of entry. For those foreign trade zones located outside the geographical limits of a port of entry, the

term ''port director'' means the director of the port of entry geographically nearest to where the foreign trade zone is located.

*Prohibited merchandise.* ''Prohibited merchandise'' is merchandise the importation of which is prohibited by law on grounds of public policy or morals, or any merchandise which is excluded from a zone by order of the Board. Books urging treason or insurrection against the U.S., obscene pictures, and lottery tickets are examples of prohibited merchandise.

*Reactivation.* ''Reactivation'' means a resumption of the activated status of an entire area that was previously deactivated without any change in the operator or the area boundaries. If the boundaries are different, the action is an alteration. If the operator is different, it is an activation.

*Subzone.* ''Subzone'' is a special-purpose zone established as part of a zone project for a limited purpose, that cannot be accommodated within an existing zone. The term ''zone'' also applies to a subzone, unless specified otherwise.

*Transfer.* ''Transfer'' means to take merchandise with zone status from a zone for consumption, transportation, exportation, warehousing, cartage or lighterage, vessel supplies and equipment, admission to another zone, and like purposes.

*Unique identifier.* ''Unique identifier'' means the numbers, letters, or combination of numbers and letters that identify merchandise admitted to a zone with zone status.

*User.* ''User'' means a person or firm using a zone or subzone for storage, handling, or processing of merchandise.

*Zone lot.* ''Zone lot'' means a collection of merchandise maintained under an inventory control method based on specific identification of merchandise admitted to a zone by lot.

*Zone site.* ''Zone site'' means the physical location of a zone or subzone.

*Zone status.* ''Zone status'' means the status of merchandise admitted to a zone, *i.e.*, nonprivileged foreign, privileged foreign, zone restricted, or domestic.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 89–1, 53 FR 51263, Dec. 21, 1988; T.D. 99–27, 64 FR 13674, Mar. 22, 1999]

### § 146.2 Port director as Board representative.

The appropriate port director shall be in charge of the zone as the representative of the Board.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

### § 146.3 Customs supervision.

(a) *Assignment of Customs officers.* Customs officers will be assigned or detailed to a zone as necessary to maintain appropriate Customs supervision of merchandise and records pertaining thereto in the zone, and to protect the revenue.

(b) *Supervision.* Customs supervision over any zone or transaction provided for in this part will be in accordance with § 101.2(c) of this chapter. The port director may direct a Customs officer to supervise any transaction or procedure at a zone. Supervision may be performed through a periodic audit of the operator's records, quantity count of goods in a zone inventory, spot check of selected transactions or procedures, or review of recordkeeping, security, or conditions of storage in a zone.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 98–22, 63 FR 11826, Mar. 11, 1998]

### § 146.4 Operator responsibility and supervision.

(a) *Supervision.* The operator shall supervise all admissions, transfers, removals, recordkeeping, manipulations, manufacturing, destruction, exhibition, physical and procedural security, and conditions of storage in the zone as required by law and regulations. Supervision by the operator shall be that which a prudent manager of a storage, manipulation, or manufacturing facility would be expected to exercise, and may take into account the degree of supervision exercised by the zone user having physical possession of zone merchandise.

(b) *Customs access.* The operator shall permit any Customs officer access to a zone.

(c) *Safekeeping of merchandise and records.* The operator is responsible for safekeeping of merchandise and records concerning merchandise admitted to a

zone. The operator, at its liability, may allow the zone importer or owner of the goods to store, safeguard, and otherwise maintain or handle the goods and the inventory records pertaining to them.

(d) *Records maintenance*. The operator shall (1) maintain the inventory control and recordkeeping system in accordance with the provisions of subpart B, (2) retain all records required in this part and defined in §162.1(a) of this chapter, pertaining to zone merchandise for 5 years after the merchandise is removed from the zone, and (3) protect proprietary information in its custody from unauthorized disclosure. Records shall be readily available for Customs review at the zone.

(e) *Merchandise security*. The operator shall maintain the zone and establish procedures adequate to ensure the security of merchandise located in the zone in accordance with applicable Customs security standards and specifications.

(f) *Storage and handling*. The operator shall store and handle merchandise in a zone in a safe and sanitary manner to minimize damage to the merchandise, avoid hazard to persons, and meet local, state, and Federal requirements applicable to a specific kind of goods. All trash and waste will be promptly removed from a zone. Aisles will be established and maintained, and doors and entrances left unblocked for access by Customs officers and other persons in the performance of their official duties.

(g) *Guard service*. The operator is authorized to provide guards or contract for guard service to safeguard the merchandise and ensure the security of the zone. This authorization does not limit the authority of the port director to assign Customs guards to protect the revenue under section 4 of the Act (19 U.S.C. 81d).

(h) *Miscellaneous responsibilities*. The operator is responsible for complying with requirements for admission, manipulation, manufacture, exhibition, or destruction, shortage, or overage; inventory control and recordkeeping systems, transfer to Customs territory, and other requirements as specified in this part. If the operator elects to transfer merchandise from within the district boundaries (see definition of ''district'' at §112.1) to his zone, he shall receipt for the merchandise at the time he picks it up for transportation to his facility. He becomes liable for the merchandise at that time.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 94–81, 59 FR 51496, Oct. 12, 1994; T.D. 95–77, 60 FR 50020, Sept. 27, 1995; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

### § 146.5 [Reserved]

### § 146.6 Procedure for activation.

(a) *Application*. A zone operator, or where there is no operator, a grantee, shall make written application to the port director to obtain approval of activation of a zone or zone site. The area to be activated may be all or any portion of the zone approved by the Board. The application must include a description of all the zone sites covered by the application, any operation to be conducted therein, and a statement of the general character of the merchandise to be admitted. The port director may also require the operator or grantee to submit fingerprints on form FD 258 or electronically at the time of filing the application. If the operator is an individual, that individual's fingerprints may be required. If the operator or grantee is a business entity, fingerprints of all officers and managing officials may be required.

(b) *Supporting documents*. The application must be accompanied by the following:

(1) [Reserved]

(2) A blueprint of the area approved by the Board to be activated showing area measurements, including all openings and buildings; and all outlets, inlets, and pipelines to any tank for the storage of liquid or similar product, that portion of the blueprint certified to be correct by the operator of the tank;

(3) A gauge table, when appropriate, showing the capacity, in the appropriate unit, of any tank, certified to be correct by the operator of the tank;

(4) A procedures manual describing the inventory control and recordkeeping system that will be used in the zone, certified by the operator or grantee to meet the requirements of subpart B; and

(5) The written concurrence of the grantee, when the operator applies for activation, in the requested zone activation.

(c) *Inquiry by port director*. As a condition of approval of the application, the port director may order an inquiry by a Customs officer into:

(1) The qualifications, character, and experience of an operator and/or grantee and their principal officers; and

(2) The security, suitability, and fitness of the facility to receive merchandise in a zone status.

(d) *Decision of the port director*. The port director shall promptly notify the applicant in writing of his decision to approve or deny the application to activate the zone. If the application is denied, the notification will state the grounds for denial which need not be limited to those listed in § 146.82. The decision of the port director will be the final Customs administrative determination in the matter. On approval of the application, a Foreign Trade Zone Operator's Bond shall be executed on Customs Form 301, containing the bond conditions of § 113.73 of this chapter.

(e) *Activation*. Upon the port director's approval of the application and acceptance of the executed bond, the zone or zone site will be considered activated; and merchandise may be admitted to the zone. Execution of the bond by an operator does not lessen the liability of the grantee to comply with the Act and implementing regulations.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 93–18, 58 FR 15773, Mar. 24, 1993; T.D. 95–99, 60 FR 62733, Dec. 7, 1995; T.D. 99–27, 64 FR 13676, Mar. 22, 1999; T.D. 01–14, 66 FR 8767, Feb. 2, 2001]

### § 146.7 Zone changes.

(a) *Alteration of an activated area*. An operator shall make written application to the port director for approval of an alteration of an activated area, including an alteration resulting from a zone boundary modification. The application must be accompanied by the supporting document requirements specified in § 146.6, as applicable. The port director may review the security, suitability, and fitness of the area, and shall reply to the applicant as provided for in § 146.6.

(b) *Deactivation or reactivation*. A grantee, or an operator with the concurrence of a grantee, shall make written application to the port director for deactivation of a zone site, indicating by layout or blueprint the exact site to be deactivated. The port director shall not approve the application unless all merchandise in the site in zone status (other than domestic status) has been removed at the risk and expense of the operator. The port director may require an accounting of all merchandise in a zone as a condition of approving the deactivation. A zone may be reactivated using the above procedure if a sufficient bond is on file under § 146.6(d).

(c) *Suspension of activated site*. When approval of an activated status has been suspended through the procedure in subpart G, the port director may require all goods in that area in zone status (other than domestic status) to be transferred to another zone, a bonded warehouse, or other location where they may lawfully be stored, if the port director considers that transfer advisable to protect the revenue or administer any Federal law or regulation.

(d) *New bond*. The port director may require an operator to furnish, on 10 days notice, a new Foreign Trade Zone Operator's Bond on Customs Form 301. If the operator fails to furnish the new bond, no more merchandise will be received in the zone in zone status. Merchandise in zone status (other than domestic status) will be removed at the risk and expense of the operator. A new bond may be required if (1) the activated zone area is substantially altered; (2) the character of merchandise admitted to the zone or operations performed in the zone are substantially changed; (3) the existing bond lacks good and sufficient surety; or (4) for any other reason that substantially affects the liability of the operator under the bond. Although a new bond may not be required, the operator shall obtain the consent of the surety to any material alteration in the boundaries of the zone.

(e) *New operator*. A grantee of an activated zone site shall make written application to the port director for approval of a new operator, submitting with the application a certification by

the new operator that the inventory control and recordkeeping system meets the requirements of subpart B, and a copy of the system procedures manual if different from the previous operator's manual. The port director may order an inquiry into the qualifications, character, and experience of the operator and its principal officers.

(f) The bond in § 146.6 shall be submitted by the operator before the operating agreement may become effective in respect to merchandise in zone status. The port director shall promptly notify the grantee, in writing, of the approval or disapproval of the application.

(g) *List of officers, employees, and other persons.* The port director may make a written demand upon the operator to submit, within 30 days after the date of the demand, a written list of the names, addresses, social security numbers, and dates and places of birth of officers and persons having a direct or indirect financial interest in the operator, and of persons employed in the carriage, receipt or delivery of merchandise in zone status, whether employed by the zone operator or a zone user. If a list was previously furnished, the port director may make a written demand for the same information in respect to new persons employed in the carriage, receipt, or delivery of zone status merchandise within 10 days after such employment. The list need not include employees of common or contract carriers transporting goods to or from the zone.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 95–99, 60 FR 62733, Dec. 7, 1995]

### § 146.8 Seals, authority of operator to break and affix.

The port director may authorize an operator to break a Customs in-bond seal affixed under § 18.4 of this chapter, or under any Customs order or directive, on any vehicle or intermodal container containing merchandise approved for admission to the zone upon its arrival at the zone; or to affix a Customs in-bond seal to any vehicle or intermodal container of merchandise for which an entry, withdrawal, or other approval document has been obtained for movement in-bond from the zone. The authorized affixing or breaking of that seal will be considered to have been done under Customs supervision. The operator shall report to the port director, upon arrival of the vehicle or container at the zone, any seal found to be broken, missing, or improperly affixed, and hold the vehicle or container and its contents intact pending instructions from the port director. If the operator does not obtain the written concurrence of the carrier as to the condition of the seal or delivering conveyance, the port director shall deem the seal or delivering conveyance to be intact.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986; 51 FR 11012, Apr. 1, 1986]

### § 146.9 Permission of operator.

An application for permission to admit merchandise into a zone, or to manipulate, manufacture, exhibit, or destroy merchandise in a zone must include the written concurrence of the operator, except where the regulations of this part provide for the making of application by the operator itself or where the operator files a separate specific or blanket application. The written concurrence of the operator in the removal of merchandise from a zone is not required because the merchandise is released by the port director to the operator for delivery from the zone, as provided in § 146.71 (a).

### § 146.10 Authority to examine merchandise.

The port director may cause any merchandise to be examined before or at the time of admission to a zone, or at any time thereafter, if the examination is considered necessary to facilitate the proper administration of any law, regulation, or instruction which Customs is authorized to enforce.

### § 146.11 Transportation of merchandise to a zone.

(a) *From outside Customs territory.* Merchandise may be admitted directly to a zone from any place outside Customs territory.

(b) *Through Customs territory, foreign merchandise.* Foreign merchandise destined to a zone and transported in-bond

through Customs territory will be subject to the laws and regulations applicable to other merchandise transported in-bond between two places in Customs territory.

(c) *From Customs territory, domestic merchandise.* Domestic merchandise may be admitted to a zone from Customs territory by any means of transportation which will not interfere with the orderly conduct of business in the zone.

(d) *From a bonded warehouse.* Merchandise may be withdrawn from a bonded warehouse under the procedures in §144.37(g) of this chapter and transferred to a zone for admission in zone-restricted status.

### § 146.12 Use of zone by carrier.

(a) *Primary use; lading and unlading.* The water area docking facilities, and any lading and unlading stations of a zone are intended primarily for the unlading of merchandise into the zone or the lading of merchandise for removal from the zone. Their use for other purposes may be terminated by Customs if found to endanger the revenue, or by the Board if found to impede the primary use of the zone.

(b) *Carrier in zone not exempt from law or regulations.* Nothing in the Act or the regulations in this part shall be construed as excepting any carrier entering, remaining in, or leaving a zone from the application of any other law or regulation.

### § 146.13 Customs forms and procedures.

Where a Customs form or other document is required in this part, the number of copies of the form or document required to be presented and their manner of distribution and processing shall be determined by the port director, except as otherwise specified in this part.

### § 146.14 Retail trade within a zone.

Retail trade is prohibited within a zone except as provided in 19 U.S.C. 81o(d). See also the regulations of the Board as contained in 15 CFR part 400.

## Subpart B—Inventory Control and Recordkeeping System

### § 146.21 General requirements.

(a) *Systems capability.* The operator shall maintain either manual or automated inventory control and recordkeeping systems or combination manual and automated systems capable of:

(1) Accounting for all merchandise, including domestic status merchandise, temporarily deposited, admitted, granted a zone status and/or status change, stored, exhibited, manipulated, manufactured, destroyed, transferred, and/or removed from a zone;

(2) Producing accurate and timely reports and documents as required by this part;

(3) Identifying shortages and overages of merchandise in a zone in sufficient detail to determine the quantity, description, tariff classification, zone status, and value of the missing or excess merchandise;

(4) Providing all the information necessary to make entry for merchandise being transferred to the Customs territory;

(5) Providing an audit trail to Customs forms from admission through manipulation, manufacture, destruction or transfer of merchandise from a zone either by zone lot or Customs authorized inventory method.

(b) *Procedures manual.* (1) The operator shall provide the port director with an English language copy of its written inventory control and recordkeeping systems procedures manual in accordance with the requirements of this part.

(2) The operator shall keep current its procedures manual and shall submit to the port director any change at the time of its implementation.

(3) The operator may authorize a zone user to maintain its individual inventory control and recordkeeping system and procedures manual. The operator shall furnish a copy of the zone user's procedures manual, including any subsequent changes, to the port director. However, the operator will remain responsible to Customs and liable under its bond for supervision, defects in, or failures of a system.

(4) The operator's procedures manual and subsequent changes will be furnished to the port director for information purposes only. Customs receipt of a manual does not indicate approval or rejection of a system.

(c) *Liability of operator*. Upon zone activation approval the operator remains liable for complying with all inventory control and recordkeeping system requirements set forth in this part.

### § 146.22 Admission of merchandise to a zone.

(a) *Identification*. All merchandise will be recorded in a receiving report or document using a zone lot number or unique identifier. All merchandise, except domestic status merchandise for which no permit for admission is required under § 146.43, will be traceable to a Customs Form 214 and accompanying documentation.

(b) *Reconciliation*. Quantities received will be reconciled to a receiving report or document such as an invoice with any discrepancy reported to the port director as provided in § 146.37.

(c) *Incomplete documentation*. Merchandise received without complete Customs documentation or which is unacceptable to the inventory control and recordkeeping system will be recorded in a suspense account or record until documentation is complete or the system is capable of accepting the information, at which time it will be formally admitted to the zone under § 146.32 or 146.40. The receiving report or document will provide sufficient information to identify the merchandise and distinguish it from other merchandise. The suspense account or record will be completely documented for Customs review to explain the differences noted and corrections made.

(d) *Recordation*. Merchandise received will be accurately recorded in the inventory system records from the receiving report or document using the zone lot number or unique identifier for traceability. The inventory record will state the quantity and date admitted, cost or value where applicable, zone status, and description of the merchandise, including any part or stock number.

(e) *Harbor maintenance fee*. When imported cargo is unloaded from a commercial vessel at a U.S. port and admitted into a foreign trade zone, the applicant for admission of that cargo into the zone may be subject to the harbor maintenance fee as set forth in § 24.24 of this chapter.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 87–44, 52 FR 10211, Mar. 30, 1987; 52 FR 10970, Apr. 6, 1987]

### § 146.23 Accountability for merchandise in a zone.

(a) *Identification of merchandise*—(1) *General*. A zone lot number or unique identifier will be used to identify and trace merchandise.

(2) *Fungible merchandise*. Fungible merchandise may be identified by an inventory method authorized by Customs, which is consistently applied, such as First-In-First-Out (FIFO) and using a unique identifier.

(b) *Inventory records*. The inventory records will specify by zone lot number or unique identifier:

(1) Location of merchandise;

(2) Zone status;

(3) Cost or value, unless operator's or user's financial records maintain cost or value and the records are made available for Customs review;

(4) Beginning balance, cumulative receipts and removals, adjustments, and current balance on hand by date and quantity;

(5) Destruction of merchandise; and

(6) Scrap, waste, and by-products.

(c) *Physical inventory*. The operator shall take at least an annual physical inventory of all merchandise in the zone (unless continuous cycle counts are taken as part of an ongoing inventory control program) with prior notification of the date(s) given to Customs for any supervision of the inventory deemed necessary. The operator shall notify the port director of any discrepancies in accordance with § 146.53.

### § 146.24 Transfer of merchandise from a zone.

(a) *Accountability*. (1) All zone status merchandise transferred from a zone will be accurately recorded within the inventory control and recordkeeping system.

(2) The inventory control and recordkeeping system for merchandise transfers must have the capability to trace

all transfers back to a zone admission under a Customs authorized inventory method.

(b) *Information*. The inventory control and recordkeeping system must be capable of providing all information necessary to make entry for transfer of merchandise from the zone.

### § 146.25 Annual reconciliation.

(a) *Report*. The operator shall prepare a reconciliation report within 90 days after the end of the zone/subzone year unless the port director authorizes an extension for reasonable cause. The operator shall retain that annual reconciliation report for a spot check or audit by Customs, and need not furnish it to Customs unless requested. There is no form specified for the preparation of the report.

(b) *Information required*. The report must contain a description of merchandise for each zone lot or unique identifer, zone status, quantity on hand at the beginning of the year, cumulative receipts and transfers (by unit), quantity on hand at the end of the year, and cumulative positive and negative adjustments (by unit) made during the year.

(c) *Certification*. The operator shall submit to the port director within 10 working days after the annual reconciliation report, a letter signed by the operator certifying that the annual reconciliation has been prepared, is available for Customs review, and is accurate. The certification letter must contain the name and street address of the operator, where the required records are available for Customs review; and the name, title, and telephone number of the person having custody of the records. Reporting of shortages and overages based on the annual reconciliation will be made in accordance with § 146.53. These reports must accompany the certification letter.

### § 146.26 System review.

The operator shall perform an annual internal review of the inventory control and recordkeeping system and shall report to the port director any deficiency discovered and corrective action taken, to ensure that the system meets the requirements of this part.

## Subpart C—Admission of Merchandise to a Zone

### § 146.31 Admissibility of merchandise into a zone.

Merchandise of every description may be admitted into a zone unless prohibited by law. A distinction is made between prohibited and conditionally admissible merchandise.

(a) *Prohibited merchandise*. Port directors shall not admit prohibited merchandise. If there is a question as to whether the merchandise may be prohibited, port directors may permit the temporary deposit of the merchandise in a zone pending a final determination of its status. Any prohibited merchandise which is found within a zone will be disposed of in the manner provided for in the laws and regulations applicable to that merchandise.

(b) *Conditionally admissible merchandise*. The admission of this merchandise into a zone is subject to the regulations of the Federal agency concerned.

### § 146.32 Application and permit for admission of merchandise.

(a) *Application on Customs Form 214 and permit*. Merchandise may be admitted into a zone only upon application on a uniquely and sequentially numbered Customs Form 214 (''Application for Foreign Trade Zone Admission and/or Status Designation'') and the issuance of a permit by the port director. Exceptions to the Customs Form 214 requirement are for merchandise temporarily deposited (§ 146.33), transiting merchandise (§ 146.34), or domestic merchandise admitted without permit (§ 146.43). The applicant for admission shall present the application to the port director and shall include a statistical copy on Customs Form 214–A for transmittal to the Bureau of Census, unless the applicant has made arrangements for the direct transmittal of statistical information to that agency.

(b) *Supporting documents*—(1) *Commercial documentation*. The applicant shall submit with the application two copies of an examination invoice meeting the requirements of subpart F, part 141, of

this chapter, for any merchandise, other than that excepted in paragraph (a) of this section, to be admitted to a zone. The notation of tariff classification and value required by §141.90 of this chapter need not be made, unless the merchandise is to be admitted in privileged status.

(2) *Evidence of right to make entry*. The applicant for admission shall submit with the application a document similar to that which would be required as evidence of the right to make entry for merchandise in Customs territory under §141.11 or §141.12 of this chapter.

(3) *Release order*. Merchandise will not be authorized for delivery by Customs to a zone until a release order has been executed by the carrier which brought the merchandise to the port, unless the merchandise is released back to that same carrier for delivery to the zone (see §141.11 of this chapter). When a release order is required, it will be made on any of the forms specified in §141.111 of this chapter, or by the following statement attached to Customs Form 214:

Authority is hereby given to release the merchandise described in this application to _____

_____

Name of Carrier _____

_____

Signature and title of carrier representative _____

_____

A blanket or qualified release order may be authorized for the transfer of merchandise to a zone as provided for in §141.111 of this chapter.

(4) *Application to unlade*. For merchandise unladen in the zone directly from the importing carrier, the application on Customs Form 214 will be supported by an application to unlade on Customs Form 3171.

(5) *Other documentation*. The port director may require additional information or documentation as needed to conduct an examination of merchandise under Customs selective entry processing criteria, or to determine whether the merchandise is admissible to the zone.

(c) *Conditions for issuance of a permit*. The port director will issue a permit for admission of merchandise to a zone when:

(1) The application is properly executed and includes the zone status desired for the merchandise, as provided in subpart D of this part;

(2) The operator's approval appears either on the application or in a separate specific or blanket approval;

(3) The merchandise is retained for examination at the place of unlading, the zone, or other location designated by the port director, except for merchandise for direct delivery to a zone under §§146.39 and 146.40. The merchandise may be examined as if it were to be entered for consumption or warehouse; and

(4) All requirements have been fulfilled.

(d) *Blanket application for admission of merchandise*. Merchandise may be admitted to a zone under blanket application upon presentation of a Customs Form 214 covering more than one shipment of merchandise. A blanket application for admission is for:

(1) Shipments which arrive under one transportation entry as described in §141.55 of this chapter, or

(2) Shipments which are destined to the same zone applicant on a single business day, in which case the applicant shall:

(i) Present the examination invoices required by paragraph (b) of this section to the port director before the merchadise is admitted into the zone,

(ii) Have been approved for the direct transmittal of statistical trade information to the Bureau of Census under an agreement with that agency; and

(iii) Have examination invoices containing a unique identifier to trace the shipment to the manifest of the carrier that brought the merchandise to the port having jurisdiction over the zone, as well as to the inventory control and recordkeeping system of the operator as described in subpart B.

### §146.33 Temporary deposit for manipulation.

Imported merchandise for which an entry has been made and which has remained in continuous Customs custody may be brought temporarily to a zone for manipulation and return to Customs territory under Customs supervision, pursuant to section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562),

and § 19.11 of this chapter. That merchandise will not be considered within the purview of the Act but will be treated as though remaining in Customs territory. No zone form or procedure will be considered applicable, but the merchandise will remain subject to any requirements necessary for the enforcement of section 562 and other Customs laws while in the zone.

### § 146.34 Merchandise transiting a zone.

The following procedure is applicable when merchandise is to be unladen from any carrier in the zone for immediate transfer to Customs territory, or if it is to be transferred from Customs territory through the zone for immediate lading on any carrier in the zone:

(a) *Application*. Application for permission to lade or unlade will be filed with the port director on Customs Form 3171 prior to transfer of the merchandise into the zone.

(b) *Permit*. The port director shall permit the transfer unless he has reason to believe that the merchandise will not be moved promptly from the zone or will be made the subject of an application for admission in accordance with § 146.32(a).

(c) *Treatment of merchandise*. Upon the issuance of a permit to lade, or unlade, the merchandise will be treated as though the lading or unlading were in the Customs territory.

(d) *Delay in zone transit*. Merchandise delayed while transiting a zone must be made the subject of an application for admission in accordance with § 146.32, or it must be removed from the zone.

### § 146.35 Temporary deposit in a zone; incomplete documentation.

(a) *General*. Temporary deposit of merchandise in a zone is allowed in circumstances where the information or documentation necessary to complete the Customs Form 214 is not available at the time of arrival of merchandise within the jurisdiction of the port. The merchandise will be subject to examination as provided in § 146.36.

(b) *Application*. An application for temporary deposit will be made to the port director on a properly signed and uniquely numbered Customs Form 214, annotated clearly ''Temporary Deposit in a Zone''.

(c) *Conditions*. Merchandise temporarily deposited under the provisions of this section has no zone status and is considered to be in the Customs territory. It will:

(1) Be physically segregated from all other zone merchandise;

(2) Be held under the bond and at the risk of the operator; and

(3) Be manipulated only to the extent necessary to obtain sufficient information about the merchandise to file the appropriate admission or entry documentation.

(d) *Approval*. The port director shall approve the application for temporary deposit of merchandise in a zone if the provisions of paragraphs (b) and (c) of this section are met.

(e) *Submission of Customs Form 214*. A complete and accurate Customs Form 214 will be submitted, as provided in § 146.32, within 5 working days plus any extension granted by the port director, or the merchandise shall be placed in general order.

### § 146.36 Examination of merchandise.

Except for direct delivery procedures provided for in § 146.39, all merchandise covered by a Customs Form 214 may be retained for Customs examination at the place of unlading, the zone, or another location, as designated by the port director. The port director may authorize release of the merchandise without examination, as provided in § 151.2 of this chapter. If a physical examination is conducted, the Customs officer shall note the results of the examination on the examination invoices.

### § 146.37 Operator admission responsibilities.

(a) *Maintenance of admission documentation*. The operator shall maintain either:

(1) *Lot file*. The operator shall open and maintain a lot file containing a copy of the Customs Form 214, the examination invoice, and all other documentation necessary to account for the merchandise covered by each Customs Form 214. The lot file will be maintained in sequential order by using the

unique number assigned to each Customs Form 214 as the file reference number; or

(2) *Authorized inventory method.* Where a Customs authorized inventory method other than a lot system (specific identification of merchandise) is used, e.g., First-In-First-Out (FIFO), no lot file is required but the operator shall maintain a file of all Customs Form's 214 in sequential order.

(b) *Examination invoice.* The operator shall give a copy of the examination invoice to the person making entry to transfer the merchandise from the zone upon request of that person or the port director.

(c) *Liability for merchandise.* The operator will be held liable under its bond for the receipt of merchandise admitted in the quantity and condition as described on the Customs Form 214, except as modified by a discrepancy report:

(1) Signed jointly by the operator and carrier on the Customs Form 214 or other approved form within 15 days after admission of the merchandise, and reported to the port director within 2 working days thereafter; or

(2) Submitted on Customs Form 5931 under the provisions of subpart A, part 158, of this chapter within 20 days after admission of the merchandise. The operator may file a Customs Form 5931 on behalf of the person who applied for admission of merchandise to the zone.

(d) *Supervision of merchandise.* The port director may authorize the receipt of zone status merchandise at a zone without physical supervision by a Customs officer (see § 146.3). In that case, the operator shall supervise the receipt of merchandise into the zone, report the receipt and condition of the merchandise, and mark packages with the unique Customs Form 214 number so that the merchandise can be traced to a particular Customs Form 214. Packages that are accounted for under a Customs-authorized inventory method other than specific identification, need not be marked with a unique Customs Form 214 number but must be adequately identified so Customs can conduct an inventory count. The operator shall submit the Custom Form 214 to Customs at the location specified by the port director.

### § 146.38 Certificate of arrival of merchandise.

Whenever a certificate prepared by Customs as to the arrival of any merchandise in a zone is required by a Federal agency, the port director shall issue the document certifying only that authorization to deliver the merchandise to a zone has been made. The operator shall issue a certificate of arrival of merchandise at a zone.

### § 146.39 Direct delivery procedures.

(a) *General.* This procedure is for delivery of merchandise to a zone without prior application and approval on Customs Form 214.

(b) *Application.* An operator, meeting the criteria of paragraph (c) of this section, shall file a written application with the port director at least 30 days before the special procedure is to become effective. The application will describe the merchandise to be handled or processed, and the kind of operation which it will undergo in the zone.

(c) *Criteria.* The port director shall approve the application if the following criteria are met:

(1) The merchandise is not restricted or of a type which requires Customs examination or documentation review before or upon its arrival at the zone;

(2) The merchandise to be admitted to the zone, and the operations to be conducted therein, are known well in advance, are predictable and stable over the long term, and are relatively fixed in variety by the nature of the business conducted at the site; and

(3) The operator is the owner or purchaser of the goods.

(d) *Application decision.* The port director shall promptly notify the operator, in writing, of Customs decision on the application. If the application is denied, the port director shall specify the reason for denial in his reply. The port director's decision will constitute the final Customs administrative determination concerning the application.

(e) *Revocation of approval.* The port director may revoke the approval given under this section if it becomes necessary for Customs routinely to examine the merchandise or documentation before or upon admission to the zone.

**§ 146.40 Operator responsibilities for direct delivery.**

(a) *Arrival of conveyance*. Upon arrival at a subzone or zone site of a conveyance containing foreign merchandise, the operator shall:

(1) Collect in-bond or cartage documentation from the carrier;

(2) Check the condition of any seal affixed to the conveyance, and if broken, missing or improperly affixed, notify the port director and receive instructions before unloading the merchandise;

(3) Check each incoming in-bond and cartage shipment to determine if the manifested quantity or the quantity on the cartage document agrees with the quantity actually received;

(4) Sign and date the in-bond or cartage documentation to accept responsibility for the merchandise under the Foreign Trade Zone Operator's Bond and to relieve the carrier of responsibility.

(5) Forward the in-bond or cartage documentation so as to reach the port director within 2 working days after the date of arrival of the conveyance at the subzone or zone site;

(6) Maintain a file of open in-bond manifests in chronological order of date of conveyance arrival to identify shipments that have arrived but the entire contents of which have not been admitted to the subzone or zone site; and

(7) Notify the port director, by annotation on the Customs Form 214, when the entire contents of a shipment have been admitted.

(b) *Transportation by operator*. If merchandise is transported to a subzone or zone site by the foreign trade zone operator from a location in the district (see definition of ''district'' at § 112.1) in which the subzone or zone site is situated, the merchandise is deemed admitted at the time the foreign trade zone operator picks it up. At the time of pick-up, the operator is responsible for:

(1) Receipting for the merchandise and recording on the appropriate document any discrepancies regarding quantity, condition or the status of the seals;

(2) Transporting the merchandise to the zone or subzone; and

(3) Ensuring that the zone records reflect that the merchandise is received in the zone.

(c) *Admission of merchandise: alternative procedures*—(1) *Cumulative Customs Form 214*. If the operator has an agreement with the Bureau of Census for direct transmittal of statistical information, he shall submit to the port director each business day a properly signed and uniquely numbered Customs Form 214 listing all merchandise except for domestic status merchandise admitted under § 146.43 recorded into the inventory control and recordkeeping system during the previous business day. The Customs Form 214 must contain a list of all in-bond (I.T.) numbers or the unique number of any cartage document, as well as the number of invoices for each I.T. or cartage document, pertaining to merchandise which has been entered into the system.

(2) *Individual Customs Form 214*. If a cumulative Customs Form 214 is not submitted as provided in paragraph (b)(1) of this section, the operator shall file with the port director each business day an individual Customs Form 214 and 214–A covering each shipment recorded into the inventory control and recordkeeping system during the previous business day. The forms shall be submitted within 10 days after the end of the month in which the merchandise was received in the zone, and no extension beyond that time will be approved by the port director.

(3) *General order*. Merchandise not admitted into a subzone or zone site as provided in this section within 15 calendar days after its arrival there shall be disposed of in accordance with the applicable procedures in § 4.37 or § 122.50 or § 123.10 of this chapter.

(4) *Inventory control and recordkeeping system*. The operator shall establish and maintain a continuing input quality control program to ensure that information concerning merchandise in admission documents, verified or corrected by counts and checks, is accurately recorded in the inventory control and recordkeeping system. Quantities recorded in the system, after allowance by the port director for any discrepancies, will be the quantities of merchandise for which the operator

shall be held liable under its bond for admission to the subzone or zone site. A discrepancy involving a within-case shortage (or overage) need not be reported on Customs Form 5931, if the operator is able to report that information in another manner so that the port director can determine whether there is liability for the discrepancy under the bond of any party to the importation.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 94–81, 59 FR 51497, Oct. 12, 1994; T.D. 95–77, 60 FR 50020, Sept. 27, 1995; T.D. 98–74, 64 FR 6801, Feb. 11, 1999]

## Subpart D—Status of Merchandise in a Zone

### § 146.41 Privileged foreign status.

(a) *General.* Foreign merchandise which has not been manipulated or manufactured so as to effect a change in tariff classification will be given status as privileged foreign merchandise on proper application to the port director.

(b) *Application.* Each application for this status will be made on Customs Form 214 at the time of filing the application for admission of the merchandise into a zone or at any time thereafter before the merchandise has been manipulated or manufactured in the zone in a manner which has effected a change in tariff classification.

(c) *Supporting documentation.* Each applicant for this status shall submit to the port director, with the application, an invoice notated as provided for in § 141.90 of this chapter.

(d) *Determination of duties and taxes.* Upon receipt of the application and accompanying invoice, the port director may examine the merchandise to determine whether to approve the application. The merchandise will be subject to classification and valuation as provided in § 146.65.

(e) *Status as privileged foreign merchandise binding.* A status as privileged foreign merchandise cannot be abandoned and remains applicable to the merchandise even if changed in form by manipulation or manufacture, except in the case of recoverable waste (see § 146.42(b)), as long as the merchandise remains within the purview of the Act. However, privileged foreign merchandise may be exported or withdrawn for supplies, equipment, or repair material of vessels or aircraft without the payment of taxes and duties, in accordance with §§ 146.67 and 146.69.

### § 146.42 Nonprivileged foreign status.

All of the following will have the status of nonprivileged foreign merchandise:

(a) *Foreign merchandise.* Foreign merchandise properly in a zone which does not have the status of privileged foreign merchandise or of zone-restricted merchandise;

(b) *Waste.* Waste recovered from any manipulation or manufacture of privileged foreign merchandise in a zone; and

(c) *Certain domestic merchandise.* Domestic merchandise in a zone, which by reason of noncompliance with the regulations in this part has lost its identity as domestic merchandise, will be treated as foreign merchandise. Any domestic merchandise will be considered to have lost its identity if the port director determines that it cannot be identified positively by a Customs officer as domestic merchandise on the basis of an examination of the articles or consideration of any proof that may be submitted promptly by a party-in-interest.

### § 146.43 Domestic status.

(a) *General.* Domestic status may be granted to merchandise:

(1) The growth, product, or manufacture of the U.S. on which all internal-revenue taxes, if applicable, have been paid;

(2) Previously imported and on which duty and tax has been paid; or

(3) Previously entered free of duty and tax.

(b) *Application.* No application or permit is required for the admission of domestic status merchandise, including domestic packing and repair material, to a zone, except upon order of the Commissioner of Customs. No application or permit is required for the manipulation, manufacture, exhibition, destruction, or transfer to Customs territory of domestic status merchandise, including packing and repair materials, except: (1) When it is mixed or

combined with merchandise in another zone status, or (2) upon order of the Commissioner of Customs. When the Commissioner orders a permit to be required for domestic status merchandise, he may also order the procedures, forms, and terms under which the permit will be received and processed.

(c) *Return of merchandise of Customs territory*. Upon compliance with the provisions of this section, any of the merchandise specified in paragraph (a) of this section, may subsequently be returned to Customs territory free of quotas, duty, or tax.

**§ 146.44 Zone-restricted status.**

(a) *General*. Merchandise taken into a zone for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage will be given zone-restricted status on proper application. That status may be requested at any time the merchandise is located in a zone, but cannot be abandoned once granted. Merchandise in zone-restricted status may not be removed to Customs territory for domestic consumption except where the Board determines the return to be in the public interest.

(b) *Application*. Application for zone-restricted status will be made on Customs Form 214.

(c) *Merchandise considered exported*—(1) *For Customs purposes*. If the applicant desires a zone-restricted status in order that the merchandise may be considered exported for the purpose of any Customs law, all pertinent Customs requirements relating to an actual exportation shall be complied with as though the admission of the merchandise into zone constituted a lading on an exporting carrier at a port of final exit from the U.S. Any declaration or form required for actual exportation will be modified to show the merchandise has been deposited in a zone in lieu of actual exportation, and a copy of the approved Customs Form 214 may be accepted in lieu of any proof of shipment required in cases of actual exportation.

(2) *For other purposes*. If the merchandise is to be considered exported for the purpose of any Federal law other than the Customs laws, the port director shall be satisfied that all pertinent laws, regulations, and rules administered by the Federal agency concerned have been complied with before the Customs Form 214 is approved.

(d) *Merchandise entered for warehousing transferred to a zone*. Merchandise entered for warehousing and transferred to a zone, other than temporarily for manipulation and return to Customs territory as provided for in § 146.33, will have the status of zone-restricted merchandise when admitted into the zone. The application on Customs Form 214 will state that zone-restricted status is desired for the merchandise.

## Subpart E—Handling of Merchandise in a Zone

**§ 146.51 Customs control of merchandise.**

No merchandise, other than domestic status merchandise provided for in § 146.43, will be manipulated, manufactured, exhibited, destroyed, or transferred from a zone in any manner or for any purpose, except under Customs permit as provided for in this part. The port director may require segregation of any zone status merchandise whenever necessary to protect the revenue or properly administer U.S. laws or regulations.

**§ 146.52 Manipulation, manufacture, exhibition or destruction; Customs Form 216.**

(a) *Application*. Prior to any action, the operator shall file with the port director an application (or blanket application) on Customs Form 216 for permission to manipulate, manufacture, exhibit, or destroy merchandise in a zone. After Customs approves the application (or blanket application), the operator will retain in his recordkeeping system the approved application.

(b) *Approval*. (1) The port director shall approve the application unless (i) the proposed operation would be in violation of law or regulation; (ii) the place designated for its performance is not suitable for preventing confusion of the identity or status of the merchandise, or for safeguarding the revenue; (iii) the port director is not satisfied

that the destruction will be effective; or (iv) the Executive Secretary of the Board has not granted approval of a new manufacturing operation.

(2) The port director is authorized to approve a blanket application for a period of up to one year for a continuous or repetitive operation. The port director may disapprove or revoke approval of any application, or may require the operator to file an individual application.

(c) *Appeal of adverse ruling*. If an approved application is subsequently rescinded by the port director for any reason, the applicant or grantee may appeal the adverse ruling pursuant to the hearing provisions of § 146.82(b)(2). The rescission shall remain in effect pending the decision on the appeal.

(d) *Report results*—(1) *Separate application*. The operator shall report on Customs Form 216 the results of an approved manipulation, manufacture, exhibition, or certification of destruction (other than by a blanket application), unless the port director chooses physically to supervise the operation.

(2) *Blanket application*. The operator shall maintain a record of an approved manipulation, manufacture, exhibition, or certification of destruction, in its inventory control and recordkeeping system so as to provide an accounting and audit trail of the merchandise through the approved operation.

(e) *Destruction*. The port director may permit destruction to be done outside the zone, in whole or in part and at the risk and expense of the applicant, and under such conditions as are necessary to protect the revenue, if proper destruction cannot be accomplished within the zone. Any residue from the destruction within a zone, which is determined to be without commercial value, may be removed to Customs territory for disposal.

### § 146.53 Shortages and overages.

(a) *Report required*. The operator shall report, in writing, to the port director upon identification, as such, of any:

(1) Theft or suspected theft of merchandise;

(2) Merchandise not properly admitted to the zone; or

(3) Shortage of one percent (1%) or more of the quantity of merchandise in a lot or covered by a unique identifier, if the missing merchandise would have been subject to duties and taxes of $100 or more upon entry into the Customs territory. The operator shall record upon identification all shortages and overages, whether or not they are required to be reported to the port director at that time, in its inventory control and recordkeeping system. The operator shall record all shortages and overages as required in the annual reconciliation report under § 146.25.

(b) *Certain domestic merchandise*. Except in a case of theft or suspected theft, the operator need not file a report with the port director, or note in the annual reconciliation report, any shortage or overage concerning domestic status merchandise for which no permit is required.

(c) *Shortage*—(1) *Operator responsibility*. The operator is responsible under its Foreign Trade Zone Operator's Bond for any loss of merchandise or for any merchandise which cannot be located or otherwise accounted for (except domestic status merchandise for which no permit is required), unless the port director is satisfied that the merchandise was:

(i) Never received in the zone;

(ii) Removed from the zone under proper permit;

(iii) Not removed from the zone; or

(iv) Lost or destroyed in the zone through fire or other casualty, evaporation, spillage, leakage, absorption, or similar cause, and did not enter the commerce of the U.S.

(2) *Liability for duty and taxes*. Upon demand of the port director, the operator shall make entry for and pay duties and taxes applicable to merchandise which is missing or otherwise not accounted for.

(d) *Overage*. The person with the right to make entry shall file, within 5 days after identification of an overage, an application for admission of the merchandise to the zone on Customs Form 214 or file a Customs entry for the merchandise. If a Customs Form 214 or a Customs entry is not timely filed, and the port director has not

granted an extension of the time provided, the merchandise shall be sent to general order.

(e) *Damage*. The liability of the operator under its Foreign Trade Zone Operator's Bond may be adjusted for the loss of value resulting from damage to merchandise occurring in the zone. The operator shall segregate, mark, and otherwise secure damaged merchandise to preserve its identity as damaged merchandise.

## Subpart F—Transfer of Merchandise From a Zone

### § 146.61 Constructive transfer to Customs territory.

The port director shall accept receipt of any entry in proper form provided under this subpart, and the merchandise described therein will be considered to have been constructively transferred to Customs territory at that time, even though the merchandise remains physically in the zone. If the entry is thereafter rejected or cancelled, the merchandise will be considered at that time to be constructively transferred back into the zone in its previous zone status.

### § 146.62 Entry.

(a) *General*. Entry for foreign merchandise which is to be transferred from a zone, or removed from a zone for exportation or transportation to another port, for consumption or warehouse, will be made on Customs Form 7512, Customs Form 3461, Customs Form 7501, or other applicable Customs forms. If entry is made on Customs Form 3461, the person making entry shall file an entry summary for all the merchandise covered by the Customs Form 3461 within 10 working days after the time of entry.

(b) *Documentation*. (1) Customs Form 7501 or the entry summary will be accompanied by the entry documentation, including invoices as provided in parts 141 and 142 of this chapter. The person with the right to make entry shall submit any other supporting documents required by law or regulations that relate to the transferred merchandise and provide the information necessary to support the admissibility, the declared values, quantity, and classification of the merchandise. If the declared values are predicated on estimates or estimated costs, that information must be clearly stated in writing at the time an entry or entry summary is filed.

(2) Customs Form 7512 for merchandise to be transferred to another port or zone or for exportation shall state that the merchandise covered is foreign trade zone merchandise; give the number of the zone from which the merchandise was transferred; state the status of the merchandise; and, if applicable, bear the notation or endorsement provided for in § 146.64(c), § 146.66(b), or § 146.70(c).

(c) *Waiver of supporting documents*. The port director may waive presentation of an invoice and supporting documentation required in paragraph (b) of this section with the entry or entry summary, if satisfied that presentation of those documents would be impractical, and the person making entry or the operator either files invoices and supporting documentation with the port director or maintains and makes those records available for examination by Customs.

### § 146.63 Entry for consumption.

(a) *Foreign merchandise*. Merchandise in foreign status or composed in part of merchandise in foreign status may be entered for consumption from a zone.

(b) *Zone-restricted merchandise*. Merchandise in a zone-restricted status may be entered for consumption only when the Board has ruled that merchandise can be entered for consumption.

(c) *Estimated production*—(1) *Weekly entry*. When merchandise is manufactured or otherwise changed in a zone (exclusive of packing) to its physical condition as entered within 24 hours before physical transfer from the zone for consumption, the port director may allow the person making entry to file an entry on Customs Form 3461 for the estimated removals of merchandise during the calendar week. The Customs Form 3461 must be accompanied by a *pro forma* invoice or schedule showing the number of units of each type of merchandise to be removed during the week and their zone and dutiable values. Merchandise covered by an entry

made under the provisions of this section will be considered to be entered and may be removed only when the port director has accepted the entry on Customs Form 3461. If the actual removals will exceed the estimate for the week, the person making entry shall file an additional Customs Form 3461 to cover the additional units before their removal from the zone. Notwithstanding that a weekly entry may be allowed, all merchandise will be dutiable as provided in § 146.65. When estimated removals exceed actual removals, that excess merchandise will not be considered to have been entered or constructively transferred to the Customs territory.

(2) *Individual transfers*. After acceptance of the weekly entry, individual transfers of merchandise covered by the entry may be made from the zone.

(d) *Textiles and textile products*. Subject to the existing statutory authority of the Board, textiles and textile products admitted into a zone, regardless of whether the merchandise has privileged or nonprivileged foreign status, which would have been subject to quota or visa or export license requirements in their condition at the time of importation (if entered for consumption rather than admitted to a zone), may not be subsequently transferred into Customs territory for consumption if, during the time the merchandise is in the zone, there has been a change by manipulation, manufacture, or other means:

(1) In the country of origin of the merchandise as defined by § 102.21 or § 102.22 of this chapter, as applicable;

(2) To exempt from quota or visa or export license requirements other than a change brought about by statute, treaty, executive order or Presidential proclamation; or

(3) From one textile category to another textile category.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by CBP Dec. 05–32, 70 FR 58016, Oct. 5, 2005]

### § 146.64 Entry for warehouse.

(a) *Foreign merchandise*. Merchandise in privileged foreign status or composed in part of merchandise in privileged foreign status may not be entered for warehouse from a zone. Merchandise in nonprivileged foreign status containing no components in privileged foreign status may be entered for warehouse in the same or at a different port.

(b) *Zone-restricted merchandise*. Foreign merchandise in zone-restricted status may be entered for warehouse in the same or at a different port only for storage pending exportation, unless the Board has approved another disposition.

(c) *Textiles and textile products*. Textiles and textile products which have been changed as provided for in § 146.63(d) may be entered for warehouse only if the entry is endorsed by the port director to show that the merchandise may not be withdrawn for consumption.

(d) *Time limit*. Merchandise may neither be placed nor remain in a Customs bonded warehouse after 5 years from the date of importation of the merchandise.

### § 146.65 Classification, valuation, and liquidation.

(a) *Classification*—(1) *Privileged foreign merchandise*. Privileged foreign merchandise provided for in this section will be subject to tariff classification according to its character, condition and quantity, at the rate of duty and tax in force on the date of filing, in complete and proper form, the application for privileged status. Classification of merchandise subject to a tariff-rate import quota will be made only at the higher non-quota duty rate in effect on the date privileged foreign status was granted. Notwithstanding the grant of privileged status, Customs may correct any misclassification of any such entered merchandise when it posts the bulletin notice of liquidation under § 159.9 of this chapter.

(2) *Nonprivileged foreign merchandise*. Nonprivileged foreign merchandise provided for in this section will be subject to tariff classification in accordance with its character, condition and quantity as constructively transferred to Customs territory at the time the entry or entry summary is filed with Customs.

(b) *Valuation*—(1) *Total zone value*. The total zone value of merchandise

provided for in this section will be determined in accordance with the principles of valuation contained in sections 402 and 500 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a, 1500). The total zone value shall be that price actually paid or payable to the zone seller in the transaction that caused the merchandise to be transferred from the zone. Where there is no price paid or payable, the total zone value shall be the cost of all materials and zone processing costs related to the merchandise transferred from the zone.

(2) *Dutiable value.* The dutiable value of merchandise provided for in this section shall be the price actually paid or payable for the merchandise in the transaction that caused the merchandise to be admitted into the zone, plus the statutory additions contained in section 402(b)(1) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a(b)(1)), less, if included, international shipment and insurance costs and U.S. inland freight costs. If there is no such price actually paid or payable, or no reasonable representation of that cost or of the statutory additions, the dutiable value may be determined by excluding from the zone value any included zone costs of processing or fabrication, general expenses and profit and the international shipment and insurance costs and U.S. inland freight costs related to the merchandise transferred from the zone. The dutiable value of recoverable waste or scrap provided for in § 146.42(b) will be the price actually paid or payable to the zone seller in the transaction that caused the recoverable waste or scrap to be transferred from the zone.

(3) *Allowance.* An allowance in the dutiable value of zone merchandise may be made by the port director in accordance with the provisions of subparts B and C of part 158 of this chapter, for damage, deterioration, or casualty while the merchandise is in the zone.

(c) *Liquidation; extension to update cost data.* When the declared value or values of the merchandise are based on an estimate or estimates, the person making entry may request an extension of liquidation pending the presentation of updated or actual cost data. A request for an extension may be granted at the discretion of the port director.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 91–79, 56 FR 46372, Sept. 12, 1991; T.D. 95–35, 60 FR 20632, Apr. 27, 1995]

### § 146.66 Transfer of merchandise from one zone to another.

(a) *At the same port.* A transfer of merchandise to another zone with a different operator at the same port (including a consolidated port) will be by a licensed cartman or a bonded carrier as provided for in § 112.2(b) of this chapter or by the operator of the zone for which the merchandise is destined under an entry for immediate transportation on Customs Form 7512 or other appropriate form with a Customs Form 214 filed at the destination zone. A transfer of merchandise between zone sites at the same port having the same operator may be made under a permit on CF 6043 or under a local control system approved by the port director wherein any loss of merchandise between sites will be treated as if the loss occurred in the zone.

(b) *At a different port.* A transfer of merchandise from a zone at one port of entry to a zone at another port will be by bonded carrier under an entry for immediate transportation on Customs Form 7512. All copies of the entry must bear a notation that the merchandise is being transferred to another zone designated by its number.

(c) *Forwarding of merchandise history; documentation.* When merchandise is transferred under the provisions of this section, the operator of the transferring zone shall provide the operator of the destination zone with the documented history of the merchandise being transferred.

(1) The following documentation must accompany merchandise maintained under a lot inventory control system:

(i) A copy of the original Customs Form(s) 214 with accompanying invoices for admission of the merchandise and all components thereof;

(ii) A copy of any Customs Form 214 filed subsequent to admission to change the status of the merchandise or its components; and

(iii) A copy of any Customs Form 216 to manipulate or manufacture the merchandise.

(2) The following documentation must accompany merchandise not under a lot system, and not manufactured in a zone:

(i) A copy of the original Customs Form(s) 214 with accompanying invoices for admission of the merchandise as attributed under the particular zone inventory method;

(ii) A copy of any Customs Form 214 filed subsequent to admission to change the status of the merchandise as attributed under the particular zone inventory method; and

(iii) A copy of any Customs Form 216 to manipulate the merchandise as attributed under the particular zone inventory method.

(3) If the documents specified in paragraph (c)(2) of this section are not presented, the operator of the transferring zone shall submit the following:

(i) A statement of the zone value, dutiable value, quantity, description, unique identifier, and zone status (showing any changes of status after admission and whether the merchandise was manipulated so as to change its tariff classification) of all the merchandise in the shipment covered by the transportation entry; and

(ii) A certification that the statement in paragraph (c)(3)(i) of this section, is true and that the information contained therein is contained in the inventory control and recordkeeping system of the transferring zone.

(4) The following documentation must accompany merchandise not under a lot system, but manufactured in a zone:

(i) A statement by the transferring zone operator of the zone value, dutiable value, quantity, description, unique identifier, and zone status of all the merchandise (and components thereof, where applicable) covered by the transportation entry. The statement will also show any change in zone status in the transferring zone and whether the merchandise has been manufactured or manipulated in the zone so as to change its tariff classification; and

(ii) A certification by the operator of the transferring zone that the statement in paragraph (c)(4)(i) of this section is true and the information therein is contained in the inventory control and recordkeeping system of the zone.

(5) The operator of the transferring zone shall transmit the historical documentation of the merchandise to the receiving zone within 10 working days after it has been delivered to the bonded carrier for transportation. The documentation will be referenced to the I.T. number covering the merchandise.

(d) *Arrival at destination zone.* Upon arrival of the merchandise at the destination zone, it will be admitted under the procedure provided for in § 146.32, except that no invoice or Customs examination will be required. When the historical documentation is received, the operator of the destination zone shall associate it with the Customs Form 214 for admission of the merchandise and incorporate that information into the zone inventory control and recordkeeping system.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 94–81, 59 FR 51497, Oct. 12, 1994]

### § 146.67 Transfer of merchandise for exportation.

(a) *Direct exportation.* Any merchandise in a zone may be exported directly therefrom (without transfer into Customs territory) upon compliance with the procedures of paragraph (b) of this section.

(b) *Immediate exportation.* Each transfer of merchandise to the Customs territory for exportation at the port where the zone is located, will be made under an entry for immediate exportation on Customs Form 7512. The person making entry shall furnish an export bond on Customs Form 301 containing the bond conditions provided for in § 113.62 of this chapter.

(c) *Transportation and exportation.* Each transfer of merchandise to the Customs territory for transportation to and exportation from a different port, will be made under an entry for transportation and exportation on Customs Form 7512. The bonded carrier will be responsible for exportation of the merchandise in accordance with § 18.26 of this chapter.

(d) *Textiles and textile products.* Textiles and textile products which have

been changed as provided for in § 146.63(d) may be exported and returned to Customs territory for warehousing provided the entry for warehouse is endorsed by the port director to show that the merchandise may not be withdrawn for consumption.

(e) *Merchandise produced or manufactured in a zone and returned to Customs territory after exportation.* Merchandise produced or manufactured in a zone and exported without having been transferred to Customs territory other than for exportation or for transportation and exportation will be subject, on its return to Customs territory, to the duties and taxes applicable to like articles of wholly foreign origin, unless it is conclusively established that it was produced or manufactured exclusively with the use of domestic merchandise. The identity of the domestic merchandise must have been maintained in accordance with the provisions of this part, in which case that merchandise will be subject to the provisions of Chapter 98, Subchapter I, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 89–1, 53 FR 51263, Dec. 21, 1988

### § 146.68 Transfer for transportation or exportation; estimated production.

(a) *Weekly permit.* The port director may allow the person making entry for merchandise provided for in § 146.63(c) to file an application for a weekly permit to enter and release merchandise during a calendar week for exportation, transportation, or transportation and exportation. The application will be on Customs Form 7512 stating at the top the words ''Application for Weekly Zone Permit,'' and will be filed with the port director. The application must be accompanied by a *pro forma* invoice or schedule like that required in § 146.63(c)(1). If actual transfers will exceed the estimate for the week, the person with the right to make entry shall file a supplemental Customs Form 7512 to cover the additional merchandise to be transferred from the subzone or zone site. No merchandise covered by the weekly permit may be transferred from the zone before approval of the application by the port director.

(b) *Individual entries.* After approval of the application for a weekly permit by the port director, the person making entry will be authorized to execute individual Customs Forms 7512 for exportation, transportation, or transportation and exportation of the merchandise covered by permit. Upon transfer of the merchandise, the operator shall obtain a receipt from the carrier on Customs Form 7512 to ensure its assumption of liability under the carrier's or cartman's bond. Customs will consider the time of entry to be when the removing carrier signs the receipt for the merchandise. The operator shall give the bonded carrier a copy of the individual Customs Form 7512, as provided for in § 18.2(c) of this chapter. The operator also shall ensure that the port director receives a copy of the Customs Form 7512 by the end of the next working day after the carrier has receipted for the merchandise.

(c) *Statement of merchandise entered.* The person making entry for merchandise under an approved weekly permit shall file with the port director, by the close of business on the second working day of the week following the week designated on the permit, a statement of the merchandise entered under that permit. The statement must list each Customs Form 7512 by its unique I.T. number, and will provide a reconciliation of the quantities on the weekly permit with the manifested quantities on the individual Customs Forms 7512 submitted to Customs, as well as an explanation of any discrepancy.

[T.D. 867–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 00–22, 65 FR 16518, Mar. 29, 2000]

### § 146.69 Supplies, equipment, and repair material for vessels or aircraft.

(a) *General.* Any merchandise which may be withdrawn duty and tax free in Customs territory under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), and under §§ 10.59 through 10.65 of this chapter, may similarly be transferred from a zone, regardless of its zone status, under those statutes and regulations. Each transfer from a zone for delivery to a qualified

vessel or aircraft, will be made on Customs Form 5512 (see § 10.60 of this chapter). The person making entry shall furnish a bond on Customs Form 301 containing the bond conditions provided for in § 113.62 of this chapter.

(b) *Merchandise for delivery within zone.* Upon acceptance of the entry and bond, the port director shall release the merchandise to the operator for delivery to the qualified vessel or aircraft for lading in the zone.

(c) *Merchandise for delivery outside zone.* Upon acceptance of the entry and bond, the port director shall release the merchandise to the operator for delivery to the bonded cartmen, lighterman, or carrier, for transportation through the Customs territory to the qualified lading vessel or aircraft.

### § 146.70 Transfer of zone-restricted merchandise into Customs territory.

(a) *General.* Zone-restricted merchandise may be transferred to Customs territory only for entry for exportation, for entry for transportation and exportation, for warehousing pending exportation, for destruction (except destruction of distilled spirits, wines and fermented malt liquors), for transfer from one zone to another, or for delivery to a qualified vessel or aircraft or as ground equipment of a qualified aircraft under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), unless the Board has ruled that the return of the merchandise to Customs territory for domestic consumption is in the public interest. With Board approval (See 15 CFR part 400), that merchandise may be entered for consumption, for warehousing, for immediate transportation without appraisement, or under any other provision of the Customs laws, unless the Board has specified the form of entry to be made.

(b) *For consumption.* If the return of zone-restricted merchandise to Customs territory for consumption has been ruled by the Board to be in the public interest, the entry shall be endorsed by the port director to show the authority under which it was made, and that the merchandise is subject to the provisions of Chapter 98, Subchapter I, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(c) *For warehousing.* Zone-restricted merchandise may be transferred from a zone to a Customs bonded warehouse for storage pending exportation. The Customs Form 7501 shall be endorsed by the port director to show that the merchandise may not be withdrawn for consumption. In the case of zone-restricted merchandise transported in bond to another port for warehousing and exportation, Customs Form 7512 shall be endorsed by the port director to show that the merchandise is foreign trade zone merchandise in zone-restricted status, which shall be entered for warehouse with proper endorsement on Customs Form 7501, and which may not be withdrawn for consumption. Zone-restricted merchandise transferred from a zone to a Customs bonded warehouse may not be manipulated, except for packing or unpacking incidental to exportation.

(d) *For other purposes.* Upon acceptance of an entry or withdrawal for zone-restricted merchandise for any purpose other than that described in a Board order, the entry shall be endorsed by the person making entry to show that actual exportation of the merchandise is required by the fourth proviso to section 3 of the Act, as amended, or the entry endorsed to require delivery to a qualified vessel or aircraft, under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317).

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 89–1, 53 FR 51263, Dec. 21, 1988]

### § 146.71 Release and removal of merchandise from zone.

(a) *General.* Except as provided for in § 146.43, no merchandise will be transferred from a zone without a Customs permit on the appropriate entry or withdrawal form or other document as required in this part. This port director may authorize transfer from a zone without physical supervision or examination by a Customs officer. Upon issuance of a permit, the port director will authorize delivery of the merchandise only to the operator, who then may release the merchandise to the importer or carrier.

(b) *Liability for discrepancy*. When a transfer is not physically supervised by a Customs officer, the operator will be relieved of responsibility only for the merchandise in a zone in the condition and quantity as shown on the entry, withdrawal, or other appropriate form. The operator will be relieved of responsibility only if it receives the signed receipt on the document of the importer or the carrier named in that document. The responsibility of the operator may be adjusted by any discrepancy report made jointly by the operator and the bonded cartman, lighterman, or carrier, or the importer, and signed by the above or an authorized representative within 15 days after transfer of the merchandise from the zone. Any adjustment must be noted on the permit copy of the entry, withdrawal, or other appropriate form or document. A copy of any joint report of discrepancy must be submitted to the port director within 10 working days of signing by the parties.

(c) *Time limit*. Except in the case of articles for use in a zone, merchandise for which a Customs permit for transfer to Customs territory has been issued must be physically removed from the zone within 5 working days of issuance of that permit. The port director, upon request of the operator, may extend that period for good cause. Merchandise awaiting removal within the required time limit will not be further manipulated or manufactured in the zone, but will be segregated or otherwise identified by the operator as merchandise that has been constructively transferred to Customs territory.

(d) *Retention or return of merchandise to zone for consumption*. (1) The port director shall cancel any entry for consumption where: (i) The merchandise is not removed from the zone within the period specified in paragraph (c) of this section, or (ii) the merchandise was removed from the zone but did not enter the commerce of the U.S. in Customs territory and was subsequently readmitted to a zone in domestic status. If the port director has reason to believe any new entry would be cancelled under the provisions of this paragraph, he may reject the entry or demand a written stipulation, as a condition of entry acceptance, that the merchandise will not be returned to a zone in domestic status. Merchandise covered by an entry which has been cancelled under this paragraph shall be restored to its last foreign status.

(2) A component of merchandise which has been entered, but not physically removed from a zone, shall be restored to its last zone status, provided the port director determines that the component was included in the entry through clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of the law. Such an error, including that in appraisement of any entry or liquidation due to the above circumstances, may be corrected pursuant to section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), in accordance with the procedures described in part 173 of this chapter. If the port director decides there has been no error, mistake, or inadvertence, or that the information was not timely provided, the component will be considered as an overage and subject to the provisions of § 146.53(d).

(3) When merchandise which has been entered for consumption is subsequently returned to a zone for a reason other than that specified in paragraph (d)(1) of this section, it shall be admitted in domestic status.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986; 51 FR 11012, Apr. 1, 1986]

## Subpart G—Penalties; Suspension; Revocation

### § 146.81 Penalties.

(a) *Amount*. Upon violation of the Act, or any regulation issued under the Act, by the grantee, or any officer, agent, operator or employee thereof, the person responsible for or permitting the violation shall be subject to a fine of not more than $1,000. Each day during which a violation continues will constitute a separate offense. Liquidated damages, where applicable, will be imposed in addition to the fine (19 U.S.C. 81s).

(b) *Review*. All fines assessed by the port director under this section will be reviewed by the Director, International Trade Compliance Division, Headquarters, to determine whether further

action against the grantee or operator, such as suspension or a recommendation for revocation of the grant, is warranted.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

**§ 146.82 Suspension.**

(a) *For cause*. The port director may suspend for cause the activated status of a zone or zone site, or the privilege to admit, manufacture, manipulate, exhibit, destroy, transfer or remove merchandise at a zone or zone site for a period not to exceed 90 days. Upon order of the Board the suspension may be continued. If appropriate, the suspension may be limited to an individual user or users and not to the zone or zone site as a whole, or may be limited to a particular activity of an operator or user, such as suspension of the privilege to admit merchandise or the privilege to manufacture. An action to suspend will be taken in accordance with the procedure in paragraph (b) of this section if:

(1) The approval of the application to activate the zone was obtained through fraud or the misstatement of a material fact;

(2) The operator neglects or refuses to obey any proper order of a Customs officer or any Customs order, rule, or regulation relating to the operation or administration of a zone;

(3) The operator, or any officer of a corporation which has been granted the right to operate a zone, is convicted of or has commited acts which would constitute a felony, or misdemeanor involving theft, smuggling, or a theft-connected crime. Any change in the employment status of the corporate officer (e.g., discharge, resignation, demotion, or promotion) prior to conviction of a felony or prior to conviction of a misdemeanor involving theft, smuggling, or a theft-connected crime, resulting from acts committed while a corporate officer, will not preclude application of this provision;

(4) The operator fails to furnish a current list of names, addresses, or other information as required by § 146.7;

(5) The operator does not provide a secure facility or properly safeguard merchandise within a zone;

(6) [Reserved]

(7) The operator, or any officer, agent, or employee of the operator, discloses to an unauthorized person proprietary information contained on a Customs form or in the inventory control and recordkeeping system; or

(8) The inventory control and recordkeeping system is impaired to the point where the identity of merchandise in zone status has been lost and cannot be reestablished without a suspension of zone operations.

(b) *Procedure*—(1) *Notice*. The port director may, at any time, serve notice, in writing, upon an operator to show cause why its right to continue operation of a zone should not be suspended or why an individual user or activities of an individual user should not be suspended, as provided for in paragraph (a) of this section. The notice will advise the operator of the grounds for the proposed action and will afford the operator an opportunity to respond, in writing, within 15 days after receipt of the notice. Thereafter, the port director shall consider the allegations and any response made by the operator and issue a decision, unless the operator requests a hearing in the matter.

(2) *Hearing*. If the operator requests a hearing, it will be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following the operator's request. The operator may be represented by counsel at the hearing, and any evidence and testimony of witnesses in the proceeding, including substantiation of the allegations and the response thereto, will be presented. The right of cross-examination will be available to both parties. A stenographic record of the proceeding will be made and a copy will be delivered to the operator. At the conclusion of the hearing, the hearing officer shall transmit promptly all papers and the stenographic record of the hearing to the Assistant Commissioner, Office of Field Operations, or designee, together with a recommendation for final action.

(3) *Decision of Assistant Commissioner*. Within 10 calendar days after delivery to the operator of a copy of the stenographic record of the hearing, the operator may submit to the Assistant Commissioner, Office of Field Operations,

or designee, in writing any additional views or arguments. The Assistant Commissioner, Office of Field Operations, or designee, shall then render a written decision stating his reasons therefor. That decision will be served on the operator and will be considered the final Customs administrative action in the case.

(4) *Grantee*. If the grantee of the zone is not the operator, a copy of the notice to show cause will be served upon the grantee. The grantee, as a party-in-interest, may join the operator in any proceedings under this section.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 88–63, 53 FR 40220, Oct. 14, 1988; T.D. 95–99, 60 FR 62733, Dec. 7, 1995]

### § 146.83 Revocation of zone grant.

(a) *Recommendation of port director*. The port director may at any time recommend to the Board that the privilege of establishing, operating, and maintaining a zone or subzone under Customs jurisdiction be revoked for willful and repeated violations of the Act (19 U.S.C. 81r). If the port director believes that a substantial question of law exists as to whether willful and repeated violations of the Act have occurred, that officer may request internal advice under the provisions of part 177 of this chapter from the Director, International Trade Compliance Division, Headquarters. A recommendation to the Board that a zone or subzone grant be revoked does not preclude, and may be in addition to, any liquidated damages, penalty, or suspension for cause.

(b) *Decision of the Board*. The procedure for revocation of a grant, the decision of the Board, and appeal is covered by the provisions of the Act and title 15, chapter IV, part 400, Code of Federal Regulations.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

## Subpart H—Petroleum Refineries in Foreign-Trade Subzones

SOURCE: T.D. 95–35, 60 FR 20632, Apr. 27, 1995, unless otherwise noted.

### § 146.91 Applicability.

This subpart applies only to a petroleum refinery (as defined herein) engaged in refining petroleum in a foreign-trade zone or subzone. Further, the provisions relating to zones generally, which are set forth elsewhere in this part, including documentation and document retention requirements, and entry procedures, such as weekly entry, shall apply as well to a refinery subzone, insofar as applicable to and not inconsistent with the specific provisions of this subpart. It does not cover zone-to-zone transfers in which the fact of removal from one zone is ignored.

### § 146.92 Definitions.

(a) *Attribution*. ''Attribution'' means the association of a final product with its source material.

(b) *Feedstocks*. ''Feedstocks'' means crude petroleum or intermediate product that is used in a petroleum refinery to make a final product.

(c) *Feedstock factor*. ''Feedstock factor'' means the relative value of final products utilizing T.D. 66–16 (see § 146.92(h)), and which takes into account any volumetric loss or gain.

(d) *Final product*. ''Final product'' means any petroleum product that is produced in a refinery subzone and thereafter removed therefrom or consumed within the zone.

(e) *Manufacturing period*. ''Manufacturing period'' means a period selected by the refiner which must be no more than a calendar month basis, for which attribution to a source feedstock must be made for every final product made, consumed in, or removed from the refinery subzone.

(f) *Petroleum refinery*. ''Petroleum refinery'' means a facility that refines a feedstock listed on the top line of the tables set forth in T.D. 66–16 into a product listed in the left column of the tables set forth in T.D. 66–16.

(g) *Price of product*. ''Price of product'' means the average per unit market value of each final product for a given manufacturing period or the published standard product value if updated each month.

(h) *Producibility*. ''Producibility'' is a method of attributing products to feedstocks for petroleum manufacturing in

accordance with the Industry Standards of Potential Production set forth in T.D. 66–16.

(i) *Relative value.* ''Relative value'' means a value assigned to each final product attributed to the separation from a privileged foreign feedstock based on the ratio of the final product's value compared to the privileged foreign feedstock's duty.

(j) *Time of Separation.* ''Time of separation'' means the manufacturing period in which a privileged foreign status feedstock is deemed to have been separated into two or more final products.

(k) *Weighted Average.* ''Weighted average'' means the relative value of merchandise, which is determined by dividing the total value of shipments in a given period by the total quantity shipped in the same given period. See example in section VI of the appendix to this part.

**§ 146.93 Inventory control and recordkeeping system.**

(a) *Attribution.* All final products removed from or consumed within a petroleum refinery subzone must be attributed to feedstock admitted into said petroleum refinery subzone in the current or prior manufacturing period. Attribution must be based on records maintained by the operator. Attribution may be made by applying one of the authorized methods set forth in this section. Records must be maintained on a weight or volume basis.

(1) *Producibility.* The producibility method of attribution requires that records be kept to attribute final products to feedstocks which are eligible for attribution as set forth in this section during the current or prior manufacturing period.

(2) *Actual production records.* An operator may use its actual production records as provided for under § 146.95(b) of this subpart.

(3) *Other inventory method.* An operator may use the FIFO (first-in, first-out) method of accounting (see § 191.22(c) of this chapter). The use of this method is illustrated in the appendix to this part.

(b) *Feedstock eligible for attribution.* Only a feedstock that has been admitted into the refinery subzone is eligible for attribution. For a given manufacturing period, the quantity of feedstock eligible for attribution may be computed as beginning inventory, plus receipts less shipments of feedstock out of the subzone, and less ending inventory.

(c) *Consumption or removal of final product.* Each final product that is consumed in or removed from a refinery subzone must be attributed to a feedstock eligible for attribution during the current or a prior manufacturing period. Each final product attributed as being produced from the separation of a privileged foreign status feedstock must be assigned the proper relative value as set forth in paragraph (d) of this section.

(d) *Relative value.* A relative value calculation is required when two or more final products are produced as the result of the separation of privileged foreign status feedstock. Ad valorem and compound rates of duty must be converted to specific rates of duty in order to make a relative value calculation.

(e) *Privileged status after admission.* Nonprivileged status feedstock is eligible for privileged status only if the request shows to the satisfaction of the Customs Service that there was no manipulation or manufacture of the feedstock to change its tariff classification before the request is granted. The absence of such manipulation or manufacture can be shown by demonstrating that the feedstock was placed in an empty tank, in a tank that contained only feedstock with the same nominal specifications or providing a sample which shows there was no change in tariff status. The existence of negligible amounts of other feedstocks may be disregarded only in accordance with § 146.95(b). A request for after-admission privileged foreign status shall be denied unless the feedstock's tank records from admission to the time that the request is made accompany the request. A refiner who makes such a request shall not put any other feedstock having different nominal specifications into the tank until the request for privileged status is granted.

The Customs Service will deny or revoke a post-admission request if a refiner fails to retain the integrity of the feedstock in the tank.

(f) *Consistent use required.* The operator must use the selected method, measurement (weight or volume), and the price of product consistently (see § 146.92(g) of this subpart and paragraph (a) of this section).

**§ 146.94 Records concerning establishment of manufacturing period.**

(a) *Feedstock admitted into the refinery subzone.* The operator must maintain appropriate inventory records during the manufacturing period to substantiate the feedstock(s) eligible for attribution under § 146.93(b) and in accordance with the operator's selected attribution method.

(b) *Final product consumed in or removed from subzone.* The operator must record the date and amount of each final product consumed in, or removed from the subzone.

(c) *Consumption or removal.* The consumption or removal of a final product during a week may be considered to have occurred on the last day of that week for purposes of attribution and relative value calculation instead of the actual day on which the removal or consumption occurred, unless the refiner elects to attribute using the FIFO method (see section II of the appendix to this part).

(d) *Gain or loss.* A gain or loss that occurs during a manufacturing period must be taken into account in determining the attribution of a final product to a feedstock and the relative value calculation of privileged foreign feedstocks. Any gain in a final product attributed to a non-privileged foreign status feedstock is dutiable if entered for consumption unless otherwise exempt from duty.

(e) *Determining gain or loss; acceptable methods*—(1) *Converting volume to weight.* Volume measurements may be converted to weight measurements using American Petroleum Institute conversion factors to account for gain or loss.

(2) *Calculating feedstock factor to account for volume gain or loss.* A feedstock factor may be calculated by dividing the value per barrel of production per product category by the quotient of the total value of production divided by all feedstock consumed. This factor would be applied to a finished product that has been attributed to a feedstock to account for volume gain.

(3) *Calculating volume difference.* Volume difference may be determined by comparing the amount of feedstocks introduced for a given period with the amount of final products produced during the period, and then assigning the volume change to each final product proportionately.

**§ 146.95 Methods of attribution.**

(a) *Producibility*—(1) *General.* A subzone operator must attribute the source of each final product. The operator is limited in this regard to feedstocks which were eligible for attribution during the current or prior manufacturing period. Attribution of final products is allowable to the extent that the quantity of such products could have been produced from such feedstocks, using the industry standards of potential production on a practical operating basis, as published in T.D. 66–16. Once attribution is made for a particular product, that attribution is binding. Subsequent attributions of feedstock to product must take prior attributions into account. Each refiner shall keep records showing each attribution.

(2) *Industry standards of potential production.* The industry standards of potential production on a practical operating basis necessary for the producibility attribution method are contained in tables published in T.D. 66–16. With these tables, a subzone operator may attribute final products consumed in, or removed from, the subzone to feedstocks during the current or a prior manufacturing period.

(3) *Attribution to product or feedstock not listed in T.D. 66–16.* (i) For purposes of attribution, where a final product or a feedstock is not listed in T.D. 66–16, the operator must submit a proposed attribution schedule, supported by a technical memorandum, to the appropriate port director. The port director shall refer the request to the Director, Office of Regulatory Audit (''ORA''), who will verify the refiner's records

and will coordinate with the Director, Office of Laboratories and Scientific Services (''OLSS''). The Director, ORA, shall either approve or deny the request. If the request is approved, the Director, ORA, shall publish a modification of T.D. 66–16. If an operator elects to show attribution on a producibility basis, but fails to keep records on that basis, the operator shall use its actual operating records to determine attribution and any necessary relative value calculation upon the Customs Service demand and subject to verification.

(ii) An operator may attribute a final product to a feedstock in excess of the amount allowed under T.D. 66–16, when authorized by Customs, without losing the ability to attribute under T.D. 66–16 for all other feedstock-final product combinations. The operator must use its actual production records for the requested feedstock-final product combination. The operator must agree in writing that it will not, and it will not enable any other person, to file a drawback claim under 19 U.S.C. 1313 inconsistent with those actual production records for that feedstock-final product combination. The operator shall file its request in accordance with paragraph (a)(3) of this section. The Director, ORA, and the Director, OLSS, must determine whether T.D. 66–16 needs to be modified and shall publish in the Customs Bulletin each approval granted under this paragraph and request public comments with each such approval.

(4) *Attribution to privileged foreign feedstock; relative value.* If a final product is attributed to the separation of a privileged foreign feedstock a relative value must be assigned (see section IV of the appendix to this part).

(b) *Refinery operating records.* An operator may use the actual refinery operating records to attribute the feedstocks used to the removed or consumed products. Customs shall accept the operator's operating conventions to the extent that the operator demonstrates that it actually uses these conventions in its refinery operations. Whatever conventions are elected by the operator, they must be used consistently in order to be acceptable to Customs. Additionally, Customs may use these records to test the validity of admissions into the subzone, consumption within and removals from the subzone.

*Example.* If the operator mixes three equal quantities of material in a day tank and treats that product as a three-part mixture in its production unit, Customs will accept the resulting product as composed of the three materials. If, in the alternative, the operator assumes that the three products do not mix and treats the first product as being composed of the first material put into the day tank, the second product as composed of the second material put into the day tank, and the third product as being composed of the third material put into the day tank, Customs will accept that convention also.

### § 146.96 Approval of other recordkeeping systems.

(a) *Approval procedure.* An operator must seek prior approval of another recordkeeping procedure by submitting the following to the Director, Office of Regulatory Audit:

(1) An explanation of the method describing how attribution will be made when a finished product is removed from or consumed in the subzone, and how and when the feedstocks will be decremented;

(2) A mathematical example covering at least two months which shows the amounts attributed, all necessary relative value calculations, the dates of consumption and removal, and the amounts and dates that the transactions are reported to Customs.

(b) *Failure to comply.* Requests received that fail to comply with paragraph (a) of this section will be returned to the requester with the defects noted by the Director, Office of Regulatory Audit.

(c) *Determination by Director.* When the Director, Office of Regulatory Audit, determines that the recordkeeping procedures provide an acceptable basis for verifying the admissions and removals from or consumption in a refinery subzone, the Director will issue a written approval to the applicant.

## APPENDIX TO PART 146—GUIDELINES FOR DETERMINING PRODUCIBILITY AND RELATIVE VALUES FOR OIL REFINERY ZONES

Where an example is set out in this appendix, the example is for purposes of illustrating the application of a provision, and where there is any inconsistency between the example and the provision, the provision prevails to the extent of the inconsistency. Alternative formats are also acceptable so long as they are consistent with the provisions of this part.

### I. ATTRIBUTION USING PRODUCIBILITY SHOWING MANUFACTURING PERIODS FROM ADMISSION T O REMOVAL WITHIN A CALENDER MONTH.

Volume losses and gains accounted for by weight.

*Day 1*

Receipt into the refinery subzone during a 30-day month:

50,000 pounds privileged foreign (PF) class II crude oil.
50,000 pounds PF class III crude oil.
50,000 pounds domestic status class III crude oil.

*Day 10*

Removal from the refinery subzone for exportation of 50,000 pounds of aviation gasoline.

The period of manufacture for the aviation gasoline is Day 1 to Day 10. The refiner must first attribute the designated source of the aviation gasoline.

In order to maximize the duty benefit conferred by the zone operation, the refiner chooses to attribute the exported aviation gasoline to the privileged foreign status crude oil. Under the tables for potential production (T.V. 66–16), class II crude has a 30% potential, and class III has a 40% potential. The maximum aviation gasoline producible from the class II crude oil is 15,000 pounds (50,000 × .30). The maximum aviation gasoline producible from the privileged foreign status class III crude oil is 20,000 pounds (50,000 × .40). The domestic class III crude would also make 20,000 pounds of aviation gasoline.

The refiner could attribute 15,000 pounds of the privileged foreign class II crude oil, 20,000 pounds of the privileged foreign class III crude oil, and 15,000 pounds of the domestic class III crude oil as the source of the 50,000 pounds of the aviation gasoline that was exported; 35,000 pounds of class II crude oil would be available for further production for other than aviation gasoline, 30,000 pounds of privileged foreign class III crude oil would be available for further production for other than aviation gasoline, and 35,000 pounds of domestic status class III crude oil would be available for further production, of which up to 5,000 pounds could be attributed to aviation gasoline.

*Day 21*

Receipt in the refinery subzone:

50,000 pounds PF status class I crude oil.
50,000 pounds PF status class IV crude oil.

*Day 30*

Removal from the refinery subzone:

30,000 pounds of motor gasoline for consumption.
10,000 pounds of jet fuel sold to the US Air Force for use in military aircraft.
10,000 pounds of aviation gasoline sold to a U.S. commuter airline for domestic flights.
10,000 pounds of kerosene for exportation.

To the extent that the crude oils that entered production on Day 1 are attributed as the designated sources for the products removed on Day 30, the period of manufacture is Day 1 to Day 30. If the refiner chooses to attribute the crude oils that were admitted on Day 21 as the designated sources of the products removed on Day 30 using the production standards published in T.D. 66–16, the manufacturing period is Day 21 to Day 30. This choice will be important if a relative value calculation on the privileged foreign status crude oil is required, because the law requires the value used for computing the relative value to be the average per unit value of each product for the manufacturing period. Relative value must be calculated if a source feedstock is separated into two or more products that are removed from the subzone refinery. If the average per unit value for each product differs between the manufacturing period from Day 1 to Day 30 and the manufacturing period from Day 21 to Day 30, the correct period must be used in the calculation.

In order to minimize duty liability, the refiner would try to attribute the production of the exported kerosene and the sale of the jet fuel to the US Air Force to the privileged foreign crude oils. For the same reason, the refiner would try to attribute the removed motor gasoline and the aviation gasoline for the commuter airline to the domestic crude oil.

Accordingly, the refiner chooses to attribute up to 5,000 pounds of the domestic status class III crude as the source of the 10,000 pounds of aviation gasoline removed from the subzone refinery for the commuter airline. Since no other aviation gasoline could have been produced from the crude oils that were admitted into the refinery subzone Day 1, the refiner must attribute the remainder to the crude oils that entered production on Day 21. Again, using the production standards from T.D. 66–16, the class I crude could produce aviation gasoline in an amount up to 10,000 pounds (50,000 × .20). Likewise, the class IV crude oil could

produce aviation gasoline in an amount up to 8,500 pounds (50,000 × .17).

The refiner selects use of the class I crude as the source of the aviation gasoline. The refiner could attribute up to 27,300 pounds (35,000 − 5,000 × .91) of the domestic class III crude oil as the source of the motor gasoline. This would leave 2,700 pounds of domestic class III crude available for further production for other than aviation gasoline or motor gasoline. The remaining motor gasoline removed (also 2,700 pounds) must be attributed to a privileged foreign crude oil. The refiner selects the privileged foreign class II crude oil that entered production on Day 1 as the source for the remaining 2,700 pounds of motor gasoline.

This would leave 32,300 pounds of privileged foreign class II crude oil available for further production, of which no more than 27,400 pounds could be designated as the source of motor gasoline. The refiner attributes the jet fuel that is removed from the refinery subzone for the US Air Force for use in military aircraft to the privileged foreign class II crude oil. The refiner could attribute up to 20,995 pounds of jet fuel from that class II crude oil (32,300 × .65). Designating that class II crude oil as the source of the 10,000 pounds of jet fuel leaves 22,300 pounds of privileged foreign class II crude oil available for further production, of which up to 10,995 pounds could be attributed as the source of the jet fuel. Because the motor gasoline and the jet fuel, under the foregoing attribution, would be considered to have been separated from the privileged foreign class II crude oil, a relative value calculation would be required.

The jet fuel is eligible for removal from the subzone free of duty by virtue of 19 U.S.C. 1309(a)(1)(A). The refiner could attribute the privileged foreign class II crude oil as being the source of the 10,000 pounds of jet fuel (22,300 × .65). The refiner chooses to attribute the privileged foreign class III crude oil as the source of the jet fuel. The refiner could attribute to that class III crude oil up to 15,000 pounds of kerosene (30,000 × .50).

II. ATTRIBUTION ON A FIFO BASIS

(Accounting for volume losses or gains by the weight method)

*Day 1–5*

Transfer, into the Refinery Subzone, from one or more storage tanks into process 150 barrels of Privileged Foreign (PF) Class II crude oil, equivalent to 50,000 pounds.

*Day 6*

Removal from the refinery subzone 119 barrels of residual oils to customs territory, equivalent to 40,000 pounds.

Since the operator uses the FIFO method of attribution, as the product is removed from the subzone, or consumed or lost within the subzone, attribution must be to the oldest feedstock available for attribution. Accordingly, the 40,000 pounds of residual oils will be attributed to 40,000 pounds of the PF Class II crude oil from Day 1–5.

*Day 10*

Transfer, into the refinery subzone, from one or more storage tanks 4 barrels of domestic motor gasoline blend stock, equivalent to 1,000 pounds to motor gasoline blending tank.

*Day 6–15*

Transfer, into the refinery subzone, from one or more storage tanks into process 320 barrels of Domestic Class III crude oil, equivalent to 100,000 pounds.

*Day 16*

Removal from the refinery subzone 14 barrels of asphalt to customs territory, equivalent to 5,000 pounds.

The 5,000 pounds of asphalt will be attributed to 5,000 pounds of PF Class II crude oil from Day 1–5.

*Day 17*

Removal from the refinery subzone, 324 barrels of motor gasoline to customs territory, equivalent to 81,000 pounds.

The 81,000 pounds of motor gasoline will be attributed to 1,000 pounds of domestic motor gasoline blend stock from Day 10, to the remaining 5,000 pounds of PF Class II crude oil from Day 1–5 and 75,000 pounds of domestic Class III crude oil from Day 6–15.

*Day 16–20*

Transfer, into the refinery subzone, from one or more storage tanks into process 169 barrels of Privileged Foreign (PF) Class III crude oil, equivalent to 50,000 pounds.

*Day 22*

Removal from the refinery subzone, 214 barrels of jet fuel for exportation, equivalent to 60,000 pounds.

The 60,000 pounds of jet fuel will be attributed to the remaining 25,000 pounds of domestic Class III crude oil from Day 6–15 and 35,000 pounds of PF Class III crude oil from Day 16–20.

*Day 21–25*

Transfer, into the refinery subzone from one or more storage tanks into process, 143 barrels of domestic Class I crude oil, equivalent to 50,000 pounds.

*Day 30 (End of the Manufacturing Period)*

It is determined that during the manufacturing period just ended, that 34 barrels of

fuel, equivalent to 10,000 pounds was consumed, and 5 barrels of oil, equivalent to 1,500 pounds was lost in the refining production process within the refinery subzone.

The 10,000 pounds of fuel consumed will be attributed 10,000 pounds of PF Class III crude oil from Day 16–20. The 1,500 pounds of oil lost in the refining production process will be attributed to 1,500 pounds of PF Class III crude oil from Day 16–20. The remaining 3,500 pounds of PF Class III crude oil from Day 16–20 will be the first to be attributed during the next manufacturing period.

III. Relative Value Calculation

Because privileged foreign feedstocks transferred into process during Day 1–5 and Day 16–20 have two or more products attributed to them, each feedstock will require a relative value calculation.

Relative value calculation for UIN Day 1–5, 50,000 pounds, equivalent to 150 barrels.

| | A Lbs | B BBLS | C $/BBL | D Product value | E R.V. Factor | F R.V. BBL | G Dutiable BBL |
|---|---|---|---|---|---|---|---|
| Residual oil | 40,000 | 119 | 15.00 | 1,785 | .9047 | 108 | 108 |
| Asphalt | 5,000 | 14 | 13.00 | 182 | .7840 | 11 | 11 |
| Motor gasoline | 5,000 | 20 | 26.00 | 520 | 1.5682 | 31 | 31 |
| Totals | 50,000 | 153 | | 2,487 | | 150 | 150 |

A=Pounds Attributed.
B=Equivalent Barrels.
C=Price of Product.
D=B×C.
E=C/(Total of Column D/Attributed Crude BBLS).
Residual Oil RV Factor=15.00/(2,487/150)=.9047.
F=B×E.
G=Dutiable Barrels.

Since all products attributed to the 50,000 pounds (150 BBLS) of PF Class II crude entered customs territory duty equals $7.88 (150×.0525).

Feedstock factor calculation for UIN Day 16–20, 46,500 pounds equivalent to 157 barrels.

| | Lbs | BBLS | $/BBL | Product value | Feedstock factor | R.V. BBL | Dutiable BBL |
|---|---|---|---|---|---|---|---|
| Jet Fuel | 35,000 | 125 | 27.00 | 3,375 | 1.1030 | 138 | 0 |
| Fuel | 10,000 | 34 | 12.00 | 408 | 0.4902 | 17 | 0 |
| Consumed Process Loss | 1,500 | 5 | 12.00 | 60 | 0.4902 | 2 | 0 |
| Totals | 46,500 | 164 | | 3,843 | | 157 | 0 |

Since jet fuel was exported, no duty is applicable. Fuel consumed for refinery process was consumed within the subzone premises and did not enter customs territory, thus no duty is applicable (assume refinery not barred by duty-free consumption restriction). Likewise, the process loss occurred entirely within the subzone. Therefore, no duty is applicable.

IV. Attribution to Privileged Foreign Feedstock; Relative Value; Monthly Manufacturing Period, Weekly Entries, Attribution to a Prior Period; Volume Loss or Gain Shown by Volume Differences.

An operator who elects to attribute on a monthly basis files the following estimated removal of final products for the first week in September:

| | |
|---|---|
| Jet Fuel (deemed exported on international flights) | 20,000 |
| Gasoline—Domestic Consumption | 15,000 |
| Duty-free certified as emergency war material | 10,000 |
| Petroleum coke exportations | 10,000 |
| Distillate for consumption | 5,000 |
| Petrochemicals exported | 10,000 |
| Total removals | 70,000 |

Because it does not elect to make attributions for feedstocks that were charged to operating units during the same week, the operator attributes the estimated removals to final products made during August from the following feedstocks:

| | |
|---|---|
| Class II PF (privileged foreign) crude | 20,000 |
| Class III PF crude | 35,000 |
| Class III D (domestic) crude | 20,000 |
| Class III NPF (nonprivileged foreign crude | 20,000 |
| | 95,000 |

During August the operator produced from those feedstocks:

| | |
|---|---|
| Jet | 35,000 |
| Gasoline | 40,000 |
| Petroleum Coke | 10,000 |
| Distillate | 5,000 |
| Petrochemicals | 15,000 |

105,000

There is a gain of 105,000 − 95,000=10,000

Using the tables in T.D. 66–16, the following choices are available for attribution:

| | Charged | Jet | Gasoline | Petrolum coke | Distillate | Petro-chemical |
|---|---|---|---|---|---|---|
| Class II PF Crude | 20,000 | 13,000 | 17,200 | 4,400 | 17,200 | 5,000 |
| Class III PF Crude | 35,000 | 24,500 | 31,850 | 14,000 | 31,150 | 10,150 |
| Class III D Crude | 20,000 | 14,000 | 18,200 | 8,000 | 17,800 | 5,800 |
| Class III NPF Crude | 20,000 | 14,000 | 18,200 | 8,000 | 17,800 | 5,800 |

Feedstock factors are calculated:

| | Barrels | Value barrels | Value | Feedstock factors |
|---|---|---|---|---|
| Gasoline | 40,000 | $25 | $1,000,000 | .9117 |
| Jet Fuel | 35,000 | 23 | 805,000 | .8388 |
| Distillate | 5,000 | 20 | 100,000 | .7294 |
| Petroleum Coke | 10,000 | 10 | 100,000 | .3647 |
| Petrochemicals | 15,000 | 40 | 600,000 | 1.4587 |
| | 105,000 | ..... | 2,605,000 | |
| Gain | − 10,000 | $2,605,000 | ..... | ..... |
| Total | [1] 95,000 | =$27.42 average value p/bbl | | |

Using the feedstock factor the refiner makes the following attributions:

| | | |
|---|---|---|
| Jet Fuel | 24,192 | (20,291 feedstock attributed to Class III PF Crude). |
| | 10,808 | Class III NPF Crude (attribution of 9066 solely for purpose of accounting for the amount of NPF used). |
| | 35,000 | |
| Gasoline | 5,000 | (4,559 feedstock attributed to Class III PF Crude). |
| | 5,000 | Class III NPF Crude (attribution of 4599 solely for purpose of accounting for the amount of NPF used). |
| | 15,000 | (13,676 feedstock attributed to Class III D Crude). |
| Petroleum Coke | 8,418 | (3,070 feedstock attributed to Class II PF Crude). |
| | 1,582 | Class III NPF Crude (attribution of 577 solely for purposes of accounting for the amount of NPF used). |
| | 10,000 | |
| Distillate | 5,000 | (3,647 feedstock attributed to Class III Domestic). |
| Petrochemicals | 3,975 | (5,800 feedstock attributed to Class III NPF Crude). |
| | 6,025 | (8,789 feedstock attributed to Class III PF Crude). |
| | 10,000 | |

V. Weekly Entry, Weekly Manufacturing Period, and Relative Values Calculated on the Actual Weighted Average Values at the End of the Week.

On the weekly estimated production CF 3461, the refiner is required to provide a pro forma invoice or schedule showing the number of units of each type of merchandise to be removed during the week and their zone and dutiable values. For example, on CF 3461 the refiner estimates the following shipments and relative values for the next week and files this on the preceding Friday.

| Product week 1 | PF shipments (MBBLS) | Value/barrel (platts) | Total value |
|---|---|---|---|
| Motor Gasoline | 20,000 | $35 | $700,000 |
| Total Alkylate | 25,000 | 35 | 875,000 |
| Heavy Reformate | 60,000 | 35 | 2,100,000 |
| Reformer Feed | 110,000 | 35 | 3,850,000 |
| Raffinates | 200,000 | 35 | 7,000,000 |
| Jet Fuel | 200,000 | 35 | 7,000,000 |
| Total | 615,000 | ..... | $21,525,000 |

Attributed Feedstock—Class III Crude: 615,000@ $105=$64,575 (estimated duties)

During that week the refiner actually removes the following products and reports those on the CF 7501 filed within 10 business days after the CF 3461 is filed. Column 3 is the actual ''weighted average'' value for the manufacturing period, therefore, no reconciliation is necessary.

| 1 Product | 2 PF Shipments (mbbls) | 3 Value/ barrel (wt. avg.) | 4 Total value (2)×(3) | 5 Relative value factor (3)/(8) | 6 Feedstock distribu. (5)×(2) | 7 Liq. duties (6)×(10) (9) |
|---|---|---|---|---|---|---|
| Week 1: | | | | | | |
| Motor Gasoline ..... | 19,977 | $35.70 | $713,179 | 1.104545 | 22,065 | $2,317 |
| Total Alkylate ..... | 22,907 | 42.50 | 973,548 | 1.314935 | 30,121 | 3,163 |
| Heavy Reformate ... | 58,164 | 31.42 | 1,827,513 | .972123 | 56,542 | 5,937 |
| Reformer Feed ..... | 100,279 | 31.42 | 3,150,766 | .972123 | 97,484 | 10,235 |
| Raffinates ..... | 170,293 | 29.55 | 5,032,158 | .914266 | 155,693 | 16,348 |
| Jet Fuel ..... | 168,433 | 30.04 | 5,059,727 | .929426 | 156,546 | 16,437 |
| Total ..... | 540,053 | ..... | 16,756,891 | ..... | 518,451 (9) | 54,437 (10) |

Class III Crude Consumed 518,451×$.105 = $54,437
Volumetric Gain 21,602
Avg. Value/Barrel Crude Consumed=$16,756,891÷518,451=$32.321 (8)
This example shows volumetric gain of 21,602 mbbls. However, in that PF was requested, liquidated duties are only on actual feedstock (class III crude) used in the refining process. (518,451 @ $.105=$54,437).

VI. WEEKLY ENTRY, MONTHLY MANUFACTURING PERIOD, AND RELATIVE VALUES CALCULATED ON THE ACTUAL WEIGHTED AVERAGE VALUES AT THE END OF THE MONTH.

For example, on the CF 3461 the refiner estimates the following shipments and relative values for the next week and files this on the preceding Friday.

| 1 Product | 2 PF shipments (mbbls) | 3 Value/ barrel (platts) | 4 Total value |
|---|---|---|---|
| Week 1: | | | |
| Motor Gasoline ..... | 20,000 | $35 | $700,000 |
| Total Alkylate ..... | 25,000 | 35 | 875,000 |
| Heavy Reformate ..... | 60,000 | 35 | 2,100,000 |
| Reformer Feed ..... | 110,000 | 35 | 3,850,000 |
| Raffinates ..... | 200,000 | 35 | 7,000,000 |
| Jet Fuel ..... | 200,000 | 35 | 7,000,000 |
| Total ..... | 615,000 | ..... | 21,525,000 |

Attributed Feedstock—Class III Crude: 615,000 @ $.105=$64,575 (estimated duties)

During the week the refiner actually removes the following products and reports those on the CF 7501 filed within 10 business days after the CF 3461 is filed. The reported relative values may be an estimate based on Platts, prior period actual prices, or the refiner's transfer prices. For this example, the estimates are based on the refiner's actual transfer prices. Listed below are the data to be shown on the weekly CF 7501s with actual quantities shipped and estimated values for weeks 1–5.

| 1 Product | 2 PF shipments (mbbls) | 3 Value/ barrel (estimates) | 4 Total value (2)×(3) | 5 Relative value factor (3)/(8) | 6 Feedstock distrib. (5)×(2) | 7 Liq. duties (6)×(10) (9) |
|---|---|---|---|---|---|---|
| Week 1: | | | | | | |
| Motor Gasoline ..... | 19,977 | $35.70 | $713,179 | 1.104545 | 22,065 | $2,317 |
| Total Alkylate ..... | 22,907 | 42.50 | 973,548 | 1.314935 | 30,121 | 3,163 |
| Heavy Reformate ... | 58,164 | 31.42 | 1,827,513 | .972123 | 56,542 | 5,937 |
| Reformer Feed ..... | 100,279 | 31.42 | 3,150,766 | .972123 | 97,484 | 10,235 |
| Raffinates ..... | 170,293 | 29.55 | 5,032,158 | .914266 | 155,693 | 16,348 |
| Jet Fuel ..... | 168,433 | 30.04 | 5,059,727 | .929426 | 156,546 | 16,437 |
| Total ..... | 540,053 | ..... | 16,756,891 | ..... | 518,451 (9) | $54,437 (10) |

Class III Crude Consumed 518,451×$.105=$54,437
Volumetric Gain 21,602
Avg. Value/Barrel Crude Consumed=$16,756,891÷518,451=$32.321 (8)

| 1 Product | 2 PF shipments (mbbls) | 3 Value/ barrel (estimated) | 4 Total value | 5 Relative value factor | 6 Feedstock distrib. | 7 Liq. duties |
|---|---|---|---|---|---|---|
| Week 2: | | | | | | |
| Motor Gasoline ..... | 20,651 | $36.90 | $762,022 | 1.145429 | 23,654 | $2,484 |
| Total Alkylate ..... | 23,435 | 44.25 | 1,036,999 | 1.373584 | 32,190 | 3,380 |
| Heavy Reformate ... | 59,819 | 30.35 | 1,815,507 | .942108 | 56,358 | 5,918 |
| Reformer Feed ..... | 101,167 | 30.10 | 3,045,127 | .934347 | 94,526 | 9,925 |

| 1 Product | 2 PF shipments (mbbls) | 3 Value/ barrel (estimated) | 4 Total value | 5 Relative value factor | 6 Feedstock distrib. | 7 Liq. duties |
|---|---|---|---|---|---|---|
| Raffinates | 172,317 | 29.30 | 5,048,888 | .909514 | 156,726 | 16,456 |
| Jet fuel | 165,291 | 30.70 | 5,074,434 | .952972 | 157,519 | 16,539 |
| Total | 542,680 | | $16,782,977 | | 520,973 | $54,702 |

Class III Crude Consumed 520,973×$.105 = $54,702
Volumetric Gain 21,707
Avg. Value/Barrel Crude Consumed = $32.215

| 1 Product | 2 PF shipments (mbbls) | 3 Value/ barrel (estimated) | 4 Total value | 5 Relative value factor | 6 Feedstock distrib. | 7 Liq. duties |
|---|---|---|---|---|---|---|
| Week 3: | | | | | | |
| Motor Gasoline | 18,689 | $34.90 | $652,246 | 1.091819 | 20,405 | $2,142 |
| Total Alkylate | 21,511 | 40.25 | 865,818 | 1.259190 | 27,087 | 2,844 |
| Heavy Reformate | 57,371 | 30.90 | 1,772,764 | .966682 | 55,460 | 5,823 |
| Reformer Feed | 99,707 | 30.90 | 3,080,946 | .966682 | 96,386 | 10,121 |
| Raffinates | 168,112 | 29.65 | 4,984,521 | .927577 | 155,938 | 16,374 |
| Jet Fuel | 172,092 | 29.85 | 5,136,946 | .933834 | 160,707 | 16,874 |
| Total | 537,482 | | $16,493,241 | | 515,983 | $54,178 |

Class III Crude Consumed 515,983 × $.105 = $54,178
Volumetric Gain 21,499
Avg. Value/Barrel Crude Consumed = $31.965

| 1 Product | 2 PF shipments (mbbls) | 3 Value/ barrel (estimated) | 4 Total value | 5 Relative value factor | 6 Feedstock distrib. | 7 Liq. duties |
|---|---|---|---|---|---|---|
| Week 4: | | | | | | |
| Motor Gasoline | 21,905 | $32.85 | $719,579 | 1.027237 | 22,502 | $2,363 |
| Total Alkylate | 22,552 | 38.75 | 873,890 | 1.211733 | 27,327 | 2,869 |
| Heavy Reformate | 58,116 | 29.60 | 1,720,234 | 0.925607 | 53,791 | 5,648 |
| Reformer Feed | 101,058 | 29.40 | 2,971,105 | 0.919353 | 92,908 | 9,755 |
| Raffinates | 169,823 | 30.15 | 5,120,163 | 0.942806 | 160,110 | 16,812 |
| Jet Fuel | 171,493 | 31.05 | 5,324,858 | 0.970949 | 166,511 | 17,484 |
| Total | 544,947 | | $16,729,829 | | 523,149 | $54,931 |

Class III Crude Consumed 523,149 × $.105 = $54,931
Gain 21,798
Avg. Value/Barrel Crude Consumed = $31.979

| 1 Product | 2 PF shipments (mbbls) | 3 Value/ barrel (estimated) | 4 Total value | 5 Relative value factor | 6 Feedstock distrib. | 7 Liq. duties |
|---|---|---|---|---|---|---|
| Week 5: | | | | | | |
| Motor Gasoline | 8,990 | $37.25 | $334,878 | 1.136260 | 10,215 | $1,073 |
| Total Alkylate | 9,984 | 45.10 | 450,278 | 1.375713 | 13,735 | 1,442 |
| Heavy Reformate | 25,351 | 31.50 | 798,557 | 0.960864 | 24,360 | 2,558 |
| Reformer Feed | 43,492 | 31.35 | 1,363,474 | 0.956288 | 41,592 | 4,367 |
| Raffinates | 75,172 | 29.95 | 2,251,401 | 0.913583 | 68,677 | 7,211 |
| Jet fuel | 75,795 | 30.56 | 2,316,295 | 0.932190 | 70,654 | 7,418 |
| Total | 238,784 | | $7,514,883 | | 229,233 | $24,069 |

Class III Crude Consumed 229,233 × $.105 = $24,069
Gain 9,551
Avg. Value/Barrel Crude Consumed = $32.783

As provided in the regulations, the refiner files an amended CF 7501 for each week based on the refiner's actual weighted average values for the month, as shown below.

| Product | Value/ barrel (MBBLS) |
|---|---|
| Month End: | |
| Motor Gasoline | $35.27 |
| Total Alkylate | 41.84 |
| Heavy Reformate | 30.66 |
| Reformer Feed | 30.54 |

| Product | Value/ barrel (MBBLS) |
|---|---|
| Raffinates | 29.69 |
| Jet Fuel | 30.42 |

RECONCILIATION OF WEEK 1 USING MONTH'S END ACTUAL WEIGHTED AVERAGE VALUES

| 1 Product | 2 PF shipments (mbbls) | 3 Value/ barrel (wt. avg.) actual | 4 Total value (2)×(3) | 5 Relative value factor (3)/(8) | 6 Feedstock distri. (5)×(2) | 7 Amended wt. avg. duties (6)×(10) (9) |
|---|---|---|---|---|---|---|
| Motor Gasoline | 19,977 | $35.27 | $704,589 | 1.095716 | 21,889 | $2,298 |
| Total Alkylate | 22,907 | 41.84 | 958,429 | 1.299823 | 29,775 | 3,126 |
| Heavy Reformate | 58,164 | 30.66 | 1,783,308 | .952499 | 55,401 | 5,817 |
| Reformer Feed | 100,279 | 30.54 | 3,062,521 | .948771 | 95,141 | 9,990 |
| Raffinates | 170,293 | 29.69 | 5,055,999 | .922365 | 157,072 | 16,493 |
| Jet Fuel | 168,433 | 30.42 | 5,123,732 | .945043 | 159,176 | 16,713 |
| Total | 540,053 | | $16,688,578 | | 518,454 (9) | 54,437 (10) |

Class III Crude Consumed = 518,454 × $.105 = $54,437
Volumetric Gain 21,599
Avg.Value/Bbl Crude Consumed = $16,688,578 ÷ 518,454 = $32.189 (8)
Note: No change in amended total duties, because duty is computed on total quantity of class III crude used. The difference is amongst the various products, *i.e.*, estimated weekly CF 7501 duties paid for Motor Gasoline was $2,317, while the reconciled amount as shown above is $2,298. Additional duties owed or refunds due would depend on the reconciliation of the weekly entry as an entirety.

VII. WEEKLY ENTRY, MONTHLY MANUFACTURING PERIOD, RELATIVE VALUES CALCULATED ON PRIOR MANUFACTURING PERIOD'S ACTUAL WEIGHTED AVERAGE VALUES. THE PRIOR PERIOD (PP) VALUES ARE SET FORTH BELOW:

| Product | Value/Barrel (wt. avg.) |
|---|---|
| Motor Gasoline | §35.28 |
| Total Alkylate | 41.90 |
| Heavy Reformate | 31.78 |
| Reformer Feed | 30.02 |
| Raffinates | 31.10 |
| Jet Fuel | 28.80 |

Thereafter, the information provided or both the CF 3461 and CF 7501 filed for each weekly entry with respect to relative values would remain the same. The only estimated amount would be the quantity to be removed on the CF 3461 as shown below. On the CF 3461 the refiner estimates the following shipments and uses a prior manufacturing period's actual weighted average values.

| 1 Product | 2 PF shipments (mbbls) | 3 Value/ barrel (PP) (wt. avg.) | 4 Total value |
|---|---|---|---|
| Week 1 | | | |
| Motor Gasoline | 20,000 | $35.28 | $705,600 |
| Total Alkylate | 25,000 | 41.90 | 1,047,500 |
| Heavy Reformate | 60,000 | 31.78 | 1,906,800 |
| Reformer Feed | 110,000 | 30.02 | 3,302,200 |
| Raffinates | 200,000 | 31.10 | 6,220,000 |
| Jet Fuel | 200,000 | 28.80 | 5,760,000 |
| Total | 615,000 | | 18,942,100 |

Attributed Feedstock—Class III Crude: 615,000 @ $.105 = $64,575 (estimated duties)
On the CF 7501, the refiner reports the following shipments and uses a prior manufacturing period's actual average values.

| 1 Product | 2 PF shipments (mbbls) | 3 Value/ barrel (PP) (wt. avg.) | 4 Total value (2)×(3) | 5 Relative value factor (3)/(8) | 6 Feedstock distri. (5)×(2) | 7 Liq. duties (6)×(10) (9) |
|---|---|---|---|---|---|---|
| Week 1: | | | | | | |
| Motor Gasoline | 19,977 | $35.28 | $704,789 | 1.097219 | 21,919 | $2,902 |
| Total Alkylate | 22,907 | 41.90 | 959,803 | 1.303104 | 29,850 | 3,134 |
| Heavy Reformate | 58,164 | 31.78 | 1,848,452 | .988368 | 57,486 | 6,036 |

| 1 Product | 2 PF shipments (mbbls) | 3 Value/ barrel (PP) (wt. avg.) | 4 Total value (2)×(3) | 5 Relative value factor (3)/(8) | 6 Feedstock distri. (5)×(2) | 7 Liq. duties (6)×(10) (9) |
|---|---|---|---|---|---|---|
| Reformer Feed ..... | 100,279 | 30.02 | 3,010,376 | .933632 | 93,623 | 9,830 |
| Raffinates ..... | 170,293 | 31.10 | 5,296,112 | .967220 | 164,710 | 17,295 |
| Jet Fuel ..... | 168,433 | 28.80 | 4,850,870 | .895689 | 150,863 | 15,840 |
| Total ..... | 540,053 | ..... | $16,670,402 | ..... | 518,451 (9) | $54,437 (10) |

Class III Crude Used 518,451 × $.105 = $54,437
Volumetric Gain 21,602
Avg. Value/Barrel Crude Used = $16,670,402 ÷ 518,451 = $32.154 (8)

| 1 Product | 2 PF shipments (mbbls) | 3 Value/ barrel (PP) (wt. avg.) | 4 Total value | 5 Relative value factor | 6 Feedstock distri. | 7 Liq. duties |
|---|---|---|---|---|---|---|
| Week 2: | | | | | | |
| Motor Gasoline ..... | 20,651 | $35.28 | $728,567 | 1.096128 | 22,636 | $2,377 |
| Total Alkylate ..... | 23,435 | 41.90 | 981,926 | 1.301808 | 30,508 | 3,203 |
| Heavy Reformate ... | 59,819 | 31.78 | 1,901,048 | .987386 | 59,064 | 6,202 |
| Reformer Feed ..... | 101,167 | 30.02 | 3,037,033 | .932704 | 94,359 | 9,908 |
| Raffinates ..... | 172,317 | 31.10 | 5,359,059 | .966259 | 166,503 | 17,483 |
| Jet Fuel ..... | 165,291 | 28.80 | 4,760,381 | .894799 | 147,903 | 15,529 |
| Total ..... | 542,680 | ..... | 16,768,014 | ..... | 520,973 | 54,702 |

Class III Crude Used 520,973×$.105=$54,702
Volumetric Gain 21,707
Avg. Value/Barrel Crude Used=$32.186

| 1 Product | 2 PF shipments (mbbls) | 3 Value/ barrel (PP) (wt. avg.) | 4 Total value | 5 Relative value factor | 6 Feedstock distri. | 7 Liq. duties |
|---|---|---|---|---|---|---|
| Week 3: | | | | | | |
| Motor Gasoline ..... | 18,689 | $35.28 | $659,348 | 1.099168 | 20,542 | $2,157 |
| Total Alkylate ..... | 21,511 | 41.90 | 901,311 | 1.305418 | 28,081 | 2,948 |
| Heavy Reformate ... | 57,371 | 31.78 | 1,823,250 | .990124 | 56,803 | 5,964 |
| Reformer Feed ..... | 99,707 | 30.02 | 2,993,204 | .935290 | 93,254 | 9,792 |
| Raffinates ..... | 168,112 | 31.10 | 5,228,283 | .968938 | 162,889 | 17,103 |
| Jet Fuel ..... | 172,092 | 28.80 | 4,956,250 | .897280 | 154,414 | 16,214 |
| Total ..... | 537,482 | ..... | 16,561,646 | ..... | 515,983 | 54,178 |

Class III Crude Used 515,983×$.105=$54,178
Volumetric Gain 21,499
Avg. Value/Barrel Crude Used=$32.097

| 1 Product | 2 PF shipments (mbbls) | 3 Value/ barrel (PP) (wt. avg.) | 4 Total value | 5 Relative value factor | 6 Feedstock distri. | 7 Liq. duties |
|---|---|---|---|---|---|---|
| Week 4: | | | | | | |
| Motor Gasoline ..... | 21,905 | $35.28 | $772,808 | 1.097390 | 24,038 | $2,524 |
| Total Alkylate ..... | 22,552 | 41.90 | 944,929 | 1.303306 | 29,391 | 3,086 |
| Heavy Reformate ... | 58,116 | 31.78 | 1,846,926 | .988522 | 57,447 | 6,032 |
| Reformer Feed ..... | 101,058 | 30.02 | 3,033,761 | .933777 | 94,365 | 9,908 |
| Raffinates ..... | 169,823 | 31.10 | 5,281,495 | .967371 | 164,281 | 17,250 |
| Jet Fuel ..... | 171,493 | 28.80 | 4,938,998 | .895829 | 153,627 | 16,131 |
| Total ..... | 544,947 | ..... | 16,818,917 | ..... | 523,149 | 54,931 |

Class III Crude Used 523,149×$.105=$54,931
Volumetric Gain 21,798
Avg. Value/Barrel Crude Used=$32.149

| 1 Product | 2 PF shipments (mbbls) | 3 Value/ barrel (PP) (wt. avg.) | 4 Total value | 5 Relative value factor | 6 Feedstock distri. | 7 Liq. duties |
|---|---|---|---|---|---|---|
| Week 5: | | | | | | |
| Motor Gasoline ..... | 8,990 | $35.28 | $317,167 | 1.097698 | 9,868 | $1,036 |
| Total Alkylate ..... | 9,984 | 41.90 | 418,330 | 1.303671 | 13,016 | 1,367 |
| Heavy Reformate ... | 25,351 | 31.78 | 805,655 | .988799 | 25,067 | 2,632 |
| Reformer Feed ..... | 43,492 | 30.02 | 1,305,630 | .934039 | 40,623 | 4,265 |
| Raffinates ..... | 75,172 | 31.10 | 2,337,849 | .967642 | 72,740 | 7,638 |
| Jet Fuel ..... | 75,795 | 28.80 | 2,182,896 | .896080 | 67,919 | 7,131 |
| Total ..... | 238,784 | ..... | 7,367,527 | ..... | 229,233 | 24,069 |

Class III Crude Used 229,233×$.105=$24,069
Volumetric Gain 9,551
Avg. Value/Barrel Crude Used=$32.14
At the end of the month, the refiner must calculate its actual weighted average values for use in the subsequent period.

RECONCILIATION OF RELATIVE VALUE FOR THE SUBSEQUENT PERIOD

| 1 Product | 2 PF shipments (mbbls) | 3 Value/ barrel (PP) (wt. avg.) | 4 Total value (2×3) | 5 Relative value factor (3)/(8) | 6 Feedstock distri. (5×2) | 7 Liq. duties (6×(10) (9) |
|---|---|---|---|---|---|---|
| Month End: | | | | | | |
| Motor Gasoline ..... | 90,212 | $35.27 | $3,181,777 | 1.095682 | 98,844 | $10,379 |
| Total Alkylate ..... | 100,389 | 41.84 | 4,200,276 | 1.299783 | 130,484 | 13,701 |
| Heavy Reformate ... | 258,821 | 30.66 | 7,935,452 | .952470 | 246,519 | 25,885 |
| Reformer Feed ..... | 445,703 | 30.54 | 13,611,770 | .948742 | 422,857 | 44,400 |
| Raffinates ..... | 755,717 | 29.69 | 22,437,238 | .922336 | 697,025 | 73,188 |
| Jet Fuel ..... | 753,104 | 30.42 | 22,909,424 | .945014 | 711,694 | 74,726 |
| Total ..... | 2,403,946 | ..... | 74,275,937 | ..... | 2,307,423 (9) | 242,279 (10) |

Class III Crude Used 2,307,423×$.105=$242,279
Volumetric Gain 96,523
Avg. Value/Barrel Crude Used=$74,275,937÷2,307,423=$32.19 (8)
Note: Actual monthly reconciliation data could result in attributions on a product basis that are less than or greater than weekly distributions. This is due to the ''weighing'' of the data *i.e.*, motor gasoline on a weekly basis was $10,996 as compared to $10,379 as above. No additional duties are due to the averaging.

# PART 147—TRADE FAIRS

Sec.
147.0 Scope.

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147.41 Removal or disposition pursuant to regulation.
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147.44 Entry for another fair.
147.45 Merchandise from a foreign-trade zone.
147.46 Voluntary abandonment or destruction.

147.47 Mandatory abandonment.

AUTHORITY: 19 U.S.C. 66, 1623, 1624, 1751–1756, unless otherwise noted.

SOURCE: T.D. 70–134, 35 FR 9268, June 13, 1970, unless otherwise noted.

### § 147.0 Scope.

This part governs the entry of merchandise intended for exhibition or for use in constructing, installing, or maintaining foreign exhibits at trade fairs which have been so designated by the Secretary of Commerce. It also contains provisions concerning Customs supervision of the merchandise, and the disposition of the merchandise after the fair has closed. The entry of articles which may be admitted free of duty under other provisions of this chapter may be governed by those provisions rather than the regulations in this part.

## Subpart A—General Provisions

### § 147.1 Definitions.

The following are general definitions for the purposes of part 147:

(a) *The Act*. ''The Act'' means the Trade Fair Act of 1959. (Secs. 2–7, 73 Stat. 18, 19; 19 U.S.C. 1751–1756.)

(b) *Fair*. ''Fair'' means a fair, exhibition, or exposition designated by the Secretary of Commerce pursuant to the Trade Fair Act.

(c) *Fair operator*. ''Fair operator'' means the party named by the Secretary of Commerce as the operator of the fair.

(d) *Port*. ''Port'' means the port at which the fair is to be held, or if the fair is not to be held within the limits of a port, the port nearest to the location of the fair.

(e) *Closing date*. ''Closing date'' means the date designated by the Secretary of Commerce as the date when the fair will close, including any extension granted by the Secretary of Commerce, or, if the fair closes earlier, the date on which the fair actually closes.

(f) *Articles for a fair*. ''Articles for a fair'' includes, but is not limited to:

(1) Actual exhibit items;

(2) Pamphlets, brochures, and explanatory material in reasonable quantities relating to foreign exhibits at a fair;

(3) Material for use in constructing, installing, or maintaining foreign exhibits at a fair.

[T.D. 70–134, 35 FR 9268, June 13, 1970, as amended by T.D. 82–145, 47 FR 35478, Aug. 16, 1982]

### § 147.2 Articles which may be entered for a fair.

(a) *General*. Any article imported or brought into the United States may be entered under bond under the regulations of this part for the purpose of exhibition at a fair, or for use in constructing, installing, or maintaining foreign exhibits at a fair, if no duty or internal revenue tax has been paid, and the article is:

(1) In a foreign-trade zone; or

(2) Imported for exhibition under Chapter 98, Subchapter XII, Harmonized Tariff Schedule of the United States; or

(3) In continuous Customs custody, including but not limited to articles:

(i) Imported or brought into the United States for the purpose of direct entry at a particular fair;

(ii) In Customs bonded warehouses;

(iii) Unentered under the Customs laws and held in general order pending entry or exportation;

(iv) On exhibition at another fair designated by the Secretary of Commerce.

(b) *Exception*. Articles which have been entered under Chapter 98, Subchapter XIII, HTSUS, may not be entered under the regulations of this part.

[T.D. 70–134, 35 FR 9268, June 13, 1970, as amended by T.D. 84–213, 49 FR 41186, Oct. 19, 1984; T.D. 89–1, 53 FR 51263, Dec. 21, 1988]

### § 147.3 Bond required.

The fair operator shall file a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter in such amount as the port director requires. Liquidated damages shall be assessed by the port director under the bond if payments required by §§ 147.33, 147.41 or 147.43 are not paid upon demand.

[T.D. 84–213, 49 FR 41186, Oct. 19, 1984]

## Subpart B—Procedure for Importation

### § 147.11 Entry.

(a) *Made in name of fair operator*. All entries of articles for a fair shall be made at the port in the name of the fair operator which shall be deemed for Customs purposes the sole consignee of the merchandise entered under the Act and responsible to the Government for all duties and charges due the United States on account of such entries.

(b) *Merchandise arriving at port other than port of the fair*. Articles to be entered under this subpart which arrive at ports other than the port of the fair shall be entered for immediate transportation without appraisement to the latter port in the manner prescribed in part 18 of this chapter.

(c) *Form of entry*. Articles shall be entered upon arrival at the port of the fair on a special form of entry to read substantially as follows:

ENTRY FOR EXHIBITION

Entry No. _____

Entry at the port of _____ of articles consigned or transferred to _____ (Fair operator) under _____ I.T. No. _____ ex S.S. _____ from _____ on the _____ day of _____, 19___, for exhibition purposes under the Trade Fair Act of 1959.

| Mark | Number | Package and contents | Quality | Invoice value |
|---|---|---|---|---|
| | ..... | ..... | ..... | ..... |
| | ..... | ..... | ..... | ..... |
| | ..... | ..... | ..... | ..... |
| | ..... | ..... | ..... | ..... |

_____
(Fair operator)

By _____

(d) *Supersedes previous entry*. When entry for a fair is made under this part, such entry shall supersede any previous entry.

### § 147.12 Invoices.

Articles intended for a fair under the provisions of the Act are subject to the invoice requirements of subpart F, part 141 of this chapter.

(R.S. 251, as amended, secs. 481, 484, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

[T.D. 85–39, 50 FR 9612, Mar. 11, 1985]

### § 147.13 Transfer to fair building.

(a) *Immediate delivery*. The provisions governing immediate delivery in part 142 of this chapter are applicable to articles for a fair.

(b) *After entry*. Upon the entry being made, a permit may be issued by the port director for the transfer of the articles covered thereby to the buildings in which they are to be exhibited or used, or, in his discretion, to the public stores for examination and subsequent delivery to the buildings in which they are to be exhibited or used.

[T.D. 70–134, 35 FR 9268, June 13, 1970, as amended by T.D. 73–175, 38 FR 17470, July 2, 1973]

### § 147.14 Articles not to be immediately entered and delivered to a fair.

(a) *Placed in bonded warehouses*. If for any reason articles imported for a fair are not to be entered and delivered to a fair upon their arrival, the fair operator should request the port director, in writing, to cause such articles to be placed in a bonded warehouse under a ''general order permit'' at the risk and expense of the fair operator. If no request is made and the articles remain unentered after 5 days from the date of arrival, they will be placed in general order.

(b) *Entry within 1 year*. At any time within 1 year from the date such articles are imported or brought in, they may be entered under this part for a fair or entered under the general tariff law, or for exportation.

(c) *Abandonment*. If not entered within such period, they will be regarded as abandoned to the Government.

### § 147.15 Tentative appraisement.

All articles entered for a fair shall be tentatively appraised prior to exhibition or use.

## Subpart C—Requirements of Other Laws

### § 147.21 Marking under the Tariff Act of 1930.

The marking requirements of the Tariff Act of 1930, as amended, and the regulations thereunder will not apply to articles for a fair, except, when such articles are entered for consumption. When entered for consumption, such articles shall be released from Customs custody only upon a full compliance with these marking requirements.

### § 147.22 Compliance with the internal revenue laws and Federal Alcohol Administration Act.

The packaging, marking, and labeling requirements of the internal-revenue laws, and the Federal Alcohol Administration Act (27 U.S.C. 201 to 212), will not apply to articles entered under this part, but any article failing to comply with such requirements shall be conspicuously marked prior to exhibition ''Not labeled or packaged as required by law—not for sale.'' When any such article is withdrawn for consumption, it shall be released from Customs custody only upon a full compliance with such packaging, marking, and labeling requirements.

### § 147.23 Compliance with Plant Quarantine Act and Federal Food, Drug, and Cosmetic Act.

(a) *Plant Quarantine Act*. The entry of plant material subject to restriction under the Plant Quarantine Act of 1912, as amended (7 U.S.C. 151 through 164a, 167), shall not be permitted except under permits issued by the Plant Quarantine Division of the Agricultural Research Service, Department of Agriculture, and in accordance with the plant quarantine regulations.

(b) *Federal Food, Drug, and Cosmetic Act*. The entry of food products shall conform to the requirements of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301 *et seq.)*, and the regulations issued thereunder.

### § 147.24 Merchandise subject to licensing.

Merchandise, the importation of which is subject to the licensing regulations of any agency of the U.S. Government, may be entered for a fair only upon the presentation of the required license, or a waiver of such license.

## Subpart D—Customs Supervision

### § 147.31 Articles to be kept separate.

Articles for exhibit at a fair shall be segregated from domestic articles and from imported articles entered under the provisions of the general Customs laws and released from Customs custody.

### § 147.32 Detail of officers to protect the revenue.

The port director shall detail an officer to act as his representative at the fair and shall station inside the buildings as many additional Custom officers and employees as may be necessary to properly protect the revenue.

### § 147.33 Reimbursement by fair operator.

All actual and necessary charges for labor, services, and other expenses in connection with the entry, examination, appraisement, custody, abandonment, destruction, or release of articles entered under the regulations of this part, together with the necessary charges for salaries of Customs officers and employees in connection with the accounting for, custody of, and supervision over, such articles, shall be reimbursed by the fair operator to the Government, payment to be made on demand to the port director for deposit to the appropriation from which paid.

## Subpart E—Disposition of Articles Entered for Fairs

### § 147.41 Removal or disposition pursuant to regulation.

Articles for a fair entered under this part shall not be removed from the fair premises, or otherwise disposed of, except in accordance with this subpart. The fair operator shall be liable for the payment of any unpaid duty, tax, fees, charges, or exaction due on any article removed from the fair premises or disposed of contrary to this subpart, including any article lost or stolen regardless of the fair operator's fault.

The payment shall be made on demand by the port director.

[T.D. 70–134, 35 FR 9268, June 13, 1970, as amended by T.D. 84–213, 49 FR 41186, Oct. 19, 1984]

### § 147.42 Disposition generally.

(a) *Kinds of disposition*. Any article entered for a fair under this part may be entered for consumption, for warehouse, or under any other provision of the Customs laws, or for another fair, or may be transferred to other Customs custody status or to a foreign-trade zone, or abandoned to the Government, or destroyed under Customs supervision, or exported, at any time before, or within 3 months after, the closing date of the fair.

(b) *Appraisement*. Upon entry under any provision of the Customs laws, or at the expiration of 3 months after the closing date of the fair in the case of articles not previously entered or transferred, articles entered for fairs shall be appraised.

(c) *Period for performance of certain acts*. In the case of any article entered under a provision of the Customs laws, or for another fair, or transferred to other Customs custody status, or to a foreign-trade zone, the period prescribed for the performance of any act required by the provision governing the status under which the article is entered, or to which it is transferred, shall be computed from the date of such entry or transfer.

[T.D. 70–134, 35 FR 9268, June 13, 1970, as amended by T.D. 70–181, 35 FR 13436, Aug. 22, 1970]

### § 147.43 Entry under the Customs laws.

(a) *Payment of duties and taxes*. Any applicable duties and internal revenue taxes on any article entered under any provision of the Customs laws must be paid on such article in its condition and quantity, and at the rate in effect, at the time of such entry.

(b) *Person to make entry*. Entry of merchandise under the Customs laws from a fair may be made in the name of any person duly authorized in writing by the fair operator to make such entry.

### § 147.44 Entry for another fair.

Articles entered for a fair which are to be entered for another fair under the provisions of this part shall be retained in continuous Customs custody.

### § 147.45 Merchandise from a foreign-trade zone.

Articles entered for a fair from a foreign-trade zone status of ''zone-restricted merchandise'' can afterwards be entered for consumption from a fair if the Foreign-Trade Zones Board has approved the entry for consumption as being in the public interest. Articles entered in the above manner are subject to the provisions of subheading 9801.00.70, if aircraft, or subheading 9801.00.80, if not aircraft, unless excluded by U.S. Note 1(c), Chapter 98, Subchapter I, Harmonized Tariff Schedule of the United States.

(R.S. 251, as amended; secs. 1–21, 48 Stat. 998, 999, as amended; 1000, 1002, as amended, 1003, 77A Stat. 14, sec. 624, 46 Stat. 759 (19 U.S.C 66, 81a–81u, 1202 (Gen, Hdnt. 11)1624))

[T.D. 83–240, 48 FR 53098, Nov. 24, 1983, as amended by T.D. 89–1, 53 FR 51263, Dec. 21, 1988]

### § 147.46 Voluntary abandonment or destruction.

At any time before or within 3 months after the closing date of the fair any article entered for a fair may be abandoned to the Government or destroyed under Customs supervision, upon compliance with § 158.43 of this chapter.

[T.D. 70–134, 35 FR 9268, June 13, 1970, as amended by T.D. 72–258, 37 FR 20174, Sept. 27, 1972]

### § 147.47 Mandatory abandonment.

Any article entered for a fair, and not disposed of under the provisions of this subpart prior to the expiration of 3 months after the close of the fair shall be regarded as abandoned to the Government, and subject to sale or destruction. Proceeds of sale shall be disposed of in the manner provided in sections 491, 492, and 493, Tariff Act of 1930, as amended, and the regulations thereunder. (See subpart D of part 127 of this chapter.) Any duties or internal revenue taxes on such article shall be computed on the basis of its condition

and quantity at the time it becomes subject to sale.

[T.D. 70–134, 35 FR 9268, June 13, 1970, as amended by T.D. 74–114, 39 FR 12095, Apr. 3, 1974]

# PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

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148.0 Scope.

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AUTHORITY: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States);

Section 148.21 also issued under 19 U.S.C. 1461, 1462.

Section 148.22 also issued under 19 U.S.C. 1629;

Sections 148.43, 148.51, 148.63, 148.64, 148.74 also issued under 19 U.S.C. 1321;

Section 148.87 also issued under 22 U.S.C. 288.

SOURCE: T.D. 73–27, 38 FR 2449, Jan. 26, 1973, unless otherwise noted.

### § 148.0 Scope.

This part contains the regulations governing the allowance of exemptions for residents and nonresidents arriving in the United States, for crewmembers of carriers engaged in international traffic, for military and civilian employees of the United States, for certain evacuees, and for certain personnel of foreign governments and international organizations. Procedures and requirements are also set forth pertaining to registration of articles to be taken abroad, declaration and entry, and examination of baggage, and collection of duties and taxes.

## Subpart A—General Provisions

### § 148.1 Registration of effects to be taken abroad.

(a) *Persons who may use procedure.* Any person, except a nonresident seaman, airman, or person engaged in similar employment, who intends to take effects of foreign origin abroad may register such articles before departure from the United States in order to facilitate their identification on return to the United States. Only articles of foreign origin having serial numbers or other distinctive, permanently affixed unique markings can be registered.

(b) *Procedures for registration.* Applicants for registration of articles of foreign origin shall present the articles, together with a completed, but unsigned, Customs Form 4457, which may be obtained in advance of departure, to a Customs officer. After the Customs officer has examined the articles and verified their description, he shall have the applicant sign the form. The Customs officer shall then sign the form and return it to the applicant for presentation on return of the articles. Customs form 4455 may be required in any case in which Customs form 4457 will

not adequately serve the purpose of registration.

(c) *Presentation on return and reuse.* The form shall be presented to the Customs officer when the registered articles are returned to the United States. The form shall be valid for reuse as long as the document is legible to identify the registered articles.

[T.D. 82–102, 47 FR 24119, June 3, 1982, as amended by T.D. 91–35, 56 FR 19260, Apr. 26, 1991]

### § 148.2 Residence status of arriving persons.

(a) *General.* Persons arriving from foreign countries shall be divided into two classes for Customs purposes:

(1) Residents of the United States returning from abroad, and

(2) All other persons, hereinafter referred to as nonresidents.

(b) *Status as returning resident.* Citizens of the United States, or persons who have formerly resided in the United States, (including American citizens who are residents of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States) shall be deemed residents of the United States returning from abroad within the meaning of ''residents'' as used in Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), in the absence of satisfactory evidence that they have established a home elsewhere. For this purpose, the residence of a wife shall be deemed to be that of her husband unless satisfactory evidence is presented that the wife has established a separate residence elsewhere. The residence of a minor child shall be presumed to be that of his parents.

(c) *Status as nonresident.* Any person arriving in the United States who is not a resident of the United States or who, though a resident of the United States, is not returning from abroad, shall be treated for the purpose of these regulations as a nonresident.

(d) *Optional claim of nonresident status.* Any person arriving in the United States who would otherwise be considered a returning resident, may claim at his option the status of a nonresident if he intends to remain in the United States for only a short period of time before returning abroad. If the status as a nonresident claimed by an arriving person is allowed, the procedures in § 148.8 shall be followed.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978; T.D. 89–1, 53 FR 51263, Dec. 21, 1988; T.D. 97–75, 62 FR 46441, Sept. 3, 1997]

### § 148.3 Customs treatment after transiting the Panama Canal.

Passengers' baggage and effects and purchases of officers and crewmembers landed in the United States from vessels which have transited the Panama Canal are subject to Customs examination and treatment in the same manner as arrivals from any other foreign country.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 79–276, 44 FR 61957, Oct. 29, 1979]

### § 148.4 Accompanying articles.

(a) *Generally.* Articles shall be considered as accompanying a passenger or brought in by him if the articles arrive on the same vessel, vehicle, or aircraft on the same date as that of his arrival in the United States.

(b) *Baggage shipped as freight.* Articles in baggage shipped as freight on a bill of lading or airway bill shall be considered as accompanying a passenger when the baggage arrives on the conveyance on which he arrives in the United States.

(c) *Precleared articles.* Articles in baggage, or in baggage shipped as freight, shall be considered as accompanying a passenger if examined at an established preclearance station and the baggage is hand-carried, checked or manifested on the conveyance on which he arrives in the United States.

(d) *Automobiles.* An automobile which arrives on the same mode of conveyance on the same date as a passenger arrives in the United States shall be considered as accompanying him.

(e) *Misdirected baggage.* Baggage which arrives on the same mode of conveyance ahead of, or after a passenger, shall be treated as accompanying him if it is fully evident to the examining officer from the circumstances that:

(1) The passenger intended the baggage to arrive with him; and

(2) It was misdirected through no fault of the passenger.

### § 148.5 Regular entry of articles in baggage.

Subject to any applicable exemption from entry requirements, articles imported as baggage but not passed under a baggage declaration or under the procedure provided in § 148.6 for unaccompanied shipments of effects subject to personal exemptions shall be entered in the same manner as a cargo importation of like goods. In making regular entry for articles imported in baggage, the value of articles entitled to free entry under subheadings 9804.00.10, or 9804.00.45, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall be disregarded in determining whether formal or informal entry is required.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51263, Dec. 21, 1988]

### § 148.6 Entry of unaccompanied shipments of effects subject to personal exemptions.

(a) *Declaration to support free entry.* When effects claimed to be free of duty under subheadings 9804.00.10, 9804.00.20, 9804.00.25, 9804.00.35 or 9804.00.45, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), do not accompany the importer on his arrival in the United States or are forwarded in bond, a declaration of the importer on Customs Form 3299 shall be required to support the claim for free entry. However, an oral declaration may be accepted in lieu of a written declaration on Customs Form 3299, for effects of a resident which are free of duty under subheadings 9804.00.10 or 9804.00.45. Effects of returning residents entitled to free entry under subheadings 9804.00.10 or 9804.00.45 (except automobiles and other vehicles of residents returning from countries other than Canada or Mexico) need not be itemized if a written declaration is required.

(b) *Exemption from entry.* If the port director is satisfied that an entry would serve no good purpose, none need be required, but evidence of ownership for Customs purposes, such as a carrier's certificate or properly endorsed bill of lading, shall be required with the declaration. Such exemption from entry may also be applied with respect to household effects or tools of trade entitled to free entry (see §§ 148.52 and 148.53 respectively) which are unaccompanied or forwarded in bond.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51264, Dec. 21, 1988]

### § 148.7 Unclaimed baggage.

Articles in passengers' baggage on which duties due are not paid and baggage not claimed within a reasonable time shall be treated as unclaimed and sent to general order.

### § 148.8 Temporary importation by residents arriving for short visits.

A person claiming the status of a nonresident upon arrival for a short visit in the United States before returning abroad may import articles free of duty under subheadings 9804.00.20, 9804.00.25, 9804.00.30, 9804.00.35, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), in accordance with the following procedure:

(a) The person claiming the status shall agree to export all such articles upon his departure from the United States, except articles imported as gifts under subheading 9804.00.30, and articles consumed during his visit;

(b) When required to do so, the person claiming the status shall list all articles of substantial value which he is importing on Customs Form 4455, in duplicate, noting thereon the expected duration of his visit. He shall present the completed form to the inspecting officer who will initial both copies and return the duplicate to him;

(c) Upon his departure from the United States at the completion of his visit, the person claiming the status of a nonresident shall present to a Customs officer the duplicate copy of Customs Form 4455, initialed by the inspecting officer, and the articles listed thereon shall be subject to inspection; and

(d) If he decides not to return abroad, the person claiming the status shall immediately notify the director of the port of entry. The port director will advise him of the amount of duties and

taxes due by reason of his failure to return abroad.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51264, Dec. 21, 1988]

## Subpart B—Declarations

### § 148.11 Declaration required.

All articles brought into the United States by any individual shall be declared to a Customs officer at the port of first arrival in the United States, on a conveyance en route to the United States on which a Customs officer is assigned for that purpose, or at a preclearance office in a foreign country where a United States Customs officer is stationed for that purpose.

### § 148.12 Oral declarations.

(a) *Generally*. Returning residents and nonresidents arriving in the United States may make an oral declaration under the conditions set forth in paragraph (b) of this section. However, written declarations may be required generally or in respect to particular types of traffic at any port if necessary to effect prompt and orderly clearance of passengers and their effects, and may be required in particular cases at any port if deemed necessary to protect the revenue. If an oral declaration is permitted, completion of the identifying information on Customs Form 6059–B may be required.

(b) *When permitted*. Oral declarations may be permitted under the following conditions:

(1) *Residents*. A returning resident may make an oral declaration if:

(i) The aggregate fair retail value in the country of acquisition of all accompanying articles acquired abroad by him and of alterations and dutiable repairs made abroad to personal and household effects taken out and brought back by him does not exceed:

(A) $400; or

(B) $600 in the case of a direct arrival from a beneficiary country as defined in § 10.191(b)(1) of this chapter, not more than $400 of which shall have been acquired elsewhere than in beneficiary countries; or

(C) $1,200 in the case of a direct or indirect arrival from American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States, not more than $400 of which shall have been acquired elsewhere than in such locations except that up to $600 of which may have been acquired in one or more beneficiary countries as defined in § 10.191(b)(1) of this chapter;

(ii) None of his accompanying articles are forwarded in bond; and

(iii) None of his accompanying articles are imported for the account of any other person or for sale.

(2) *Nonresidents*. An arriving nonresident may make an oral declaration if all the articles he has to declare are:

(i) Entitled to free entry under his personal exemptions (see Subpart E of this part); or

(ii) Eligible for the administrative exemption for articles not exceeding $200 in aggregate value, provided in section 321(a)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(B)) (see § 148.51).

(c) *Memorandum baggage declaration for dutiable articles*. When an arriving person is carrying a few dutiable or taxable articles which can be readily identified and segregated from articles entitled to free entry under his personal exemptions, the Customs officer may prepare a memorandum baggage declaration using a cash receipt, Customs Form 368 or 368A, for dutiable or taxable articles if he determines that a written declaration by the arriving person is not essential.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978; T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 92–56, 57 FR 24944, June 12, 1992; T.D. 94–51, 59 FR 30296, June 13, 1994; T.D. 97–75, 62 FR 46441, Sept. 3, 1997]

### § 148.13 Written declarations.

(a) *When required*. Unless an oral declaration is accepted under § 148.12, the declaration required of a person arriving in the United States shall be in writing on Customs Form 6059–B.

(b) *Completion and presentation of written declarations*. The person arriving in the United States shall complete the information required by Customs Form 6059–B and shall list all articles acquired abroad which are in his possession at the time of arrival. Individual items not exceeding $5 per item in fair

retail value in the country of acquisition may be grouped on the written declaration as ''Miscellaneous'' up to but not exceeding a total value of $50. Articles not requiring itemization as set forth in paragraph (c) of this section shall be declared orally to the Customs officer. The form shall be presented to the Customs officer who will inspect the passenger's baggage.

(c) *Itemization of certain articles not required*. Except as required by § 148.62 or § 148.66 for crewmembers' articles, the following need not be itemized in written declarations:

(1) Effects of a returning resident entitled to free entry under subheading 9804.00.10, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), for tools of trade taken abroad, or under subheading, 9804.00.45, HTSUS, for personal or household effects taken abroad. However, automobiles and other vehicles of residents returning from countries other than Canada or Mexico and the cost of all repairs or alterations to articles taken abroad must be itemized.

(2) Effects of a nonresident entitled to free entry under subheading 9804.00.20, HTSUS (19 U.S.C. 1202), for wearing apparel and other similar personal effects; subheading 9804.00.25, HTSUS, for tobacco products and alcoholic beverages; subheading 9804.00.30, HTSUS, for articles to be disposed of as bona fide gifts; or subheading 9804.00.40, HTSUS, for articles accompanying a person in transit to a place outside U.S. customs territory.

(3) Books, libraries, furniture, and similar household effects entitled to free entry under subheading 9804.00.05, HTSUS.

(d) *Value*. Opposite the description of each article required to be declared specifically in a written declaration, the passenger shall state either:

(1) The price actually paid for the article in the currency of purchase, or its equivalent in U.S. currency; or

(2) The fair retail value in the country of acquisition if the article was not acquired by purchase, in the currency of the country in which the article was acquired, or its equivalent in U.S. currency.

(e) *Acknowledgment before Customs officer*. Each written declaration shall be acknowledged by the declarant before the Customs officer who examines the baggage covered by the declaration.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 87–89, 52 FR 24445, July 1, 1987; T.D. 89–1, 53 FR 51264, Dec. 21, 1988]

### § 148.14 Family declarations.

A family group residing in one household, traveling together, and having the same residence status may be permitted to declare orally articles acquired abroad for the personal or household use of any member of the family if the value of such articles does not exceed the total amount of the exemption to which the family group is entitled. (See § 148.34.) Where a written declaration is required, one member of a family group may declare for all. Servants accompanying a family group shall not be included in the family declaration.

### § 148.15 Inclusion of articles not for personal or household use.

Articles not personal in character, or which are intended for sale or are brought in on commission for another person, may be included in the baggage declaration of a resident or nonresident under the conditions specified in § 148.23(c). If not so included, regular entry shall be required.

### § 148.16 Amendment of declaration.

(a) *Before examination*. A passenger shall be permitted to add an article to his declaration if, before examination of his baggage has begun, the fact that the article has not been declared is brought to the attention of the examining officer by the passenger.

(b) *After examination is begun*. A passenger shall be permitted to add an article to his declaration after examination of his baggage has begun if, before any undeclared article is found, the passenger advises the examining officer that he has such an article and the officer is satisfied that there was no fraudulent intent. Under no circumstances shall a passenger be permitted to add any undeclared article to his declaration after such article has been discovered by the examining officer.

### § 148.17 Declaration on arrival incidental to further foreign travel.

(a) *Declaration on incidental arrival.* A resident who enters the United States merely as an incident of foreign travel and who will continue his foreign travel before finally returning to the United States from a continuous trip shall declare, but need not clear through Customs, any articles he has acquired or had repaired or altered while abroad. The incidental character of the arrival shall be made known to the Customs officer.

(b) *Treatment of articles on incidental arrival.* In order that a resident may claim the $400, $600, or $1,200 exemption upon his final arrival in the United States from a continuous trip, articles accompanying him at the time of an incidental arrival may be exported directly from Customs custody or after transportation in bond, or the articles may be left in Customs custody if the resident upon his final return is to arrive at the Customs facility where the articles are deposited.

(c) *Failure to advise of incidental character of arrival.* If the traveler fails to advise the Customs officer of the incidental character of his arrival, or for other reason declares any articles for allowance of the $400, $600, or $1,200 exemption, such declaration shall mark the beginning of the respective period or periods during which a further exemption cannot be granted.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 97–75, 62 FR 46441, Sept. 3, 1997]

### § 148.18 Failure to declare.

(a) *Penalty incurred.* Any article in the baggage of a passenger arriving from a foreign country which is not declared as required by this subpart shall be seized if it is available for seizure at the time the violation is detected, and the personal penalty prescribed by section 497, Tariff Act of 1930 (19 U.S.C. 1497), shall be demanded from the passenger. If the article is not seized, a claim for the personal penalty shall be made against the person who imported the article without declaration. No duty shall be collected, because undeclared articles are treated as smuggled.

(b) *Remission of liability.* When an article not declared as required by this subpart is found in the baggage of a person arriving in the United States, the personal penalty and forfeiture may be mitigated or remitted in accordance with the Guidelines for Disposition of Violations of 19 U.S.C. 1497 in the appendix to part 171 of this chapter.

[T.D. 83–145, 48 FR 30100, June 30, 1983]

### § 148.19 False or fraudulent statement.

A passenger who makes any false or fraudulent statement or engages in other conduct within the purview of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), whereby a Customs officer is or may be induced to pass an article free of duty or at less than the proper amount of duty, or to treat an article in some other manner in order to obtain a benefit, shall be deemed to have violated 19 U.S.C. 1592. In any such case the article involved shall be seized only if one or more of the conditions set forth in section 162.75 of this chapter are present, if it is available for seizure at the time the violation is detected, and if such seizure is otherwise practicable, unless the article is in the possession of an innocent holder for value who has full right to possession as against any party to the Customs violation. If seizure is not made, an amount equivalent to the maximum penalty which may be assessed in accordance with the passenger's degree of culpability as provided in 19 U.S.C. 1592(c) shall be demanded from the passenger. The amount demanded in lieu of seizure shall be determined in accordance with the guidelines contained in the appendix to part 171 of this chapter. In all cases, the estimated duties shall be demanded of the passenger as soon as possible after the discovery of the violation. Any applicable internal revenue tax shall also be demanded unless the merchandise is to be, or has been, forfeited.

[T.D. 84–18, 49 FR 1678, Jan. 13, 1984; 49 FR 3986, Feb. 1, 1984]

## Subpart C—Examination of Baggage and Collection of Duties and Taxes

### § 148.21 Opening of baggage, compartments, or vehicles.

A Customs officer has the right to open and examine all baggage, compartments and vehicles brought into the United States under Sections 461, 462, 496 and 582, Tariff Act of 1930, as amended (19 U.S.C. 1461, 1462, 1496, and 1582) and 19 U.S.C. 482. To the extent practical, the owner or his agent shall be asked to open the baggage, compartment or vehicle first. If the owner or his agent is unavailable or refuses to open the baggage, compartment, or vehicle, it shall be opened by the Customs officer. If any article subject to duty, or any prohibited article is found upon opening by the Customs officer, the whole contents and the baggage or vehicle shall be subject to forfeiture, pursuant to 19 U.S.C. 1462.

[T.D. 95–86, 60 FR 54188, Oct. 20, 1995]

### § 148.22 Examination of air travelers' baggage in foreign territory.

(a) *Examination and surrender of declaration.* When places have been established in a foreign country where U.S. Customs officers have been stationed for the purpose of conducting Customs inspections and examinations (see §§ 101.5 and 162.8 of this chapter), persons destined to the United States on flights shall present themselves to those officers for inspection and examination of their baggage which may be passed in accordance with § 148.23 prior to boarding the flight. They shall comply with all U.S. Customs laws and other civil and criminal laws of the United States relating to importation of merchandise, including baggage, to the filing of false or fraudulent statements, and to the unlawful removal of merchandise from Customs custody, in the same manner as if the passengers, were arriving at an airport within the Customs territory of the United States. When baggage is examined in foreign territory, the baggage declaration shall be surrendered to the Customs officer at the airport of departure for the United States prior to boarding the flight.

(b) *Subsequently acquired articles.* When a person whose baggage has been examined and passed in foreign territory in accordance with paragraph (a) of this section subsequently acquires additional articles prior to return to the United States, the Customs officer to whom the declaration was surrendered may permit the amendment of that declaration to include the additional articles.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 77–241, 42 FR 54944, Oct. 12, 1977; T.D. 89–22, 54 FR 5076, Feb. 1, 1989]

### § 148.23 Examination and clearance of baggage.

(a) *Articles free of duty.* The inspector, including inspectors on trains or ferries, who examines the baggage of any person arriving in the United States may examine and pass, without limitation as to value, the following articles in such baggage or otherwise accompanying such person:

(1) All articles which are for the personal or household use of the arriving person and are free of duty under Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), including automobiles and other articles under § 148.32.

(2) Works of art classifiable under subheadings 9701.10.00 or 9701.90.00, HTSUS.

(3) Works of art classifiable under subheadings 9702.00.00 or 9703.00.00, HTSUS, upon compliance with § 10.48 of this chapter.

(b) *Articles subject to duty.* The inspector who examines the baggage of any person arriving in the United States may examine, determine the dutiable value of, collect duty on, and pass articles accompanying the arriving person which are for his personal or household use but are subject to duty, including articles imported to be disposed of by him as bona fide gifts.

(c) *Articles not for personal use*—(1) *Valued at not more than $2,000 (with exceptions).* The inspector may also examine, determine the dutiable value of, collect duty on, and pass articles accompanying any person arriving in the United States properly listed on the baggage declaration which are not for

the personal or household use of the declarant or which are intended for sale or are brought in on commission for another, provided the aggregate value of such articles is not more than $2,000 (except for articles valued in excess of $250 classified in Sections VII, VIII, XI, and XII; Chapter 94, and Chapter 99, Subchapter III and IV, HTSUS).

(2) *Valued over $2,000 (with exceptions).* Articles in the baggage of or otherwise accompanying any person arriving in the United States which have an aggregate value over $2,000 (except for articles valued in excess of $250 classified in Sections VII, VIII, XI, and XII; Chapter 94 and Chapter 99, Subchapters III and IV, HTSUS) and are not intended for his personal or household use, or are intended for sale or are brought in on commission for another, may be examined and entered and cleared on a baggage declaration at the place of their arrival with a passenger if:

(i) The articles are accompanied by a proper invoice if one is required (see § 141.83 of this chapter); and

(ii) It is practicable to appraise the articles at the place of arrival.

(d) *Examination of tea for personal use imported in baggage.* Tea for personal use in one or more packages weighing not more than 5 pounds each, when imported in a passenger's baggage, may be delivered without examination for purity under 21 U.S.C. 41–50 and without payment of the examination fee prescribed in 21 U.S.C. 46a.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 84–149, 49 FR 28699, July 16, 1984; T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 89–1, 53 FR 51264, Dec. 21, 1988; T.D. 89–82, 54 FR 36026, Aug. 31, 1989; T.D. 98–28, 63 FR 16417, Apr. 3, 1998]

### § 148.24 Determination of dutiable value.

(a) *Principles applied.* In determining the dutiable value of articles examined under § 148.23, the Customs inspector shall apply the principles of section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a), and shall not regard the declared value or price as conclusive.

(b) *Adjustment of value declared.* An adjustment shall be made by the Customs inspector whenever the purchase price or value declared differs from the fair retail value, whether by reason of depreciation due to wear or use, circumstances of purchase, or acquisition, or for any other reason. He shall give due consideration to the condition of the articles at the time of importation, but he shall not make any allowance for wear and use in excess of 25 per centum of the declared price or value of a worn or used article. A passenger who desires to claim a larger allowance may arrange for formal entry and appraisement of his goods.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 87–89, 52 FR 24445, July 1, 1987]

### § 148.25 Reexamination and protest.

(a) *Reexamination.* Whenever the Customs officer deems it advisable any or all of a passenger's baggage may be sent to the public stores for examination or reexamination. Passengers dissatisfied with the assessment of duty on their baggage may demand a reexamination, provided the articles have not been removed from Customs custody. In either case, a receipt for the baggage to be examined or reexamined shall be given on Customs Form 6051.

(b) *Protest.* If the passenger remains dissatisfied with the assessment of duty after reexamination, he shall pay the duty assessed and may protest the decision of the port director in accordance with part 174 of this chapter.

### § 148.26 Collection of internal revenue taxes.

(a) *Cigars and cigarettes.* The internal revenue tax on taxable cigars and cigarettes in a passenger's baggage shall be paid to Customs, using the Customs entry form as a return. Any such return shall show the kind, the quantity, and the tax by class on cigars and cigarettes separately from the statement of duty. Unless for the personal consumption of the importer or disposition as his bona fide gift, cigars and cigarettes are subject to the packaging and marking requirements in the regulations of the Bureau of Alcohol, Tobacco, and Firearms.

(b) *Alcoholic beverages.* The internal revenue tax shall be collected on all

wines and liquors in excess of the quantity entitled to exemption as specified in this part.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51264, Dec. 21, 1988]

### § 148.27 Receipt for payment.

When duties and internal revenue taxes on articles in a passenger's baggage are collected, a receipt on Customs Form 368 or 368A shall be issued to the passenger if such duties and taxes are paid in cash. If such duties and taxes are paid by personal check, the check shall be the passenger's receipt unless a receipt is requested.

[T.D. 73–27 38 FR 2449, Jan. 26, 1973, as amended by T.D. 92–56, 57 FR 24944, June 12, 1992]

## Subpart D—Exemptions for Returning Residents

### § 148.31 Effects taken abroad.

(a) *Exemption*. Each returning resident (including American citizens who are residents of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States) is entitled to bring in free of duty and internal revenue tax under subheading 9804.00.45, and Chapter 98, U.S Note 3, Harmonized Tariff Schedule of the United States, (19 U.S.C. 1202), all personal and household effects taken abroad. To ensure allowance of the exemption, articles of foreign origin should be registered in accordance with § 148.1. Automobiles and other vehicles, aircraft, boats, teams and saddle horses, together with their accessories, may be brought in free of duty if taken abroad for noncommercial use (see § 148.32).

(b) *Repair or alteration while abroad*. If any such personal or household effect taken abroad has been advanced in value or improved in condition while abroad by repairs (including cleaning) not merely incidental to wear or use while abroad, or by alterations (including additions) which did not change the identity of the article, the cost or value of such repairs or alterations is subject to duty unless all or part of such cost or value is covered by an allowance of the $400, $600, or $1,200 exemption for articles acquired abroad (see § 148.33). An effect taken abroad and there changed into a different article is dutiable at its full value when returned to the United States, unless covered in whole or in part by some provision for free entry.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978; T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 89–1, 53 FR 51264, Dec. 21, 1988; T.D. 97–75, 62 FR 46441, Sept. 3, 1997]

### § 148.32 Vehicles, aircraft, boats, teams and saddle horses taken abroad.

(a) *Admission free of duty*. Automobiles and other vehicles, aircraft, boats, teams and saddle horses, together with their accessories, taken abroad for noncommercial use and returned by a returning resident shall be admitted free of duty upon being satisfactorily identified.

(b) *Identification of articles taken abroad*. Upon the request of the owner or his agent, the port director shall cause any article described in paragraph (a) of this section to be examined before it is taken abroad, and shall issue a certificate of registration therefor on Customs Form 4455. On the return of the article, the certificate may be accepted as satisfactory identification of the described article for the purpose of admitting the article free of duty. In lieu of Customs Form 4455, the following may be accepted as satisfactory identification of such articles taken abroad:

(1) For an automobile, the State registration card;

(2) For an aircraft, the certificate of registration issued by the Federal Aviation Administration; and

(3) For a pleasure boat, the yacht license or motorboat identification certificate.

(c) *Repairs, alterations, and accessories*. Repairs made abroad to articles described in paragraph (a) of this section, if incidental to use abroad, are not subject to duty. Repairs not incidental to use abroad, and alterations and additions made abroad, shall be assessed with duty upon their value at the rate at which the article itself would be dutiable if imported. Accessories for articles described in paragraph (a) of this section which are acquired abroad are

dutiable as if separately imported. Any accessories, repairs, alterations, or additions, which accompany the returning resident at the time of his return to the United States shall be included in his baggage declaration.

(d) *Entry*. Entry on a baggage declaration or regular entry (see § 148.5) shall be required if:

(1) The owner or his agent is unable to produce a proper registration card or certificate to cover the article;

(2) A claim for free entry of repairs, alterations, additions, or accessories is to be made under the $400, $600, or $1,200 returning resident's exemption for articles acquired abroad; or

(3) Duty is to be collected.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 97–75, 62 FR 46441, Sept. 3, 1997]

### § 148.33 Articles acquired abroad.

(a) *Exemption*. Each returning resident is entitled to bring in free of duty and internal revenue tax under subheadings 9804.00.65, 9804.00.70 and 9804.00.72, and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), articles for his personal or household use which were purchased or otherwise acquired abroad merely as an incident of the foreign journey from which he is returning, subject to the limitations and conditions set forth in this section and §§ 148.34–148.38. The aggregate fair retail value in the country of acquisition of such articles for personal and household use shall not exceed:

(1) $400, and provided that the articles accompany the returning resident;

(2) Whether or not the articles accompany the returning resident, $600 in the case of a direct arrival from a beneficiary country as defined in § 10.191(b)(1) of this chapter, not more than $400 of which shall have been acquired elsewhere than in beneficiary countries; or

(3) Whether or not the articles accompany the returning resident, $1,200 in the case of a direct or indirect arrival from American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States, not more than $400 of which shall have been acquired elsewhere than in such locations except that up to $600 of which may have been acquired in one or more beneficiary countries as defined in § 10.191(b)(1) of this chapter.

(b) *Application to articles of highest rate of duty*. The $400, $600, or $1,200 exemption shall be applied to the aggregate fair retail value in the country of acquisition of the articles acquired abroad which are subject to the highest rates of duty. If an internal revenue tax is applicable, it shall be combined with the duty in determining which rates are highest.

(c) *Gifts*. An article acquired abroad by a returning resident and imported by him to be disposed of after importation as his bona fide gift is considered to be for the personal use of the returning resident and may be included in the exemption.

(d) *Tobacco products and alcoholic beverages*. Cigars, cigarettes, manufactured tobacco, and alcoholic beverages may be included in the exemption to which a returning resident is entitled, with the following limits:

(1) No more than 200 cigarettes and 100 cigars may be included, except that in the case of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the Virgin Islands of the United States the cigarette limit is 1,000, not more than 200 of which shall have been acquired elsewhere than in such locations;

(2) No alcoholic beverages shall be included in the case of an individual who has not attained the age of 21; and

(3) No more than 1 liter of alcoholic beverages may be included, except that:

(i) An individual returning directly or indirectly from American Samoa, Guam, the Commonwealth of the Northern Mariana Islands or the Virgin Islands of the United States may include in the exemption not more than 5 liters of alcoholic beverages, not more than 1 liter of which shall have been acquired elsewhere than in such locations and not more than 4 liters of which shall have been produced elsewhere than in such locations; and

(ii) An individual returning directly from a beneficiary country as defined in § 10.191(b)(1) of this chapter may include in the exemption not more than 2 liters of alcoholic beverages if at

least 1 liter is the product of one or more beneficiary countries.

(e) *Exemption not applicable.* The exemption does not apply to articles intended for sale or acquired on commission, *i.e.*, for the account of another person, with or without compensation for the service rendered. Articles acquired on one journey and left in a foreign country cannot be allowed the exemption accruing upon the return of the resident from a subsequent journey.

(f) *Remainder not applicable to subsequent journey.* A returning resident who has received a total exemption of less than the $400, $600, or $1,200 maximum in connection with his return from one journey is not entitled to apply the unused portion of that maximum amount to articles acquired abroad on a subsequent journey.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978; T.D. 80–179, 45 FR 45580, July 7, 1980; T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 89–1, 53 FR 51264, Dec. 21, 1988; T.D. 97–75, 62 FR 46441, Sept. 3, 1997]

### § 148.34 Family grouping of exemptions for articles acquired abroad.

(a) *Grouping of exemptions.* Each member of a family is entitled to the $400, $600, or $1,200 exemption for articles acquired abroad, subject to the conditions prescribed in this subpart. When members of a family residing in one household travel together on their return to the United States, the $400, $600, or $1,200 exemption to which the several members of the family may be entitled may be grouped and allowed without regard to which member of the family is the owner of the articles. However, a group exemption shall not include an exemption for a family member not entitled to it in his own right, nor shall a group exemption be applied to any property of such a member. The exemption of a family member who has not attained the age of 21 shall not be applied under the group exemption to alcoholic beverages. No exemptions allowable to a resident servant accompanying the family shall be included in the family grouping.

(b) *Members of a family residing in one household.* The term ''members of a family in one household'' shall include all persons, regardless of age, who:

(1) Are related by blood, marriage, or adoption;

(2) Lived together in one household at their last permanent residence; and

(3) Intend to live together in one household after their arrival in the United States.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 97–75, 62 FR 46442, Sept. 3, 1997]

### § 148.35 Length of stay for exemption of articles acquired abroad.

(a) *Required for allowance of $400, $600, or $1,200 exemption.* Except as otherwise provided in this paragraph or in paragraph (b) of this section, the $400, $600, or $1,200 exemption for articles acquired abroad shall not be allowed unless the returning resident has remained beyond the territorial limits of the United States for a period of not less than 48 hours. The $400 exemption may be allowed on articles acquired abroad by a returning resident arriving directly from Mexico without regard to the length of time the person has remained outside the territorial limits of the United States.

(b) *Not required for allowance of $1,200 exemption on return from Virgin Islands.* The $1,200 exemption applicable in the case of the arrival of a returning resident directly or indirectly from the Virgin Islands of the United States may be allowed without regard to the length of time such person has remained outside the territorial limits of the United States.

(c) *Computation of time.* The 48-hour period a returning resident must have completed abroad to be entitled to an exemption shall be computed exactly. For example, a resident leaving United States territory at 1:30 p.m. on June 1 would complete the 48-hour period at 1:30 p.m. on June 3.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 97–75, 62 FR 46442, Sept. 3, 1997]

### § 148.36 Frequency of allowance of exemption for articles acquired abroad.

(a) *30-day period.* The $400, $600, or $1,200 exemption for articles acquired

abroad shall not be granted to a returning resident who has taken advantage of such exemption within the 30-day period immediately preceding his return to the United States. The date of the returning resident's latest prior arrival on which he declared articles acquired abroad for allowance of the $400, $600, or $1,200 exemption shall be deemed the date he took advantage of the applicable exemption.

(b) *Computation of time.* The 30-day period immediately preceding the resident's return shall be computed by excluding the day of arrival and counting backward 30 days. For example, in the case of an arrival on May 28, the resident would not be entitled to the $400, $600, or $1,200 exemption if he had taken advantage of such exemption on or after the preceding April 28.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 97–75, 62 FR 46442, Sept. 3, 1997]

### § 148.37 Replacement of unsatisfactory articles acquired abroad.

(a) *Free entry of replacement articles.* An article furnished by a foreign supplier to replace a like article of comparable value previously exempted from duty under the $400, $600, or $1,200 exemptions for articles acquired abroad shall be allowed free entry if the original article is found by the importer to be unsatisfactory and the procedures provided by paragraph (b) of this section are followed. In any case in which the importer has failed to follow these procedures, the port director may allow free entry of the replacement article if he is satisfied that the unsatisfactory article was timely exported and that the failure to comply with the procedures of paragraph (b) of this section was due to inadvertence or lack of experience in Customs matters and was without willful intent to avoid Customs supervision.

(b) *Procedure for replacement.* Any article previously exempted from duty under the $400, $600, or $1,200 exemptions found by the importer to be unsatisfactory shall be returned to Customs custody and exported under Customs supervision at the expense of the importer within 60 days after its importation. A certificate of registration on Customs Form 4455 shall be issued to the importer with instructions as to its use when the unsatisfactory article is exported for replacement under the provisions of subheading 9804.00.75, Harmonized Tariff Schedule of the United States.

(c) *Articles found damaged upon declaration.* The requirement that the original article be exported under Customs supervision does not apply when a duplicate article is furnished by a foreign supplier as a replacement for an article declared for entry under the $400, $600, or $1,200 exemption and found by the Customs inspector or other examining officer to be so damaged as to constitute a nonimportation (§ 158.11 of this chapter). In such a case, Customs Form 4455 shall be issued to the importer at the time the determination of nonimportation is made and the duplicate replacement shall be considered to have been acquired abroad for the purposes of the $400, $600, or $1,200 exemption provision, provided no charge is made to the importer for the duplicate replacement.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 89–1, 53 FR 51264, Dec. 21, 1988; T.D. 97–75, 62 FR 46442, Sept. 3, 1997]

### § 148.38 Sale of articles acquired abroad.

An article brought in under the $400, $600, or $1,200 exemption for articles acquired abroad for personal or household use and subsequently sold is not dutiable or subject to forfeiture by reason of the sale if the returning resident actually acquired and imported the article for his bona fide personal or household use and not for sale.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 97–75, 62 FR 46442, Sept. 3, 1997]

### § 148.39 Rented automobiles.

(a) *Importation for temporary period.* An automobile rented by a resident of the United States while abroad may be brought into the United States by or on behalf of such resident for a temporary period not to exceed 30 days under subheading 9804.00.60, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), without payment of duty. The automobile shall be used for the transportation of

the resident and that of his family and guests, and for such incidental carriage of articles as may be appropriate to his personal use of the automobile. No entry or security for exportation shall be required.

(b) *Unauthorized use or failure to export.* If any automobile exempted from duty under subheading 9804.00.60, HTSUS (19 U.S.C. 1202), is used otherwise than for the purpose expressed or is not returned abroad within 30 days, without prior payment to a port director of the duty which would have been payable at the time of entry if entered without benefit of the exemption, the automobile or its value (to be recovered from the importer) shall be subject to forfeiture.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51264, Dec. 21, 1988]

## Subpart E—Exemptions for Nonresidents

### § 148.41 Articles carried through the United States.

An arriving nonresident who is in transit to a place outside U.S. Customs territory may take with him through U.S. Customs territory for carriage to such place articles not exceeding $200 in aggregate value (including not more than 4 liters of alcoholic beverages) without the payment of duty or internal revenue taxes as provided in subheading 9804.00.40, Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978; T.D. 89–1, 53 FR 51264, Dec. 21, 1988; T.D. 97–82, 62 FR 51771, Oct. 3, 1997]

### § 148.42 Personal effects.

(a) *Exemption.* A nonresident arriving in the United States, regardless of age, is entitled under subheading 9804.00.20, and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), to entry free of duty and internal revenue tax for his wearing apparel, articles of personal adornment, toilet articles, and similar personal effects. ''Similar personal effects'' include all articles intended and appropriate for the personal use of the nonresident while traveling, such as hunting and fishing equipment, wheelchairs for invalids or crippled persons, pet and hunting dogs, and the like.

(b) *Application of exemption.* The exemption applies only to articles which were actually owned by the nonresident and in his possession abroad at the time of, or prior to, his departure for the United States. The articles must be appropriate for the personal use of the nonresident, and intended only for such use and not as a gift for another person nor for sale.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51264, Dec. 21, 1988]

### § 148.43 Tobacco products and alcoholic beverages.

(a) *For personal use.* Fifty cigars, or 200 cigarettes, or 2 kilograms of smoking tobacco, and not exceeding 1 liter of alcoholic beverages may be passed free of duty and internal revenue tax under subheading 9804.00.25 and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), when brought in by an adult nonresident for his personal use, and not for commercial use or to be given to another person. This exemption for tobacco products may be applied proportionately. The exemption may be applied to more than one kind of alcoholic beverages but not to an aggregate volume of more than 1 liter for one adult nonresident.

(b) *For gifts.* A nonresident who is allowed the $100 gift exemption (see § 148.44) may include not more than 100 cigars under such exemption from duty and internal revenue tax, provided the cigars accompany him and are to be disposed of only as bona fide gifts.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–394, 43 FR 49789, Oct. 25, 1978; T.D. 80–19, 45 FR 45580, July 7, 1980; T.D. 89–1, 53 FR 51264, Dec. 21, 1988]

### § 148.44 Gifts.

(a) *Exemption.* An arriving nonresident who intends to remain in the United States for not less than 72 hours is entitled to claim as free of duty and internal revenue tax under subheading 9804.00.30 and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), articles

not over $100 in aggregate value (not including alcoholic beverages and cigarettes, but including not more than 100 cigars) which accompany him and are to be disposed of by him as bona fide gifts. See § 148.43(b) for limitations on cigars under this exemption.

(b) *Frequency of allowance.* The exemption for gifts may be allowed only if the nonresident has not claimed the exemption within the immediately preceding 6 months.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–394, 43 FR 49789, Oct. 25, 1978; T.D. 89–1, 53 FR 51265, Dec. 21, 1988]

### § 148.45 Vehicles and other conveyances.

Nonresidents are entitled to entry free of duty and internal revenue tax under subheading 9804.00.35 and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), for automobiles, trailers, aircraft, motorcycles, bicycles, baby carriages, boats, horse-drawn conveyances, horses, and similar means of transportation and the usual equipment accompanying them, if such articles are imported in connection with the arrival of the nonresident to be used in the United States only for the transportation of the nonresident, his family and guests, and such incidental carriage of articles as may be appropriate to his personal use of the conveyance.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51265, Dec. 21, 1988]

### § 148.46 Sale of exempted articles.

(a) *Sale resulting in forfeiture.* The following articles or their value (to be recovered from the importer) upon their sale, shall be subject to forfeiture in accordance with the provisions of Chapter 98, Subchapter IV, U.S. Note 1, HTSUS (19 U.S.C. 1202), unless the procedure set forth in paragraph (b) of this section is followed:

(1) Any jewelry or similar articles of personal adornment having an aggregate value of $300 or more which have been allowed an exemption under § 148.42, if sold within 3 years of the date of importation.

(2) Any conveyance or its equipment allowed an exemption under § 148.45, if sold within 1 year after the date of importation.

(b) *Procedure permitting sale.* Articles described in paragraph (a) of this section may be sold if, prior to the time of sale, payment is made to a port director of the duty which would have been payable at the time of entry if the article had been entered without the benefit of the applicable exemption.

(c) *Permissible sales.* A sale pursuant to a judicial order or in liquidation of the estate of a decedent is not a basis for any liability for duty or forfeiture.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51265, Dec. 21, 1988]

## Subpart F—Other Exemptions

### § 148.51 Special exemption for personal or household articles.

(a) *Application of exemption.* The exemption from duty and internal revenue tax contemplated by section 321(a)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(B)), may be applied to articles for his personal or household use including gifts, but not for any business or commercial use, accompanying:

(1) A nonresident arriving in the United States who is not entitled to an exemption for gifts under subheading 9804.00.30 Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202) (see § 148.44); or

(2) A returning resident who is not entitled to the $400, $600, or $1,200 exemption for articles acquired abroad under subheading 9804.00.65, 9804.00.70 or 9804.00.72, HTSUS (see Subpart D of this part).

(b) *Limitations.* No article accompanying a person arriving in the United States shall be exempted from duty or internal revenue tax under section 321(a)(2)(B), Tariff Act of 1930, as amended, if any article accompanying such person is subject to duty or tax by reason of the following limitations on the application of this exemption:

(1) *Value of articles.* The exemption shall be allowed only when the aggregate fair retail value of all articles not otherwise entitled to an exemption does not exceed $200.

(2) *Articles subject to internal revenue tax.* The exemption shall not be applied

to articles subject to internal revenue tax other than:

(i) Cigarettes not in excess of 50;

(ii) Cigars not in excess of 10;

(iii) Alcoholic beverages not in excess of 150 milliliters; or

(iv) Alcoholic perfumery not in excess of 150 milliliters; or

(c) *Family grouping*. Family grouping of the exemption shall not be allowed.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–394, 43 FR 49789, Oct. 25, 1978; T.D. 80–179, 45 FR 45580, July 7, 1980; T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 89–1, 53 FR 51265, Dec. 21, 1988; T.D. 94–51, 59 FR 30296, June 13, 1994; T.D. 97–75, 62 FR 46442, Sept. 3, 1997; T.D. 99–64, 64 FR 43267, Aug. 10, 1999]

### § 148.52 Exemption for household effects used abroad.

(a) *Exemption*. Furniture, carpets, paintings, tableware, books, libraries, and other usual household furnishings and effects actually used abroad for not less than 1 year by resident or nonresidents, and not intended for any other person or for sale may be allowed entry free of duty and tax under subheading 9804.00.05, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). Household effects used abroad not less than 1 year by a family of which the importer was a resident member for not less than 1 year during the period of use may be allowed free entry whether or not the importer owned the effects at the time of such use. The year of use need not be continuous, nor need it immediately precede the time of importation.

(b) *Proof of use*. In order to obtain free entry for household effects under this section, the use of the effects abroad for 1 year must be proven to the satisfaction of the port director. The port director, in his discretion, may require evidence of use other than the declaration provided for in paragraph (c) of this section.

(c) *Declaration*. When household effects are claimed to be free of duty a declaration of the owner on Customs Form 3299 shall be required to support the claim for free entry. If it is impracticable to produce the declaration at the time of entry, the importer may give a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, for the production of the owner's declaration within 6 months.

(d) *Arrival of effects more than 10 years after arrival of importer*. As a general rule, household effects arriving more than 10 years after the last arrival of the importer from the country in which the effects were used shall not be admitted free of duty under this exemption unless the port director is satisfied from the importer's explanation that the effects were unavoidably detained beyond the 10-year period. However, in no case shall free entry be allowed under this provision when a period of 25 years or more has elapsed since the last arrival of the importer in the United States from the country in which the effects were used.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 84–213, 49 FR 41186, Oct. 19, 1984; T.D. 89–1, 53 FR 51265, Dec. 21, 1988]

### § 148.53 Exemption for tools of trade.

(a) *Exemption*. Professional books, implements, instruments, or tools of trade, occupation or employment, may be allowed entry free of duty and tax under the provisions of subheading 9804.00.15, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), for such articles owned and used abroad by any person emigrating to the United States, or subheading 9804.00.10 for such articles taken abroad by or for the account of any person arriving in the United States. The exemption for emigrants under subheading 9804.00.15, HTSUS shall not be applied to:

(1) Theatrical scenery, properties, or apparel;

(2) Articles for use in any manufacturing establishment;

(3) Articles for any other person; or

(4) Articles for sale.

(b) *Declaration*. A declaration of the emigrant or returning individual on Customs Form 3299 shall be required to support the claim of free entry. However, an oral declaration may be accepted from a returning individual in lieu of a written declaration for any such articles claimed to be free of duty under subheading 9804.00.10, HTSUS (19 U.S.C. 1202).

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51265, Dec. 21, 1988]

### § 148.54 Exemption for effects of citizens dying abroad.

(a) *Exemption*. Articles claimed to be personal and household effects, not stock in trade, the title to which is in the estate of a citizen of the United States who died abroad may be allowed entry free of duty and tax under subheading 9804.00.85, and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(b) *Entry*. Such effects shall be entered in accordance with the provisions of §§ 143.11 through 143.16 of this chapter, or if the value of such effects does not exceed $250, entry may be permitted under the provisions of §§ 143.21 through 143.28 of this chapter.

(c) *Statement of facts required*. The port director shall require in connection with the entry the written statement of a person having knowledge of the facts or shall otherwise satisfy himself as to the citizenship of the deceased owner of the effects at the time of death.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–99, 43 FR 13061, Mar. 28, 1978; T.D. 89–1, 53 FR 51265, Dec. 21, 1988]

### § 148.55 Exemption for articles bearing American trademark.

(a) *Application of exemption*. An exemption is provided for trademarked articles accompanying any person arriving in the United States which would be prohibited entry under section 526, Tariff Act of 1930, as amended (19 U.S.C. 1526), or section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), because the trademark has been registered with the U.S. Patent and Trademark Office and recorded with Customs. The exemption may be applied to those trademarked articles of foreign manufacture bearing a trademark owned by a citizen of, or a corporation or association created or organized within, the United States when imported for the arriving person's personal use in the quantities provided in pararaph (c) of this section. Unregistered and unrecorded trademarked articles are not subject to quantity limitation.

(b) *Limitations*—(1) *30-day period*. The exemption in paragraph (a) of this section shall not be granted to any person who has taken advantage of the exemption for the same type of article within the 30-day period immediately prior to his arrival in the United States. The date of the person's last arrival on which he claimed this exemption shall be considered to be the date he last took advantage of the exemption.

(2) *Sale of exempted articles*. If an article which has been exempted is sold within one year of the date of importation, the article or its value (to be recovered from the importer), is subject to forfeiture. A sale subject to judicial order or in the liquidation of an estate is not subject to the provisions of this paragraph.

(c) *Quantities*. Generally, each person arriving in the United States may apply the exemption to one article of the type bearing a protected trademark. The Commissioner shall determine if a quantity of an article in excess of one may be entered and, with the approval of the Secretary of the Treasury, publish in the FEDERAL REGISTER a list of types of articles and the quantities of each entitled to the exemption. If the holder of a protected trademark allows importation of a quantity in excess of one of its particular trademarked article, the total of those trademarked articles authorized by the trademark holder may be entered without penalty.

[T.D. 79–159, 44 FR 31969, June 4, 1979; 44 FR 35208, June 19, 1979, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

## Subpart G—Crewmember Declarations and Exemptions

### § 148.61 Status as crewmembers.

The following persons arriving in the United States shall not be treated as crewmembers:

(a) Members of the uniformed services of the United States and persons in the civil service of the United States engaged in the operation of a vessel, vehicle, or aircraft owned by, or under the complete control and management of, the United States or any of its agencies.

(b) Persons engaged in the operation of a private or public aircraft.

(c) Persons not connected with the operation, navigation, ownership, or

business of a vessel, vehicle or aircraft engaged in international traffic.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 76–338, 41 FR 54167, Dec. 13, 1976]

### § 148.62 Declaration and entry of articles by crewmembers.

(a) *Declaration required.* Articles which are to be landed by a crewmember, including any person traveling on board a vessel, vehicle, or aircraft engaged in international traffic who is returning from a trip on which he was employed as a crewmember, shall be declared upon arrival of the vessel, vehicle, or aircraft in the United States. When practicable, the clearance of articles through Customs shall be made and permission to unlade obtained before the articles are taken from the carrier. However, if no danger to the revenue will result, articles may be submitted for examination and clearance to the Customs office on the pier or at the landing place.

(b) *Form of declaration*—(1) *Oral declaration.* A crewmember may be permitted to make an oral declaration and entry if all articles he has to declare, in addition to articles for use in port on temporary leave for which no entry is required in accordance with § 148.63, may be admitted free of duty and tax under section 321(a)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(B)) (See § 148.64).

(2) *Written declaration.* A written declaration on Customs Form 5129, Crewmember's Declaration shall be required in any case in which an oral declaration is not permitted. A written declaration may be required in any case if necessary to effect prompt and orderly clearance of crewmembers and their effects or if deemed necessary to protect the revenue.

(c) *Transfer without declaration.* Articles belonging to a crewmember may be transferred from one carrier to another in international traffic without declaration, entry, or assessment of duty if the transfer is carried out under the supervision of Customs officers, or by a bonded cartman if necessary.

(d) *Entry at port where articles to be landed.* Articles in the possession of or owned by a crewmember of a character for which entry must be made when they are brought into the United States shall be entered at the port where the articles are to be landed. However, if the crewmember remains on a vessel, vehicle, or aircraft which is to proceed to another port of the United States in a movement in which entry of the vessel, vehicle, or aircraft will not be required, entry of the articles shall be made at the port at which such movement begins.

(e) *Collection of duty and taxes.* Any duties and taxes found due shall be collected as in the case of arriving passengers.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–99, 43 FR 13061, Mar. 29, 1978]

### § 148.63 Articles for use while on temporary leave.

(a) *Exemption.* Articles in the possession of and exclusively for use by any crewmember during the trip or voyage, such as necessary clothing, toiletries, and purely personal effects, may be landed by such crewmember for use on temporary leave without a written declaration or entry, and without payment of duty or internal revenue tax under subheading 9804.00.80, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), if the port director is satisfied that:

(1) The articles are reasonable and appropriate for the crewmember's accommodation while on temporary leave, and are to be taken out of the United States, except for articles consumed in use;

(2) The articles are intended exclusively for the crewmember's bona fide personal use;

(3) The quantities are reasonable, depending on the circumstances in each particular case; and

(4) In the case of tobacco products and alcoholic beverages, the containers have been opened and the total quantity landed shall not exceed 50 cigars, 300 cigarettes, or 2 kilograms of smoking tobacco, or a proportionate amount of each, and 1 liter of alcoholic beverages.

(b) *Temporary leave.* A crewmember is not considered to be on temporary leave from a vessel, vehicle, or aircraft

engaged in international traffic or entitled to the exemption under this section upon disembarkation when he is to remain in the confines of a pier, terminal, airport, or area immediately adjacent thereto, in order to timely embark on the carrier in the course of a continuous journey or on a concurrently scheduled arrival and departure.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 80–179, 45 FR 45580, July 7, 1980; T.D. 89–1, 53 FR 51265, Dec. 21, 1988]

### § 148.64 Administrative exemption.

(a) *Application of exemption.* The exemption from duty and internal revenue tax contemplated by section 321(a)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(B)), may be applied to articles for the personal and household use, including gifts, of a crewmember arriving in the United States who is not entitled to an exemption under subheading 9804.00.30, 9804.00.65, 9804.00.70, or 9804.00.72, Harmonized Tariff Schedule of the United States (HTSUS) (see §§ 148.66(c) and 148.65). The exemption may be applied when the crewmember is entitled to an exemption under subheading 9804.00.80, HTSUS (19 U.S.C. 1202), for articles for use while on temporary leave (§ 148.63).

(b) *Limitations.* No article accompanying a crewmember arriving in the United States shall be exempted from duty or internal revenue tax under section 321(a)(2)(B), Tariff Act of 1930, as amended, if any article accompanying such crewmember is subject to duty or internal revenue tax by reason of the following limitations.

(1) *Value of articles.* The exemption shall be allowed only when the aggregate fair retail value of all articles not otherwise entitled to an exemption does not exceed $200.

(2) *Articles subject to internal revenue tax.* The exemption shall not be applied to any article subject to internal revenue tax in addition to any articles allowed an exemption under subheading 9804.00.80, HTSUS (19 U.S.C. 1202), other than:

(i) Cigarettes not in excess of 50;

(ii) Cigars not in excess of 10;

(iii) Alcoholic beverages not in excess of 150 milliliters; or

(iv) Alcoholic perfumery not in excess of 150 milliliters (Subheading 9805.00.50, HTSUS (19 U.S.C. 1202, 1321)). [T.D. 80–179.].

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 80–179, 45 FR 45580, July 7, 1980; T.D. 84–149, 49 FR 28699, July 16, 1984; T.D. 89–1, 53 FR 51265, Dec. 21, 1988; T.D. 94–51, 59 FR 30296, June 13, 1994; T.D. 97–75, 62 FR 46442, Sept. 3, 1997]

### § 148.65 Exemption for resident crewmembers.

(a) *Status as returning resident.* A crewmember arriving in a vessel, vehicle, or aircraft from a foreign port who is a resident of the United States shall be considered a returning resident qualifying for the exemptions allowed under Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), and subpart D of this part if he permanently leaves the carrier without the intention of resuming his employment on the same or any other carrier that is engaged in international traffic.

(b) *Statement of declaration.* A resident crewmember who claims that articles declared by him are entitled to be passed free of duty and tax under the returning resident's exemption, shall include a legible statement on the declaration, Customs Form 5129, of the basis for his claim for entitlement to the resident's exemption.

[T.D. 81–218, 46 FR 42657, Aug. 24, 1981, as amended by T.D. 89–1, 53 FR 51265, Dec. 21, 1988]

### § 148.66 Exemptions for nonresident crewmembers.

(a) *Status as arriving nonresident.* A nonresident crewmember will be treated as an arriving nonresident for purposes of claiming the exemptions allowable under Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), and subpart E of this part when he permanently leaves his employment with a vessel, vehicle, or aircraft at a port in the United States without intention of resuming employment on the same or another carrier in international traffic. However, a nonresident crewmember shall not be treated as an arriving nonresident for this purpose when he departs a carrier for temporary leave but retains his employment with the carrier so that he will be

going foreign again in the course of his continuing employment (see § 148.63).

(b) *Articles carried through the United States*. A nonresident crewmember, permanently leaving a carrier in a U.S. port to travel as a passenger on another carrier which will take him to a place outside the United States, who desires to take with him articles not exceeding $200 in aggregate value (including not more than 4 liters of alcoholic beverages) without the payment of duty or internal revenue tax as provided in item 812.40 (see § 148.41), may be accorded free entry of the articles under the following procedure:

(1) *Declaration and supporting statement*. The nonresident crewmember shall itemize the articles on his declaration and entry, Customs Form 5129, required by § 148.62(b)(2), and shall state in writing in support of his declaration that:

(i) He has been finally discharged from the carrier, with the date of discharge;

(ii) He intends to depart from the same or another U.S. port as a passenger on another carrier for a place outside U.S. Customs territory; and

(iii) The articles will be taken with him on such carrier and will not remain in the United States.

(2) *Allowance by port director*. The port director may require verification of the crewmember's discharge and a statement as to the accuracy of the second and third supporting statements of the crewmember from the person in charge of the carrier, the vessel agent, or the port captain. If the port director is satisfied that the crewmember's statements are correct, the articles may be passed free of duty and internal revenue tax under subheading 9808.00.40, HTSUS (19 U.S.C. 1202).

(c) *Articles to be disposed of as gifts*. A nonresident crewmember shall itemize on his baggage declaration and entry, Customs Form 5123 or 5129, required by § 148.62, all articles in his possession for which he seeks entry under subheading 9804.00.30, HTSUS (19 U.S.C. 1202), as bona fide gifts. The crewmember must be permanently leaving his employment on the international carrier for a stay in the United States of at least 72 hours before departing for a place outside the United States as a passenger.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–99, 43 FR 13061, Mar. 29, 1978; T.D. 78–394, 43 FR 49789, Oct. 25, 1978; T.D. 89–1, 53 FR 51265, Dec. 21, 1988]

### § 148.67 Penalties for failure to declare articles.

(a) *Avoidance of inspection*. When articles may be presented to the Customs office on the pier or at the landing place for inspection and clearance, if the circumstances under which the articles are landed indicate an attempt to avoid inspection, the penalties prescribed in section 453, Tariff Act of 1930, as amended (19 U.S.C. 1453), shall be assessed.

(b) *Articles landed without declaration*. Any article landed without having been properly declared as provided in § 148.62 shall be considered as having been unladen without a permit and the penalties provided in 19 U.S.C. 1453 or 19 U.S.C. 1644 and 1644a shall be assessed as applicable.

(c) *Articles omitted from declaration*. If the declaration does not include all the articles landed, the crewmember shall be subject to the penalties prescribed in section 497, Tariff Act of 1930 (19 U.S.C. 1497), with respect to the articles omitted. The penalties prescribed in section 453, Tariff Act of 1930, as amended (19 U.S.C. 1453), shall not be assessed if any, though not all, of the articles are declared, except as provided in paragraph (a) of this section.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 98–74, 63 FR 51290, Sept. 25, 1998]

## Subpart H—Military and Civilian Employees of the United States, and Evacuees

### § 148.71 Status of persons in service of United States as returning residents.

A person in the service of the United States and members of his family arriving in the United States are ordinarily considered returning residents for the purpose of Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), except that the following persons are treated as nonresidents:

(a) A wife or husband of any person in the service of the United States emigrating to the United States, and

(b) A child born abroad of any person in the service of the United States who is arriving in the United States for the first time.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51265, Dec. 21, 1988]

### § 148.72 [Reserved]

### § 148.73 Baggage on carriers operated by the Department of Defense.

(a) *Declaration*. All persons, including crewmembers, entering the United States on carriers operated by or for the Department of Defense shall execute written baggage declarations.

(b) *Exemptions applicable*. Passengers on transports shall be granted the applicable exemptions from duty provided for in Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). Members of the Armed Forces of the United States and personnel in the civil service of the United States engaged in the operation of the vessel shall be accorded the same privilege. Civilian officers and crewmembers not in the service of the United States shall be subject to the provisions of subpart G of this part with respect to exemption from duty.

(c) *Examination of baggage*. Baggage on transports shall be examined at the port where landed in the same manner as baggage on commercial vessels.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 82–213, 48 FR 46979, Oct. 17, 1983; T.D. 89–1, 53 FR 51265, Dec. 21, 1988]

### § 148.74 Exemption on termination of assignment to extended duty or on evacuation.

(a) *Exemption*. With the limitation on alcoholic beverages and tobacco products provided in paragraph (c) of this section, entry free of duty and tax under subheading 9805.00.50, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), may be accorded personal and household effects of:

(1) Any person in the service of the United States who returns to the United States upon the termination of assignment to extended duty at a post or station outside the Customs territory of the United States;

(2) Members of his family who have resided with him at such post or station and are returning upon the termination of his assignment; or

(3) Any person evacuated to the United States under Government orders or instructions.

(b) The term ''personal effects'' as used in subheading 9805.00.50, HTSUS, is not confined to that class of articles described in subheading 9804.00.20, HTSUS, nor is any period of use, such as prescribed by subheading 9804.00.05, HTSUS, applicable to household effects entered under subheading 9805.00.50, HTSUS. The privilege of free entry under subheading 9805.00.50, HTSUS, does not apply to:

(1) Articles imported for sale, or for the account of any person not specified in subheading 9805.00.50, HTSUS; or

(2) Articles which have not been in the direct personal possession of the claimant, or a member of his household, while abroad.

(c) *Limitation on alcoholic beverages and tobacco products*. A total of not more than 4 liters of alcoholic beverages and not more than 100 cigars shall be accorded free entry under subheading 9805.00.50, HTSUS, subject to the conditions that:

(1) These articles accompany the person making the claim for free entry upon his arrival in the U.S.;

(2) Not more than 1 liter of any such alcoholic beverages shall have been distilled or otherwise manufactured and bottled in any place other than the United States or its possessions;

(3) Such individual has not concurrently claimed exemption as a returning resident under subheading 9804.00.65, 9804.00.70, or 9804.00.72, HTSUS; and

(4) Such person, if other than one in the service of the U.S., shall have attained the age of 21.

(d) *Termination of assignment to extended duty*. The requirement of subheading 9805.00.50, HTSUS that the person ''returns to the United States upon the termination of assignment to extended duty'' shall be considered met upon the necessary proof being submitted that any one of the following is applicable:

(1) The person is returning upon the termination of a tour of duty outside the Customs territory of the United States of at least 140 days' duration.

(2) The person is returning after the termination of an assignment under permanent change of station orders to duty at a post or station outside the Customs territory of the United States, regardless of the duration of the duty. A crewmember, including a member of a command, serving on a United States naval vessel when it departs from the United States on an intended deployment of 120 days or more outside the Customs territory of the United States and who continues to serve on the vessel until it returns to the United States may be considered as returning after the termination of an assignment of duty under permanent change of station orders.

(3) The person is returning to the United States upon the termination of a tour of duty at any time after leaving the United States for duty of not less than 140 days outside the Customs territory of the United States.

(4) The person, although not returning to the United States, is ordered by the Government agency involved from duty at a post or station outside the Customs territory of the United States to duty at another post or station outside the Customs territory of the United States necessitating the return to the United States of his personal and household effects.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 80–179, 45 FR 45580, July 7, 1980; T.D. 89–1, 53 FR 51265, Dec. 21, 1988; T.D. 97–75, 62 FR 46442, Sept. 3, 1997]

### § 148.75 Persons ineligible for exemption on termination of assignment.

(a) *Persons returning from temporary assignment.* No person, or member of his family, shall be allowed free entry of personal and household effects under subheading 9805.00.50, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), where the person returns to the United States pursuant to Government orders or instructions which authorized him initially to proceed to a foreign post or station and return to the United States upon termination of temporary duty, except as it may otherwise be deemed proper in accordance with the provisions of § 148.74(d) or § 148.76.

(b) *Persons returning on leave or before termination of extended duty assignment.* A person returning on leave, other than on reemployment leave at the termination of assignment to extended duty as defined in § 148.74(d), or otherwise returning before the termination of an assignment to extended duty outside the Customs territory of the United States, with or without orders covering the return, is not eligible for an exemption under subheading 9805.00.50, HTSUS (19 U.S.C. 1202).

(c) *Person returning on temporary duty assignment.* A person returning to the United States under orders on temporary duty assignment at the termination of which he is returned to his duty station abroad to resume his regular duties is not regarded as returning to the United States at the termination of extended duty outside the Customs territory of the United States and is not eligible for an exemption under subheading 9805.00.50, HTSUS (19 U.S.C. 1202).

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51266, Dec. 21, 1988]

### § 148.76 Waiver of requirements or limitations.

In any case in which the limitation on the quantity of alcoholic beverages and tobacco products which may be exempted from duty and tax under § 148.74(c) or the failure of the person to meet the requirements that he be returning upon the termination of assignment to ''extended duty,'' as explained in § 148.74(d), will cause undue hardship to the person through no fault of his own, but rather because of the nature of his assignment or other hardship circumstances, the Commissioner of Customs, upon receipt of a request from the Government agency involved, may waive the limitation or the requirement, as the case may be, if he deems such waiver warranted by the facts.

### § 148.77 Entry of effects on termination of assignment to extended duty, or on evacuation.

(a) *General procedure.* All articles for which free entry is claimed under subheading 9805.00.50, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall be entered or withdrawn in accordance with the requirements prescribed by the Tariff Act of 1930, as amended. Port directors shall be satisfied in all cases that the articles for which free entry is claimed under subheading 9805.00.50, HTSUS, are personal and household effects of the importer entitled to the benefits of item 817.00, particularly in those cases where the quantity of effects imported may appear to be unreasonable for personal or household use. No invoice shall be required for articles accorded free entry under this provision.

(b) *Declaration and entry*—(1) *Person entitled to exemption.* Declaration and entry for articles claimed to be exempt from duty and tax under subheading 9805.00.50, HTSUS (19 U.S.C. 1202), may be made on Customs Form 3299, or Department of Defense Form (DD) 1252 when entry is made in the name of the person who is entitled to the benefits of the exemption. The date of the person's last departure from the United States shall be indicated on the declaration and entry.

(2) *Designated official.* Customs Form 3299 or Department of Defense Form 1252 executed on behalf of the owner of unaccompanied personal and household effects by either a United States Dispatch Agent or a designated responsible military official in his own name, may be accepted by the Customs officer as the declaration and entry if there is a valid reason evident from the owner's travel orders or information at hand why the United States Government agency concerned is unable to present Department of Defense Form (DD) 1252 or Customs Form 3299 executed by the owner. The date of the owner's last departure from the United States need not be indicated on the form. The following statement shall be added across the face or to the back of Customs Form 3299 or Department of Defense Form 1252.

This form is completed on behalf of (Name of Government employee) Travel orders and information on hand in this office show that the named person has met all requirements of section 148.74, Customs Regulations, and is entitled to the benefits of subheading 9805.00.50, Harmonized Tariff Schedule of the United States. The shipment imported consists of nothing but personal and household effects of the named person, which effects are not imported for sale or as an accommodation for others.

(c) *Verification of claim for exemption*—(1) *By travel orders.* The declaration and entry shall be verified by the Customs officer by an inspection of the owner's travel orders. If the port director accepts an inspection of the owner's travel orders as evidence that the effects were brought into the United States within the requirements of subheading 9805.00.50, the owner's travel orders shall be identified on the entry, which shall be handled like a free baggage declaration.

(2) *By other evidence.* The declaration and entry may be verified by other evidence which satisfies the port director that the effects were brought into the United States in connection with:

(i) The person's return to the United States upon the termination of assignment to extended duty, as explained in § 148.74(d);

(ii) The return of members of his family who have resided with him at his post or station upon the termination of his assignment; or

(iii) The evacuation of a person to the United States under Government orders or instructions.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 82–145, 47 FR 35478, Aug. 16, 1982; T.D. 85–123, 50 FR 29955, July 23, 1985; T.D. 89–1, 53 FR 51266, Dec. 21, 1988]

## Subpart I—Personnel of Foreign Governments and International Organizations and Special Treatment for Returning Individuals

### § 148.81 General provisions.

(a) *Reciprocal privileges.* The privileges provided for in §§ 148.81 through 148.86 and § 148.90 of this chapter shall be accorded only if reciprocal privileges are granted by the foreign government involved to U.S. personnel of comparable status.

(b) *Baggage and effects.* The term ''baggage and effects,'' as used in this subpart includes all articles which were in the possession of a person abroad, and are being imported in connection with his arrival, and which are intended for his bona fide personal or household use. It does not include articles imported as an accommodation to others or for sale or other commercial use.

(c) *Aliens.* The privileges provided in this subpart shall be accorded only to alien representatives, officers, employees, and members of the armed forces of foreign governments and designated public international organizations.

(d) *Internal revenue tax.* Any article exempted from the payment of duty under this subpart shall be exempt also from the payment of any internal revenue tax imposed upon or by reason of importation.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 73–227, 38 FR 22548, Aug. 22, 1973]

### § 148.82 Diplomatic, consular, and other privileged personnel.

(a) *Inviolability of the person of diplomatic personnel.* The person of the representatives of foreign governments and members of their families set forth below shall be free from arrest, search, or detention:

(1) Ambassadors, ministers, chargés d'affaires, secretaries, counselors, attachés of foreign embassies and legations, and other heads of diplomatic missions or members of the diplomatic staffs of such missions, accredited to the United States or en route between other countries to which accredited and their own countries.

(2) Members of the families forming part of the households of the diplomatic personnel listed in the preceding subparagraph, who are accompanying them or traveling separately to join them incidental to their official travel, excluding those members of families who are U.S. nationals.

(3) Members of the administrative and technical staffs of diplomatic missions accredited to the United States and members of their families forming part of their household, all of whom are not nationals or permanent residents of the United States who are accompanying them or traveling separately to join them incidental to their official travel.

(4) Diplomatic and consular couriers.

(b) *Exemption for baggage and effects and admission without entry.* The baggage and effects of the following representatives of foreign governments shall be admitted free of duty without the filing of an entry, upon the request of the Department of State and appropriate instructions from the United States Customs Service in each instance:

(1) Ambassadors, ministers, chargés d'affaires, secretaries, counselors, attachés of embassies and legations, and other members of the diplomatic staffs of such missions accredited to the United States or en route to or from other countries to which assigned, as well as recognized consular officers, and the immediate families, suites, and servants of all the above under subheading 9806.00.05, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202).

(2) Members of the administrative and technical staffs of diplomatic missions and members of their families forming part of their households, all of whom are not nationals or permanent residents of the United States under subheading 9806.00.05, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). Unless more extensive privileges are provided in treaties or special agreements between the United States and the foreign country concerned, this privilege is limited to baggage and effects imported at the time of first installation.

(3) Consular employees who are not nationals or permanent residents of the United States. Unless more extensive privileges are provided in treaties or special agreements between the United States and the foreign country concerned, this privilege is limited to articles imported at the time of first installation.

(4) Other high officials of foreign governments and such distinguished foreign visitors as may be designated by the Department of State, and their immediate families under subheading 9806.00.25, HTSUS.

(5) Foreign government personnel entitled to privileges under statutes or

treaties under subheading 9806.00.30, HTSUS.

(6) Diplomatic couriers, limited to accompanying baggage and effects.

(c) *Absence of special request.* In the absence of special request from the Department of State prior to the arrival of representatives of foreign governments enumerated in paragraph (b)(1) of this section, their immediate families as well as accompanying suites and servants, and diplomatic couriers, their baggage and effects may be admitted free of duty without entry upon presentation of their credentials or other proof of their identity.

(d) *Delay in arrival of baggage or effects.* If by accident or unavoidable delay in shipment the baggage or other effects of a person entitled to the privileges of this section shall arrive after him upon satisfactory proof of ownership, such baggage or effects may be passed free of duty without entry.

(e) *Inspection of baggage*—(1) *Exemption for representatives of foreign governments.* The personal baggage of the following representatives of foreign governments and their families is ordinarily exempt from inspection:

(i) Ambassadors, ministers, chargés d'affaires, secretaries, counselors, attachés of foreign embassies or legations, and other members of the diplomatic staffs of such missions, who are accredited to the United States or en route between other countries to which accredited and their own countries and members of their families forming part of their household who are not nationals of the United States.

(ii) Consular officers recognized by the United States and members of their families forming part of their household who are not nationals or permanent residents of the United States, provided the baggage accompanies them.

(iii) Diplomatic couriers, provided the baggage accompanies them.

(2) *Conditions permitting inspection.* The personal baggage of representatives of foreign governments listed in paragraph (e)(1) of this section and members of their families may be inspected if there is serious reason to believe that it contains:

(i) Articles other than those for the personal use of such persons or for the use of their establishments or for official mission use.

(ii) In the case of consular officers and their families, articles intended for consumption in excess of the quantities necessary for direct use by the person concerned.

(iii) Articles which are absolutely or conditionally prohibited importation or exportation under the laws or regulations of the United States, or which are subject to the quarantine laws or regulations of the United States.

(3) *Presence of foreign representative.* When inspection of personal baggage is permitted under paragraph (e)(2) of this section, the inspection shall take place only in the presence of the affected representative of a foreign government, or his authorized agent.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51266, Dec. 21, 1988]

### § 148.83 Diplomatic and consular bags.

(a) *Diplomatic bags.* The contents of diplomatic bags are restricted to diplomatic documents and articles intended exclusively for official use and packages constituting the diplomatic bag must bear visible marks of their character. Diplomatic bags shall not be opened or detained nor shall they be subject to duty or entry.

(b) *Consular bags.* Consular bags must bear visible external marks of their character and their contents are restricted to official correspondence and documents or articles intended exclusively for official use. Consular bags shall not be subject to duty and ordinarily shall not be opened or detained. However, if Customs officers have serious reason to believe that a consular bag contains other than permissible materials, they may request that the bag be opened in their presence by an authorized representative of the foreign government concerned. If this request is refused, the consular bag shall be returned to its place of origin.

### § 148.84 Special treatment for returning individuals.

(a) Except as otherwise provided by law, an individual returning to the United States from abroad:

(1) Shall not have his or her baggage and effects admitted free of duty without entry.

(2) Shall not be entitled to expedited Customs examination and clearance of his or her baggage and effects unless the port director finds:

(i) That the individual:

(A) Is seriously ill or infirm;

(B) Was summoned by news of affliction or disaster; or

(C) Is accompanying the body of a deceased relative; or

(ii) That a special circumstance exists which warrants expedited examination and clearance.

(b) For purposes of this section, the term ''baggage and effects'' means any article which was in the possession of the individual while abroad, is being imported in connection with his or her arrival, and is intended for his or her bona fide personal or household use. This term does not include any article imported as an accommodation to others or for sale or other commercial use.

[T.D. 78–394, 43 FR 49789, Oct. 25, 1978]

### § 148.85 Subsequent importations for the personal or family use of diplomatic, consular and other privileged personnel.

The privilege of importing free of duty and without the filing of any entry articles for personal or family use, but not as an accommodation for others or for sale or other commercial use, shall be granted upon the request of the Department of State and upon appropriate instructions from the United States Customs Service in each instance, to the following:

(a) Ambassadors, ministers, chargés d'affaires, secretaries, counselors and attachés of foreign embassies and legations accredited to the United States under subheading 9806.00.40, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202);

(b) Other representatives, officers and employees of foreign governments, under subheading 9806.00.50, HTSUS; and

(c) Other persons designated pursuant to statute or pursuant to treaties between the United States and the countries which they represent, under subheading 9806.00.55, HTSUS.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51266, Dec. 21, 1988]

### § 148.86 Articles for official use of representatives of foreign governments and public international organizations.

Office supplies and equipment and other articles for the official use of members and attaches of foreign embassies and legations, consular officers, and other representatives of foreign governments or of personnel of public international organizations, may be admitted free of duty under subheading 9809.00.20, Harmonized Tariff Schedule of the United States, without the filing of an entry, upon the request of the Department of State.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 82–145, 47 FR 35478, Aug. 16, 1982; T.D. 89–1, 53 FR 51266, Dec. 21, 1988]

### § 148.87 Officers and employees of, and representatives to public international organizations.

(a) *Exemption for baggage and effects.* The baggage and effects of the alien officers and employees of, or representatives of foreign governments, to the organizations designated by the President as public international organizations pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288), and the baggage and effects of their families, suites, and servants, shall be admitted free of duty and without entry under subheading 9806.00.15, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), but only upon the receipt in each instance of instructions from the United States Customs Service issued at the request of the Department of State.

(b) *Designated public international organizations.* The President, by virtue of the authority vested in him by section 1 of the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), has designated certain organizations as public international organizations entitled to the free entry privileges of that statute. The following is a list of the public international organizations currently entitled to such free entry privileges and

the Executive orders by which they were designated:

| Organization | Executive Order | Date |
|---|---|---|
| African Development Bank ..... | 12403 | Feb. 8, 1983. |
| African Development Fund ..... | 11977 | Mar. 14, 1977. |
| Asian Development Bank ..... | 11334 | Mar. 7, 1967. |
| Border Environment Cooperation Commission. | 12904 | Mar. 16, 1994. |
| Caribbean Organization ..... | 10983 | Dec. 30, 1961. |
| Commission for Environmental Cooperation. | 12904 | Mar. 16, 1994. |
| Commission for Labor Cooperation. | 12904 | Mar. 16, 1994. |
| Commission for the Study of Alternatives to the Panama Canal. | 12567 | Oct. 2, 1986. |
| Council of Europe in Respect of the Group of States Against Corruption (GRECO). | 13240 | Dec. 18, 2001. |
| Customs Cooperation Council .. | 11596 | June 5, 1971. |
| European Bank for Reconstruction and Development. | 12766 | June 18, 1991. |
| European Space Agency (formerly the European Space Research Organization (ESRO)). | 12766 | June 18, 1991. |
| Food and Agriculture Organization. | 9698 | Feb. 19, 1946. |
| Great Lakes Fishery Commission. | 11059 | Oct. 23, 1962. |
| Hong Kong Economic and Trade Offices. | 13052 | June 30, 1997. |
| Inter-American Defense Board | 10228 | Mar. 26, 1951. |
| Inter-American Development Bank. | 10873 | Apr. 8, 1960. |
| Inter-American Institute of Agricultural Sciences. | 9751 | July 11, 1946. |
| Inter-American Investment Corporation. | 12567 | Oct. 2, 1986. |
| Inter-American Statistical Institute. | 9751 | Do. |
| Inter-American Tropical Tuna Commission. | 11059 | Oct. 23, 1962. |
| Intergovernmental Maritime Consultative Organization. | 10795 | Dec. 13, 1958. |
| International Atomic Energy Agency. | 10727 | Aug. 31, 1957. |
| International Bank for Reconstruction and Development. | 9751 | July 11, 1946. |
| International Boundary and Water Commission, United States & Mexico. | 12467 | Mar. 2, 1984. |
| International Centre for Settlement of Investment Disputes. | 11966 | Jan. 19, 1977. |
| International Civil Aviation Organization. | 9863 | May 31, 1947. |
| International Coffee Organization. | 11225 | May 22, 1965. |
| International Committee of the Red Cross. | 12643 | June 23, 1988. |
| International Cotton Advisory Committee. | 9911 | Dec. 19, 1947. |
| International Cotton Institute ..... | 11283 | May 27, 1966. |
| International Criminal Police Organization (INTERPOL)—Limited privileges.. | 12425 | June 16, 1983. |
| | 12971 | Sep. 15, 1995. |
| International Development Association. | 11966 | Jan. 19, 1977. |
| International Development Law Institute. | 12842 | Mar. 29, 1993. |
| International Fertilizer Development Center. | 11977 | Mar. 14, 1977. |
| International Finance Corporation. | 10680 | Oct. 2, 1956. |
| International Food Policy Research Institute—Limited privileges only. | 12359 | Apr. 22, 1982. |
| International Fund for Agricultural Development. | 12732 | Oct. 31, 1990. |
| International Hydrographic Bureau. | 10769 | May 29, 1958. |
| International Joint Commission—United States and Canada. | 9972 | June 25, 1948. |
| International Labor Organization | 9698 | Feb. 19, 1946. |
| International Maritime Satellite Organization. | 12238 | Sept. 12, 1980. |
| International Monetary Fund ..... | 9751 | July 11, 1946. |
| International Pacific Halibut Commission. | 11059 | Oct. 23, 1962. |
| International Secretariat for Volunteer Service. | 11363 | July 20, 1967. |
| International Telecommunications Satellite Organization (INTELSAT). | 11966 | Jan. 19, 1977. |
| International Telecommunication Union. | 9863 | May 31, 1947. |
| International Union for Conservation of Nature and Natural Resources—Limited privileges. | 12986 | Jan. 18, 1996. |
| International Wheat Advisory Committee (International Wheat Council). | 9823 | Jan. 24, 1947. |
| Interparliamentary Union ..... | 13097 | Aug. 7, 1998. |
| Israel-United States Binational Industrial Research and Development Foundation. | 12956 | Mar. 13, 1995. |
| Korean Peninsula Energy Development Organization. | 12997 | Apr. 1, 1996. |
| Multilateral Investment Guarantee Agency. | 12647 | Aug. 2, 1988. |
| Multinational Force and Observers. | 12359 | Apr. 22, 1982. |
| North American Development Bank. | 12904 | Mar. 16, 1994. |
| North Pacific Anadromous Fish Commission. | 12895 | Jan. 26, 1994. |
| North Pacific Marine Science Organization. | 12894 | Jan. 26, 1994. |
| Organization for Economic Cooperation and Development [formerly Organization for European Economic Cooperation]. | 10133 | June 27, 1950. |
| Organization for the Prohibition of Chemical Weapons.. | 13049 | June 11, 1997. |
| Organization of African Unity (OAU). | 11767 | Feb. 19, 1974. |
| Organization of American States. | 10533 | June 3, 1954. |
| Organization of Eastern Caribbean States. | 12669 | Feb. 20, 1989. |
| Pacific Salmon Commission ..... | 12567 | Oct. 2, 1986. |
| Pan American Health Organization (includes the Pan American Sanitary Bureau). | 10864 | Feb. 18, 1960. |
| Preparatory Commission of the International Atomic Energy Agency. | 10727 | Aug. 31, 1957. |

| Organization | Executive Order | Date |
|---|---|---|
| Provisional Intergovernmental Committee for the Movement of Migrants from Europe (now known as the Intergovernmental Committee for European Migration). | 10335 | Mar. 28, 1952. |
| South Pacific Commission | 10086 | Nov. 25, 1949. |
| United International Bureau for the Protection of Intellectual Property. | 11484 | Sept. 29, 1969. |
| United Nations | 9698 | Feb. 19, 1946. |
| United Nations Educational, Scientific, and Cultural Organization. | 9863 | May 31, 1947. |
| United Nations Industrial Development Organization. | 12628 | Mar. 8, 1988. |
| Universal Postal Union | 10727 | Aug. 31, 1957. |
| World Health Organization | 10025 | Dec. 30, 1948. |
| World Intellectual Property Organization. | 11866 | June 18, 1975. |
| World Meteorological Organization. | 10676 | Sept. 1, 1956. |
| World Tourism Organization | 12508 | Mar. 22, 1985. |
| World Trade Organization | 13042 | Apr. 9, 1997. |

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 148.87, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 148.88 Certain representatives to and officers of the United Nations and the Organization of American States.

(a) *Exemption for baggage and effects and admission without entry*. At the request of the Department of State and upon appropriate instructions from the United States Customs Service in each instance, the privilege of admission free of duty without the filing of an entry may be extended to the baggage and effects of the following alien representatives, officers, and members of the staff of the United Nations and the Organization of American States, and their personal baggage is ordinarily exempt from inspection, subject to § 148.82(e)(2):

(1) Every person designated by a United Nations member nation as the principal resident representative to the United Nations of such member or as a resident representative with the rank of ambassador or minister plenipotentiary and members of their families;

(2) Such resident members of their staffs as may be agreed upon between the Secretary-General of the United Nations, the Government of the United States, and the Government of the United Nations member concerned and members of their families;

(3) Every person designated by a United Nations member of a specialized United Nations agency as its principal resident representative, with the rank of ambassador or minister plenipotentiary at the headquarters of such agency in the United States and members of their families;

(4) Such other principal resident representatives of United Nations members to a specialized United Nations agency and such resident members of the staffs of representatives to a specialized United Nations agency as may be agreed upon between the principal executive officer of the specialized agency, the Government of the United States, and the Government of the United Nations member concerned and members of their families;

(5) The Secretary-General, Under Secretaries-General, and Assistant Secretaries-General to the United Nations and members of their families;

(6) Representatives of members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, while exercising their functions and during their journey to and from the place of meeting, with regard to personal baggage only;

(7) Experts performing missions for the United Nations, the same facilities for personal baggage as are accorded diplomatic envoys;

(8) Any person designated by a member of the Organization of American States as its representative or interim representative on the council of the Organization of American States and members of their families; and

(9) All other permanent members of the Delegation of a member of the Organization of American States and members of their families regarding whom there is agreement for that purpose between the government of the member state concerned, the Secretary-General of the Organization of American States, and the Government of the United States of America.

(b) *Absence of special request*. In the absence of a special request from the

Department of State prior to the arrival of persons of the classes enumerated in paragraph (a) of this section, the privilege of admission free of duty without entry may be extended to their baggage and effects upon presentation of their credentials or other proof of identity.

(c) *Importations for personal or family use.* Upon the request of the Department of State and appropriate instructions from the United States Customs Service, the privilege of importing without entry and free of duty articles for their personal or family use but not as an accommodation for others or for sale or other commercial use may be granted to persons of the classes enumerated in paragraph (a) of this section except those in paragraph (a) (6) and (7) of this section, under subheading 9806.00.55, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(d) *Personal inviolability.* The person of the representatives to and officers of the United Nations and the Organization of American States set forth in paragraph (a) of this section shall be free from arrest, search, and detention except that persons of the rank set forth in paragraph (a) (6) and (7) of this section shall be accorded this privilege only while exercising their function and traveling to and from the place of meeting.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51266, Dec. 21, 1988]

### § 148.89 Property of public international organizations and foreign governments.

(a) *Exemption from duty.* Property of designated international organizations listed in paragraph (b) of § 148.87 or of foreign governments shall be admitted free of duty and internal-revenue taxes imposed upon or by reason of importation under 22 U.S.C. 288a(d), but such exemption shall be granted only upon the receipt in each instance of instruction from the United States Customs Service issued at the request of the Department of State.

(b) *Bond.* Any Customs bond which may be required from a designated international organization (see paragraph (b) of § 148.87) in connection with the importation or entry of merchandise into, or the exportation of merchandise from, the United States may be accepted without surety.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 82–145, 47 FR 35479, Aug. 16, 1982]

### § 148.90 Foreign military personnel.

(a) *Exemptions allowed.* Port directors shall in accordance with the provisions of this section admit the following free of duty and internal revenue tax imposed upon or by reason of importation:

(1) The baggage and effects of persons on duty in the United States as members of the armed forces of any foreign country, and of their immediate families under subheading 9806.00.20, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202);

(2) Articles entered or withdrawn from warehouse for consumption by a member of the armed forces of any foreign country on duty in the United States, for his personal use or that of any member of his immediate family but not as an accommodation to others or for sale or other commercial use, under subheading 9806.00.45, HTSUS; and

(3) Articles entered or withdrawn from warehouse for consumption for the official use of members of the armed forces of any foreign country on duty in the United States, under subheading 9809.00.30, HTSUS.

(b) *Reciprocity limitation.* When port directors have been advised officially of a finding by the Secretary of the Treasury that a foreign country does not reciprocate to members of the armed forces of the United States on duty in its country and members of their immediate families the privileges accorded its members and their families in the United States, the port directors shall accord to the personnel of such foreign government privileges under the law only to the extent to which the foreign government accords similar treatment to members of the armed forces of the United States and members of their immediate families.

(c) *Status of importer questioned.* If any question arises as to the status of the importer under subheadings 9806.00.20, 9806.00.45 and 9809.00.30, HTSUS, or

whether articles entered thereunder are for official use or for personal or family use, but not as an accommodation to others or for sale or other commercial use, the port director shall report the available facts to the Commissioner of Customs for instructions.

(d) *Alcoholic beverages for personal or family use*—(1) *General rule*—(i) *Limitation stated*. Except in the case of exceptional circumstances set forth in paragraph (d)(2) of this section, entry of alcoholic beverages (other than malt beverages) for personal or family use but not as an accommodation to others or for sale or other commercial use under subheading 9806.00.45, HTSUS, is limited to one case each month.

(ii) *Advance entry or withdrawal*. A maximum of three cases (the initial one plus two cases in advance) may be entered or withdrawn at any one time in a given 3-month period if the port director is satisfied they are for personal or family use but not as an accommodation to others or for sale or other commercial use. Such advance entry or withdrawal shall not be deemed to broaden the one case per month limitation.

(iii) *Certification*. At the time of each entry or withdrawal, the member of the Armed Forces must certify that since his last entry or withdrawal there have expired a number of months equal to the numbers of cases last entered or withdrawn.

(2) *Exceptional circumstances*. In exceptional circumstances an additional quantity of alcoholic beverages for personal or family use but not as an accommodation to others or for sale or other commercial use, in excess of the one case per month limitation may be allowed under the following procedure:

(i) A statement signed by the member of the Armed Forces and attached to his declaration for free entry will be submitted to the port director, setting forth the reason for requesting the additional quantity;

(ii) The statement of request must be approved by the officer or person in charge of the Armed Forces involved, or a person specifically authorized by such officer or person to approve such requests; and

(iii) The port director must be satisfied that the need for the additional quantity is justified. Questionable cases shall be referred to the Commissioner of Customs for instructions.

(3) *Retention and verification of the warehouse proprietors' records*. The warehouse proprietor shall retain all records relating to the entry and withdrawal of alcoholic beverages under subheading 9806.00.45, HTSUS, for 3 years from the date of the entry against which the withdrawal of the alcoholic beverages is charged.

(e) *Entry requirements*. The entry requirements prescribed in the Tariff Act of 1930, as amended (Title 19, United States Code), and the regulations thereunder are applicable to articles for which free entry is claimed under subheadings 9806.00.20, 9806.00.45, 9809.00.30, HTSUS. No invoices shall be required.

[T.D. 73–227, 38 FR 22548, Aug. 22, 1973, as amended by T.D. 79–159, 44 FR 31969, June 4, 1979; T.D. 89–1, 53 FR 51266, Dec. 21, 1988]

## Subpart J—Noncommercial Importations of Limited Value

### § 148.101 Applicability.

Each person, including a crewmember, arriving in the United States who enters articles for his personal or household use, or as bona fide gifts not imported for sale nor for the account of another person, valued in the aggregate at not over $1,000 fair retail value in the country of acquisition, shall be assessed a flat rate of duty on the articles, as provided in § 148.102. The entry shall be made under subheading 9816.00.20 or 9816.00.40, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), and is subject to the limitations and conditions in this subpart. Except as provided in § 148.105, the flat rate of duty shall be assessed in place of any rates of duty other than free rates of duty. If the dutiable amount of the article(s) is over $1,000 fair retail value, the flat rate of duty provisions shall apply to the amount not over $1,000 fair retail value, and the excess amount shall be valued under section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a). The article(s) shall be classified under the appropriate subheading number of the tariff schedule.

For purposes of this subpart, ''fair retail value'' in the country of acquisition means the price at which the merchandise is freely offered there for sale at retail and ''country of acquisition'' includes America Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States.

Two examples of the application of this subpart are set forth below:

*Example 1:* B returned from Europe where he acquired merchandise having a fair retail value of $1,950. Assume for purposes of this example that (1) in addition to the personal exemption of $400, $100 of the merchandise carries a free rate of duty, (2) allowances and exemptions have not been used within the past 30 days, and (3) all articles in excess of allowances and exemptions and duty-free articles are dutiable at rates other than the flat rate.

B presents his baggage to the Customs officer for examination and his declaration for verification. Duty is figured as follows:

| | Fair retail value | Duty |
|---|---|---|
| (a) The $400 personal exemption | $400 | ..... |
| (b) Articles which carry a free rate of duty | 100 | ..... |
| (c) The $1,000 flat rate of duty allowance calculated at: | 1,000 | ..... |
| 4 percent (effective 01/01/01 through 12/31/01) | ..... | $40 |
| 3 percent (effective from 01/01/02) | ..... | 30 |
| (d) Balance of articles subject to duty at rates other than flat rate | [1] 450 | ([1]) |
| Total | [1] 1,950 | ([1]) |

[1] The articles not covered by exemptions, allowances, and duty-free rates will be valued under section 402, Tariff Act of 1930, as amended, and duty calculated at rates other than the flat rate.

*Example 2:* Mr. and Mrs. B return from the U.S. Virgin Islands. During the trip, they acquired merchandise having a fair retail value of $4,900. Assume for purposes of this example that (1) in addition to the personal exemption of $1,200 for each returning resident, $100 of the merchandise carries a free rate of duty, (2) allowances and exemptions have not been used within the past 30 days, (3) all articles in excess of allowances and exemptions and duty-free articles are dutiable at rates other than the flat rate, and (4) Mrs. B made $400 in purchases on the trip, none of which carries a free rate of duty.

Mr. and Mrs. B present their baggage to the Customs officer for examination and their declaration for verification. Duty is figured as follows:

| | Fair retail value | Duty |
|---|---|---|
| (a) The $1,200 personal exemptions for residents returning from the U.S. Virgin Islands are grouped for a total of | $2,400 | ..... |
| (b) Articles which carry a free rate of duty | 100 | ..... |
| (c) The $1,000 flat rate of duty allowance calculated at: | 2,000 | ..... |
| 2 percent (effective 01/01/01 through 12/31/01) | ..... | $40 |
| 1.5 percent (effective from 01/01/02) | ..... | 30 |
| (d) Balance of articles subject to duty at rates other than flat rate | [1] 400 | ([1]) |
| Total | [1] 4,900 | ([1]) |

[1] The articles not covered by exemptions, allowances, and duty-free rates will be valued under section 402, Tariff Act of 1930, as amended, and duty calculated at rates other than the flat rate.

[T.D. 78–394, 43 FR 49789, Oct. 25, 1978, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; 52 FR 12149, Apr. 15, 1987; T.D. 87–89, 52 FR 24446, July 1, 1987; T.D. 89–1, 53 FR 51266, Dec. 21, 1988; T.D. 97–75, 62 FR 46442, Sept. 3, 1997; T.D. 01–61, 66 FR 46218, Sept. 4, 2001]

## § 148.102 Flat rate of duty.

(a) *Generally*. The rate of duty on articles accompanying any person, including a crewmember, arriving in the United States (exclusive of duty-free articles and articles acquired in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States) shall be 4 percent, effective January 1, 2001, and 3 percent, effective January 1, 2002, of the fair retail value in the country of acquisition.

(b) *American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands*. The rate of duty on articles accompanying any person, including a crewmember, arriving in the United States directly or indirectly from American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States (exclusive of duty-free articles), acquired in these locations as an incident of the person's physical presence there, shall be 2 percent, effective January 1, 2001, and 1.5 percent, effective January 1, 2002, of the fair retail value in the location in which acquired.

[T.D. 01–61, 66 FR 46218, Sept. 4, 2001]

**§ 148.103 Family grouping of allowances.**

(a) *Generally*. When members of a family residing in one household travel together on their return to the United States, the flat rate of duty allowance will be grouped and allowed without regard to which member of the family is the owner of the articles. A group allowance shall not include an allowance for a family member not entitled to it in his own right, nor shall a group allowance be applied to any property of that member.

(b) *Members of a family residing in one household*. ''Members of a family residing in one household'' shall include all persons, regardless of age, who:

(1) Are related by blood, marriage, or adoption;

(2) Lived together in one household at their last permanent residence; and

(3) Intend to live in one household after their arrival in the United States.

[T.D. 78–394, 43 FR 49789, Oct. 25, 1978]

**§ 148.104 Frequency of use.**

(a) *30-day period*. The flat rate of duty shall not apply to a person who has used the provision within the 30-day period immediately prior to his arrival in the United States. The date of the person's last arrival on which he declared articles for which the flat rate of duty was applicable shall be considered the date that rate was last used.

(b) *Computation of time*. The 30-day period immediately prior to the person's arrival in the United States shall be computed by excluding the day of arrival and counting backward 30 days.

(c) *Remainder not applicable to subsequent journey*. A person who has received a flat rate of duty allowance of less than $1,000 in connection with his return from one journey is not entitled to apply the remainder to articles acquired abroad on a subsequent journey.

[T.D. 78–394, 43 FR 49789, Oct. 25, 1978, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 97–75, 62 FR 46443, Sept. 3, 1997]

**§ 148.105 Procedure for excluding articles from flat rate of duty.**

(a) *Generally*. Any person who has information that merchandise is being imported into the United States under the provisions of subheading 9816.00.20 or 9816.00.40, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), and this subpart which adversely affects the economic interest of the United States may communicate the information in writing to the Commissioner of Customs, Attention: Office of Field Operations, Washington, DC 20229.

(b) *Content of communication*. The communication to the Commissioner need not be in any particular form but shall contain the following:

(1) The name of the individual and the person, firm, or association the individual represents, if any;

(2) The nature of the individual's interest in the matter, if any;

(3) A description of the merchandise, which it is alleged affects the economic interest of the United States adversely, including subheadings of the HTSUS, if known;

(4) The country of acquisition and the ports and dates of entry of the merchandise, if known; and

(5) A statement and supporting evidence as to the manner in which the individual believes the economic interest of the United States is being adversely affected.

(c) *Inquiry to be conducted*. Upon receipt of a communication containing the information required by paragraph (b) of this section, an inquiry will be conducted.

(d) *Negative determination*. If the inquiry results in a finding that no reasonable cause exists to believe that the application of the flat rate of duty provisions to a particular article of merchandise is adversely affecting the economic interest of the United States, the inquirer shall be advised in writing of the finding and the matter shall be closed.

(e) *Publication of tentative finding*. If the inquiry results in a finding by the Secretary of the Treasury that reasonable cause exists to believe that the application of the flat rate of duty provisions to a particular article of merchandise is affecting the economic interest of the United States adversely, a notice of the finding will be published in the FEDERAL REGISTER and Customs

Bulletin, along with a statement of intent to exclude the articles from application of the flat rate of duty provisions. Interested persons will be given an opportunity to submit written comments on the notice.

(f) *Final determination*. Based upon the comments received and the results of any additional inquiry as may be necessary, if it is determined by the Secretary of the Treasury that application of the flat rate of duty provisions adversely affects the economic interest of the United States, a Treasury Decision will be published in the FEDERAL REGISTER and Customs Bulletin announcing that the merchandise will be excluded from application of the flat rate of duty provisions. Excluded articles of merchandise shall be listed in § 148.106. If it is determined by the Secretary of the Treasury that a valid basis for excluding the merchandise from the flat rate of duty provisions does not exist, the notice proposing to exclude the article will be withdrawn by publishing a notice in the FEDERAL REGISTER and the Customs Bulletin.

[T.D. 78–394, 43 FR 49789, Oct. 25, 1978, as amended by T.D. 89–1, 53 FR 51267, Dec. 21, 1988; T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

### § 148.106 Excluded articles of merchandise.

The following articles of merchandise have been found to affect the economic interest of the United States adversely, and they are excluded from the application of the flat rate of duty provisions.

[Reserved for listing.]

[T.D. 78–394, 43 FR 49789, Oct. 25, 1978]

## Subpart K—Unaccompanied Shipments From American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States

### § 148.110 Applicability.

The provisions of this subpart are applicable to articles not accompanying a person, including a crewmember, which are purchased in *and* shipped from American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States. However, this subpart is not applicable to the importation of unaccompanied articles in a manner prohibited by law or regulation (e.g., mail shipments of alcoholic beverages or alcoholic beverages shipped other than by mail in excess of quantities authorized by State laws or regulations).

The following is a summary of the procedure to be followed to obtain the benefits of this subpart: A person purchasing articles in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States would receive a sales slip, invoice, or other evidence of purchase which he would present to the Customs officer along with his baggage declaration, Customs Form 6059–B, and a Declaration of Unaccompanied Articles, Customs Form 255. The latter form is prepared in triplicate for each shipment to follow. The Customs officer would verify the information, indicate on the form whether the article or articles were free of duty, dutiable at the flat rate, or a combination of the foregoing, and validate the form. Two copies would be returned to the traveler, who would send one form to the vendor. Upon receipt of the form the vendor would place it in an envelope, affix it to the outside of the package, clearly mark the package ''Unaccompanied Tourist Shipment,'' and send the package to the traveler, generally via mail, although it could be sent by other means. If sent through the mail, the package would be examined by Customs and forwarded to the Postal Service for delivery. Any duties due would be collected by the mailman. If the shipment arrives other than through the mail, the traveler would be notified by the carrier when the article arrives. Entry would be made by the carrier or the traveler at the customhouse. Any duties due would be collected at that time.

[T.D. 78–394, 43 FR 49790, Oct. 25, 1978; 43 FR 55758, Nov. 29, 1978; T.D. 97–75, 62 FR 46443, Sept. 3, 1997]

### § 148.111 Written declaration for unaccompanied articles.

The baggage declaration, Customs Form 6059–B, of a person (the crewmembers declaration, Customs Form

5129, in the case of a returning crewmember) arriving directly or indirectly from American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States shall be in writing if it covers articles which do not accompany him and:

(a) The articles are entitled to free entry under the $1,200 exemption provided by subheading 9804.00.70, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), or

(b) The articles are noncommerical importations of limited value subject to a flat rate of duty under subheading 9816.00.40, HTSUS.

[T.D. 78–394, 43 FR 49790, Oct. 25, 1978, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 89–1, 53 FR 51267, Dec. 21, 1988; T.D. 97–75, 62 FR 46443, Sept. 3, 1997]

### § 148.112 Evidence of purchase.

A sales slip, invoice, or other evidence of purchase, shall be presented with the declaration for all unaccompanied articles.

[T.D. 78–394, 43 FR 49790, Oct. 25, 1978]

### § 148.113 Declaration, entry, and collection of duty.

(a) *Declaration and entry for unaccompanied articles*—(1) *Declaration*. A baggage declaration covering articles for which a claim of free entry, in whole or in part, is made under the $1,200 exemption provided by subheading 9804.00.70, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), or a baggage or crewmembers declaration covering articles for which the flat rate of duty provision of subheading 9816.00.40, HTSUS appears to be applicable, shall be accompanied by a Declaration of Unaccompanied Articles, Customs Form 255. Customs Form 255 shall be prepared in triplicate by the vendor or declarant for each shipment of declared articles not accompanying the person. A shipment consists of one or more packages or containers sent as a unit.

(2) *Verification*. The Customs officer shall verify the information from the declaration, sales slip, invoice, or other evidence of purchase furnished by the person. The completed Customs Form 255 shall be validated by the Customs officer and two copies given to the person.

(b) *Collection of duty*. Duties shall be collected before release of the articles, after their arrival in the United States, as provided in § 145.12 or § 148.115.

[T.D. 78–394, 43 FR 49790, Oct. 25, 1978, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 89–1, 53 FR 51267, Dec. 21, 1988; T.D. 93–66, 58 FR 44131, Aug. 19, 1993; T.D. 97–75, 62 FR 46443, Sept. 3, 1997]

### § 148.114 Shipment of unaccompanied articles.

One copy of the validated Customs Form 255 shall be returned to the vendor. The vendor shall place the form in an envelope, affix it to the outside of the shipment, and clearly mark the outside of the shipment ''Unaccompanied Tourist Shipment.''

[T.D. 78–394, 43 FR 49790, Oct. 25, 1978]

### § 148.115 Release of shipment.

(a) *Release after examination*. Unaccompanied tourist shipments:

(1) To which the personal exemption provided in subheading 9804.00.70, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), is applicable, or

(2) For which entry is made under the flat rate of duty provisions of subheading 9816.00.40, HTSUS, or under those provisions in conjunction with the regular rate of duty provision of another subheading of the tariff schedule, shall be released if:

(i) The shipment is properly marked and accompanied by a validated copy of Customs Form 255,

(ii) The examining Customs officer is satisfied that the contents of the shipment are as stated on the Customs Form 255 and, if applicable, that they are properly classified,

(iii) The declared value conforms to the fair retail value in the country of acquisition, and

(iv) In respect to shipments for which entry is made under subheading 9816.00.40, HTSUS, any duties found to be due are paid.

(b) *Removal of Customs Form 255*. The copy of Customs Form 255 attached to the shipment shall be removed by the Customs officer and retained for Customs purposes.

(c) *Missing Customs Form 255.* If a validated copy of Customs Form 255 does not accompany the shipment, entry shall be made under the provisions of part 141 or 145 of this chapter.

(d) *Restricted or prohibited shipments.* No shipment containing prohibited or restricted merchandise for which exemption is claimed under subheading 9804.00.70, HTSUS, or for which entry is claimed under subheading 9816.00.40, HTSUS, shall be released except upon compliance with the provisions of part 12 and §§ 145.51 through 145.59 of this chapter, and other applicable laws and regulations.

(e) *Verification of claim.* The port director may withhold release of any shipment for which exemption is claimed under subheading 9804.00.70, HTSUS, or for which entry is claimed under subheading 9816.00.40, HTSUS, to verify the validity of the claim. If he is unable to verify the claim, the merchandise shall be released under the provisions of part 141 or 145 of this chapter.

[T.D. 78–394, 43 FR 49790, Oct. 25, 1978; 43 FR 55758, Nov. 29, 1978, as amended by T.D. 89–1, 53 FR 51267, Dec. 21, 1988; T.D. 93–66, 58 FR 44131, Aug. 19, 1993]

### § 148.116 Claim for refund.

Any person who has filed a declaration of unaccompanied articles under §§ 148.112 and 148.113 and who is dissatisfied with the amount of duty assessed on the articles upon their arrival in the United States may file a claim for administrative review under subpart C, part 145, of this chapter if the articles arrived by mail, or under parts 173 and 174 if the articles arrived other than by mail. Any supporting documents, including a copy of Customs Form 255, should be submitted with the claim.

[T.D. 78–394, 43 FR 49790, Oct. 25, 1978; 43 FR 55758, Nov. 29, 1978]

## PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

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AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i) and (j), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

Section 151.21 also issued under the provisions of Chapters 17 and 18, HTSUS;

Section 151.42 also issued under 19 U.S.C. 1460, 1584, 1592;

Section 151.43 also issued under 19 U.S.C. 1592;

Section 151.46 also issued under 19 U.S.C. 1507;

Section 151.62 also issued under 19 U.S.C. 1481;

Section 151.63 also issued under 19 U.S.C. 1484;

Section 151.66 also issued under 19 U.S.C. 1562;

Section 151.68 also issued under 19 U.S.C. 1311, 1562;

Section 151.69 also issued under 19 U.S.C. 1557, 1562;

Section 151.82 also issued under 19 U.S.C. 1481;

Section 151.91 also issued under the Additional U.S. Notes to Chapter 20, HTSUS.

SOURCE: T.D. 73–175, 38 FR 17470, July 2, 1973, unless otherwise noted.

### § 151.0 Scope.

This part sets forth general provisions governing the examination and sampling of imported merchandise, as well as specific provisions governing the examination, sampling, and testing of certain particular types of merchandise.

## Subpart A—General

### § 151.1 Merchandise to be examined.

The port director shall examine such packages or quantities of merchandise as he deems necessary for the determination of duties and for compliance with the Customs laws and any other laws enforced by the Customs Service.

[T.D. 81–240, 46 FR 45130, Sept. 10, 1981]

### § 151.2 Quantities to be examined.

(a)(1) *Minimum quantities.* Not less than one package of every 10 packages of merchandise shall be examined, unless a special regulation permits a lesser number of packages to be examined. Port directors are specially authorized to examine less than one package of every 10 packages, but not less than one package of every invoice, in the case of any merchandise which is:

(i) Imported in packages the contents and values of which are uniform, or

(ii) Imported in packages the contents of which are identical as to character although differing as to quantity and value per package.

(2) *Exceptions to minimum quantities.* At ports of entry specifically designated by the Commissioner of Customs, the port director is authorized to release, without examination, merchandise of a character which the port director has determined need not be examined in every instance to ensure the protection of the revenue and compliance with the Customs laws and any other laws enforced by the Customs Service.

[T.D. 81–240, 46 FR 45130, Sept. 10, 1981]

### § 151.3 Disclosure of examination packages.

Information as to the particular packages which will be examined shall not be made available to the importer, his agent, or any person other than Customs officers necessarily concerned, until the merchandise has arrived within the limits of the port of entry.

### § 151.4 Time of examination.

Imported merchandise shall not be opened, examined, or inspected until it has been entered under some form of entry for consumption or warehouse, except in the following cases:

(a) *Official Government examination and sampling*. Authorized employees of the Customs Service, Food and Drug Administration, Animal and Plant Health Inspection Service, Public Health Service, or other Government agency may for official purposes examine or take samples of merchandise for which entry has not been filed, including merchandise being released under a special permit for immediate delivery.

(b) *Perishable merchandise, benzenoid chemicals, and merchandise received without an invoice*. An application by the importer to examine merchandise, whether or not covered by an entry for transportation in bond or for exportation, may be granted by the port director, under the conditions listed in § 151.5, in the following cases:

(1) Examination of perishable merchandise is desired solely to determine its condition. This is not limited to a single examination, and there is no objection to incidental display to prospective buyers during the examination.

(2) [Reserved]

(3) The importer has been unable to obtain the required documents or information to make the necessary entry, and examination of the merchandise is required to obtain information for the preparation of a pro forma invoice to be used in making entry.

(c) *Examination of merchandise entered for transportation under bond or for exportation*—(1) *Examination, sampling, weighing or emergency operation*. As a bona fide incident to exportation or further transportation, the importer of merchandise entered or withdrawn for transportation under bond or for exportation may, upon written application to the port director supported by a valid business reason for the request, be permitted to examine, sample, weigh, or subject his merchandise to an operation required by reason of an emergency, provided that any operation performed on the merchandise does not constitute a manufacture, and that § 151.5 is complied with. For conditions governing transshipment and emergency access to the shipment by the carrier, see § 18.3 of this chapter.

(2) *Nonemergency operation*. In cases not involving an emergency, an operation not constituting a manufacture may be permitted under the conditions listed in paragraph (c)(1) of this section if neither the protection of the revenue nor the proper conduct of Customs business requires that the operation be done in a Customs bonded warehouse, provided that the importer's written application for such operation is approved by the port director.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 95–99, 60 FR 62733, Dec. 7, 1995; T.D. 97–82, 62 FR 51771, Oct. 3, 1997]

### § 151.5 Conditions for examination prior to entry.

Examination, sampling, weighing, or operation upon merchandise at the importer's request prior to entry for consumption or warehouse, as provided for in § 151.4 (b) and (c), shall be subject to the following conditions:

(a) The operation permitted shall be executed under Customs supervision;

(b) If the merchandise is in possession or joint possession of a carrier or container station operator, the concurrence of such carrier or operator shall be obtained; and

(c) The Government shall be reimbursed for the compensation, computed in accordance with § 24.17(d) of this chapter, and other expenses of the Customs officer or employee supervising the action permitted.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 95–99, 60 FR 62733, Dec. 7, 1995]

### § 151.6 Place of examination.

All merchandise will be examined at the place of arrival, unless examination at another place is required or authorized by the port director in accordance with § 151.7 or § 151.15 of this part. Except where the merchandise is required by the port director to be examined at the public stores, the importer shall bear any expense involved in preparing the merchandise for Customs

examination and in the closing of packages.

[T.D. 84–152, 49 FR 29374, July 20, 1984, as amended by T.D. 93–6, 58 FR 5606, Jan. 22, 1993]

### § 151.7 Examination elsewhere than at place of arrival or public stores.

The port director may require or authorize examination at a place other than the place of arrival or the public stores, such as at the importer's premises or at a centralized examination station under § 151.15 of this part. If examination at a place other than at the place of arrival or the public stores is authorized it will be subject to the following conditions:

(a) *Sealing of packages*. If examination is to be made at the importer's premises or other place not under the control of Customs, the port director may require the packages to be corded and sealed by a Customs officer before the packages are removed from the place of arrival. The packages shall be opened only in the presence of the Customs officer authorized to examine their contents.

(b) *Preparation for Customs examination and closing of packages*. Except when merchandise is required by the port director to be examined at the public stores, the importer shall arrange and bear any expense for preparation of the merchandise for Customs examination and closing of packages.

(c) *Reimbursement of expenses outside port limits*. If the place of examination is not located within the limits of a port of entry or at a Customs station at which Customs is permanently located, whether or not that location is the place of arrival, the importer shall pay any additional expenses, including actual expenses of travel and subsistence but not the salary during regular hours of duty of the examining officer. However, no collection will be made if the total amount chargeable against one importer for one day amounts to less than 50 cents. If the total amount chargeable amounts to 50 cents or more but less than $1, a minimum charge of $1 will be made.

(d) *Bond for removal from Customs custody*. Before permitting the removal of merchandise for examination elsewhere than at the public stores, wharf, or other place under the control of Customs, the port director shall require the importer to execute a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 84–152, 49 FR 29374, July 20, 1984; T.D. 84–213, 49 FR 41186, Oct. 19, 1984; T.D. 93–6, 58 FR 5606, Jan. 22, 1993]

### § 151.8 Examination after assembly.

(a) *Application by importer*. Upon application by the importer, machinery, altars, shrines, and other articles which must be set up or assembled prior to examination may be examined at the mill, factory, or other suitable place after being assembled.

(b) *Conditions applicable*. The importer shall comply with the conditions set forth in § 151.7 (b) through (d). The port director may also require that a deposit be made of the estimated additional expense. The packages need not be corded and sealed in accordance with § 151.7(a), but the port director may make such preliminary examination as he deems necessary to identify the merchandise with the invoice.

(c) *Removal of merchandise and notification of assembly*. After the bond required by § 151.7(d) has been filed and any necessary preliminary examination has been made, the port director may permit the merchandise to be removed to the place at which it is to be assembled for examination. Within 90 days after such removal, unless an extension has been applied for and granted by the port director, the importer shall notify the port director that the merchandise has been assembled and is ready for examination, whereupon final examination shall be made.

### § 151.9 Immediate transportation entry delivered outside port limits.

When merchandise covered by an immediate transportation entry has been authorized by the port director to be delivered to a place outside a port of entry as provided for in § 18.11(c) of this chapter, the provisions of § 151.7 shall be complied with to the same extent as if the merchandise had been delivered to the port of entry, and then authorized to be examined elsewhere than at

the public stores, wharf, or other place under the control of Customs.

### § 151.10 Sampling.

When necessary, the port director may obtain samples of merchandise for appraisement, classification, or other official purposes. Samples shall be taken by Customs or a commercial gauger approved in accordance with § 151.13. Samples shall be marked to ensure identification and retained according to established policies.

[T.D. 87–39, 52 FR 9787, Mar. 26, 1987]

### § 151.11 Request for samples or additional examination packages after release of merchandise.

If the port director requires samples or additional examination packages of merchandise which has been released from Customs custody, he shall send the importer a written request, on Customs Form 28, Request for Information, or other appropriate form, to submit the necessary samples or packages. If the request is not promptly complied with, the port director may make a demand under the bond for the return of the necessary merchandise to Customs custody in accordance with § 141.113 of this chapter.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 75–152, 40 FR 27444, June 30, 1975; T.D. 84–213, 49 FR 41186, Oct. 19, 1984]

### § 151.12 Accreditation of commercial laboratories.

This section sets forth the requirements for commercial laboratories to obtain accreditation by Customs for the testing of certain commodities, and explains the operation of such accredited laboratories. This section also provides for the imposition of accreditation and reaccreditation fees, sets forth grounds for the suspension and revocation of accreditation, and provides for the imposition of a monetary penalty for an accredited commercial laboratory that fails to adhere to the provisions of this section.

(a) *Definitions.* For purposes of this section, the following words and phrases have the meanings indicated:

*Analysis record.* An ''analysis record'' is a compilation of all documents which have been generated during the course of analysis of a particular sample which, under normal circumstances, may include, both in paper and electronic-form, such documents as work sheets, notes, associated spectra (both spectra of the actual product and any standard spectra used for comparison), photographs and microphotographs, and the laboratory report.

*Assistant Commissioner.* In §§ 151.12 and 151.13, references to the ''Assistant Commissioner'' mean the Assistant Commissioner, Office of Field Operations, located in Washington, D.C.

*Check samples.* ''Check samples'' are samples which have been distributed by Customs to accredited laboratories to test their proficiency in a certain area of accreditation.

*Commodity Group Brochure.* A ''Commodity Group Brochure'' is a booklet which contains a listing of laboratory methods which commercial laboratories are required to have the capability to perform to qualify for Customs-accreditation in a particular commodity group. The brochures and the U.S. Customs Laboratory Methods Manual will specify the particular laboratory testing methods required for particular commodity groups, unless written permission from the Executive Director is given to use an alternate method. Procedures required by the Executive Director may reference applicable general industry testing standards, published by such organizations as the American Society for Testing and Materials (ASTM) and the American Petroleum Institute (API). Commodity Group Brochures and a listing of the methods found in the U.S. Customs Laboratory Methods Manual are available from the U.S. Customs Service, Attention: Executive Director, Laboratories and Scientific Services, Washington, D.C. 20229 and can also be found on the Customs Internet Web Site: *www.customs.gov*.

*Executive Director.* In §§ 151.12 and 151.13, references to the ''Executive Director'' mean the Executive Director, Laboratories and Scientific Services, located in Washington, D.C.

(b) *What is a ''Customs-accredited laboratory''?* ''Commercial laboratories'' are individuals and commercial organizations that analyze merchandise, *i.e.*,

determine its composition and/or characteristics, through laboratory analysis. A ''Customs-accredited laboratory'' is a commercial laboratory, within the United States, that has demonstrated, to the satisfaction of the Executive Director, pursuant to this section, the capability to perform analysis of certain commodities to determine elements relating to the admissibility, quantity, composition, or characteristics of imported merchandise. Customs accreditation extends only to the performance of such functions as are vested in, or delegated to, Customs.

(c) *What are the obligations of a Customs-accredited laboratory?* A commercial laboratory accredited by Customs agrees to the following conditions and requirements:

(1) To comply with the requirements of part 151, Customs Regulations (19 CFR part 151), and to conduct professional services in conformance with approved standards and procedures, including procedures which may be required by the Commissioner of Customs or the Executive Director;

(2) To have no interest in or other connection with any business or other activity which might affect the unbiased performance of duties as a Customs-accredited laboratory. It is understood that this does not prohibit acceptance of the usual fees for professional services;

(3) To maintain the ability, *i.e.*, the instrumentation, equipment, qualified staff, facilities, etc., to perform the services for which the laboratory is accredited, and allow the Executive Director to evaluate that ability on a periodic basis by such means as on-site inspections, demonstrations of analysis procedures, reviews of submitted records, and proficiency testing through check samples;

(4) To retain those laboratory records beyond the five-year record-retention period and samples (see paragraph (j)(1) of this section) specified by Customs as necessary to address matters concerned in pending litigation, and, if laboratory operations or accreditation cease, to contact Customs immediately regarding the disposition of records/samples retained;

(5) To promptly investigate any circumstance which might affect the accuracy of work performed as an accredited laboratory, to correct the situation immediately, and to notify both the port director and the Executive Director of such matters, their consequences, and any corrective action taken or that needs to be taken; and

(6) To immediately notify both the port director and the Executive Director of any attempt to impede, influence, or coerce laboratory personnel in the performance of their duties, or of any decision to terminate laboratory operations or accredited status. Further, within 5 days of any changes involving legal name, address, ownership, parent-subsidiary relationships, bond, other offices or sites, or approved signatories to notify the Executive Director by certified mail.

(d) *What are the commodity groups for which accreditation may be sought?* (1) Commercial laboratories may apply for accreditation to perform tests for any of the commodity groups listed in paragraph (d)(2) of this section. Applicable test procedures are listed in Commodity Group Brochures and the U.S. Customs Laboratory Methods Manual. Application may be made for accreditation in more than one commodity group. At the discretion of the Executive Director accreditation may be granted for subgroups of tests within a commodity group or for commodity groups not specifically enumerated. Once accredited, a Customs-accredited laboratory may apply at any time to expand its accreditation, to add new testing sites, or increase the number of commodity groups or subgroups accredited.

(2) The commodity groups for which accreditation may be sought without special permission from the Executive Director are:

(i) Dairy and Chocolate Products entered under Chapters 4, 18, and 21 of the Harmonized Tariff Schedule of the United States (HTSUS);

(ii) Food and Food Products entered under Chapters 7–12, 15, 16, and 19–21, HTSUS;

(iii) Botanical Identification—materials and products entered under Chapters 14 and 44–46, HTSUS;

(iv) Sugar, Sugar Syrups, and Confectionery products entered under Chapter 17, HTSUS;

(v) Spirituous Beverages entered under Chapter 22, HTSUS;

(vi) Building Stone, Ceramics, Glassware, and Other Mineral Substances entered under Chapters 25 and 68–70, HTSUS;

(vii) Inorganic Materials, including Inorganic Compounds and Ores, entered under Chapters 26, 28, 31, and 36–38, HTSUS;

(viii) Petroleum and Petroleum Products entered under Chapters 27 and 29, HTSUS;

(ix) Organic Materials, including Intermediates and Pharmaceuticals, entered under Chapters 29, 30, 34, 35, and 38, HTSUS;

(x) Rubber, Plastics, Polymers, Pigments and Paints entered under Chapters 32, 39, and 40, HTSUS;

(xi) Essential Oils and Perfumes entered under Chapter 33, HTSUS;

(xii) Leather and Articles of Leather entered under Chapters 41 and 42, HTSUS;

(xiii) Paper and Paper Products entered under Chapters 47–49, HTSUS;

(xiv) Textiles and Related Products, including footwear and hats, entered under Chapters 50–67, HTSUS; and,

(xv) Metals and Alloys entered under Chapters 72–83, HTSUS.

(e) *What are the approved methods of analysis?* Customs-accredited laboratories must follow the general or specific testing methods set forth in Commodity Group Brochures and the U.S. Customs Laboratory Methods Manual in the testing of designated commodities, unless the Executive Director gives written permission to use an alternate method. Alternative methods will be considered and approved on a case-by-case basis.

(f) *How would a commercial laboratory become a Customs-accredited laboratory?*—(1) *What should an application contain?* An application for Customs accreditation must contain the following information:

(i) The applicant's legal name and the address of its principal place of business and any other facility out of which it will work;

(ii) Detailed statements of ownership and any partnerships, parent-subsidiary relationships, or affiliations with any other domestic or foreign organizations, including, but not limited to, importers, other commercial laboratories, producers, refiners, Customs brokers, or carriers;

(iii) A statement of financial condition;

(iv) If a corporation, a copy of the articles of incorporation and the names of all officers and directors;

(v) The names, titles, and qualifications of each person who will be authorized to sign or approve analysis reports on behalf of the commercial laboratory;

(vi) A complete description of the applicant's facilities, instruments, and equipment;

(vii) An express agreement that if notified by Customs of pending accreditation to execute a bond in accordance with part 113, Customs Regulations (19 CFR part 113), and submit it to the Customs port nearest to the applicant's main office. (The limits of liability on the bond will be established by the Customs port in consultation with the Executive Director. In order to retain Customs accreditation, the laboratory must maintain an adequate bond, as determined by the port director);

(viii) A listing of each commodity group for which accreditation is being sought and, if methods are being submitted for approval which are not specifically provided for in a Commodity Group Brochure and the U.S. Customs Laboratory Methods Manual, a listing of such methods;

(ix) A listing by commodity group of each method according to its Customs Laboratory Method Number for which the laboratory is seeking accreditation;

(x) An express agreement to be bound by the obligations contained in paragraph (c) of this section; and,

(xi) A nonrefundable pre-payment equal to 50 percent of the fixed accreditation fee, as published in the FEDERAL REGISTER and Customs Bulletin, to cover preliminary processing costs. Further, the applicant agrees to pay Customs within 30 days of notification of preliminary accreditation the associated charges assessed for accreditation, *i.e.*, those charges for actual travel and background investigation costs,

and the balance of the fixed accreditation fee.

(2) *Where should an application be sent?* A commercial laboratory seeking accreditation or an extension of an existing accreditation must send a letter of application to the U.S. Customs Service, Attention: Executive Director, Laboratories & Scientific Services, 1300 Pennsylvania Ave., NW, Washington, D.C. 20229.

(3) *How will an application be reviewed?*—(i) *Physical plant and management system.* The facility of the applicant will be inspected to ensure that it is properly equipped to perform the necessary tests and that staff personnel are capable of performing required tests. Customs evaluation of an applicant's professional abilities will be in accordance with the general criteria contained in either the American Society for Testing and Materials (ASTM) E548 (Standard Guide for General Criteria Used for Evaluating Laboratory Competence) or the ISO/IEC Guide 25 (General Requirements for the Competence of Calibration and Testing Laboratories). This review will ascertain the laboratory's ability to manage and control the acquisition of technical data. The review will be performed at the time of initial application and upon reaccreditation at three-year intervals.

(ii) *Ability to perform tests on specified commodity groups.* For each commodity group applied for, the applicant will undergo a separate review of testing capabilities. The specific accreditation will be based on the laboratory's ability to perform the tests required for that commodity group. This will include the qualifications of the technical personnel in this field and the instrument availability required by the test methods. Maintenance of accreditation will be ongoing and may require the submission of test results on periodic check samples. The criteria for acceptance will be based on the laboratory's ability to produce a work product that assists in the proper classification and entry of imported merchandise.

(iii) *Determination of competence.* The Executive Director will determine the applicant's overall competence, independence, and character by conducting on-site inspections, which may include demonstrations by the applicant of analysis procedures and a review of analysis records submitted, and background investigations. The Executive Director may also conduct proficiency testing through check samples.

(iv) *Evaluation of technical and operational requirements.* Customs will determine whether the following technical and operational requirements are met:

(A) *Equipment.* The laboratory must be equipped with all of the instruments and equipment needed to conduct the tests for which it is accredited. The laboratory must ensure that all instruments and equipment are properly calibrated, checked, and maintained.

(B) *Facilities.* The laboratory must have, at a minimum, adequate space, lighting, and environmental controls to ensure compliance with the conditions prescribed for appropriate test procedures.

(C) *Personnel.* The laboratory must be staffed with persons having the necessary education, training, knowledge, and experience for their assigned functions (e.g., maintaining equipment, calibrating instruments, performing laboratory analyses, evaluating analytical results, and signing analysis reports on behalf of the laboratory). In general, each technical staff member should hold, at a minimum, a bachelor's degree in science or have two years related experience in an analytical laboratory.

(g) *How will an applicant be notified concerning accreditation?*—(1) *Notice of accreditation or nonselection.* When Customs evaluation of a laboratory's credentials is completed, the Executive Director will notify the laboratory in writing of its preliminary accreditation or nonselection. (Final accreditation determinations will not be made until the applicant has satisfied all bond requirements and made payment on all assessed charges and the balance of the applicable accreditation fee). All final notices of accreditation, reaccreditation, or extension of existing Customs accreditation will be published in the FEDERAL REGISTER and Customs Bulletin.

(2) *Grounds for nonselection.* The Executive Director may deny a laboratory's

application for any of the following reasons:

(i) The application contains false or misleading information concerning a material fact;

(ii) The laboratory, a principal of the laboratory, or a person the Executive Director determines is exercising substantial ownership or control over the laboratory operation is indicted for, convicted of, or has committed acts which would:

(A) Under United States federal or state law, constitute a felony or misdemeanor involving misstatements, fraud, or a theft-related offense; or

(B) Reflect adversely on the business integrity of the applicant;

(iii) A determination is made that the laboratory-applicant does not possess the technical capability, have adequate facilities, or management to perform the approved methods of analysis for Customs purposes;

(iv) A determination is made that the laboratory has submitted false reports or statements concerning the sampling of merchandise, or that the applicant was subject to sanctions by state, local, or professional administrative bodies for such conduct;

(v) Nonpayment of assessed charges and the balance of the fixed accreditation fee; or

(vi) Failure to execute a bond in accordance with part 113 of this chapter.

(3) *Adverse accreditation decisions; appeal procedures*—(i) *Preliminary notice.* A laboratory which is not selected for accreditation will be sent a preliminary notice of nonselection. The preliminary notice of nonselection will state the specific grounds for the proposed nonselection decision and advise the laboratory that it may file a response addressing the grounds for the action proposed with the Executive Director within 30 calendar days of the date the preliminary notice of nonselection was received by the laboratory.

(ii) *Final notice*—(A) *Based on nonresponse.* If the laboratory does not respond to the preliminary notice, the Executive Director will issue a final notice of nonselection within 60 calendar days of the date the preliminary notice of nonselection was received by the laboratory applicant. The final notice of nonselection will state the specific grounds for the nonselection and advise the laboratory that it may choose to pursue one of the following two options:

(*1*) Submit a new application for accreditation, in accordance with the provisions of paragraph (f)(1) of this section, 180 days after the date of the final notice of nonselection; or

(*2*) Administratively appeal the final notice of nonselection to the Assistant Commissioner within 30 calendar days of the date of the final notice of nonselection.

(B) *Based on response.* If the laboratory files a timely response, the Executive Director will issue a final determination regarding the laboratory's accreditation within 30 calendar days of the date the applicant's response is received by the Executive Director. If this final determination is adverse to the laboratory, then the final notice of nonselection will state the specific grounds for nonselection and advise the laboratory that it may choose to pursue one of the two options provided at paragraphs (g)(3)(ii)(A)(1) and (2) of this section.

(iii) *Appeal decision.* The Assistant Commissioner will issue a decision on the appeal within 30 calendar days of the date the appeal is received. If the appeal decision is adverse to the laboratory, then the decision notice will advise the laboratory that it may choose to pursue one of the following two options:

(A) Submit a new application for accreditation, in accordance with the provisions of paragraph (f)(1) of this section, 120 days after the date of the appeal decision; or

(B) File an action with the Court of International Trade, pursuant to chapter 169 of title 28, United States Code, within 60 days of the date of the appeal decision.

(h) *What are the accreditation/reaccreditation fee requirements?*—(1) *In general.* A fixed fee, representing Customs administrative overhead expense, will be assessed for each application for accreditation or reaccreditation. In addition, associated assessments, representing the actual costs associated with travel and per diem of Customs

employees related to verification of application criteria and background investigations will be charged. The combination of the fixed fee and associated assessments represent reimbursement to Customs for costs related to accreditation and reaccreditation. The fixed fee will be published in the Customs Bulletin and the FEDERAL REGISTER. Based on a review of the actual costs associated with the program, the fixed fee may be adjusted periodically; any changes will be published in the Customs Bulletin and the FEDERAL REGISTER.

(i) *Accreditation fees*. A nonrefundable pre-payment equal to 50 percent of the fixed accreditation fee to cover preliminary processing costs must accompany each application for accreditation. Before a laboratory will be accredited, it must remit to Customs, at the address specified in the billing, within the 30 day billing period, the associated charges assessed for the accreditation and the balance of the fixed accreditation fee.

(ii) *Reaccreditation fees*. Before a laboratory will be reaccredited, it must submit to Customs, at the billing address specified, within the 30 day billing period the fixed reaccreditation fee.

(2) *Disputes*. In the event a laboratory disputes the charges assessed for travel and per diem costs associated with scheduled inspection visits, it may file an appeal within 30 calendar days of the date of the assessment with the Executive Director. The appeal letter must specify which charges are in dispute and provide such supporting documentation as may be available for each allegation. The Executive Director will make findings of fact concerning the merits of an appeal and communicate the agency decision to the laboratory in writing within 30 calendar days of the date of the appeal.

(i) *Can existing Customs-accredited laboratories continue to operate?* Commercial laboratories accredited by the Executive Director prior to December 8, 1993, will retain that accreditation under these regulations provided they conduct their business in a manner consistent with the administrative portions of this section. This paragraph does not pertain to any laboratory which has had its accreditation suspended or revoked. Laboratories which have had their accreditations continued under this section will have their status reevaluated on their next triennial inspection date which is no earlier than three years after the effective date of this regulation. At the time of reaccreditation, these laboratories must meet the requirements of this section and remit to Customs, at the address specified in the billing, within the 30 day billing period, the fixed reaccreditation fee. Failure to meet these requirements will result in revocation or suspension of the accreditation.

(j) *How will Customs-accredited laboratories operate?*—(1) *Samples for testing*. Upon request by the importer of record of merchandise, the port director will release a representative sample of the merchandise for testing by a Customs-accredited laboratory at the expense of the importer. Under Customs supervision, the sample will be split into two essentially equal parts and given to the Customs-accredited laboratory. One portion of the sample may be used by the Customs-accredited laboratory for its testing. The other portion must be retained by the laboratory, under appropriate storage conditions, for Customs use, as necessary, unless Customs requires other specific procedures. Upon request, the sample portion reserved for Customs purposes must be surrendered to Customs.

(i) *Retention of non-perishable samples*. Non-perishable samples reserved for Customs and sample remnants from any testing must be retained by the accredited laboratory for a period of four months from the date of the laboratory's final analysis report, unless other instructions are issued in writing by Customs. At the end of this retention time period, the accredited laboratory may dispose of the retained samples and sample remnants in a manner consistent with federal, state, and local statutes.

(ii) *Retention of perishable samples*. Perishable samples reserved for Customs and sample remnants from any testing can be disposed of more expeditiously than provided for at paragraph (j)(1)(i) of this section, if done in accordance with acceptable laboratory

procedures, unless other instructions are issued in writing by Customs.

(2) *Reports.*—(i) *Contents of reports.* Testing data must be obtained using methods approved by the Executive Director. The testing results from a Customs-accredited laboratory that are submitted by an importer of record with respect to merchandise in an entry, in the absence of testing conducted by Customs laboratories, will be accepted by Customs, provided that the importer of record certifies that the sample tested was taken from the merchandise in the entry and the report establishes elements relating to the admissibility, quantity, composition, or characteristics of the merchandise entered, as required by law.

(ii) *Status of commercial reports where Customs also tests merchandise.* Nothing in these regulations will preclude Customs from sampling and testing merchandise from a shipment which has been sampled and tested by a Customs-accredited laboratory at the request of an importer. In cases where a shipment has been analyzed by both Customs and a Customs-accredited laboratory, all Customs actions will be based upon the analysis provided by the Customs laboratory, unless the Executive Director advises otherwise. If Customs tests merchandise, it will release the results of its test to the importer of record or its agent upon request unless the testing information is proprietary to the holder of a copyright or patent, or developed by Customs for enforcement purposes.

(3) *Recordkeeping requirements.* Customs-accredited laboratories must maintain records of the type normally kept in the ordinary course of business in accordance with the provisions of this chapter and any other applicable provision of law, and make them available during normal business hours for Customs inspection. In addition, these laboratories must maintain all records necessary to permit the evaluation and verification of all Customs-related work, including, as appropriate, those described below. All records must be maintained for five years, unless the laboratory is notified in writing by Customs that a longer retention time is necessary for particular records. Electronic data storage and transmission may be approved by Customs.

(i) *Sample records.* Records for each sample tested for Customs purposes must be readily accessible and contain the following information:

(A) A unique identifying number;

(B) The date when the sample was received or taken;

(C) The identity of the commodity (e.g., crude oil);

(D) The name of the client;

(E) The source of the sample (e.g., name of vessel, flight number of airline, name of individual taking the sample); and

(F) If available, the Customs entry date, entry number, and port of entry and the names of the importer, exporter, manufacturer, and country-of-origin.

(ii) *Major equipment records.* Records for each major piece of equipment or instrument (including analytical balances) used in Customs-related work must identify the name and type of instrument, the manufacturer's name, the instrument's model and any serial numbers, and the occurrence of all servicing performed on the equipment or instrument, to include recalibration and any repair work, identifying who performed the service and when.

(iii) *Records of analytical procedures.* The Customs-accredited laboratory must maintain complete and up-to-date copies of all approved analytical procedures, calibration methods, etc., and must document the procedures each staff member is authorized to perform. These procedures must be readily available to appropriate staff.

(iv) *Laboratory analysis records.* The Customs-accredited laboratory must identify each analysis by sample record number (see paragraph (j)(3)(i) of this section) and must maintain all information or data (such as sample weights, temperatures, references to filed spectra, etc.) associated with each Customs-related laboratory analysis. Each analysis record must be dated and initialed or signed by the staff member(s) who did the work.

(v) *Laboratory analysis reports.* Each laboratory analysis report submitted to Customs must include:

(A) The name and address of the Customs-accredited laboratory;

(B) A description and identification of the sample, including its unique identifying number;

(C) The designations of each analysis procedure used;

(D) The analysis report itself (*i.e.*, the pertinent characteristics of the sample);

(E) The date of the report; and

(F) The typed name and signature of the person accepting technical responsibility for the analysis report (*i.e.*, an approved signatory).

(4) *Representation of Customs-accredited status.* Commercial laboratories accredited by Customs must limit statements or wording regarding their accreditation to an accurate description of the tests for the commodity group(s) for which accreditation has been obtained. Use of terms other than those appearing in the notice of accreditation (see paragraph (g) of this section) is prohibited.

(5) *Subcontracting prohibited.* Customs-accredited laboratories must not subcontract Customs-related analysis work to non Customs-accredited laboratories or non Customs-approved gaugers, but may subcontract to other facilities that are Customs-accredited/approved and in good standing.

(k) *How can a laboratory have its accreditation suspended or revoked or be required to pay a monetary penalty?*—(1) *Grounds for suspension, revocation, or assessment of a monetary penalty.*—(i) *In general.* The Executive Director may immediately suspend or revoke a laboratory's accreditation only in cases where the laboratory's actions are intentional violations of any Customs law or when required by public health or safety. In other situations where the Executive Director has cause, the Executive Director will propose the suspension or revocation of a laboratory's accreditation or propose a monetary penalty and provide the laboratory with the opportunity to respond to the notice of proposed action.

(ii) *Specific grounds.* A laboratory's accreditation may be suspended or revoked, or a monetary penalty may be assessed because:

(A) The selection was obtained through fraud or the misstatement of a material fact by the laboratory;

(B) The laboratory, a principal of the laboratory, or a person the port director determines is exercising substantial ownership or control over the laboratory operation is indicted for, convicted of, or has committed acts which would: under United States federal or state law, constitute a felony or misdemeanor involving misstatements, fraud, or a theft-related offense; or reflect adversely on the business integrity of the applicant. In the absence of an indictment, conviction, or other legal process, the port director must have probable cause to believe the proscribed acts occurred;

(C) Staff laboratory personnel refuse or otherwise fail to follow any proper order of a Customs officer or any Customs order, rule, or regulation;

(D) The laboratory fails to operate in accordance with the obligations of paragraph (c) of this section;

(E) A determination is made that the laboratory is no longer technically or operationally proficient at performing the approved methods of analysis for Customs purposes;

(F) The laboratory fails to remit to Customs, at the billing address specified, within the 30 day billing period the associated charges assessed for the accreditation and the balance of the fixed accreditation fee;

(G) The laboratory fails to maintain its bond;

(H) The laboratory fails to remit to Customs, at the billing address specified, within the 30 day billing period, the fixed reaccreditation fee; or

(I) The laboratory fails to remit any monetary penalty assessed under this section.

(iii) *Assessment of monetary penalties.* The assessment of a monetary penalty under this section, may be in lieu of, or in addition to, a suspension or revocation of accreditation under this section. The monetary penalty may not exceed $100,000 per violation and will be assessed and administered pursuant to published guidelines. Any monetary penalty under this section can be in addition to the recovery of:

(A) Any loss of revenue, in cases where the laboratory intentionally falsified the analysis report in collusion with the importer, pursuant to 19 U.S.C. 1499(b)(1)(B)(i); or

(B) Liquidated damages assessed under the laboratory's Customs bond.

(2) *Notice of adverse action.* When a decision to suspend or revoke accreditation, and/or assess a monetary penalty is made, the Executive Director will immediately notify the laboratory in writing, indicating whether the action is effective immediately or is proposed.

(i) *Immediate suspension or revocation.* Where the suspension or revocation of accreditation is immediate, the Executive Director will issue a final notice of adverse determination. The final notice of adverse determination will state the specific grounds for the immediate suspension or revocation, direct the laboratory to cease performing any Customs-accredited functions, and advise the laboratory that it may choose to pursue one of the following two options:

(A) Submit a new application for accreditation, in accordance with the provisions of paragraph (f)(1) of this section, 180 days after the date of the final notice of adverse determination; or

(B) Administratively appeal the final notice of adverse determination to the Assistant Commissioner within 30 calendar days of the date of the final notice of adverse determination.

(ii) *Proposed suspension, revocation, or assessment of monetary penalty*—(A) *Preliminary notice.* Where the suspension or revocation of accreditation, and/or the assessment of a monetary penalty is proposed, the Executive Director will issue a preliminary notice of proposed action. The preliminary notice of proposed action will state the specific grounds for the proposed action, inform the laboratory that it may continue to perform those functions requiring Customs-accreditation until the Executive Director's final notice is issued, and advise the laboratory that it may file a response addressing the grounds for the action proposed with the Executive Director within 30 calendar days of the date the preliminary notice of proposed action was received by the laboratory. The laboratory may respond by accepting responsibility, explaining extenuating circumstances, and/or providing rebuttal evidence. The laboratory also may ask for a meeting with the Executive Director or his designee to discuss the proposed action.

(B) *Final notice*—(*1*) *Based on nonresponse.* If the laboratory does not respond to the preliminary notice of proposed action, the Executive Director will issue a final notice of adverse determination within 60 calendar days of the date the preliminary notice of proposed action was received by the laboratory. The final notice of adverse determination will state the specific grounds for the adverse determination, direct the laboratory to cease performing any Customs-accredited functions, and advise the laboratory that it may choose to pursue one of the two options provided at paragraphs (k)(2)(i)(A) and (B) of this section.

(*2*) *Based on response.* If the laboratory files a timely response, the Executive Director will issue a final determination regarding the status of the laboratory's accreditation within 30 calendar days of the date the laboratory's response is received by the Executive Director. If this final determination is adverse to the laboratory, then the final notice of adverse determination will state the specific grounds for the adverse action, advise the laboratory to cease performing any functions requiring Customs accreditation, and advise the laboratory that it may choose to pursue one of the two options provided at paragraphs (k)(2)(i)(A) and (B) of this section.

(*3*) *Publication of final notices of adverse determination.* Any final notices of adverse determination issued by the Executive Director resulting in a laboratory being directed to cease performing Customs-accredited functions will be published in the FEDERAL REGISTER and Customs Bulletin and the notice published will include the effective date, duration, and scope of the determination.

(*4*) *Appeal decision.* The Assistant Commissioner will issue a decision on the appeal within 30 calendar days of the date the appeal is received. If the appeal decision is adverse to the laboratory, then the decision notice will advise the laboratory that it may choose to pursue one of the following two options:

(i) Submit a new application for accreditation, in accordance with the

provisions of paragraph (f)(1) of this section, 120 days after the date of the appeal decision; or

(ii) File an action with the Court of International Trade, pursuant to chapter 169 of title 28, United States Code, within 60 days of the date of the appeal decision.

[T.D. 99–67, 64 FR 48534, Sept.7, 1999; T.D. 99–67, 65 FR 10009, 10010, Feb. 25, 2000]

### § 151.13 Approval of commercial gaugers.

This section sets forth the requirements for commercial gaugers to obtain approval by Customs for the measuring of certain merchandise, and explains the operation of such approved gaugers. This section also provides for the imposition of approval and reapproval fees, sets forth grounds for the suspension or revocation of approval, and provides for the imposition of a monetary penalty for an approved commercial gauger that fails to adhere to the provisions of this section.

(a) *What is a ''Customs-approved gauger''?* ''Commercial gaugers'' are individuals and commercial organizations that measure, gauge, or sample merchandise (usually merchandise in bulk form) and who deal mainly with animal and vegetable oils, petroleum, petroleum products, and bulk chemicals. A ''Customs-approved gauger'' is a commercial concern, within the United States, that has demonstrated, to the satisfaction of the Executive Director (defined at § 151.12(a)), pursuant to this section, the capability to perform certain gauging and measurement procedures for certain commodities. Customs approval extends only to the performance of such functions as are vested in, or delegated to, Customs.

(b) *What are the obligations of a Customs-approved gauger?* A commercial gauger approved by Customs agrees to the following conditions and requirements:

(1) To comply with the requirements of part 151, Customs Regulations (19 CFR part 151), and to conduct professional services in conformance with approved standards and procedures, including procedures which may be required by the Commissioner of Customs or the Executive Director;

(2) To have no interest in or other connection with any business or other activity which might affect the unbiased performance of duties as a Customs-approved gauger. It is understood that this does not prohibit acceptance of the usual fees for professional services;

(3) To maintain the ability, *i.e.*, the instrumentation, equipment, qualified staff, facilities, etc., to perform the services for which the gauger is approved, and allow the Executive Director to evaluate that ability on a periodic basis by such means as on-site inspections, demonstrations of gauging procedures, and reviews of submitted records;

(4) To retain those gauger records beyond the five-year record-retention period specified by Customs as necessary to address matters concerned in pending litigation, and, if gauger operations or approval cease, to contact Customs immediately regarding the disposition of records retained;

(5) To promptly investigate any circumstance which might affect the accuracy of work performed as an approved gauger, to correct the situation immediately, and to notify both the port director and the Executive Director of such matters, their consequences, and any corrective action taken or that needs to be taken; and

(6) To immediately notify both the port director and the Executive Director of any attempt to impede, influence, or coerce gauger personnel in the performance of their duties, or of any decision to terminate gauger operations or approval status. Further, within 5 days of any changes involving legal name, address, ownership, parent-subsidiary relationships, bond, other offices or sites, or approved signatories to notify the Executive Director by certified mail.

(c) *What are the approved measurement procedures?* Customs-approved gaugers must comply with appropriate procedures published by such professional organizations as the American Society for Testing and Materials (ASTM) and the American Petroleum Institute (API), unless the Executive Director gives written permission to use an alternate method. Alternative methods

will be considered and approved on a case-by-case basis.

(d) *How would a commercial gauger become a Customs-approved gauger?*—(1) *What should an application contain?* An application for Customs approval must contain the following information:

(i) The applicant's legal name and the address of its principal place of business and any other facility out of which it will work;

(ii) Detailed statements of ownership and any partnerships, parent-subsidiary relationships, or affiliations with any other domestic or foreign organizations, including, but not limited to, importers, producers, refiners, Customs brokers, or carriers;

(iii) A statement of financial condition;

(iv) If a corporation, a copy of the articles of incorporation and the names of all officers and directors;

(v) The names, titles, and qualifications of each person who will be authorized to sign or approve gauging reports on behalf of the commercial gauger;

(vi) A complete description of the applicant's facilities, instruments, and equipment;

(vii) An express agreement that if notified by Customs of pending approval to execute a bond in accordance with part 113, Customs Regulations (19 CFR part 113), and submit it to the Customs port nearest to the applicant's main office. (The limits of liability on the bond will be established by the Customs port in consultation with the Executive Director. In order to retain Customs approval, the gauger must maintain an adequate bond, as determined by the port director);

(viii) An express agreement to be bound by the obligations contained in paragraph (b) of this section; and,

(ix) A nonrefundable pre-payment equal to 50 percent of the fixed approval fee, as published in the FEDERAL REGISTER and Customs Bulletin, to cover preliminary processing costs. Further, the applicant agrees to pay Customs within 30 days of notification of preliminary approval the associated charges assessed for approval, *i.e.*, those charges for actual travel and background investigation costs, and the balance of the fixed approval fee.

(2) *Where should an application be sent?* A commercial gauger seeking approval or an extension of an existing approval must send a letter of application to the U.S. Customs Service, Attention: Executive Director, Laboratories & Scientific Services, 1300 Pennsylvania Ave., NW, Washington, D.C. 20229.

(3) *How will an application be reviewed?*—(i) *Determination of competence.* The Executive Director will determine the applicant's overall competence, independence, and character by conducting on-site inspections, which may include demonstrations by the applicant of gauging procedures and a review of records submitted, and background investigations. The Executive Director may also conduct proficiency testing through check samples.

(ii) *Evaluation of technical and operational requirements.* Customs will determine whether the following technical and operational requirements are met:

(A) *Equipment.* The facility must be equipped with all of the instruments and equipment needed to conduct approved services. The gauger must ensure that all instruments and equipment are properly calibrated, checked, and maintained.

(B) *Facilities.* The facility must have, at a minimum, adequate space, lighting, and environmental controls to ensure compliance with the conditions prescribed for appropriate measurements.

(C) *Personnel.* The facility must be staffed with persons having the necessary education, training, knowledge, and experience for their assigned functions (e.g., maintaining equipment, calibrating instruments, performing gauging services, evaluating gauging results, and signing gauging reports on behalf of the commercial gauger). In general, each technical staff member should have, at a minimum, six months training and experience in gauging.

(e) *How will an applicant be notified concerning approval?*—(1) *Notice of approval or nonselection.* When Customs evaluation of a gauger's credentials is completed, the Executive Director will notify the gauger in writing of its preliminary approval or nonselection. (Final approval determinations will

not be made until the applicant has satisfied all bond requirements and made payment on all assessed charges and the balance of the applicable approval fee). All final notices of approval, reapproval, or extension of existing Customs approval will be published in the FEDERAL REGISTER and Customs Bulletin.

(2) *Grounds for nonselection*. The Executive Director may deny a gauger's application for any of the following reasons:

(i) The application contains false or misleading information concerning a material fact;

(ii) The gauger, a principal of the gauging facility, or a person the Executive Director determines is exercising substantial ownership or control over the gauger operation is indicted for, convicted of, or has committed acts which would:

(A) Under United States federal or state law, constitute a felony or misdemeanor involving misstatements, fraud, or a theft-related offense; or

(B) Reflect adversely on the business integrity of the applicant;

(iii) A determination is made that the gauger-applicant does not possess the technical capability, have adequate facilities, or management to perform the approved methods of measurement for Customs purposes;

(iv) A determination is made that the gauger has submitted false reports or statements concerning the measurement of merchandise, or that the applicant was subject to sanctions by state, local, or professional administrative bodies for such conduct;

(v) Nonpayment of assessed charges and the balance of the fixed approval fee; or

(vi) Failure to execute a bond in accordance with part 113 of this chapter.

(3) *Adverse approval decisions; appeal procedures*. (i) *Preliminary notice*. A gauger which is not selected for approval will be sent a preliminary notice of nonselection. The preliminary notice of nonselection will state the specific grounds for the proposed nonselection decision and advise the gauger that it may file a response addressing the grounds for the action proposed with the Executive Director within 30 calendar days of the date the preliminary notice of nonselection was received by the gauger.

(ii) *Final notice*—(A) *Based on nonresponse*. If the gauger does not respond to the preliminary notice, the Executive Director will issue a final notice of nonselection within 60 calendar days of the date the preliminary notice of nonselection was received by the gauger applicant. The final notice of nonselection will state the specific grounds for the nonselection and advise the gauger that it may choose to pursue one of the following two options:

(*1*) Submit a new application for approval, in accordance with the provisions of paragraph (d)(1) of this section, 180 days after the date of the final notice of nonselection; or

(*2*) Administratively appeal the final notice of nonselection to the Assistant Commissioner within 30 calendar days of the date of the final notice of nonselection.

(B) *Based on response*. If the gauger files a timely response, the Executive Director will issue a final determination regarding the gauger's approval within 30 calendar days of the date the applicant's response is received by the Executive Director. If this final determination is adverse to the gauger, then the final notice of nonselection will state the specific grounds for nonselection and advise the gauger that it may choose to pursue one of the two options provided at paragraphs (e)(3)(ii)(A)(1) and (2) of this section.

(iii) *Appeal decision*. The Assistant Commissioner will issue a decision on the appeal within 30 calendar days of the date the appeal is received. If the appeal decision is adverse to the gauger, then the decision notice will advise the gauger that it may choose to pursue one of the following two options:

(A) Submit a new application for approval, in accordance with the provisions of paragraph (d)(1) of this section, 120 days after the date of the appeal decision; or

(B) File an action with the Court of International Trade, pursuant to chapter 169 of title 28, United States Code, within 60 days of the date of the appeal decision.

(f) *What are the approval/reapproval fee requirements?*—(1) *In general*. A fixed

fee, representing Customs administrative overhead expense, will be assessed for each application for approval or reapproval. In addition, associated assessments, representing the actual costs associated with travel and per diem of Customs employees related to verification of application criteria and background investigations will be charged. The combination of the fixed fee and associated assessments represent reimbursement to Customs for costs related to approval and reapproval. The fixed fee will be published in the Customs Bulletin and the FEDERAL REGISTER. Based on a review of the actual costs associated with the program, the fixed fee may be adjusted periodically; any changes will be published in the Customs Bulletin and the FEDERAL REGISTER.

(i) *Approval fees*. A nonrefundable prepayment equal to 50 percent of the fixed approval fee to cover preliminary processing costs must accompany each application for approval. Before a gauger will be approved, it must submit to Customs, at the address specified in the billing, within the 30 day billing period the associated charges assessed for the approval and the balance of the fixed approval fee.

(ii) *Reapproval fees*. Before a gauger will be reapproved, it must submit to Customs, at the billing address specified, within the 30 day billing period, the fixed reapproval fee.

(2) *Disputes*. In the event a gauger disputes the charges assessed for travel and per diem costs associated with scheduled inspection visits, it may file an appeal within 30 calendar days of the date of the assessment with the Executive Director. The appeal letter must specify which charges are in dispute and provide such supporting documentation as may be available for each allegation. The Executive Director will make findings of fact concerning the merits of an appeal and communicate the agency decision to the gauger in writing within 30 calendar days of the date of the appeal.

(g) *Can existing Customs-approved gaugers continue to operate?* Commercial gaugers approved by the Executive Director prior to December 8, 1993, will retain approval under these regulations provided that they conduct their business in a manner consistent with the administrative portions of this section. This paragraph does not pertain to any gauger which has had its approval suspended or revoked. Gaugers which have had their approvals continued under this section will have their status reevaluated on their next triennial inspection date which is no earlier than three years after the effective date of this regulation. At the time of reapproval, these gaugers must meet the requirements of this section and remit to Customs, at the address specified in the billing, within the 30 day billing period the fixed reapproval fee. Failure to meet these requirements will result in revocation or suspension of the approval.

(h) *How will Customs-approved gaugers operate?*—(1) *Reports*—(i) *Contents of reports*. The measurement results from a Customs-approved gauger that are submitted by an importer of record with respect to merchandise in an entry, in the absence of measurements conducted by Customs, will be accepted by Customs, provided that the importer of record certifies that the measurement was of the merchandise in the entry. All reports must measure net landed quantity, except in the case of crude petroleum of Heading 2709, Harmonized Tariff Schedule of the United States (HTSUS), which may be measured by gross quantity. Reports must use the appropriate HTSUS units of quantity, e.g., liters, barrels, or kilograms.

| HTSUS | Product | Unit of quantity |
|---|---|---|
| Headings 1501–1515 | Animal and vegetable oils | Kilogram. |
| Subheadings 2707.10–2707.30 and 2902.20–2902.44. | Benzene, toluene and xylene | Liter. |
| Heading 2709 | Crude Petroleum | Barrel. |
| Heading 2710 (various subheadings) | Fuel oils, motor oils, kerosene, naphtha, lubricating oils. | Barrel. |
| Chapter 29 (various subheadings) | Organic compounds in bulk and liquid form. | Kilogram, liter, etc. |

(ii) *Status of commercial reports where Customs also gauges merchandise.* Nothing in these regulations will preclude Customs from gauging a shipment which has been gauged by a Customs-approved gauger at the request of an importer. In cases where a shipment has been gauged by both Customs and a Customs-approved gauger, all Customs actions will be based upon the gauging reports issued by Customs, unless the Executive Director advises other actions. If Customs gauges merchandise, it will release the report of its measurements to the importer of record or its agent upon request unless the gauging information is proprietary to the holder of a copyright or patent, or developed by Customs for enforcement purposes.

(2) *Recordkeeping requirements.* Customs-approved gaugers must maintain records of the type normally kept in the ordinary course of business in accordance with the provisions of this chapter and any other applicable provisions of law, and make them available during normal business hours for Customs inspection. In addition, these gaugers must maintain all records necessary to permit the evaluation and verification of all Customs-related work, including, as appropriate, those described below. All records must be maintained for five years, unless the gauger is notified in writing by Customs that a longer retention time is necessary for particular records. Electronic data storage and transmission may be approved by Customs.

(i) *Transaction records.* Records for each Customs-related transaction must be readily accessible and have the following:

(A) A unique identifying number;

(B) The date and location where the transaction occurred;

(C) The identity of the product (e.g., crude oil);

(D) The name of the client;

(E) The source of the product (e.g., name of vessel, flight number of airline); and

(F) If available, the Customs entry date, entry number, and port of entry and the names of the importer, exporter, manufacturer, and country-of-origin.

(ii) *Major equipment records.* Records for each major piece of equipment used in Customs-related work must identify the name and type of instrument, the manufacturer's name, the instrument's model and any serial numbers, and the occurrence of all servicing performed on the equipment or instrument, to include recalibration and any repair work, identifying who performed the service and when.

(iii) *Records of gauging procedures.* The Customs-approved gauger must maintain complete and up-to-date copies of all approved gauging procedures, calibration methods, etc., and must document the procedures that each staff member is authorized to perform. These procedures must be readily available to appropriate staff.

(iv) *Gauging records.* The Customs-approved gauger must identify each transaction by transaction record number (see paragraph (h)(2)(i) of this section) and must maintain all information or data (such as temperatures, etc.) associated with each Customs-related gauging transaction. Each gauging record (*i.e.*, the complete file of all data for each separate transaction) must be dated and initialed or signed by the staff member(s) who did the work.

(v) *Gauging reports.* Each gauging report submitted to Customs must include:

(A) The name and address of the Customs-approved gauger;

(B) A description and identification of the transaction, including its unique identifying number;

(C) The designations of each gauging procedure used;

(D) The gauging report itself (*i.e.*, the quantity of the merchandise);

(E) The date of the report; and

(F) The typed name and signature of the person accepting technical responsibility for the gauging report (*i.e.*, an approved signatory).

(3) *Representation of Customs-approved status.* Commercial gaugers approved by Customs must limit statements or wording regarding their approval to an accurate description of the commodities for which approval has been obtained. Use of terms other than those appearing in the notice of approval (see

paragraph (e) of this section) is prohibited.

(4) *Subcontracting prohibited.* Customs-approved gaugers must not subcontract Customs-related work to non Customs-approved gaugers or non Customs-accredited laboratories, but may subcontract to other facilities that are Customs-approved/accredited and in good standing.

(i) *How can a gauger have its approval suspended or revoked or be required to pay a monetary penalty?*—(1) *Grounds for suspension, revocation, or assessment of a monetary penalty*—(i) *In general.* The Executive Director may immediately suspend or revoke a gauger's approval only in cases where the gauger's actions are intentional violations of any Customs law or when required by public health or safety. In other situations where the Executive Director has cause, the Executive Director will propose the suspension or revocation of a gauger's approval or propose a monetary penalty and provide the gauger with the opportunity to respond to the notice of proposed action.

(ii) *Specific grounds.* A gauger's approval may be suspended or revoked, or a monetary penalty may be assessed because:

(A) The selection was obtained through fraud or the misstatement of a material fact by the gauger;

(B) The gauger, a principal of the gauging facility, or a person the port director determines is exercising substantial ownership or control over the gauger operation is indicted for, convicted of, or has committed acts which would: under United States federal or state law, constitute a felony or misdemeanor involving misstatements, fraud, or a theft-related offense; or reflect adversely on the business integrity of the applicant. In the absence of an indictment, conviction, or other legal process, the port director must have probable cause to believe the proscribed acts occurred;

(C) Staff gauger personnel refuse or otherwise fail to follow any proper order of a Customs officer or any Customs order, rule, or regulation;

(D) The gauger fails to operate in accordance with the obligations of paragraph (b) of this section;

(E) A determination is made that the gauger is no longer technically or operationally proficient at performing the approved methods of measurement for Customs purposes;

(F) The gauger fails to remit to Customs, at the billing address specified, within the 30 day billing period the associated charges assessed for the approval and the balance of the fixed approval fee;

(G) The gauger fails to maintain its bond;

(H) The gauger fails to remit to Customs, at the billing address specified, within the 30 day billing period the fixed reapproval fee; or

(I) The gauger fails to remit any monetary penalty assessed under this section.

(iii) *Assessment of monetary penalties.* The assessment of a monetary penalty under this section, may be in lieu of, or in addition to, a suspension or revocation of approval under this section. The monetary penalty may not exceed $100,000 per violation and will be assessed and administered pursuant to published guidelines. Any monetary penalty under this section can be in addition to the recovery of:

(A) Any loss of revenue, in cases where the gauger intentionally falsified the gauging report in collusion with the importer, pursuant to 19 U.S.C. 1499(b)(1)(B)(i); or

(B) Liquidated damages assessed under the gauger's Customs bond.

(2) *Notice of adverse action.* When a decision to suspend or revoke approval, and/or assess a monetary penalty is made, the Executive Director will immediately notify the gauger in writing, indicating whether the action is effective immediately or is proposed.

(i) *Immediate suspension or revocation.* Where the suspension or revocation of approval is immediate, the Executive Director will issue a final notice of adverse determination. The final notice of adverse determination will state the specific grounds for the immediate suspension or revocation, direct the gauger to cease performing any Customs-approved functions, and advise the gauger that it may choose to pursue one of the following two options:

(A) Submit a new application for approval, in accordance with the provisions of paragraph (d)(1) of this section, 180 days after the date of the final notice of nonselection; or

(B) Administratively appeal the final notice of adverse determination to the Assistant Commissioner within 30 calendar days of the date of the final notice of adverse determination.

(ii) *Proposed suspension, revocation, or assessment of monetary penalty*—(A) *Preliminary notice*. Where the suspension or revocation of approval, and/or the assessment of a monetary penalty is proposed, the Executive Director will issue a preliminary notice of proposed action. The preliminary notice of proposed action will state the specific grounds for the proposed action, inform the gauger that it may continue to perform those functions requiring Customs-approval until the Executive Director's final notice is issued, and advise the gauger that it may file a response addressing the grounds for the action proposed with the Executive Director within 30 calendar days of the date the preliminary notice of proposed action was received by the gauger. The gauger may respond by accepting responsibility, explaining extenuating circumstances, and/or providing rebuttal evidence. The gauger also may ask for a meeting with the Executive Director or his designee to discuss the proposed action.

(B) *Final notice*—(*1*) *Based on nonresponse*. If the gauger does not respond to the preliminary notice of proposed action, the Executive Director will issue a final notice of adverse determination within 60 calendar days of the date the preliminary notice of proposed action was received by the gauger. The final notice of adverse determination will state the specific grounds for the adverse determination, direct the gauger to cease performing any Customs-approved functions, and advise the gauger that it may choose to pursue one of the two options provided at paragraphs (i)(2)(i)(A) and (B) of this section.

(*2*) *Based on response*. If the gauger files a timely response, the Executive Director will issue a final determination regarding the status of the gauger's approval within 30 calendar days of the date the gauger's response is received by the Executive Director. If this final determination is adverse to the gauger, then the final notice of adverse determination will state the specific grounds for the adverse action, advise the gauger to cease performing any functions requiring Customs approval, and advise the gauger that it may choose to pursue one of the two options provided at paragraphs (i)(2)(i))(A) and (B) of this section.

(*3*) *Publication of final notices of adverse determination*. Any final notices of adverse determination issued by the Executive Director resulting in a gauger being directed to cease performing Customs-approved functions will be published in the FEDERAL REGISTER and Customs Bulletin and the notice published will include the effective date, duration, and scope of the determination.

(*4*) *Appeal decision*. The Assistant Commissioner will issue a decision on the appeal within 30 calendar days of the date the appeal is received. If the appeal decision is adverse to the gauger, then the decision notice will advise the gauger that it may choose to pursue one of the following two options:

(i) Submit a new application for approval, in accordance with the provisions of paragraph (d)(1) of this section, 120 days after the date of the appeal decision; or

(ii) File an action with the Court of International Trade, pursuant to chapter 169 of title 28, United States Code, within 60 calendar days of the date of the appeal decision.

[T.D. 99–67, 64 FR 48539, Sept. 7, 1999; T.D. 99–67, 65 FR 10011, Feb. 25, 2000]

### § 151.14 Use of commercial laboratory tests in liquidation.

The analysis method for crude petroleum contained in ASTM D96 or other approved analysis method and as determined by a Customs-accredited commercial laboratory shall be used for Customs purposes if the difference between the value found by the commercial laboratory and the value found by the Customs laboratory does not exceed 0.11 percent. If the difference exceeds this limit and the Customs-accredited commercial laboratory cannot

establish that Customs is in error, then the Customs results shall be used.

[T.D. 90–78, 55 FR 40167, Oct. 2, 1990, as amended by T.D. 99–67, 64 FR 48543, Sept. 7, 1999]

### § 151.15 Movement of merchandise to a centralized examination station.

(a) *Permission to transfer merchandise for examination*. When a shipment requires examination at a centralized examination station (CES), Customs Form 3461, or Customs Form 3461 (ALT) for land border cargo, or an attachment to either, may be used to request permission to transfer the merchandise to a CES. The entry filer must write, type or stamp the following lines on the form or attachment, and must supply the information called for on the first three lines:

Containers to be transferred: _____ All or,
Container #'s _____, _____, _____
To CES_____
Approved by: U.S. Customs Inspector_____
Date_____

Unless the port director exercises his authority pursuant to paragraph (d) of this section, the reviewing inspector will initial and date the form or attachment being used, or stamp one copy of the Customs Form 3461 or 3461 (ALT) if required by the port director. A copy of this document will act as notification and authorization to the entry filer that the merchandise must be transferred to the importer-designated CES unless another CES is designated by the port director under paragraph (d) of this section.

(b) *Assumption of liability during transfer*. Merchandise designated for examination may be transferred from the importing carrier's point of unlading or from a bonded facility, to a CES, only if the transfer takes place under bond. The entry filer shall select one of the following bonded movements for the transfer to the CES unless the type of bonded movement to be used is specified by the port director under paragraph (d) of this section:

(1) If the merchandise is tranferred directly to a CES by an importing carrier, the importing carrier shall remain liable under the terms of its international carrier bond for the proper safekeeping and delivery of the merchandise until it is receipted for by the CES operator.

(2) If the merchandise is transferred directly from a bonded carrier's facility to a CES or is delivered directly to the CES by a bonded carrier, the bonded carrier shall remain liable under the terms of its custodial bond for the proper safekeeping and delivery of the merchandise until it is receipted for by the CES operator.

(3) If containerized cargo, including excess loose cargo that is part of the containerized cargo, is transferred to a CES operator's own facility using his own vehicles, the CES operator shall be liable under the terms of his custodial bond for the proper safekeeping and delivery of the merchandise to the CES facility.

(4) If the importer or his agent acting as importer of record transfers the merchandise to a CES, that importer or agent shall assume liability under his importation and entry bond (see § 151.7(d) of this part) for the proper transfer of the merchandise until it is receipted for by the CES operator.

(c) *Annual blanket transfer*. Port directors may institute an annual blanket transfer application procedure to facilitate any of the bonded movements described in paragraph (b) of this section.

(d) *Designation of bonded movement and CES to be used*. In the event the port director deems it necessary, he may direct the type of bonded movement to be used to transfer merchandise to a CES and may designate the CES at which examination must take place. In either case the port director's action will be noted on the Customs Form 3461 or 3461 (ALT) or attachment thereto.

[T.D. 93–6, 58 FR 5606, Jan. 22, 1993]

### § 151.16 Detention of merchandise.

(a) *Exemptions from applicability*. The provisions of this section are not applicable to detentions effected by Customs on behalf of other agencies of the U.S. Government in whom the determination of admissibility is vested and to detentions arising from possibly piratical copies (see part 133, subpart E, of this chapter) or import of goods bearing marks which are confusingly

similar to recorded trademarks or restricted gray market merchandise (see part 133, subpart C, of this chapter.)

(b) *Decision to detain or release.* Within the 5-day period (excluding weekends and holidays) following the date on which merchandise is presented for Customs examination, Customs shall decide whether to release or detain merchandise. Merchandise which is not released within such 5-day period shall be considered to be detained merchandise. For purposes of this section, merchandise shall be considered to be presented for Customs examination when it is in a condition to be viewed and examined by a Customs officer. Mere presentation to the examining officer of a cargo van, container or instrument of international traffic in which the merchandise to be examined is contained will not be considered to be presentation of merchandise for Customs examination for purposes of this section. Except when merchandise is examined at the public stores, the importer shall pay all costs relating to the preparation and transportation of merchandise for examination.

(c) *Notice of detention.* If a decision to detain merchandise is made, or the merchandise is not released within the 5-day period, Customs shall issue a notice to the importer or other party having an interest in such merchandise no later than 5 days (excluding weekends and holidays) after such decision or failure to release (see paragraph (b) of this section). Issuance of a notice of detention is not to be construed as a final determination as to admissibility of the merchandise. The notice shall be prepared by the Customs officer detaining the merchandise and shall advise the importer or other interested party of the:

(1) Initiation of the detention, including the date the merchandise was presented for examination;

(2) Specific reason for the detention;

(3) Anticipated length of the detention;

(4) Nature of the tests or inquiries to be conducted; and

(5) Nature of any information which, if supplied to the Customs Service, may accelerate the disposition of the detention.

(d) *Providing testing results.* Upon written request by the importer or other party having an interest in detained merchandise, Customs shall provide copies of the results of any testing conducted on the merchandise together with a description of the testing procedures and methodologies used (unless such procedures or methodologies are proprietary to the holder of a copyright or patent or were developed by Customs for enforcement purposes). The results and test description shall be in sufficient detail to permit the duplication and analysis of the testing and the results.

(e) *Final determinations.* A final determination with respect to admissibility of detained merchandise will be made within 30 days from the date the merchandise is presented for Customs examination. Such a determination may be the subject of a protest.

(f) *Effect of failure to make a determination.* The failure by Customs to make a final determination with respect to the admissibility of detained merchandise within 30 days after the merchandise has been presented for Customs examination, or such longer period if specifically authorized by law, shall be treated as a decision by Customs to exclude the merchandise for purposes of section 514(a)(4) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(a)(4)). Such a deemed exclusion may be the subject of a protest.

(g) *Failure to decide protest.* If a protest which is filed as a result of a final determination or a deemed exclusion of detained merchandise is not allowed or denied in whole or in part before the 30th day after the day on which the protest was filed, it shall be treated as having been denied on such 30th day for purposes of 28 U.S.C. 1581.

(h) *Decision before commencement of court action.* Customs may at any time after a deemed denial of a protest as provided in paragraph (g) of this section, but before commencement of a court action as provided in paragraph (i) of this section, grant a protest and permit release of detained merchandise, or deny a protest in accordance with § 174.30 of this chapter.

(i) *Commencement of court action; burden of proof and decisions of the court.*

Once a court action respecting a detention is commenced, unless Customs establishes by a preponderance of the evidence that an admissibility decision has not been reached for good cause, the court shall grant the appropriate relief which may include, but is not limited to, an order to cancel the detention and release the merchandise.

(j) *Seizure and forfeiture; denial of entry or exportation.* If otherwise provided by law, detained merchandise may be seized and forfeited. In lieu of seizure and forfeiture, where authorized by law, Customs may deny entry and permit the merchandise to be exported, with the importer responsible for paying all expenses of exportation.

[T.D. 99–65, 64 FR 43611, Aug. 11, 1999]

## Subpart B—Sugars, Sirups, and Molasses

### § 151.21 Definitions.

The following are general definitions for the purposes of this subpart in applying the provisions of Chapters 17 and 18, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202):

(a) *Degree.* ''Degree'' or ''sugar degree'' means an International Sugar Degree as determined by polarimetric test performed in accordance with procedures recognized by the International Commission for Uniform Methods of Sugar Analysis. This test discloses the percentage of sucrose contained in the sugar.

(b) *Total sugars.* ''Total sugars'' means the sum of the sucrose, the raffinose, and the reducing sugars.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 89–1, 53 FR 51268, Dec. 21, 1988]

### § 151.22 Estimated duties on raw sugar.

Estimated duties shall be taken on raw sugar, as defined in Subheading Note 1 to Chapter 17, Harmonized Tariff Schedule of the United States, on the basis of not less than 96° polariscopic test unless the invoice shows that the sugar is of a lower grade than that of the ordinary commercial shipment.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 89–1, 53 FR 51268, Dec. 21, 1988]

### § 151.23 Allowance for moisture in raw sugar.

Inasmuch as the absorption of sea water or moisture reduces the polariscopic test of sugar, there shall be no allowance on account of increased weight of raw sugar importations due to unusual absorption of sea water or other moisture while on the voyage of importation. Any portion of the cargo claimed by the importer to have absorbed sea water or moisture on the voyage of importation shall be weighed, sampled, and tested separately. No such claim shall be considered if made after the sugar claimed to have been damaged has been weighed.

### § 151.24 Unlading facilities for bulk sugar.

When dutiable sugar is to be imported in bulk, a full description of the facilities to be used in unlading the sugar shall be submitted to the Commissioner of Customs as far as possible in advance of the date of importation, and special instructions will be issued as to the methods to be applied in weighing and sampling such sugar.

### § 151.25 Mixing classes of sugar.

No regulations relative to the weighing, taring, sampling, classifying, and testing of imported sugar shall be so construed as to permit mixing together sugar of different classes, such as centrifugal, beet, molasses, or any sugar different in character from those mentioned, for the purpose of weighing, taring, sampling, or testing.

### § 151.26 Molasses in tank cars.

When molasses is imported in tank cars, the importer shall file with the port director a certificate showing whether there is any substantial difference either in the total sugars or the character of the molasses in the different cars.

**§ 151.27 Weighing and sampling done at time of unlading.**

Sugar, sirup, and molasses requiring either weighing or sampling shall be weighed or sampled at the time of unlading. When such merchandise requires both weighing and sampling, these operations shall be performed simultaneously.

**§ 151.28 Gauging of sirup or molasses discharged into storage tanks.**

(a) *Plans of storage tank to be filed.* When sirup or molasses is imported in bulk in tank vessels and is to be pumped or discharged into storage tanks, before the discharging is permitted there shall be filed with the port director a certified copy of the plans and gauge table of the storage tank showing all inlets and outlets and stating accurately the capacity in liters per centimeter of height of the tank from an indicated starting point.

(b) *Settling before gauging.* After the discharge is completed, all inlets to the tank shall be carefully sealed and the sirup or molasses left undisturbed for a period not to exceed 20 days to allow for settling before being gauged. When a request for immediate gauging is made in writing by the importer, it shall be allowed by the port director.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 80–142, 45 FR 36384, May 30, 1980; T.D. 89–1, 53 FR 51268, Dec. 21, 1988]

**§ 151.29 Expense of unlading and handling.**

No expense incidental to the unlading, transporting, or handling of sugar, sirup, or molasses for convenient weighing, gaging, measuring, sampling, or marking shall be borne by the Government.

**§ 151.30 Sugar closets.**

Sugar closets for samples shall be substantially built and secured by locks furnished by Customs. They shall be conveniently located as near as possible to the points of discharge they are intended to serve. They shall be provided by the owner of the premises on which they are located and shall be so situated that sugar, sirup, and molasses stored therein shall not be subjected to extremes of temperature or humidity.

**§ 151.31 [Reserved]**

## Subpart C—Petroleum and Petroleum Products

**§ 151.41 Information on entry summary.**

On the entry summary for petroleum or petroleum products in bulk, the importer shall show the API gravity at 60° Fahrenheit, in accordance with the current edition of the ASTM-IP Petroleum Measurement Tables (American Edition), approved by the American Society for Testing and Materials. The appropriate unabridged table shall be used in the reduction of volume to 60° F. If the exact volumetric quantity cannot be determined in advance, the entry summary may be made for "____ barrels, more or less", but in no case may the estimate vary by more than three percent from the gross quantity unladen. The term "barrels" is defined in Chapter 27, Additional U.S. Note 7, Harmonized Tariff Schedule of the United States. The information required by this section also shall be shown on the entry summary permit if the entry summary is filed at the time of entry, and on each entry summary continuation sheet regardless of when the entry summary is filed.

[T.D. 80–142, 45 FR 36384, May 30, 1980, as amended by T.D. 82–224, 47 FR 53728, Nov. 29, 1982; T.D. 89–1, 53 FR 51268, Dec. 21, 1988]

**§ 151.42 Controls on unlading and gauging.**

(a) *Methods of control.* (1) Each port director shall establish controls and checks on the unlading and measurement of petroleum and petroleum products imported in bulk by vessel, truck, railroad car, pipeline, or other carrier. One of the following methods of control shall be employed:

(i) Customs-approved metering and sampling installations provided by the importer;

(ii) Shore tank gauging; or

(iii) Weighing for trucks and railroad cars.

(2) Vessel ullages shall be taken in every case unless the port director determines that it is impracticable to do so for safety or technological reasons. Ullages may be taken for trucks and railroad cars if weighing or shore tank

gauging is not available as a method of control. Vessel ullages will not be used to determine the quantity unladen unless none of the other methods provided for in this paragraph is available or adequate.

(3) The metering and sampling installations described in paragraph (a)(1)(i) of this section are approved by Customs on a case-by-case basis. Importers seeking approval shall send a complete description of the installation to the port director who, with the concurrence of the Director, Laboratory & Scientific Services, or his designee, shall give approval or shall state, in writing, the reasons for disapproval. Approved installations are subject to periodic verification by Customs. Importers desiring to modify a Customs-approved installation shall obtain Customs approval beforehand.

(b) *Duties of Customs officers.* Customs officers may perform or witness ullaging and gauging as follows:

(1) Opening ullages.

(2) Closing ullages of carriers which have not completely discharged cargo, or if an importer or carrier requests Customs to witness closing ullages because of special problems.

(3) Shore tank gauges performed by company or related-party employees.

(4) Between 5 and 10 per cent of shore tank gauges conducted by commercial gaugers.

(5) Shore tank gauges, including those conducted by a commercial gauger if no carrier ullages are taken.

(c) *Manifest discrepancies.* Manifest discrepancies (shortages and overages) shall be reported by or on behalf of the carrier in the manner specified in § 4.12 of this chapter. If a reported discrepancy is not explained to the satisfaction of the port director, the master or other person in charge, or the owner of the vessel or vehicle, or any person directly or indirectly responsible for the discrepancy, will be subject to the imposition of the appropriate penalty under section 460, 584, or 592, Tariff Act of 1930, as amended (19 U.S.C. 1460, 1584, 1592).

[T.D. 80–142, 45 FR 36384, May 30, 1980, as amended by T.D. 82–224, 47 FR 53728, Nov. 29, 1982; T.D. 87–39, 52 FR 9790, Mar. 26, 1987; T.D. 89–1, 53 FR 51268, Dec. 21, 1988; T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

**§ 151.43 [Reserved]**

**§ 151.44 Storage tanks.**

(a) *Plans and gauge tables.* When petroleum or petroleum products subject to duty at a specific rate per barrel are imported in bulk in tank vessels and are to be transferred into shore storage tanks, both the plans of each shore tank showing all outlets and inlets and the gauge table for each tank showing its capacity in barrels per centimeter or tenth of a centimeter of height shall be certified as correct by the proprietor of the tank. One set of these plans and gauge tables so certified shall be kept on file at the plant of the oil company and shall be available at all times to Customs officers. Another certified set of the shore tank plans and gauge tables shall be filed with the port director for use in verifying the Customs officers' reports. The port director may require such additional sets of shore tank plans, including subsidiary pipeline plans, and gauge tables as he may deem necessary. The storage tank proprietor shall maintain the plans and gauge tables for 3 years after discontinuing use of the storage tanks as bonded warehouses for the storage of imported petroleum or petroleum products.

(b) *Tags required on valves.* The inlet and outlet valves of each tank shall have tags of a permanent type affixed by the proprietor or lessee indicating the use of the valves.

(c) *Verification of gauge tables.* Whenever he has reason to suspect their reliability, the port director may require the measurement and calibrations shown on the gauge tables to be verified by a Customs officer. If no qualified Customs officer is available, the port director may accept an independent certification verifying the measurements and calibrations. The independent verification shall be performed at the expense of the storage tank proprietor.

[T.D. 80–142, 45 FR 36384, May 30, 1980, as amended by T.D. 89–1, 53 FR 51268, Dec. 21, 1988]

**§ 151.45 Storage tanks bonded as warehouses.**

(a) *Application.* Tanks for the storage of imported petroleum or petroleum

products in bulk may be bonded as warehouses of class 2 if to be used exclusively for the storage of petroleum or petroleum products belonging or consigned to the owner or lessee of the tank. In addition to the documents and bonds required to be filed with the application to bond (see § 19.2 of this chapter), the certified plans and gauge tables required by § 151.44 shall be filed.

(b) *Removal of nonbonded petroleum.* If a bonded tank is not empty at the time the first importation of bonded petroleum or petroleum products is to be stored therein, the amount of nonbonded petroleum or petroleum products in the tank shall be withdrawn by the proprietor as soon as possible. The request to withdraw shall be in the form of a letter and no formal withdrawal need be filed. Domestic or duty-paid petroleum or petroleum products shall not thereafter be stored in the tank as long as the tank remains bonded.

(c) *Information on warehouse withdrawal.* Warehouse withdrawals of petroleum or petroleum products from bonded tanks shall show the information specified in § 151.41, as well as the designation of the tank from which the merchandise is to be withdrawn. Such withdrawals may be made for "____ U.S. gallons, more or less", but in no case may the estimate vary by more than three percent from the gross quantity unladen.

[T.D. 80–142, 45 FR 36384, May 30, 1980, as amended by T.D. 87–39, 52 FR 9790, Mar. 26, 1987]

### § 151.46 Allowance for detectable moisture and impurities.

An allowance for all detectable moisture and impurities present in or upon imported petroleum or petroleum products shall be made in accordance with § 158.13 of this chapter.

[T.D. 90–78, 55 FR 40167, Oct. 2, 1990]

### § 151.47 Optional entry of net quantity of petroleum or petroleum products.

Instead of stating the gross quantity of petroleum or petroleum products on the entry summary, the importer may state the net quantity. The analytical report from the Customs-accredited commercial laboratory shall be filed with the entry summary.

[T.D. 87–39, 52 FR 9790, Mar. 26, 1987, as amended by T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

## Subpart D—Metal-Bearing Ores and Other Metal-Bearing Materials

### § 151.51 Sampling requirements.

(a) *General.* Except as provided in paragraph (b) of this section, when metal-bearing ores and other metal-bearing materials which are classifiable under Chapter 26, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), are entered for consumption or warehousing at the port of first arrival, they shall be sampled for assay and moisture purposes in accordance with § 151.52. If proper facilities for weighing or sampling are not available at the port of entry, the merchandise shall be transported under bond to the place of sampling. The sampling or weighing of metal-bearing ores or materials at any place other than the port of entry shall be at the expense of the parties in interest.

(b) *Ores of low metal content.* When, on the basis of invoice information, the nature of any available sample, knowledge of prior importations of similar materials, and other data, the port director is satisfied that metal-bearing ores entered under heading 2617, HTSUS, as containing less than 1 percent of metals dutiable under headings 2603, 2607, and 2608, HTSUS, are properly entered, he may liquidate the entry on the basis of the assay information contained in the entry papers. However, the sampling and testing procedures prescribed in §§ 151.52 and 151.54 shall be followed at random intervals for verification purposes.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

### § 151.52 Sampling procedures.

(a) *Commercial samples taken under Customs supervision.* Representative commercial moisture and assay samples shall be taken under Customs supervision for testing by the Customs laboratory. The samples used for the

moisture test shall be representative of the shipment at the time the shipment is weighed for Customs purposes. When a shipment is made up of a number of lots a composite sample of the shipment shall be drawn for assay, providing composite sampling is feasible and assays of the individual lots are not required for tariff classification or other Customs purposes. The composite sample shall consist of proportional parts by weight of the prepared sample drawn from the various lots represented and shall be thoroughly mixed.

(b) *Commercial samples furnished by importer*. When commercial samples cannot be taken under Customs supervision, the importer shall be required to furnish a verified commercial moisture sample and prepared assay sample certified to be representative of the shipment at the time the shipment was weighed for Customs purposes. The samples shall be in appropriate containers, properly labeled, and shall be accompanied by a statement including:

(1) Entry number,

(2) Lots represented,

(3) Kind of ore or material,

(4) Date and place where sampling occurred, and

(5) The name and address of the sampling concern.

(c) *Samples taken by Customs*. Where no commercial samples have been taken, the port director shall take representative samples from different parts of the shipment.

### § 151.53 Sample lockers.

A suitable place or containers shall be provided for the safekeeping of all Customs samples under Customs lock or seal.

### § 151.54 Testing by Customs laboratory.

Samples taken in accordance with § 151.52 shall be promptly forwarded to the appropriate Customs laboratory for testing in accordance with commercial methods. The port director may secure from the importer a certified copy of the commercial settlement tests for moisture and for assay which shall be transmitted with the commercial samples to the Custom laboratory. If the Customs tests are not in substantial agreement with the settlement tests, the Customs laboratory director shall review his tests. The Customs tests shall be used in determining the final duties on the merchandise, except that the settlement tests shall be used if, in the opinion of the Customs laboratory director:

(a) The settlement and Customs tests differ by no more than is to be expected between qualified laboratories, and

(b) The use of the settlement test results will not require a different tariff classification or rate of duty than is indicated by the Customs test.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 87–39, 52 FR 9791, Mar. 26, 1987]

### § 151.55 Deductions for loss during processing.

Deductions for the loss of copper, lead, or zinc content during processing, as authorized by Chapter 26, Additional U.S. Note 1, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall be made by the port director in the liquidation of any entry only if the importer has followed the procedures set forth in that headnote. See §§ 19.17 through 19.25 of this chapter for procedures applicable to bonded smelting and refining warehouses.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

## Subpart E—Wool and Hair

### § 151.61 Definitions.

The following are general definitions for the purposes of this subpart:

(a) *Clean kg*. 'Clean kg' means kilograms of clean yield as defined in paragraph (b) of this section.

(b) *Clean yield*. Except for the purposes of carbonized fibers, ''Clean yield'' means the absolute clean content (that is, all that portion of the merchandise which consists exclusively of wool or hair free of all vegetable and other foreign material, containing by weight 12 percent of moisture and 1.5 percent of material removable from the wool or hair by extraction with alcohol, and having an ash content of not over 0.5 percent by weight), less an allowance, equal by weight to 0.5 percent

of the absolute clean content plus 60 percent of the vegetable matter present, but not exceeding 15 percent by weight of the absolute clean content, for wool or hair that would ordinarily be lost during commercial cleaning operations.

(c) For the purposes of carbonized fibers, the term clean yield means the condition as entered.

(d) *Sampling unit.* ''Sampling unit'' means all the similar packages covered by one entry or withdrawal containing wool or hair of the same kind or same general condition and character, produced in the same country, packed in substantially the same manner, and entered as or found to be subject to the same rate of entry.

(e) *General sample.* ''General sample'' means the composite of the individual portions of wool or hair drawn from a sampling unit.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

### § 151.62 Information on invoices.

Invoices of wool or hair subject to duty at a rate per clean kilogram under Chapter 51, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall show the following detailed information in addition to other information required:

(a) Condition, that is, whether in the grease, washed, pulled, on the skin, scoured, carbonized, burr-picked, willowed, handshaken, or beaten;

(b) Whether free of vegetable matter, practically free, slightly burry, medium burry, heavy burry;

(c) Whether in the fleece, skirted, matchings, or sorted;

(d) Length, that is, whether super combing, ordinary combing, clothing, or filling;

(e) Country of origin, and, if possible, the province, section, or locality of production;

(f) If wool, the type symbol by which it is bought and sold in the country of origin and the grade of each lot covered by the invoice, specifying the standard or basis used, that is, whether U.S. Official Standards or the commercial terms to designate grade in the country of shipment; and

(g) Net weight of each lot of wool or hair covered by the invoice in the condition in which it is shipped, and the shipper's estimate of the clean yield of each lot by weight or by percentage.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

### § 151.63 Information on entry summary.

Each entry summary covering wool or hair subject to duty at a rate per clean kilogram under Chapter 51, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall show as to each lot of wool or hair covered thereby, in addition to other information required, the total estimated or actual net weight of the wool or hair in its condition as imported, its total estimated clean yield in kilograms, and the estimated percentage clean yield. (19 U.S.C. 1484.)

[T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

### § 151.64 Extra copy of entry summary.

One extra copy of the entry summary covering wool or hair subject to duty at a rate per clean kilogram shall be filed in addition to the copies otherwise required.

[T.D. 93–52, 58 FR 37854, July 14, 1993]

### § 151.65 Duties.

Duties on wool or hair subject to duty at a rate per clean kilogram may be estimated at the time of filing the entry summary on the basis of the clean yield shown on the entry summary if the port director is satisfied that the revenue will be properly protected. Liquidated duties shall be based upon the port director's final determination of clean yield. Estimated and liquidated duties on wool or hair tested for clean yield pursuant to the provisions of § 151.71, and withdrawn for consumption without a change in condition which affects the duties and in a quantity less than an entire sampling unit shall be determined on the basis of an appropriate adjustment of the estimated percentage clean yield shown on the entry summary for the wool or hair included in each of the lots covered by the withdrawal. This adjustment shall be made by increasing or decreasing

such estimated percentage clean yield of each lot by the difference between the percentage clean yield of the related sampling unit, as determined by the port director, and the weighted average percentage clean yield for the sampling unit, as computed from the estimated percentages clean yield and net weights shown on the entry summary for the lots included in the sampling unit.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 79–221, 44 FR 46829, Aug. 9, 1979; T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

### § 151.66 Duty on samples.

Duty shall be assessed and collected on samples taken pursuant to any provision in this subpart, whether taken by the importer or by Customs, unless an exemption or remission is obtained by compliance with an applicable provision of the law or regulations. The duty shall be assessed upon the samples in accordance with their condition at the time of importation, except in the case of merchandise manipulated in warehouse pursuant to section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562). The collection of duty on the samples may be postponed when the importation concerned is not entered for consumption until the withdrawal of the merchandise from which the samples are taken, or until an application for the destruction or abandonment of such merchandise has been accepted pursuant to an appropriate provision of the law or regulations.

### § 151.67 Sampling by importer.

The importer may be permitted after entry to draw samples under Customs supervision in reasonable quantities from the packages of wool or hair designated for examination, provided the bales or bags are properly repacked and repaired by him. Any samples so withdrawn shall be weighed and a record showing the quantities thereof shall be made and filed with the related entry.

### § 151.68 Merchandise to be sampled and tested by Customs.

The following shall be weighed, sampled, and tested for clean yield, unless such sampling or testing is not feasible:

(a) All importation of wool or hair subject to duty at a rate per clean kilogram, except importations entered directly for manipulation under the provisions of section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), or for manufacture under the provisions of section 311, Tariff Act of 1930, as amended (19 U.S.C. 1311);

(b) All imported wool or hair manipulated under the provisions of section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562) and dutiable after manipulation as wool or hair at a rate per clean kilogram; and

(c) Such other imported wool or hair as the port director may designate.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

### § 151.69 Transfer or exportation of part of sampling unit.

(a) *Transfer of right to withdraw*. When an original sampling unit has been weighed, sampled, and tested in accordance with this subpart and a part of such unit is covered by a transfer of the right to withdraw made pursuant to section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), the percentages clean yield of the part covered by the transfer and of the part not so covered shall be computed on the basis of the original Customs weights and test and the invoice data related to the respective parts.

(b) *Exportation*. When part of such an original sampling unit is exported from continuous Customs custody without having been manipulated as provided for in section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), the percentage clean yield of the part not exported shall be determined, at the discretion of the port director, either on the basis of a new determination by reweighing, resampling, and retesting, or by a computation as described in paragraph (a) of this section, for either the exported or the remaining part.

### § 151.70 Method of sampling by Customs.

A general sample shall be taken from each sampling unit, unless it is not feasible to obtain a representative general sample of the wool or hair in a sampling unit or to test such a sample in

accordance with the provisions of § 151.71. At the request of the importer, two general samples may be taken from a sampling unit if the taking and testing of a second general sample is feasible. If two general samples are taken, one general sample shall be held for use in making a second test for clean yield if such a test is requested in accordance with the provisions of § 151.71(c), or if a second test is found desirable by the port director or the chief chemist.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 93–52, 58 FR 37854, July 14, 1993]

### § 151.71 Laboratory testing for clean yield.

(a) *Test and report by Customs laboratory*. The clean yield of all general samples taken in accordance with § 151.70 shall be determined by test in a Customs laboratory, unless it is found that it is not feasible to test such a sample and obtain a proper finding of percentage clean yield. A report of the percentage clean yield of each general sample as established by the test, or a statement of the reason for not testing a general sample, shall be forwarded to the port director.

(b) *Notification to importer*. Where samples of wool or hair have been tested in a Customs laboratory and the port director has received a copy of the Laboratory Report, Customs Form 6415, the port director shall promptly provide notice of the test results by mailing a copy of that report to the importer.

(c) *Importer's request for retest*. If the importer is dissatisfied with the port director's finding of clean yield, he may file with the port director a written request in duplicate for another laboratory test for percentage clean yield. Such request shall be filed within 14 calendar days after the date of mailing of the notice of the port director's finding of clean yield. The request shall be granted if it appears to the port director to be made in good faith and if a second general sample as provided for in § 151.70 is available for testing, or if all packages or, in the opinion of the Commissioner of Customs, an adequate number of the packages represented by the general sample are available and in their original imported condition.

(d) *Retest procedures*. The second test shall be made upon the second general sample, if such a sample is available. If the second general sample is not available, the packages shall be reweighed, resampled, and tested in accordance with the provisions of this section. All costs and expenses of such operations, exclusive of the compensation of Customs officers, shall be borne by the importer, who may be present during such resampling and testing.

(e) *Request for commercial test*. If the importer is dissatisfied with the results of the second laboratory test, or if a second laboratory test is not feasible, the wool or hair may be retested by a commercial laboratory in accordance with § 151.73.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 75–121, 40 FR 23458, May 30, 1975; T.D. 93–52, 58 FR 37854, July 14, 1993]

### § 151.73 Importer's request for commercial laboratory test.

(a) *Conditions for commercial test*. If the importer is dissatisfied with the results of a retest made in accordance with § 151.71(c), he may request that a commercial test be made to determine the percentage clean yield of the wool or hair.

(b) *Time for filing request*. The importer's request shall be filed in writing with the port director within 14 calendar days after the date of mailing of the notice of the port director's findings based on the retest.

(c) *Procedures for commercial test*. The port director shall cause a representative quantity of the wool or hair in dispute to be selected and tested by a commercial method approved by the Commissioner of Customs. The yield, as determined by such commercial test, shall be suitably adjusted to coincide with the definition of clean yield in § 151.61(b). Such test shall be made under the supervision and direction of the port director at an establishment approved by him, and the expense thereof, including the actual expense of

travel and subsistence of Customs officers but not their compensation, shall be paid by the importer.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 93–52, 58 FR 37854, July 14, 1993]

### § 151.74 Retest at port director's request.

If the port director is not satisfied with the results of any test provided for in § 151.71 or § 151.73, he may, within 14 calendar days after receiving the report of the results of such test, proceed to have another test made upon a suitable sample of the wool or hair at the expense of the Government. When the port director is proceeding to have another test made, he shall, within the 14-day period specified in this paragraph, notify the importer by mail of that fact.

### § 151.75 Final determination of clean yield.

The port director shall base his final determination of clean yield upon a consideration of all the tests made in connection with the wool or hair concerned.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 93–52, 58 FR 37854, July 14, 1993]

### § 151.76 Grading of wool.

(a) *Examination for grade*. The port director shall cause wool dutiable at a rate per clean kilogram to be examined for grade. The standards for determining grades of wool shall be those which are established from time to time by the Secretary of Agriculture pursuant to law and which are in effect on the date of importation of the wool, as provided by Chapter 51, Additional U.S. Note 2, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(b) *Notification to importer*. If classification of the wool at the grade or grades determined on the basis of the examination will result in the assessment of duty at a rate higher than the rate provided for wool of the grade stated in the entry, the port director shall promptly notify the importer by mail.

(c) *Importer's request for reexamination*. If the importer is dissatisfied with the port director's findings as to the grade or grades of the wool, he may, within 14 calendar days after the date of mailing of the notice of the port director's findings, file in duplicate a written request for another determination of grade or grades, stating the reason for the request. Notice of the port director's findings on the basis of the reexamination of the wool shall be mailed to the importer.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

## Subpart F—Cotton

### § 151.81 Definition of staple length.

For the purposes of this subpart, ''staple length'' means the length of the fibers in a particular quantity of cotton designated in terms expressing the measurement by the millimeter or fraction thereof of a representative portion of the quantity in accordance with the Official Cotton Standards of the United States for length of staple, as established by the Secretary of Agriculture.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

### § 151.82 Information on invoices.

Invoices of cotton provided for in subheading 5201.00.10, 5201.00.20, 5201.00.50, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall show the following detailed information in addition to other required information:

(a) One of the following statements regarding each lot of cotton covered by the invoice:

(1) This is harsh or rough cotton under 19.05 millimeters in staple length;

(2) The staple length of this cotton is under 28.58 millimeters. (This statement is not to be used if paragraph (a)(1) of this section is applicable);

(3) The staple length of this cotton is 28.58 millimeters or more and under 34.93 millimeters;

(4) This cotton is harsh or rough cotton (other than cotton of perished staple, and cotton pickings), white in color, and has a staple length of 29.37

millimeters or more and under 44.45 millimeters;

(5) The staple length of this cotton is 34.93 millimeters or more and under 42.86 millimeters; or

(6) The staple length of this cotton is 42.86 millimeters or more.

(b) The name of the country of origin and, if practicable, the name of the province or other subdivision of the country of origin in which the cotton was grown.

(c) The variety of the cotton, such as Karnak, Gisha, Pima, Tanguis, etc.

[T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

### § 151.83 Method of sampling.

For determining the staple length of any lot of cotton for any Customs purposes, samples of the lot shall be taken in accordance with commercial practice.

### § 151.84 Determination of staple length.

The port director shall have one or more samples of each sampled bale of cotton stapled by a qualified Customs officer, or a qualified employee of the Department of Agriculture designated by the Commissioner of Customs for the purpose, and shall promptly mail the importer a notice of the results determined.

### § 151.85 Importer's request for redetermination.

If the importer is dissatisfied with the port director's determination, he may file with the port director, within 14 calendar days after the mailing of the notice, a written request in duplicate for a redetermination of the staple length. Each such request shall include a statement of the claimed staple length for the cotton in question and a clear statement of the basis for the claim. The request shall be granted if it appears to the port director to be made in good faith. In making the redetermination of staple length, the port director may obtain an opinion of a board of cotton examiners from the U.S. Department of Agriculture, if he deems such action advisable. All expenses occasioned by any redetermination of staple length, exclusive of the compensation of Customs officers, shall be reimbursed to the Government by the importer.

## Subpart G—Fruit Juices

### § 151.91 Brix values of unconcentrated natural fruit juices.

The following values have been determined to be the average Brix values of unconcentrated natural fruit juices in the trade and commerce of the United States, for the purposes of the provisions of the Additional U.S. Notes to Chapter 20, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), and will be used in determining the dutiable quantity of imports of concentrated fruit juices, using the procedure set forth in Additional U.S. Note 2, Chapter 20, HTSUS:

| Kind of fruit juice | Average Brix value (degrees) |
|---|---|
| Apple | 13.3 |
| Apricot | 14.3 |
| Bilberry (Whortleberry, Vaccinium Myrtillium) | 13.4 |
| Black currant | 15.0 |
| Blackberry | 10.0 |
| Black raspberry | 11.1 |
| Blueberry | 14.1 |
| Boysenberry | 10.0 |
| Carob | 40.0 |
| Cherry | 14.3 |
| Crabapple | 15.4 |
| Cranberry | 10.5 |
| Date | 18.5 |
| Dewberry | 10.0 |
| Elderberry | 11.0 |
| Fig | 18.2 |
| Gooseberry | 8.3 |
| Grape (Vitis Vinifera) | 21.5 |
| Grape (Slipskin varieties) | 16.0 |
| Grapefruit | 10.2 |
| Guava | 7.7 |
| Lemon | 8.9 |
| Lime | 10.0 |
| Loganberry | 10.5 |
| Mango | 17.0 |
| Naranjilla | 10.5 |
| Orange | 11.8 |
| Papaya | 10.2 |
| Passion Fruit | 15.3 |
| Peach | 11.8 |
| Pear | 15.4 |
| Pineapple | 14.3 |
| Plum | 14.3 |
| Pomegranate | 18.2 |
| Prune | 18.5 |
| Quince | 13.3 |
| Raisin | 18.5 |
| Raspberry (Red raspberry) | 10.5 |
| Red currant | 10.5 |
| Soursop (Guanabana, Annono Muricata) | 16.0 |
| Strawberry | 8.0 |
| Tamarind | 55.0 |
| Tangerine | 11.5 |
| Youngberry | 10.0 |

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 74–41, 39 FR 2470, Jan. 23, 1974; T.D. 84–173, 49 FR 31852, Aug. 9, 1984; T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

## Subpart H [Reserved]

## Subpart I—Cigars, Cigarillos, and Tobacco

### § 151.111 Cigars, cigarillos, and tobacco of Cuban origin.

The tobacco National Import Specialist at the port of New York shall have general supervision of the examination of (a) all cigars or cigarillos which may be made or derived in whole or in part of Cuban articles, and (b) all tobacco which may be of Cuban origin.

[T.D. 81–189, 46 FR 37888, July 23, 1981]

# PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

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AUTHORITY: 19 U.S.C. 66, 1401a, 1500, 1502, 1624;

Subpart B also issued under 19 U.S.C. 1315;

Subpart C also issued under 19 U.S.C. 1503;

Section 152.3 also issued under 19 U.S.C. 1499;

Section 152.13 also issued under 19 U.S.C. 1202 (General Note 3(f), Harmonized Tariff Schedule of the United States (HTSUS)).

SOURCE: T.D. 73–175, 38 FR 17477, July 2, 1973, unless otherwise noted.

### § 152.0 Scope.

This part contains regulations pertaining to the tariff classification and appraisement of imported merchandise. Other applicable provisions are contained elsewhere in this chapter, such as in part 10 for articles conditionally free or subject to a reduced rate of duty, and in part 159 for relief from duties on articles lost, damaged, etc.

## Subpart A—General Provisions

### § 152.1 Definitions.

The following are general definitions for the purposes of part 152:

(a)–(b) [Reserved]

(c) *Date of exportation.* ''Date of exportation,'' or the ''time of exportation'' referred to in section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a), means the actual date the merchandise finally leaves the country of exportation for the United States. If no positive evidence is at hand as to the actual date of exportation, the port director shall ascertain or estimate the date of exportation by all reasonable ways and means in his power, and in so doing may consider dates on bills of lading, invoices, and other information available to him.

(d) *Fair retail value.* ''Fair retail value'' or ''fair market value'' as used in Section XXII, Harmonized Tariff Schedule of the United States, and part 148 of this chapter means the price actually paid or payable for all imported merchandise, or if not purchased, the

value as otherwise ascertained under 19 CFR 152.100 *et seq*.

[T.D. 73–175, 38 FR 17477, July 2, 1973, as amended by T.D. 87–89, 52 FR 24446, July 1, 1987; T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

### § 152.2 Notification to importer of increased duties.

If the port director believes that the entered rate or value of any merchandise is too low, or if he finds that the quantity imported exceeds the entered quantity, and the estimated aggregate of the increase in duties on that entry exceeds $15, he shall promptly notify the importer on Customs Form 29, specifying the nature of the difference on the notice. Liquidation shall be made promptly and shall not be withheld for a period of more than 20 days from the date of mailing of such notice unless in the judgment of the port director there are compelling reasons that would warrant such action.

[T.D. 73–175, 38 FR 17477, July 2, 1973, as amended by T.D. 82–224, 47 FR 53728, Nov. 29, 1982; T.D. 93–66, 58 FR 44131, Aug. 19, 1993]

### § 152.3 Merchandise found not to correspond with invoice description.

When any merchandise not corresponding with the description given in the invoice is found by the examining officer, duties shall be assessed on the merchandise actually found. If the discrepancy appears conclusively to be the result of a mistake and not of any intent to defraud, no proceedings for forfeiture shall be taken. When the entire shipment does not agree with the invoice and there is no evidence of any intent to defraud, a new entry shall be required and the estimated duty paid on the original entry shall be refunded on liquidation as in the case of a nonimportation. (Sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499)

## Subpart B—Classification

### § 152.11 Harmonized Tariff Schedule of the United States.

Merchandise shall be classified in accordance with the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) as interpreted by administrative and judicial rulings.

[T.D. 73–175, 38 FR 17477, July 2, 1973, as amended by T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

### § 152.12 Applicable rates of duty.

Rates of duty shall be based on the detailed instructions in § 141.69 of this chapter, which provides in general that the rates of duty applicable to merchandise shall be those in effect on the date of entry or withdrawal for consumption, except for certain merchandise covered by an entry for immediate transportation or overcarried and returned to the port of entry.

### § 152.13 Commingling of merchandise.

(a) *Notice to importer*. The port director shall give written notice to the importer as promptly as possible after any commingling is discovered.

(b) *Highest rate applicable*. Commingled merchandise shall be assessed with duty at the highest rate or rates applicable to any one kind of merchandise included in the commingling, unless:

(1) The quantity and value of each of the kinds so included can be readily ascertained by the usual method of CBP examination or by one or more of the methods specified in General Note 3(f), Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), or

(2) The conditions specified in General Note 3(f), HTSUS, are satisfied.

(c) *Time limit*. To obtain the benefit of General Note 3(f), HTSUS, the importer shall, within 30 days after the date of mailing or personal delivery of the notice provided for in paragraph (a) of this section, take appropriate action as follows:

(1) File with the port director evidence showing performance of the commercial settlement tests specified in General Note 3(f), HTSUS; or

(2) Perform the segregation under CBP supervision as specified in General Note 3(f), HTSUS; or

(3) File with the port director documentary proof which will satisfy him that the merchandise is entitled to the lower rate of duty under General Note 3(f), HTSUS.

(d) *Extension of time limit*. The 30-day limit for filing the evidence specified in

General Note 3(f) or for performing the segregation specified in General Note 3(f), Harmonized Tariff Schedule of the United States, may be extended by the port director for additional periods of 30 days each, but not beyond 6 months from the date of mailing or personal delivery of the notice provided for in paragraph (a) of this section, if the importer makes written application for each extension and gives satisfactory reasons for its allowance.

[T.D. 73–175, 38 FR 17477, July 2, 1973, as amended by T.D. 89–1, 53 FR 51270, Dec. 21, 1988; T.D. 95–29, 60 FR 18349, Apr. 11, 1995; T.D. 00–81, 65 FR 68887, Nov. 15, 2000; T.D. 02–14, 67 FR 15099, Mar. 29, 2002; CBP Dec. 05–31, 70 FR 53062, Sept. 7, 2005]

### § 152.16 Judicial changes in classification.

The following procedures apply to changes in classification made by decision of either the United States Court of International Trade or the United States Court of Appeals for the Federal Circuit, except to the extent otherwise provided in a ruling published in the Customs Bulletin pursuant to § 177.10(a) of this chapter:

(a) *Identical merchandise under decision favorable to Government.* The principles of any court decision favorable to the Government shall be applied to all merchandise identical with that passed on by the court which is covered by unliquidated entries, whether for consumption or warehouse.

(b) *Similar merchandise under decision favorable to Government.* The principles of any court decision favorable to the Government shall be applied to merchandise, though not identical with the merchandise the subject of the court's decision, if its classification is affected by such principles, provided that it has been entered or withdrawn for consumption after 30 days from the date of publication of the court's decision in the Customs Bulletin.

(c) *Higher rate.* If a court decision overruling a protest contains a definite statement that a higher rate than that assessed by the port director was properly chargeable, such higher rate shall be applied to all merchandise, whether identical or similar to that passed on by the court, which is affected by the principles of the court's decision and which is entered or withdrawn for consumption after 30 days from the date of the publication of the court's decision in the Customs Bulletin.

(d) *American manufacturer's petition upheld.* If the court upholds a petition made by an American manufacturer, producer, or wholesaler under the provisions of section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), the principles of the court's decision shall be applicable to all merchandise of that character which is entered or withdrawn for consumption after the date of publication of the court's decision in the Customs Bulletin. The liquidation of entries covering merchandise of that character made after publication of the court's decision shall be suspended in accordance with § 159.57 of this chapter pending any rehearing or review, then liquidated, or, if necessary, reliquidated in accordance with the final judicial decision.

(e) *Other decisions adverse to Government.* Unless the Commissioner of Customs otherwise directs, the principles of any court decision adverse to the Government (except for a decision upholding an American manufacturer's petition as covered in paragraph (d) of this section) shall be applied to unliquidated entries and protested entries which have not been denied in whole or in part and in which the same issue is involved as soon as the time within which an application for a rehearing or review may be filed has expired without such application having been made. See § 176.31 of this chapter for the treatment of entries which are the subject of a court decision.

[T.D. 73–175, 38 FR 17477, July 2, 1973, as amended by T.D. 75–186, 40 FR 31928, July 30, 1975; T.D. 85–90, 50 FR 21430, May 24, 1985]

### § 152.17 Changes in classification by Congress or by Presidential Proclamation.

When a rate of Customs duty or internal revenue tax imposed upon or by reason of importation is changed by an act of Congress or by a proclamation of the President, the new rate shall be applied in accordance with the detailed instructions in § 141.69 of this chapter, which provides in general that the rates of duty applicable to merchandise shall be those in effect on the date of

entry or withdrawal for consumption, except for certain merchandise covered by an entry for immediate transportation or overcarried and returned to the port of entry.

## Subpart C—Appraisement

### §§ 152.20–152.22 [Reserved]

### § 152.23 Merchandise imported from intermediate countries.

Merchandise imported from one country, being the growth, production, or manufacture of another country, shall for value purposes (see sections 402, Tariff Act of 1930, as amended; 19 U.S.C. 1401a) be treated as an exportation of the country from which it is immediately imported. However, if it appears by the invoice, bill of lading, or other evidence that the merchandise was destined for the United States at the time of original shipment, it shall be treated as an exportation of the country from which it was originally exported. The term ''country'' is to be regarded for the purposes of this section as embracing all the possessions of a nation, however widely separated, which are subject to the same supreme executive and legislative authority and control.

[T.D. 73–175, 38 FR 17477, July 2, 1973, as amended by T.D. 87–89, 52 FR 24446, July 1, 1987]

### § 152.24 [Reserved]

### § 152.25 Conversion of foreign currency.

When foreign currency must be converted for purposes of appraisement, the instructions in subpart C of part 159 of this chapter shall be followed.

### § 152.26 Furnishing value information to importer.

The port director shall furnish to importers the latest information as to values in his possession, subject to the following conditions:

(a) *Before appraisement*. Value information shall be given before appraisement only in response to a specific oral or written request by the importer, supported by an adequate reason for the request, or where required by Customs purposes, such as in determining proper estimated duties to be deposited or notification of increased duties in accordance with § 152.2.

(b) *Only for merchandise under port director's jurisdiction*. The information shall be given only in regard to merchandise to be appraised by, or under the jurisdiction of, the port director who receives the request, and only with respect to merchandise for which there is presented evidence of a firm commitment or intent to import such merchandise into the United States.

(c) *Information by importer*. Each request shall be accompanied by the latest information as to the values in question which the importer has or can reasonably obtain.

(d) *Information not binding*. Value information shall be given by the port director only with an understanding and agreement in each case that the information is in no sense an appraisement and is not binding upon the port director's action when he appraises the merchandise.

(e) *No reply required after entry*. The port director shall not be required to reply to a written request for value information after a value for the merchandise has been declared on entry unless he has information indicating a probable appraised value different from such entered value.

## Subpart D [Reserved]

## Subpart E—Valuation of Merchandise

SOURCE: T.D. 81–7, 46 FR 2600, Jan. 12, 1981, unless otherwise noted.

### § 152.100 Interpretative notes.

The interpretative notes set forth in this subpart have been derived from information contained in the Statement of Administrative Action relating to customs valuation, submitted to and approved by Congress along with the Trade Agreements Act of 1979 (Pub. L. 96–39), and will have the force and effect of regulations issued under this subpart.

### § 152.101 Basis of appraisement.

(a) *Effective date*. The value for appraisement of merchandise exported to

the United States on or after July 1, 1980, or, for articles classified under subheading 6401.10.00 Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), on or after July 1, 1981, will be determined in accordance with section 402, Tariff Act of 1930 (19 U.S.C. 1401a), as amended by section 201, Trade Agreements Act of 1979.

(b) *Methods*. Imported merchandise will be appraised on the basis, and in the order, of the following:

(1) The transaction value provided for in § 152.103;

(2) The transaction value of identical merchandise provided for in § 152.104, if the transaction value cannot be determined, or can be determined but cannot be used because of the limitations provided for in § 152.103(j);

(3) The transaction value of similar merchandise provided for in § 152.104, if the transaction value of identical merchandise cannot be determined;

(4) The deductive value provided for in § 152.105, if the transaction value of similar merchandise cannot be determined;

(5) The computed value provided for in § 152.106, if the deductive value cannot be determined; or

(6) The value provided for in § 152.107, if the computed value cannot be determined.

(c) *Importer's option*. The importer may request the application of the computed value method before the deductive value method. The request must be made at the time the entry summary for the merchandise is filed with the port director (see § 141.0a(b) of this chapter). If the importer makes the request, but the value of the imported merchandise cannot be determined using the computed value method, the merchandise will be appraised using the deductive value method if it is possible to do so. If the deductive value cannot be determined, the appraised value will be determined as provided for in § 152.107.

(d) *Explanation to importer*. Upon receipt of a written request from the importer within 90 days after liquidation, the port director shall provide a reasonable and concise written explanation of how the value of the imported merchandise was determined. The explanation will apply only to the imported merchandise being appraised and will not serve as authority with respect to the valuation of importations of any other merchandise at the same or a different port of entry. This procedure is for informational purposes only, and will not affect or replace the protest or administrative ruling procedures contained in parts 174 and 177, respectively, of this chapter, or any other Customs procedures. Under this procedure, Customs will not be required to release any information not otherwise subject to disclosure under the Freedom of Information Act, as amended (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or any other statute (see part 103 of this chapter).

[T.D. 81–7, 46 FR 2600, Jan. 12, 1981, as amended by T.D. 89–1, 53 FR 51270, Dec. 21, 1988]

## § 152.102 Definitions.

As used in this subpart, the following terms will have the meanings indicated:

(a) *Assist*. (1) ''Assist'' means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

(i) Materials, components, parts, and similar items incorporated in the imported merchandise.

(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.

(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

(2) No service or work to which paragraph (a)(1)(iv) of this section applies will be treated as an assist if the service or work:

(i) Is performed by an individual domiciled within the United States;

(ii) Is performed by that individual while acting as an employee or agent of the buyer of the imported merchandise; and

(iii) Is incidental to other engineering, development, artwork, design

work, or plans or sketches that are undertaken within the United States.

(3) The following apply in determining the value of assists described in paragraph (a)(1)(iv) of this section:

(i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist.

(ii) If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value added outside the United States.

(iii) If the assist was purchased or leased by the buyer from an unrelated person, the value of the assist is the cost of the purchase or of the lease.

(b) *Commission.* ''Selling commission'' means any commission paid to the seller's agent, who is related to or controlled by, or works for or on behalf of, the manufacturer or the seller.

(c) *Generally accepted accounting principles.* (1) ''Generally accepted accounting principles'' refers to any generally recognized consensus or substantial authoritative support regarding:

(i) Which economic resources and obligations should be recorded as assets and liabilities;

(ii) Which changes in assets and liabilities should be recorded;

(iii) How the assets and liabilities and changes in them should be measured;

(iv) What information should be disclosed and how it should be disclosed; and

(v) Which financial statements should be prepared.

(2) The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the imported merchandise is sought to be established, and the relevant country for the point in contention.

(3) Information submitted by an importer, buyer, or producer in regard to the appraisement of merchandise may not be rejected by Customs because of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles.

(d) *Identical merchandise.* ''Identical merchandise'' means merchandise identical in all respects to, and produced in the same country and by the same person as, the merchandise being appraised. If identical merchandise cannot be found (or for purposes of related buyer and seller transactions (see § 152.103 (j)(2)(i)(A)) regardless of whether identical merchandise can be found), merchandise identical in all respects to, and produced in the same country as, but not produced by the same person as, the merchandise being appraised, may be treated as ''identical merchandise''. ''Identical merchandise'' does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or sale for export to the United States of the merchandise, and is not an assist because undertaken within the United States.

(e) *Packing costs.* ''Packing costs'' means the cost of all containers (exclusive of instruments of international traffic) and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

(f) *Price actually paid or payable.* ''Price actually paid or payable'' means the total payment (whether direct or indirect, and exclusive of any charges, costs, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

(g) *Related persons.* ''Related persons'' means: (1) Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

(2) Any officer or director of an organization, and that organization.

(3) An officer or director of an organization and an officer or director of another organization, if each individual also is an officer or director in the other organization.

(4) Partners.

(5) Employer and employee.

(6) Any person directly or indirectly owning, controlling, or holding with

power to vote, five percent or more of the outstanding voting stock or shares of any organization, and that organization.

(7) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(h) *Same class or kind.* ''Merchandise of the same class or kind'' means merchandise (including, but not limited to, identical merchandise and similar merchandise) within a group or range of merchandise produced by a particular industry or industry sector.

(i) *Similar merchandise.* ''Similar merchandise'' means merchandise produced in the same country and by the same person as the merchandise being appraised, like the merchandise being appraised in characteristics and component material, and commercially interchangeable with the merchandise being appraised. If similar merchandise cannot be found (or for purposes of related buyer and seller transactions (see § 152.103 (j)(2)(i)(A)) regardless of whether similar merchandise can be found), merchandise produced in the same country as, but not produced by the same person as, the merchandise being appraised, like the merchandise being appraised in characteristics and component material, and commercially interchangeable with the merchandise being appraised, may be treated as ''similar merchandise''. ''Similar merchandise'' does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise, and is not an assist because undertaken within the United States.

(j) *Sufficient information.* ''Sufficient information'' means information that establishes the accuracy of:

(1) Any amount:

(i) Added under § 152.103(b) to the price actually paid or payable;

(ii) Deducted under § 152.105(d) as profit or general expenses or value from further processing, or

(iii) Added under § 152.106(b) as profit or general expenses; or

(2) Any difference taken into account under § 152.103(j)(2)(ii); or

(3) Any adjustment made under § 152.104(d).

(k) *Unit price in greatest aggregate quantity.* ''Unit price at which merchandise is sold in the greatest aggregate quantity'' means the unit price at which the ''merchandise concerned'' is sold to unrelated persons at the first commercial level after importation (in cases to which § 152.105(c)(1) and (2) apply), or after further processing (in cases to which § 152.105(c)(3) applies), at which the sales take place in a total volume greater than the total volume sold at any other unit price and sufficient to establish the unit price.

[T.D. 81–7, 46 FR 2600, Jan. 12, 1981, as amended by T.D. 97–82, 62 FR 51771, Oct. 3, 1997]

## § 152.103 Transaction value.

(a) *Price actually paid or payable*—(1) *General.* In determining transaction value, the price actually paid or payable will be considered without regard to its method of derivation. It may be the result of discounts, increases, or negotiations, or may be arrived at by the application of a formula, such as the price in effect on the date of export in the London Commodity Market. The word ''payable'' refers to a situation in which the price has been agreed upon, but actual payment has not been made at the time of importation. Payment may be made by letters of credit or negotiable instruments and may be made directly or indirectly.

*Example 1.* In a transaction with foreign Company X, a U.S. firm pays Company X $10,000 for a shipment of meat products, packed ready for shipment to the United States. No selling commission, assist, royalty, or license fee is involved. Company X is not related to the U.S. purchaser and imposes no condition or limitation on the buyer.

The customs value of the imported meat products is $10,000—the transaction value of the imported merchandise.

*Example 2.* A foreign shipper sold merchandise at $100 per unit to a U.S. importer. Subsequently, the foreign shipper increased its price to $110 per unit. The merchandise was exported after the effective date of the price increase. The invoice price of $100 was the price originally agreed upon and the price the U.S. importer actually paid for the merchandise.

How should the merchandise be appraised?

Actual transaction value of $100 per unit based on the price actually paid or payable.

*Example 3.* A foreign shipper sells to U.S. wholesalers at one price and to U.S. retailers at a higher price. The shipment undergoing appraisement is a shipment to a U.S. retailer. There are continuing shipments of identical and similar merchandise to U.S. wholesalers.

How should the merchandise be appraised?

Actual transaction value based on the price actually paid or payable by the retailer.

*Example 4.* Company X in the United States pay $2,000 to Y Toy Factory abroad for a shipment of toys. The $2,000 consists of $1,850 for the toys and $150 for ocean freight and insurance. Y Toy Factory would have charged Company X $2,200 for the toys; however, because Y owed Company X $350, Y charged only $1,850 for the toys. What is the transaction value?

The transaction value of the imported merchandise is $2,200, that is, the sum of the $1,850 plus the $350 indirect payment. Because the transaction value excludes C.I.F. charges, the $150 ocean freight and insurance charge is excluded.

*Example 5.* A seller offers merchandise at $100, less a 2% discount for cash. A buyer remits $98 cash, taking advantage of the cash discount.

The transaction value is $98, the price actually paid or payable.

(2) *Indirect payment.* An indirect payment would include the settlement by the buyer, in whole or in part, of a debt owed by the seller, or where the buyer receives a price reduction on a current importation as a means of settling a debt owed him by the seller. Activities such as advertising, undertaken by the buyer on his own account, other than those for which an adjustment is provided in §152.103(b), will not be considered an indirect payment to the seller though they may benefit the seller. The costs of those activities will not be added to the price actually paid or payable in determining the customs value of the imported merchandise.

(3) *Assembled merchandise.* The price actually paid or payable may represent an amount for the assembly of imported merchandise in which the seller has no interest other than as the assembler. The price actually paid or payable in that case will be calculated by the addition of the value of the components and required adjustments to form the basis for the transaction value.

*Example 1.* The importer previously has supplied an unrelated foreign assembler with fabricated components ready for assembly having a value or cost at the assembler's plant of $1.00 per unit. The importer pays the assembler 50¢ per unit for the assembly. The transaction value for the assembled unit is $1.50.

*Example 2.* Same facts as Example 1 above except the U.S. importer furnishes to the foreign assembler a tooling assist consisting of a tool acquired by the importer at $1,000. The transportation expenses to the foreign assembler's plant for the tooling assist equal $100. The transaction value for the assembled unit would be $1.50 per unit plus a *pro rata* share of the tooling assist valued at $1,100.

(4) *Rebate.* Any rebate of, or other decrease in, the price actually paid or payable made or otherwise effected between the buyer and seller after the date of importation of the merchandise will be disregarded in determining the transaction value under §152.103(b).

(5) *Foreign inland freight and other inland charges incident to the international shipment of merchandise*—(i) *Ex-factory sales.* If the price actually paid or payable by the buyer to the seller for the imported merchandise does not include a charge for foreign inland freight and other charges for services incident to the international shipment of merchandise (an ex-factory price), those charges will not be added to the price.

(ii) *Sales other than ex-factory.* As a general rule, in those situations where the price actually paid or payable for imported merchandise includes a charge for foreign inland freight, whether or not itemized separately on the invoices or other commercial documents, that charge will be part of the transaction value to the extent included in the price. However, charges for foreign inland freight and other services incident to the shipment of the merchandise to the United States may be considered incident to the international shipment of that merchandise within the meaning of §152.102(f) if they are identified separately and they occur after the merchandise has been sold for export to the United States and placed with a carrier for through shipment to the United States.

(iii) *Evidence of sale for export and placement for through shipment.* A sale for export and placement for through shipment to the United States under

paragraph (a)(5)(ii) of this section shall be established by means of a through bill of lading to be presented to the port director. Only in those situations where it clearly would be impossible to ship merchandise on a through bill of lading (e.g., shipments via the seller's own conveyance) will other documentation satisfactory to the port director showing a sale for export to the United States and placement for through shipment to the United States be accepted in lieu of a through bill of lading.

(iv) *Erroneous and false information.* This regulation shall not be construed as prohibiting Customs from making appropriate additions to the dutiable value of merchandise in instances where verification reveals that foreign inland freight charges or other charges for services incident to the international shipment of merchandise have been overstated.

(b) *Additions to price actually paid or payable.* (1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to:

(i) The packing costs incurred by the buyer with respect to the imported merchandise;

(ii) Any selling commission incurred by the buyer with respect to the imported merchandise;

(iii) The value, apportioned as appropriate, of any assist;

(iv) Any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and

(v) The proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

(2) The price actually paid or payable for imported merchandise will be increased by the amounts attributable to the items (and no others) described in paragraphs (b)(1) (i) through (v) of this section to the extent that each amount is not otherwise included within the price actually paid or payable, and is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in this section, the transaction value will be treated as one that cannot be determined.

(3) *Interpretative note.* A royalty is paid on the basis of the price in a sale in the United States of a gallon of a particular product imported by the pound and transformed into a solution after importation. If the royalty is based partially on the imported merchandise and partially on other factors which have nothing to do with the imported merchandise (such as if the imported merchandise is mixed with domestic ingredients and is no longer separately identifiable, or if the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported merchandise and can be readily quantified, an addition to the price actually paid or payable will be made.

(c) *Sufficiency of information.* Additions to the price actually paid or payable will be made only if there is sufficient information to establish the accuracy of the additions and the extent to which they are not included in the price.

(d) *Assist.* If the value of an assist is to be added to the price actually paid or payable, or to be used as a component of computed value, the port director shall determine the value of the assist and apportion that value to the price of the imported merchandise in the following manner:

(1) If the assist consist of materials, components, parts, or similar items incorporated in the imported merchandise, or items consumed in the production of the imported merchandise, acquired by the buyer from an unrelated seller, the value of the assist is the cost of its acquisition. If the assist were produced by the buyer or a person related to the buyer, its value would be the cost of its production. In either case, the value of the assist would include transportation costs to the place of production.

(2) If the assist consists of tools, dies, molds, or similar items used in the production of the imported merchandise,

acquired by the buyer from an unrelated seller,the value of the assist is the cost of its acquisition. If the assist were produced by the buyer or a person related to the buyer, its value would be cost of its production. If the assist has been used previously by the buyer, regardless of whether it had been acquired or produced by him, the original cost of acquisition or production would be adjusted downward to reflect its use before its value could be determined. If the assist were leased by the buyer from an unrelated seller, the value of the assist would be the cost of the lease. In either case, the value of the assist would include transportation costs to the place of production. Repairs or modifications to an assist may increase its value.

*Example 1.* A U.S. importer supplied detailed designs to the foreign producer. These designs were necessary to manufacture the merchandise. The U.S. importer bought the designs from an engineering company in the U.S. for submission to his foreign supplier.

Should the appraised value of the merchandise include the value of the assist?

No, design work undertaken in the U.S. may not be added to the price actually paid or payable.

*Example 2.* A U.S. importer supplied molds free of charge to the foreign shipper. The molds were necessary to manufacture merchandise for the U.S. importer. The U.S. importer had some of the molds manufactured by a U.S. company and others manufactured in a third country.

Should the appraised value of the merchandise include the value of the molds?

Yes. It is an addition required to be made to transaction value.

(e) *Apportionment.* (1) The apportionment of the value of assists to imported merchandise will be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles. The method of apportionment actually accepted by Customs will depend upon the documentation submitted by the importer. If the entire anticipated production using the assist is for exportation to the United States, the total value may be apportioned over (i) the first shipment, if the importer wishes to pay duty on the entire value at once, (ii) the number of units produced up to the time of the first shipment, or (iii) the entire anticipated production. In addition to these three methods, the importer may request some other method of apportionment in accordance with generally accepted accounting principles. If the anticipated production is only partially for exportation to the United States, or if the assist is used in several countries, the method of apportionment will depend upon the documentation submitted by the importer.

(2) *Interpretative note.* An importer provides the producer with a mold to be used in the production of the imported merchandise and contracts to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request Customs to apportion the value of the mold over 1,000, 4,000, 10,000 units, or any other figure which is in accordance with generally accepted accounting principles.

(f) *Royalties or license fees.* Royalties or license fees for patents covering processes to manufacture the imported merchandise generally will be dutiable. Royalties or license fees paid to third parties for use, in the United States, of copyrights and trademarks related to the imported merchandise generally will be considered selling expenses of the buyer and not dutiable. The dutiable status of royalties or license fees paid by the buyer will be determined in each case and will depend on (1) whether the buyer was required to pay them as a condition of sale of the merchandise for exportation to the United States, and (2) to whom and under what circumstances they were paid. Payments made by the buyer to a third party for the right to distribute or resell the imported merchandise will not be added to the price actually paid or payable for the imported merchandise if the payments are not a condition of the sale of the merchandise for exportation to the United States.

*Example.* A foreign producer sold merchandise to an unrelated U.S. importer. The U.S. importer pays a royalty to an unrelated third party for the right to manufacture and sell a product made in part from the imported merchandise. The royalty is based on the selling price of the further-manufactured product in the U.S.

Is the license fee part of the appraised value? No. The license fee is not a condition

of the sale of the imported merchandise for export to the U.S.

(g) *Proceeds of subsequent resale.* Additions to the price actually paid or payable will be made for the value of any part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrues directly or indirectly to the seller. Dividends or other payments from the buyer to the seller which do not relate directly to the imported merchandise will not be added to the price actually paid or payable. Whether any addition would be made will depend on the facts of the particular case.

*Example.* A buyer contracts to import a new product. Not knowing whether the product ultimately will sell in the United States, the buyer agrees to pay the seller initially $1 per unit with an additional $1 per unit to be paid upon the sale of each unit in the United States. Assuming the resale price in the United States can be determined in a reasonable period of time, the transaction value of each unit would be $2. Otherwise, the transaction value could not be determined for want of sufficient information.

(h) *Right to reproduce.* Charges for the right to reproduce the imported merchandise in the United States will not be added to the price actually paid or payable. The right to reproduce denotes that an idea or an original work is incorporated in, or reflected by, the imported merchandise, and the right is reserved to reproduce that idea or work in other merchandise by using the imported merchandise. The concept of the right to reproduce relates only to the following classes of merchandise: originals or copies of artistic or scientific works; originals or copies of models and industrial drawings; model machines and prototypes; and plant and animal species.

*Example.* The importer purchases a painting. By purchasing the painting, the owner possesses the right to resell, lease, or otherwise place it on display. Absent an agreement to the contrary, he does not possess the right to reproduce copies of the painting. Fees paid for the right to reproduce the painting would not be dutiable.

(i) *Exclusions from transaction value.* The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (b) of this section:

(1) Any reasonable cost or charge that is incurred for—

(i) The construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States; or

(ii) The transportation of the merchandise after its importation.

(2) The customs duties and other Federal taxes currently payable on the imported merchandise by reason of its importation, and any Federal excise tax on, or measured by the value of, the merchandise for which vendors in the United States ordinarily are liable.

*Example.* A foreign shipper sells a piece of equipment to a U.S. buyer. The total contract price for the equipment includes technical assistance in the U.S. The equipment cannot be purchased without the technical assistance, but the contract provides a breakdown of costs.

Should the appraised value include the technical assistance? No, transaction value does not include any reasonable costs for construction, erection, assembly, maintenance of, or technical assistance, for the imported merchandise after its importation into the U.S., the cost of which can be accurately identified as being separate from the price actually paid or payable for the merchandise to which they relate.

(j) *Limitations on use of transaction value*—(1) *In general.* The transaction value of imported merchandise will be the appraised value only if:

(i) There are no restrictions on the disposition or use of the imported merchandise by the buyer, other than restrictions which are imposed or required by law, limit the geographical area in which the merchandise may be resold, or do not affect substantially the value of the merchandise;

(ii) The sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consideration for which a value cannot be determined;

(iii) No part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made under paragraph (b)(1)(v) of this section; and

(iv) The buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable.

(2) *Related person transactions.* (i) The transaction value between a related buyer and seller is acceptable if an examination of the circumstances of sale indicates that their relationship did not influence the price actually paid or payable, or if the transaction value of the imported merchandise closely approximates:

(A) The transaction value of identical merchandise; or of similar merchandise, in sales to unrelated buyers in the United States; or

(B) The deductive value or computed value of identical merchandise, or of similar merchandise; and

(C) Each value referred to in paragraph (j)(2)(i) (A) and (B) of this section that is used for comparison relates to merchandise that was exported to the United States at or about the same time as the imported merchandise.

(ii) In applying the values used for comparison, differences with respect to the sales involved will be taken into account if based on sufficient information supplied by the buyer or otherwise available to Customs and if the differences relate to:

(A) Commercial levels;

(B) Quantity levels;

(C) The costs, commissions, values, fees, and proceeds described in paragraph (b) of this section; and

(D) The costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

(k) *Restrictions and conditions on sale.* (1) A restriction placed on the buyer of imported merchandise that does not affect substantially its value will not prevent transaction value from being accepted as the appraised value.

(i) *Interpretative note.* A seller requires a buyer of automobiles not to sell or exhibit them before a fixed date that represents the beginning of a model year.

(2) The transaction value will not be accepted as the appraised value if the sale of, or the price actually paid or payable for, the merchandise is subject to a condition or consideration for which a value cannot be determined.

(i) *Interpretative note 1.* The seller establishes the price of the imported merchandise on condition that the buyer also will buy other merchandise in specified quantities.

(ii) *Interpretative note 2.* The price of the imported merchandise is dependent upon the price or prices at which the buyer of the merchandise sells other merchandise to the seller of the merchandise.

(iii) *Interpretative note 3.* The price of the imported merchandise is established on the basis of a form of payment extraneous to the merchandise, such as where the merchandise is to be further processed by the buyer, and has been provided by the seller on condition that he will receive a specified quantity of the finished merchandise.

(l) *Related buyer and seller*—(1) *Validation of transaction.* The port director shall not disregard a transaction value solely because the buyer and seller are related. There will be related person transactions in which validation of the transaction value, using the procedures contained in §152.103(j)(2), may not be necessary.

(i) *Interpretative note 1.* Customs may have previously examined the relationship or may already have sufficient detailed information concerning the buyer and seller to be satisfied that the relationship did not influence the price actually paid or payable. In such case, if Customs has no doubts about the acceptability of the price, the price will be accepted without requesting further information from the importer. If Customs does have doubts about the acceptability of the price and is unable to accept the transaction value without further inquiry, the importer will be given an opportunity to supply such further detailed information as may be necessary to enable Customs to examine the circumstances of the sale. In this context, Customs will examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at in order to determine whether the relationship influenced the price.

(ii) *Interpretative note 2.* If it is shown that the buyer and seller, although related, buy from and sell to each other as if they were not related, this will demonstrate that the price has not been influenced by the relationship, and the transaction value will be accepted. If the price has been settled in a manner consistent with the normal pricing practices of the industry in question, or with the way the seller settles prices for sales to buyers who are not related to him, this will demonstrate that the price has not been influenced by the relationship.

(iii) *Interpretative note 3.* If it is shown that the price is adequate to ensure recovery of all costs plus a profit which is equivalent to the firm's overall profit realized over a representative period of time (e.g., on an annual basis), in sales of merchandise of the same class or kind, this would demonstrate that the price has not been influenced.

*Example.* A foreign seller sells merchandise to a related U.S. importer. The foreign seller does not sell identical merchandise or similar merchandise to any unrelated parties. The transaction between the foreign seller and the U.S. importer is determined by Customs to be unaffected by the relationship.

How should the merchandise be appraised?

Transaction value based on the price actually paid or payable. A transaction value between a related buyer and seller is acceptable if the relationship did not affect the price actually paid or payable. This is so even if similar merchandise is being sold at a higher price, which includes a higher percentage for profit and general expenses.

(2) *Test values.* (i) The importer or the buyer may demonstrate that the transaction value in a related person transaction is acceptable by showing that the value ''closely approximates'' any one of the test values provided in § 152.103(j)(2)(i). The factors that will be examined to determine if the transaction value closely approximates a test value include:

(A) The nature of the imported merchandise and the industry,

(B) The season in which the merchandise is imported,

(C) Whether the difference in value is commercially significant, and

(D) Whether the difference in value is attributable to internal transport costs in the country of exportation.

(ii) Because these factors may vary, Customs will not be able to apply a uniform standard, such as a fixed percentage, in each case. A small difference in value in a case involving one type of imported merchandise may be unacceptable, although a large difference in a case involving another type may be acceptable, in determining if the transaction value closely approximates any of the test values. Customs will be consistent in determining if one value ''closely approximates'' another value. The same approach will be taken if Customs considers a transaction value that is higher than any of the enumerated test values as will be taken if the transaction value is lower than any of the test values.

*Example.* In applying any of the test values, if the transaction value in the sale under consideration is rejected because 95 does not closely approximate 100, then a transaction value for the sale of the same merchandise at 105 occurring at or about the same time likewise would have to be rejected. Similarly, if 103 were considered to closely approximate 100, a transaction value of 97 likewise would closely approximate 100.

(iii) If one of the test values provided in § 152.103(j)(2)(i) has been found to be appropriate, the port director shall not seek to determine if the relationship between the buyer and seller influenced the price. If the port director already has sufficient information to be satisfied, without further detailed inquiries, that one of the test values is appropriate, he shall not require the importer to demonstrate that the test value is appropriate.

(m) *Rejection of transaction value.* When Customs has grounds for rejecting the transaction value declared by an importer and that rejection increases the duty liability, the port director shall inform the importer of the grounds for the rejection. The importer will be afforded 20 days to respond in writing to the port director if in disagreement. This procedure will not affect or replace the administrative ruling procedures contained in part 177 of this chapter, or any other Customs procedures.

[T.D. 81–7, 46 FR 2600, Jan. 12, 1981, as amended by T.D. 84–235, 49 FR 46888, Nov. 29, 1984]

**§ 152.104 Transaction value of identical merchandise and similar merchandise.**

(a) *General*. The transaction value of identical merchandise, or of similar merchandise, is the transaction value (acceptable as the appraised value under § 152.103 but adjusted under paragraph (e) of this section) of imported merchandise that is—

(1) With respect to the merchandise being appraised, either identical merchandise, or similar merchandise; and

(2) Exported to the United States at or about the time that the merchandise being appraised is exported to the United States.

(b) *Identical merchandise*. Minor differences in appearance will not preclude otherwise conforming merchandise from being considered ''identical''. See § 152.102(d).

(c) *Similar merchandise*. The quality of the merchandise, its reputation, and the existence of a trademark will be factors considered to determine whether merchandise is ''similar''. See § 152.102(i).

(d) *Commercial level and quantity*. Transaction values determined under this section will be based on sales of identical merchandise, or similar merchandise, at the same commercial level and in substantially the same quantity as the sales of the merchandise being appraised. If no such sale is found, sales of identical merchandise, or similar merchandise, at either a different commercial level or in different quantities, or both, will be used, but adjusted to take account of that difference. Any adjustment made under this section will be based on ''sufficient information''. See § 152.102(j). If in applying this section to any merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, the merchandise will be appraised on the basis of the lower or lowest of those values.

(e) *Adjustments*. (1) Adjustments for identical merchandise, or similar merchandise, because of different commercial levels or quantities, or both, whether leading to an increase or decrease in the value, will be made only on the basis of sufficient information; e.g., valid price lists containing prices referring to different levels or quantities.

(2) *Interpretative note*. If the imported merchandise being valued consists of a shipment of 10 units and the only identical imported merchandise for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being *bona fide* through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions for transaction value of identical or similar merchandise is not appropriate.

**§ 152.105 Deductive value.**

(a) *Merchandise concerned*. For the purposes of deductive value, ''merchandise concerned'' means the merchandise being appraised, identical merchandise, or similar merchandise.

(b) *Merchandise of the same class or kind*. For the purposes of deductive value, ''merchandise of the same class or kind'' includes merchandise imported from the same country as well as other countries as the merchandise being appraised.

(c) *Prices*. The deductive value of the merchandise being appraised is whichever of the following prices (as adjusted under paragraph (d) of this section) is appropriate depending upon when and in what condition the merchandise concerned is sold in the United States:

(1) If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity at or about such date.

(2) If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is

sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

(3) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th day after the date of such importation. This provision will apply to appraisement of merchandise only if the importer so elects at the time of filing the entry summary.

(d) *Deductions from price.* The price determined under paragraph (c) of this section will be reduced by an amount equal to:

(1) Any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the United States of imported merchandise that is of the same class or kind, regardless of the country of exportation, as the merchandise concerned;

(2) The actual costs and associated costs of transportation and insurance incurred with respect to international shipments of the merchandise concerned from the country of exportation to the United States;

(3) The usual costs and associated costs of transportation and insurance incurred with respect to shipments of the merchandise concerned from the place of importation to the place of delivery in the United States, if those costs are not included as a general expense under paragraph (d)(1) of this section;

(4) The customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of, the merchandise for which vendors in the United States ordinarily are liable; and

(5) But only in the case of price determined under paragraph (c)(3) of this section, the value added by the processing of the merchandise after importation to the extent that the value is based on sufficient information relating to the cost of that processing.

(e) *Profit and general expenses; special rules.* (1) The deduction made for profit and general expenses (taken as a whole) will be based upon the importer's profit and general expenses, unless the profit and general expenses are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind from all countries, in which case the deduction will be based on the usual profit and general expenses reflected in those sales, as determined from sufficient information. Any State or local tax imposed on the importer with respect to the sale of imported merchandise will be treated as a general expense.

(2) In determining deductions for commissions and usual profit and general expenses, sales in the United States of the narrowest group or range of imported merchandise of the same class or kind, including the merchandise being appraised, for which sufficient information can be provided, will be examined.

(f) *Packing costs.* The price determined under paragraph (c) of this section will be increased, but only to the extent that the costs are not otherwise included, by an amount equal to the packing costs incurred by the importer or the buyer with respect to the merchandise concerned.

(g) *Assists.* For purposes of determining deductive value, any sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned will be disregarded.

(h) *Unit price in greatest aggregate quantity.* The unit price will be established after a sufficient number of units have been sold to an unrelated person. The unit price to be used when the units have been sold in different quantities will be that at which the total volume sold is greater than the total volume sold at any other unit price.

(1) *Interpretative note 1.* Merchandise is sold to an unrelated person from a price list which grants favorable unit prices for purchases made in larger quantities:

| Sale quantity | Unit price | Number of sales | Total quantity sold at each price |
|---|---|---|---|
| 1–10 units ... | $100 | 10 sales of 5 units ..... | 65 |
| | | 5 sales of 3 units. | |
| 11–25 units | 95 | 5 sales of 11 units ..... | 55 |
| Over 25 units. | 90 | 1 sale of 30 units ..... | 80 |
| | | 1 sale of 50 units ..... | |

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is $90.

(2) *Interpretative note 2*. Two sales to unrelated persons occur: in the first sale, 500 units are sold at a price of $95 each; in the second sale, 400 units are sold at a price of $90 each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is $95.

(3) *Interpretative note 3*. Various quantities are sold to unrelated persons at various prices:

(I) SALES

| Sale quantity | Unit price |
|---|---|
| 40 units ..... | $100 |
| 30 units ..... | 90 |
| 15 units ..... | 100 |
| 50 units ..... | 95 |
| 25 units ..... | 105 |
| 35 units ..... | 90 |
| 5 units ..... | 100 |

(II) TOTALS

| Total quantity sold | Unit price |
|---|---|
| 65 ..... | $90 |
| 50 ..... | 95 |
| 60 ..... | 100 |
| 25 ..... | 105 |

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is $90.

(i) *Further processing*—(1) *Quantified data*. If merchandise has undergone further processing after its importation into the United States and the importer elects the method specified in paragraph (c)(3) of this section, deductions made for the value added by that processing will be based on objective and quantifiable data relating to the cost of the work performed. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis for the deduction. That deduction also will reflect amounts for spoilage, waste, or scrap derived from the further processing.

(2) *Loss of identity*. If the imported merchandise loses its identity as a result of further processing, the method specified in paragraph (c)(3) of this section will not be applicable unless the value added by the processing can be determined accurately without unreasonable difficulty for either importers or Customs. If the imported merchandise maintains its identity but forms a minor element of the merchandise sold in the United States, the use of paragraph (c)(3) of this section will be unjustified. The port director shall review each case involving these issues on its merits.

*Example*. A foreign shipper sells merchandise to a related U.S. importer. The foreign shipper does not sell to any unrelated person. The transaction between the foreign shipper and the U.S. importer is determined to have been affected by the relationship. There is no identical or similar merchandise from the same country of production. The U.S. importer further processes the product and sells the finished product to an unrelated buyer in the U.S. within 180 days of the date of importation. No assists from the unrelated U.S. buyer are involved, and the type of processing involved can be accurately costed.

How should the merchandise be appraised?

The merchandise should be appraised under deductive value with allowances for profit and general expenses, freight and insurance, duties and taxes, and the cost of processing.

[T.D. 81–7, 46 FR 2600, Jan. 12, 1981, as amended by T.D. 85–123, 50 FR 29956, July 23, 1985]

### § 152.106 Computed value.

(a) *Elements*. The computed value of imported merchandise is the sum of:

(1) The cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;

(2) An amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;

(3) Any assist, if its value is not included under paragraph (a) (1) or (2) of this section; and

(4) The packing costs.

(b) *Special rules.* (1) The cost or value of materials under paragraph (a)(1) of this section will not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used.

(2) The amount for profit and general expenses under paragraph (a)(2) of this section will be based upon the producer's profit and general expenses, unless the producer's profit and general expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States. In that case, the amount under paragraph (a)(2) of this section will be based on the usual profit and general expenses of such producers in those sales, as determined from ''sufficient information''. See § 152.102(j).

(c) *Profit and general expenses.* The amount for profit and general expenses will be taken as a whole. If the producer's profit figure is low and general expenses high, those figures taken together nevertheless may be consistent with those usually reflected in sales of imported merchandise of the same class or kind.

(1) *Interpretative note 1.* A product is introduced into the United States, and the producer accepts either no profit or a low profit to offset the high general expenses required to introduce the product into this market. If the producer can demonstrate that there is a low profit on sales of the imported merchandise because of peculiar commercial circumstances, the actual profit figures will be accepted provided the producer has valid commercial reasons to justify them and his pricing policy reflects the usual pricing policies in the industry.

(2) *Interpretative note 2.* Producers have been forced to lower prices temporarily because of an unforseeable drop in demand, or they sell merchandise to complement a range of merchandise being produced in the United States and accept a low profit to maintain competitiveness. If the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of merchandise of the same class or kind as the merchandise being valued which are made in the country of exportation for export to the United States, the amount for profit and general expenses will be based upon reliable and quantifiable information other than that supplied by or on behalf of the producer of the merchandise.

(d) *Assists and packing costs.* Computed value also will include an amount equal to the apportioned value of any assists used in the production of the imported merchandise and the packing costs for the imported merchandise. The value of any engineering, development, artwork, design work, and plans and sketches undertaken in the United States will be included in computed value only to the extent that their value has been charged to the producer. Depending on the producer's method of accounting, the value of assists may be included (duplicated) in the producer's cost of materials, fabrication, and other processing, or in the general expenses. If duplication occurs, a separate amount for the value of the assists will not be added to the other elements as it is not intended that any component of computed value be included twice.

(e) *Merchandise of same class or kind.* Sales for export to the United States of the narrowest group or range of imported merchandise, including the merchandise being appraised, will be examined to determine usual profit and general expenses. For the purpose of computed value, merchandise of the same class or kind must be from the same country as the merchandise being appraised.

*Example.* A foreign shipper sells merchandise to a related U.S. importer. The foreign shipper does not sell to any unrelated persons. The transaction between the foreign shipper and the U.S. importer is determined to have been affected by the relationship. There is no identical or similar merchandise from the same country of production. The U.S. importer further processes the product

and sells the finished product to an unrelated buyer in the U.S. within 180 days of the date of importation. No assists from the unrelated U.S. buyer are involved, and the type of processing involved can be accurately costed. The U.S. importer has requested that the shipment be appraised under computed value. The profit and general expenses figure for the same class or kind of merchandise in the country of exportation for export to the U.S. is known.

How should the merchandise be appraised?

The merchandise should be appraised under computed value, using the company's profit and general expenses if not inconsistent with those usually reflected in sales of merchandise of the same class or kind.

(f) *Availability of information.* (1) It will be presumed that the computed value of the imported merchandise cannot be determined if:

(i) The importer is unable to provide required computed value information within a reasonable time, and/or

(ii) The foreign producer refuses to provide, or is legally prevented from providing, that information.

(2) If information other than that supplied by or on behalf of the producer is used to determine computed value, the port director shall inform the importer, upon written request, of:

(i) The source of the information,

(ii) The data used, and

(iii) The calculation based upon the specified data,

if not contrary to domestic law regarding disclosure of information. See also §152.101(d).

### §152.107 Value if other values cannot be determined or used.

(a) *Reasonable adjustments.* If the value of imported merchandise cannot be determined or otherwise used for the purposes of this subpart, the imported merchandise will be appraised on the basis of a value derived from the methods set forth in §§152.103 through 152.106, reasonably adjusted to the extent necessary to arrive at a value. Only information available in the United States will be used.

(b) *Identical merchandise or similar merchandise.* The requirement that identical merchandise, or similar merchandise, should be exported at or about the same time of exportation as the merchandise being appraised may be interpreted flexibly. Identical merchandise, or similar merchandise, produced in any country other than the country of exportation or production of the merchandise being appraised may be the basis for customs valuation. Customs values of identical merchandise, or similar merchandise, already determined on the basis of deductive value or computed value may be used.

(c) *Deductive value.* The ''90 days'' requirement for the sale of merchandise referred to in §152.105(c) may be administered flexibly.

### §152.108 Unacceptable bases of appraisement.

For the purposes of this subpart, imported merchandise may not be appraised on the basis of:

(a) The selling price in the United States of merchandise produced in the United States;

(b) A system that provides for the appraisement of imported merchandise at the higher of two alternative values;

(c) The price of merchandise in the domestic market of the country of exportation;

(d) A cost of production, other than a value determined under §152.106 for merchandise that is identical merchandise, or similar merchandise, to the merchandise being appraised;

(e) The price of merchandise for export to a country other than the United States;

(f) Minimum values for appraisement;

(g) Arbitrary or fictitious values.

[T.D. 81–7, 46 FR 2600, Jan. 12, 1981, as amended by T.D. 85–123, 50 FR 29956, July 23, 1985]

## PART 158—RELIEF FROM DUTIES ON MERCHANDISE LOST, DAMAGED, ABANDONED, OR EXPORTED

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158.0 Scope.

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158.45 Exportation of merchandise.

AUTHORITY: 19 U.S.C. 66, 1624, unless otherwise noted. Subpart C also issued under 19 U.S.C. 1563.

SOURCE: T.D. 72–258, 37 FR 20171, Sept. 27, 1972, unless otherwise noted.

### § 158.0 Scope.

This part sets forth general rules for granting relief from duties on merchandise which is lost, damaged, abandoned, or exported.

## Subpart A—Lost or Missing Packages and Deficiencies in Contents of Packages

### § 158.1 Definition of "permitted" merchandise.

For the purpose of this subpart, merchandise is ''permitted'' when Customs authorizes the carrier bringing the shipment to the port to make delivery to the consignee or the next carrier and:

(a) These parties in interest, or their agents, make a joint determination of the quantities being delivered, or,

(b) The carrier bringing the shipment to the port, at its option, independently declares the quantities available for delivery by filing with the port director, no later than the close of business on the next working day after a determination of quantities is made, a signed statement that:

(1) An independent determination of quantities of merchandise available for delivery has been made, with the date of the determination shown;

(2) At least 4 days have elapsed since the consignee or his agent was notified that Customs has authorized delivery; and,

(3) The merchandise was and is available for delivery.

### § 158.2 Shortages in packages released under immediate delivery or entry.

An importer may file an entry summary for consumption or an entry summary for warehouse for less than the invoiced and manifested number of packages in a shipment ''permitted'' and delivered to him or deposited in a bonded warehouse under the immediate delivery procedure in § 142.21 of this chapter, or under the entry documentation in § 142.3(a), if he files with the entry summary a Customs Form 5931 in triplicate. The Customs Form 5931 shall be completed by the importer with attached copies of the dock receipt or other documents evidencing nonreceipt of the lost or missing packages.

[T.D. 85–159, 50 FR 38520, Sept. 23, 1985]

**§ 158.3 Allowance for lost or missing packages included in an entry summary.**

Allowance shall be made in the assessment of duties for lost or missing packages of merchandise included in an entry summary whenever it is established to the satisfaction of the port director before the liquidation of the entry summary becomes final that the merchandise claimed to be lost or missing was not ''permitted.'' A claim for such allowance shall be made on Customs Form 5931, in triplicate, executed by the importer and the importing carrier or bonded carrier, as appropriate. When the importing or bonded carrier refuses to execute the Customs Form 5931, a claim may be allowed if the importer properly executes the Customs Form 5931 and attaches copies of the dock receipt or other document evidencing nonreceipt of the lost or missing packages.

[T.D. 72–258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 79–221, 44 FR 46829, Aug. 9, 1979]

**§ 158.4 Liability of carrier for lost or missing packages.**

Upon a joint determination or independent determination of quantity as set forth in § 158.1 (a) or (b) resulting in the merchandise being ''permitted,'' the carrier shall be responsible only for any discrepancy between the manifested quantity and the ''permitted'' quantity. In the case of an importing carrier, when there is a difference between the quantity shown on the inward foreign manifest and the quantity ''permitted,'' liquidated damages or duties shall be assessed under the provisions of the carrier's bond or under the provisions of section 448, Tariff Act of 1930, as amended (19 U.S.C. 1448), unless the carrier corrects his manifest (see § 4.12 of this chapter). In the case of a bonded carrier, liquidated damages for lost or missing merchandise shall be assessed in accordance with § 18.8 of this chapter.

**§ 158.5 Deficiencies in contents of packages—general.**

An allowance shall be made in the assessment of duties for deficiencies in the contents of packages when, before the liquidation of the entry becomes final, the importer files:

(a) In the case of a concealed shortage, a Customs Form 5931, in triplicate, executed by the importer alone, and the port director satisfies himself as to the validity of the claim; or,

(b) In the case of an unconcealed shortage, a Customs Form 5931, in triplicate, executed by both the importer and the importing or bonded carrier, as appropriate.

**§ 158.6 Deficiencies in contents of examination packages.**

Allowance for deficiency in the contents of any examination package reported to the port director by a Customs officer shall be made in the liquidation of the entry. No Customs officer except one making an examination contemplated by section 499, Tariff Act of 1930, as amended (19 U.S.C. 1499), shall report a supposed deficiency to the port director unless it is established to the satisfaction of the reporting officer that the merchandise was not imported.

(Sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499)

**§ 158.7 Allowance for reduction or loss of merchandise by a natural force or by leakage.**

Merchandise subject to ad valorem, specific, or compound rates of duty found at the time of importation to be reduced or diminished by a natural force, such as evaporation, or by leakage, shall be appraised in its condition as imported, with an allowance made in the value, weight, quantity, or measure to the extent of the reduction or loss, except when forbidden by law or regulation.

(R.S. 251, as amended, sec. 499, sec. 624, 46 Stat. 728, as amended, 759 (19 U.S.C. 66, 1499, 1624))

[T.D. 78–448, 43 FR 53713, Nov. 17, 1978]

## Subpart B—Damaged or Defective Merchandise

**§ 158.11 Merchandise completely worthless at time of importation.**

(a) *Nonperishable merchandise.* When a shipment of nonperishable merchandise, or any portion thereof which shall

have been segregated from the remainder of the shipment under Customs supervision at the expense of the importer, is found by the port director to be entirely without commercial value at the time of importation by reason of damage or deterioration, an allowance in duties on such merchandise on the ground of nonimportation shall be made in the liquidation of the entry.

(b) *Perishable merchandise.* In the case of perishable merchandise, an allowance in duties may be made under the following conditions:

(1) An application for such allowance shall be filed with the port director on Customs Form 4315 in duplicate, within 96 hours after the unlading of the merchandise and before any of the shipment involved has been removed from the pier (or other area permitted under § 142.2(b)(2) of this chapter) pursuant to the entry permit.

(2) Should an application filed in accordance with paragraph (b)(1) of this section be withdrawn, the merchandise involved shall thereafter be released upon presentation of an appropriate permit.

(3) Allowance in duty shall be made in the liquidation of the entry on such of the merchandise covered by the application as is found by the port director to be entirely without commercial value by reason of damage or deterioration.

(Sec. 506, 46 Stat. 732, as amended; 19 U.S.C. 1506)

[T.D. 72–258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 76–220, 41 FR 33248, Aug. 9, 1976]

### § 158.12 Merchandise partially damaged at time of importation.

(a) *Allowance in value.* Merchandise which is subject to ad valorem or compound duties and found by the port director to be partially damaged at the time of importation shall be appraised in its condition as imported, with an allowance made in the value to the extent of the damage. However, no allowance shall be made when forbidden by law or regulation; for example, Chapter 72, Additional U.S. Note 3, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), provides that no allowance or reduction of duties for partial damage or loss in consequence of discoloration or rust occurring before importation shall be made upon iron or steel or upon any article of iron or steel.

(b) *No allowance in specific duties.* In the case of merchandise subject to specific or compound duties and found to be partially damaged at the time of importation, no allowance may be made in the specific duties or in the weight, quantity, or measure (except that an allowance for any excessive moisture or other impurities may be made in accordance with § 158.13). However, any part of the shipment which is totally worthless and can be segregated from the rest of the shipment may be treated as a nonimportation in accordance with § 158.11.

(Sec. 506, 46 Stat. 732, as amended; 19 U.S.C. 1506)

[T.D. 72–258, 37 FR 20171, Sept 27, 1972, as amended by T.D. 89–1, 53 FR 51270, Dec. 21, 1988]

### § 158.13 Allowance for moisture and impurities.

(a) *Application by importer*—(1) *Petroleum and petroleum products.* An application for an allowance in duties under section 507, Tariff Act of 1930, as amended (19 U.S.C. 1507), for all detectable moisture and impurities present in or upon imported petroleum or petroleum products shall be made by the importer on Customs Form 4315. The application shall be filed with the port director within 10 days of the port director's receipt of the gauging report or within 10 days of Customs acceptance of the entry's invoice gauge.

(2) *Other products.* An application for an allowance in duties under 19 U.S.C. 1507 for products other than petroleum or petroleum products for excessive moisture or other impurities not usually found in or upon such or similar merchandise shall be made by the importer on Customs Form 4315. The application shall be filed with the port director within 10 days after the report of weight or gauge has been received by the port director or within 10 days after the date upon which the entry or a related document was endorsed to show that invoice weight or gauge has been accepted by the Customs inspector or other Customs officer.

(b) *Allowance by port director*. If the port director is satisfied after any necessary investigation that the merchandise contains moisture or impurities as described in paragraph (a) of this section, he shall make allowance for the amount thereof in the liquidation of the entry.

[T.D. 90–78, 55 FR 40167, Oct. 2, 1990]

### § 158.14 Perishable merchandise condemned.

(a) *Application by importer*. When fruit or other perishable merchandise has been condemned by health officers or other legally constituted authorities within 10 days after landing, an importer who desires allowance in duties under section 506(2), Tariff Act of 1930, as amended (19 U.S.C. 1506(2)), shall within 5 days after such condemnation file with the port director written notice of the condemnation. The date of landing in the case of merchandise forwarded under an entry for immediate transportation is the date of arrival at the port of destination.

(b) *Allowance in duties*. If the port director is satisfied after any necessary investigation that the claim is valid, allowance in duties shall be made in the liquidation of the entry. Such allowance shall be limited to perishable goods condemned by the health officers or authorities in the original package, unless segregation of the merchandise was under constant Customs supervision at the importer's expense.

(Sec. 506(2), 46 Stat. 732, as amended; 19 U.S.C. 1506(2))

## Subpart C—Casualty, Loss, or Theft While in Customs Custody

### § 158.21 Allowance in duties for casualty, loss, or theft while in Customs custody.

Section 563(a), Tariff Act of 1930, as amended (19 U.S.C. 1563(a)), provides for allowance in duties upon satisfactory proof of the loss or theft of any merchandise while in the public stores, or of the actual injury or destruction, in whole or in part, of any merchandise by accidental fire or other casualty, while in bonded warehouse, or in the public stores, or while in transportation under bond, or while in Customs custody although not in bond, or while within the limits of any port of entry and before having been landed under Customs supervision. Such allowance is subject to the conditions set forth in this subpart.

### § 158.21a Time period.

An abatement or refund of duties shall be made in the case of injury to, or destruction of, merchandise in a bonded warehouse as a result of accidental fire or other casualty only if the fire or casualty occurs within 3 years from the date of importation.

[T.D. 79–221, 44 FR 46829, Aug. 9, 1979]

### § 158.22 Not applicable when allowances made under other provisions.

The procedures in this subpart do not apply in cases where allowances in duties are made under subpart A or subpart B of this part, or § 18.6 of this chapter.

### § 158.23 Filing of application and evidence by importer.

Within 30 days from the date of his discovery of the loss, theft, injury, or destruction, the importer shall file an application in duplicate on Customs Form 4315, and within 90 days from the date of discovery shall file any evidence required by § 158.26 or § 158.27.

### § 158.24 Place of filing.

The application and evidence shall be filed with the director of the port where the loss, theft, injury, or destruction occurred. In the case of total loss of merchandise by fire or other casualty while in transportation under bond, the application and evidence shall be filed with the director of the port at which the transportation entry was made. In the case of partial destruction of or injury to such merchandise, the application and evidence shall be filed with the director of the port of destination, except that if the merchandise is returned to the port at which the transportation entry was made, the application shall be filed at that port.

### § 158.25 Partial destruction or injury.

In the case of partial destruction or injury, no application shall be entertained unless the port director shall have had an opportunity to examine the merchandise or the remainder thereof for the purpose of fixing the percentage of injury or destruction. Whether the duty involved is ad valorem, specific, or compound, the percentage of injury for the purpose of the allowance shall be determined by comparing the market value of comparable sound merchandise with the net salvage value of the injured merchandise computed on the basis of the market value of comparable injured merchandise, such comparison to be made as of the time and place of examination.

### § 158.26 Loss or theft in public stores.

In the case of alleged loss or theft while the merchandise is in the public stores, there shall be filed a declaration of the importer, owner, or ultimate consignee that he did not receive the merchandise and that to the best of his knowledge and belief it was lost or stolen as alleged in the application. If the alleged loss or theft consisted of only a part of an examination package and was discovered after the release of the package from Customs custody, the following evidence shall be submitted:

(a) A declaration of each cartman, lighterman, or other carrier handling the package between the public stores and the place of delivery, setting forth the condition of the package at the time of receipt and delivery by him and whether or not there was an abstraction of the merchandise while the package was in his possession.

(b) A declaration of the person who first received the package for the importer, owner, or ultimate consignee as to whether or not he examined the package at the time of receipt, and, if so, as to its condition at that time.

(c) A declaration of the person who opened the package after release from Customs custody that the alleged missing merchandise was not found by him in the package or elsewhere.

### § 158.27 Accidental fire or other casualty.

In the case of injury or destruction by accidental fire or other casualty, the following evidence shall be submitted:

(a) A declaration of the master of the vessel, the conductor or driver of the vehicle, the proprietor of the warehouse, or other person (except a Customs officer) having charge of the merchandise at the time of casualty, stating:

(1) The time, place, and nature of such casualty;

(2) That the merchandise was on board the vessel or vehicle, in the warehouse, or otherwise in his charge, as the case may be, at the time of the casualty; and

(3) That it was totally destroyed and there is no probability of recovering or saving any part thereof, or that it was injured as the result of the casualty.

(b) The bill of lading, the entry summary (where appropriate) and the invoice covering the merchandise, or certified copies of the foregoing, unless such documents are already in the possession of the director of the port where the claim is filed.

(c) A copy of the insurance appraiser's report, if any.

[T.D. 72–258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 79–221, 44 FR 46829, Aug. 9, 1979]

### § 158.28 Waiver of evidence.

The port director may waive the production of any of the evidence required by this subpart if the validity of the claim is otherwise established to his satisfaction.

### § 158.29 Decision by port director.

When the application and evidence have been received and examined by the port director, he shall determine whether the desired abatement or refund of duty shall be made and notify the importer of his decision.

### § 158.30 Review of port director's decision.

(a) *Filing of petition.* The importer may file with the port director a petition addressed to the Commissioner of Customs for a review of the port director's decision. Such petition shall be filed in duplicate within 30 days from

the date of the notice of the port director's decision, shall completely identify the case, and shall set forth in detail the objections to the port director's decision.

(b) *Decision by Commissioner*. When the petition has been filed, the port director shall promptly transmit both copies thereof and the entire file to the Commissioner, together with a full statement of his views. When the Commissioner's decision is received, the port director shall proceed in conformity therewith.

## Subpart D—Destroyed, Abandoned, or Exported Merchandise

### § 158.41 Destruction of prohibited merchandise.

Merchandise regularly entered or withdrawn for consumption in good faith and denied admission into the United States by any Government agency after its release from Customs custody, pursuant to a law or regulation in force on the date of entry or withdrawal for consumption, may be destroyed under Government supervision. In such case, the destroyed merchandise is exempt from duty and any duties collected thereon shall be refunded. In lieu of destruction, the merchandise may be exported under Customs supervision in accordance with § 158.45(c).

(Sec. 558(a), 46 Stat. 744, as amended; 19 U.S.C. 1558(a))

### § 158.42 Abandonment by importer within 30 days after entry.

Allowance in duties for merchandise abandoned to the Government in accordance with section 506(1), Tariff Act of 1930, as amended (19 U.S.C. 1506(1)), shall be subject to the following conditions:

(a) *Minimum quantity to be abandoned*. The merchandise being abandoned shall represent 5 percent or more of the total value of all the merchandise of the same class or kind entered in the invoice in which the merchandise being abandoned appears.

(b) *Application within 30 days*. The importer shall file written notice of abandonment with the director of the port where the entry was filed within 30 days after the date of entry, or, in the case of examination packages, within 30 days after release, whether or not delivery is taken by the importer immediately after entry or release as the case may be.

(c) *Delivery of merchandise*. Within the 30-day period set forth in paragraph (b) of this section, the importer shall deliver the abandoned merchandise to such place as the port director specifies, unless the port director is satisfied that the merchandise is so far destroyed as to be nondeliverable.

(d) *Identification of merchandise*. The importer shall identify the abandoned merchandise with that described in the invoice used in making entry to the satisfaction of the port director, who shall make such examination as may be necessary to verify such identification.

(e) *Segregation and repacking*. When repacking is necessary to segregate the abandoned merchandise from the remainder of the shipment, such repacking shall be done at the expense of the importer and under Customs supervision.

(Sec. 506, 46 Stat. 732, as amended; 19 U.S.C. 1506)

### § 158.43 Abandonment or destruction of merchandise in bond.

Allowance in duties for merchandise entered under bond destroyed under section 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)), or for merchandise in bonded warehouse abandoned to the Government under section 563(b), Tariff Act of 1930, as amended (19 U.S.C. 1563(b)), shall be subject to the following conditions:

(a) *Application by importer*. The importer shall file an application for abandonment or destruction of merchandise in bond with the port director on Customs From 3499, with the title modified to read ''Application and Permit to Abandon (or Destroy) Goods in Bond.'' When an application is for permission to destroy, the proposed method of destruction shall be stated in the application and be subject to the approval of the port director.

(b) *Concurrence of warehouse proprietor*. An application to abandon or destroy warehoused merchandise shall

not be approved unless concurred in by the warehouse proprietor.

(c) *Abandonment*—(1) *Costs*. When in the opinion of the port director the abandonment of merchandise under section 563(b), Tariff Act of 1930, as amended (19 U.S.C. 1563(b)), will involve any expense or cost to the Government, or if the merchandise is worthless or unsalable, or cannot be sold for a sum sufficient to pay the expenses of sale, such abandonment shall not be permitted unless the importer deposits a sum which in the opinion of the port director will be sufficient to save the Government harmless from any expense or cost resulting from such abandonment. The sum so advanced shall be placed in a special deposit account and expended to cover the cost of destruction or to meet any deficit should the merchandise be sold and the proceeds of sale be less than the expenses of such sale. After meeting such expenses or deficit, any balance remaining shall be refunded to the importer. However, the applicant may elect to destroy such merchandise under Customs supervision pursuant to the provisions of section 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)).

(2) *Time period*. The importer may abandon his warehoused merchandise voluntarily to the Government within 3 years from the date of importation.

(d) *Destruction*—(1) *Costs*. Destruction of merchandise under section 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)), shall be at the expense of the importer.

(2) *Time period*. The importer may request destruction of his warehoused merchandise within 5 years from the date of importation.

(e) *Action by port director*. When the conditions set forth in paragraphs (a) through (d) of this section are met, the port director may grant applications and make an allowance in duties for the merchandise abandoned or destroyed. In any case where doubt exists, the matter shall be referred to the Commissioner of Customs.

(Secs. 557, 563, 46 Stat. 744, as amended, 746, as amended; 19 U.S.C. 1557, 1563)

[T.D. 72–258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 79–221, 44 FR 46829, Aug. 9, 1979]

## § 158.44 Disposition of abandoned merchandise.

(a) *General conditions*. The disposition of merchandise abandoned to the Government pursuant to § 158.42 or § 158.43, and not retained for official use, shall be governed by the regulations of the General Services Administration applicable to the United States Customs Service.

(b) *Sale of merchandise*. If the merchandise is cleared for sale, it shall be sold in accordance with the applicable provisions of part 127 of this chapter, unless it is worthless or it appears probable that the expenses of sale will exceed the proceeds. If the merchandise is sold, no part of the proceeds shall be returned to the importer.

(c) *Disposition of worthless merchandise*. If the merchandise or any part thereof is worthless or it appears probable that the expenses of its sale will exceed the proceeds, it shall be destroyed or otherwise disposed of as the port director shall specify. The port director shall insure that such merchandise is destroyed or removed from the control of the importer to avoid the possibility of any part of the same merchandise being made the subject of another application.

(Secs. 506(1), 563(b), 46 Stat. 732, as amended, 746, as amended; 19 U.S.C. 1506(1), 1563(b) R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[T.D. 72–258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 77–12, 41 FR 56629, Dec. 29, 1976]

## § 158.45 Exportation of merchandise.

(a) *From continuous Customs custody*. Merchandise in Customs custody for which entry has not been completed and merchandise which has remained in continuous Customs custody that is covered by a liquidated or unliquidated consumption entry may be exported under Customs supervision in accordance with §§ 18.25 through 18.27 of this chapter, with refund of any duties that have been paid.

(b) *After release from Customs custody*. Except as provided for in paragraphs (c) and (d) of this section, no refund or other allowance in duties shall be made

because of the exportation of merchandise after its release from Customs custody unless a drawback of duties is expressly provided for by law (see part 191 of this chapter).

(c) *Prohibited merchandise.* If merchandise has been regularly entered or withdrawn for consumption in good faith and is thereafter found to be prohibited entry under any law of the United States, it may be exported under Customs supervision in accordance with §§18.25 through 18.27 of this chapter, with refund of any duties that have been paid. In lieu of exportation, the merchandise may be destroyed in accordance with §158.41.

(d) *Not legally marked merchandise.* When merchandise found to be not legally marked is exported or destroyed under Customs supervision after once having been released from Customs custody, as provided for in section 304(f), Tariff Act of 1930, as amended (19 U.S.C. 1304(f)), such exportation or destruction shall not exempt such merchandise from the payment of duties other than the marking duties.

(Sec. 558, 46 Stat. 744, as amended; 19 U.S.C. 1558; R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[T.D. 72–258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 83–212, 48 FR 46771, Oct. 14, 1983; T.D. 90–51, 55 FR 28191, July 10, 1990]

# PART 159—LIQUIDATION OF DUTIES

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AUTHORITY: 19 U.S.C. 66, 1500, 1504, 1624.

Subpart C also issued under 31 U.S.C. 5151.

Subpart F also issued under 19 U.S.C. 1675c.

Sections 159.4, 159.5, and 159.21 also issued under 19 U.S.C. 1315;

Section 159.6 also issued under 19 U.S.C. 1321, 1505;

Section 159.7 also issued under 19 U.S.C. 1557;

Section 159.22 also issued under 19 U.S.C. 1507;

Section 159.44 also issued under 15 U.S.C. 73, 74;
Section 159.46 also issued under 19 U.S.C. 1304;
Section 159.55 also issued under 19 U.S.C. 1558;
Section 159.57 also issued under 19 U.S.C. 1516.

SOURCE: T.D. 73–175, 38 FR 17482, July 2, 1973, unless otherwise noted.

### § 159.0 Scope.

This part sets forth general rules for the liquidation of entries. Certain specific procedures affecting liquidation appear in other parts of this chapter; e.g., part 158 of this chapter covers allowance for lost or damaged merchandise.

## Subpart A—General Provisions

### § 159.1 Definition of liquidation.

*Liquidation* means the final computation or ascertainment of the duties (not including vessel repair duties) or drawback accruing on an entry.

[T.D. 01–24, 66 FR 16400, Mar. 26, 2001]

### § 159.2 Liquidation required.

All entries covering imported merchandise, except temporary importation bond entries and those for transportation in bond or for immediate exportation, shall be liquidated. Vessel repair entries are not subject to liquidation under this part (see § 4.14(i)(3) of this chapter).

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 01–24, 66 FR 16400, Mar. 26, 2001]

### § 159.3 Rounding of fractions.

(a) *Value*. In the computation of duty on entries, ad valorem rates shall be applied to the values in even dollars, fractional parts of a dollar less than 50 cents being disregarded and 50 cents or more being considered as $1, with all merchandise in the same invoice subject to the same rate of duty to be treated as a unit. However, the total dutiable value of the invoice shall not be increased or decreased by more than the rounding of the total dutiable value to an even dollar. When necessary, fractional parts of a dollar, whether more or less than 50 cents, shall be dropped or taken up as whole dollars in order to avoid such an increase or decrease. If in such cases it is necessary to drop fractional parts of a dollar amounting to 50 cents or more, the lower fractions shall be dropped, and if it is necessary to take up as whole dollars fractional parts less than 50 cents, the larger fractions shall be taken. In the case of two equal fractions, the one subject to the lower rate of duty shall be dropped or taken up, as the case may be. In determining a rate of duty dependent upon value, fractional parts of a dollar shall be considered.

(b) *Quantities subject to specific duty*. Except in the case of alcoholic beverages treated under § 159.4, if a rate of duty is specific and $1 or less per unit, fractional quantities, if less than one-half, shall be disregarded, and if one-half or more shall be treated as a whole unit. Subject to the same exception, if a specific rate is more than $1 per unit, duty shall be assessed upon the exact quantity with any fractional part expressed in the form of a decimal extended to two places.

### § 159.4 Alcoholic beverages.

(a) *Quantities subject to duties*. Customs duties and internal revenue taxes on alcoholic beverages provided for in headings 2207 and 2208, Harmonized Tariff Schedule of the United States (HTSUS), (19 U.S.C. 1202), and subject to internal revenue taxes shall be collected only on the number of proof gallons and fractional parts thereof, entered or withdrawn for consumption. No internal revenue tax shall be collected on distilled spirits in bulk which have been transferred to Internal Revenue bonded premises in accordance with § 141.102(b) of this chapter. Customs duties and internal revenue taxes on alcoholic beverages other than subheadings 2206.00.30 and 2206.00.90, HTSUS, and distilled spirits provided for in headings 2207 and 2208, shall be collected only on the number of wine gallons and fractional parts thereof, entered or withdrawn for consumption.

(b) *Computation of duties*. In the computation of Customs duties on alcoholic beverages provided for in headings 2207 and 2208 (19 U.S.C. 1202), which are also subject to internal revenue taxes, the methods prescribed for the

computation of internal revenue taxes on such beverages shall be followed. The following methods apply to the specific beverages shown:

(1) *Distilled spirits.* The quantity of distilled spirits imported in barrels, kegs, or similar containers shall be ascertained in accordance with the regulations of the Bureau of Alcohol, Tobacco and Firearms. Where distilled spirits are imported in bottles, jugs, or similar containers, Customs duties and taxes shall be collected on the exact quantity contained in each case or other outer container, fractional parts of a gallon being carried out to three decimal places utilizing the proof gallon method of computation.

(2) *Wine.* Customs duties and taxes on wines shall be on the basis of a wine gallon of liquid measure equivalent to 231 cubic inches and shall be paid proportionally on all fractional parts of a wine gallon. Fractions of less than one-tenth gallon shall be converted to the nearest one-tenth gallon, and five-hundredths gallon shall be converted to the next full one-tenth gallon.

(3) *Beer and similar fermented beverages.* Customs duties and taxes on beer, ale, porter, stout, and other similar fermented beverages, including sake, of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor, shall be collected in accordance with section 5051(a), Internal Revenue Code of 1954 (26 U.S.C. 5051(a)).

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 78–329, 43 FR 43455, Sept. 26, 1978; T.D. 80–271, 45 FR 75641, Nov. 17, 1980; T.D. 89–1, 53 FR 51270, Dec. 21, 1988]

### § 159.5 Cigars, cigarettes, and cigarette papers and tubes.

The internal revenue taxes imposed on cigars, cigarettes, and cigarette papers and tubes under section 5701 or 7652, Internal Revenue Code of 1954 (26 U.S.C. 5701 or 7652), are determined in accordance with section 5703 of that Code (26 U.S.C. 5703) at the time of removal; that is, on the quantity removed from Customs custody under the entry or withdrawal for consumption. The Customs duties, unlike those on alcoholic beverages, do not necessarily apply only to such quantities.

### § 159.6 Difference between liquidated duties and estimated duties.

(a) *Difference under $20 in original liquidation.* When there is a net difference of less than $20 between the total amount of duties, fees, taxes, and interest assessed in the liquidation of any entry (other than an informal, mail, or baggage entry) and the total amount of estimated duties, fees, and taxes deposited, including any supplemental deposit, the difference shall be disregarded and the entry endorsed ''as entered.'' In the case of an informal, mail, or baggage entry, the amount of duties, fees, and taxes computed by a Customs officer when the entry is prepared by, or filed with, him shall be considered the liquidated assessment.

(b) *Difference under $20 in reliquidation.* When there is a net difference of less than $20 between the total amount of duties, fees, taxes, and interest found due in the reliquidation of any entry and the total amount of duties, fees, taxes, and interest assessed in the prior liquidation of the entry, the difference shall be disregarded except in the following cases:

(1) *Reliquidation at importer's request.* When reliquidation of any entry is made at the importer's request, such as reliquidation following the allowance of a protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), or a request for correction under section 520(c), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)), any refund determined to be due shall be refunded even if less than $20.

(2) *Court decision.* Any refund or increase determined to be due as the result of the reliquidation of an entry in accordance with a court decision and judgment order shall be refunded or collected as the case may be.

(c) *Difference of $20 or more collected or refunded.* If there is a difference of $20 or more between the duties, fees, taxes, and interest assessed in the liquidation of an entry and the total estimated duties, fees, and taxes deposited, or between the total duties, fees, taxes, and interest assessed in the reliquidation of an entry and those assessed in the prior liquidation, the entry shall be endorsed

to show the difference and bills or refund checks shall be issued.

(d) *Customs duties and fees and internal revenue taxes and interest netted for $20 limit.* The assessments of Customs duties and fees and internal revenue taxes and interest shall be separately stated on the entry at the time of liquidation, but the amounts of any differences shall be netted when applying the $20 minimum for issuance of a bill or refund check.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 78–394, 43 FR 49791, Oct. 25, 1978; T.D. 94–51, 59 FR 30296, June 13, 1994; 64 FR 56440, Oct. 20, 1999]

### § 159.7 Rewarehouse entries.

The liquidation of the original warehouse entry shall be followed in determining the liability for duties on a rewarehouse entry, except in the following cases:

(a) *Merchandise excluded from liquidation of original warehouse entry.* When any of the following types of merchandise are withdrawn from warehouse for transportation to another port, they shall be excluded from the liquidation of the original warehouse entry, and the liability for duties shall be determined by a liquidation of the rewarehouse entry made at the port where the merchandise is withdrawn for consumption or for exportation:

(1) Alcoholic beverages provided for in headings 2203 through 2208, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), and subject to internal revenue taxes;

(2) Cigars, cigarettes, and cigarette papers and tubes subject to internal revenue taxes;

(3) Tariff-rate quota merchandise; and

(4) Wool or hair subject to duty at a rate per clean kilogram under Chapter 51, HTSUS.

(b) *Reliquidation required by change in rate.* When a rate of Customs duty or tax is changed by an act of Congress or a proclamation of the President, any necessary reliquidation of Customs duty or tax on merchandise covered by a rewarehouse entry which may be required by reason of the change in rate shall be made at the port where the merchandise is held in Customs custody on the effective date of the change.

(c) *Shortage, irregular delivery, nondelivery, and other cases.* In cases involving shortage, irregular delivery, or nondelivery under the original warehouse withdrawal for transportation, or in other cases when the port director of the port where the merchandise is entered for rewarehouse is of the opinion that circumstances make it inadvisable to follow the liquidation of the original warehouse entry, he shall make an appropriate adjustment in the amount of duties to be assessed under the rewarehouse entry.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 89–1, 53 FR 51270, Dec. 21, 1988; T.D. 90–78, 55 FR 40168, Oct. 2, 1990]

### § 159.8 Allowance for loss, injury, etc.

Allowance in duties for any merchandise which is lost, stolen, destroyed, injured, abandoned, or short-shipped shall be made in accordance with the provisions of part 158 of this chapter.

### § 159.9 Notice of liquidation and date of liquidation for formal entries.

(a) *Bulletin notice of liquidation.* Notice of liquidation of formal entries shall be made on a bulletin notice of liquidation, Customs Form 4333.

(b) *Posting of bulletin notice.* The bulletin notice of liquidation shall be posted for the information of importers in a conspicuous place in the customhouse at the port of entry (or Customs station, when the entries listed were filed at a Customs station outside the limits of a port of entry), or shall be lodged at some other suitable place in the customhouse in such a manner that it can readily be located and consulted by all interested persons, who shall be directed to that place by a notice maintained in a conspicuous place in the customhouse stating where notices of liquidation of entries are to be found.

(c) *Date of liquidation*—(1) *Generally.* The bulletin notice of liquidation shall be dated with the date it is posted or lodged in the customhouse for the information of importers. This posting or lodging shall be deemed the legal evidence of liquidation. For electronic entry summaries, the date of liquidation will be the date of posting of the

bulletin notice of liquidation. Customs will endeavor to provide the filer with electronic notification of this date as an informal, courtesy notice of liquidation.

(2) *Exception: Entries liquidated by operation of law.* (i) Entries liquidated by operation of law at the expiration of the time limitations prescribed in section 504. Tariff Act of 1930, as amended (19 U.S.C. 1504), and set out in §§ 159.11 and 159.12, shall be deemed liquidated as of the date of expiration of the appropriate statutory period.

(ii) The bulletin notice of liquidation shall be posted or lodged in the customhouse within a reasonable period after each liquidation by operation of law and shall be dated as of the date of expiration of the statutory period.

(iii) A protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter shall be filed within 90 days from the date the bulletin notice of liquidation of an entry by operation of law is posted or lodged in the customhouse.

(d) *Courtesy notice of liquidation.* Customs will endeavor to provide importers or their agents with Customs Form 4333–A, ''Courtesy Notice,'' for all entries scheduled to be liquidated or deemed liquidated by operation of law. This notice shall serve as an informal, courtesy notice and not as a direct, formal and decisive notice of liquidation.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 79–221, 44 FR 46829, Aug. 9, 1979; T.D. 90–1, 54 FR 52933, Dec. 26, 1989; T.D. 90–92, 55 FR 49888, Dec. 3, 1990]

### § 159.10 Notice of liquidation and date of liquidation for informal, mail, and baggage entries.

(a) *Usual date of liquidation.* Except in the cases provided for in paragraph (b) of this section, the effective date of liquidation for informal, mail, and baggage entries shall be:

(1) The date of payment by the importer of duties due on the entry;

(2) The date of release by Customs or the postmaster when the merchandise is released under such an entry free of duty; and

(3) The date a free entry is accepted for articles released under a special permit for immediate delivery under part 142 of this chapter.

(b) *Date of liquidation when duty cannot be determined at time of entry.* When the proper rate or amount of duty cannot be determined at the time of entry because the merchandise is subject to a tariff-rate quota, because of a missing document which, if for free entry, is not produced prior to the release of the merchandise to the importer, or because of any other reason, the printed notice of liquidation appearing on the receipt issued for any money collected on the entry shall be voided. When the tariff status of the merchandise either as dutiable or free is finally ascertained it shall be noted on the entry. The effective date of liquidation shall be the date of posting or lodging of the notice of liquidation required by paragraph (c)(3) of this section.

(c) *Notice of liquidation*—(1) *Dutiable entries.* Where duties are paid on an entry in accordance with paragraph (a)(1) of this section, notice of liquidation is furnished by a suitable printed statement appearing on the receipt issued for duties collected. No other notice of liquidation shall be given, but notice of reliquidation of any such entry shall be given on Customs Form 4333 posted or lodged in the place and manner specified in § 159.9(b).

(2) *Free entries.* Notice of liquidation is furnished by release of the merchandise under a free entry in accordance with paragraph (a)(2) of this section, or by acceptance of the free entry in accordance with paragraph (a)(3) of this section after release under a special permit for immediate delivery. No further notice of the liquidation of such entries shall be given.

(3) *Entries where duty cannot be determined at time of entry.* When the proper rate or amount of duty cannot be determined at the time of entry as set forth in paragraph (b) of this section, notice of liquidation shall be given on a bulletin notice of liquidation, Customs Form 4333, in the manner specified in § 159.9 for formal entries.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 90–1, 54 FR 52933, Dec. 26, 1989]

### § 159.11 Entries liquidated by operation of law.

(a) *Time limit generally.* Except as provided in § 159.12, an entry not liquidated

within 1 year from the date of entry of the merchandise, or the date of final withdrawal of all merchandise covered by a warehouse entry, shall be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duties asserted by the importer at the time of filing an entry summary for consumption in proper form, with estimated duties attached, or a withdrawal for consumption in proper form, with estimated duties attached. Notice of liquidation shall be given on the bulletin notice of liquidation, Customs Form 4333, as provided in §§ 159.9 and 159.10(c)(3). Customs will endeavor to provide a courtesy notice of liquidation on Customs Form 4333–A in accordance with § 159.9(d).

(b) *Applicability*. The provisions of this section and § 159.12 shall apply to entries of merchandise for consumption or withdrawals of merchandise for consumption made on or after April 1, 1979, but shall not apply to drawback entries.

[T.D. 79–221, 44 FR 46829, Aug. 9, 1979, as amended by T.D. 90–1, 54 FR 52933, Dec. 26, 1989; T.D. 01–24, 66 FR 16400, Mar. 26, 2001]

### § 159.12 Extension of time for liquidation.

(a) *Reasons*—(1) *Extension*. The port director may extend the 1–year statutory period for liquidation for an additional period not to exceed 1 year if:

(i) *Information needed by Customs*. Information needed by Customs for the proper appraisement or classification of the merchandise is not available, or

(ii) *Importer's request*. The importer requests an extension in writing before the statutory period expires and shows good cause why the extension should be granted. ''Good cause'' is demonstrated when the importer satisfies the port director that more time is needed to present to Customs information which will affect the pending action, or there is a similar question under review by Customs.

(2) *Suspension*. The 1-year liquidation period may be suspended as required by statute or court order.

(b) *Notice of extension*. If the port director extends the time for liquidation, as provided in paragraph (a)(1) of this section, he promptly shall notify the importer or the consignee and his agent and surety on Customs Form 4333–A, appropriately modified, that the time has been extended and the reasons for doing so.

(c) *Notice of suspension*. If the liquidation of an entry is suspended as required by statute or court order, as provided in paragraph (a)(2) of this section, the port director promptly shall notify the importer or the consignee and his agent and surety on Customs Form 4333–A, appropriately modified, of the suspension.

(d) *Additional extensions*—(1) *Information needed by Customs*. If an extension has been granted because Customs needs more information and the port director thereafter determines that more time is needed, he may extend the time for liquidation for an additional period not to exceed 1 year provided he issues the notice required by paragraph (b) of this section before termination of the prior extension period.

(2) *At importer's request*. If the statutory period has been extended for 1 year at the importer's request, and the importer thereafter determines that additional time is necessary, he may request another extension in writing before the original extension expires, giving reasons for his request. If the port director finds that good cause (as defined in paragraph (a)(1)(ii) of this section) exists, he shall issue a notice extending the time for liquidation for an additional period not to exceed 1 year.

(e) *Limitation on extensions*. The total time for which extensions may be granted by the port director may not exceed 3 years.

(f) *Time limitation*—(1) *Generally*. An entry not liquidated within 4 years from either the date of entry, or the date of final withdrawal of all the merchandise covered by a warehouse entry, shall be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duty asserted by the importer at the time of filing the entry summary for consumption in proper form, with estimated duties attached, or the withdrawal for consumption in proper form, with estimated duties attached, unless liquidation continues to be suspended by statute or court order. Customs will endeavor to provide a courtesy notice of liquidation

on Customs Form 4333–A, in accordance with § 159.9(d), in addition to the bulletin notice specified in § 159.9(c)(2)(ii).

(2) *Suspension of liquidation by statute or court order*. When liquidation of an entry continues to be suspended beyond the 4-year period specified in paragraph (f)(1) of this section due to a statute or court order, the entry shall be liquidated within 90 days after removal of the suspension.

(g) *Notice of liquidation*. If an entry is liquidated after an extension expires or a suspension is removed, notice of liquidation shall be given on the bulletin notice of liquidation, Customs Form 4333, as provided in §§ 159.9 and 159.10(c)(3). Customs will endeavor to provide a courtesy notice of liquidation on Customs Form 4333–A in accordance with § 159.9(d).

[T.D. 79–221, 44 FR 46829, Aug. 9, 1979, as amended by T.D. 90–1, 54 FR 52933, Dec. 26, 1989]

## Subpart B—Weight, Gage, and Measure

### § 159.21 Quantity upon which duties based.

Insofar as duties are based upon the quantity of any merchandise, such duties shall be based upon the quantity of such merchandise at the time of its importation, except in the following cases:

(a) *Manipulation in warehouse*. If any merchandise covered by a warehouse entry has been cleaned, sorted, repacked, or otherwise changed in condition under section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), withdrawals shall be passed and the entry liquidated on the basis of the weight, gauge, or measure of such merchandise in its manipulated condition with an appropriate notation in the duty statement that the duties are assessed on the basis of the manipulated condition of the merchandise.

(b) *Alcoholic beverages*. Duties on certain alcoholic beverages are assessed only on the quantities entered or withdrawn for consumption (see § 159.4).

(c) *Cigars, cigarettes, and cigarette papers and tubes*. Although Customs duties on cigars, cigarettes, and cigarette papers and tubes are assessed on the quantities imported, the internal revenue taxes on such merchandise are assessed only on the quantities entered or withdrawn for consumption (see § 159.5).

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 80–142, 45 FR 36386, May 30, 1980]

### § 159.22 Net weights and tares.

(a) *Determination of net weight*. The net weight of merchandise dutiable by net weight, or upon a value dependent upon net weight, shall be determined insofar as possible by obtaining the actual weight, or by deducting the actual or schedule tare from the gross weight. Actual tare may be determined on the basis of tests when the tares of the packages in a shipment are reasonably uniform.

(b) *Invoice net weight or tare*. When the actual net weight or tare cannot reasonably be determined and no schedule tare is applicable, liquidation may be made on the basis of the invoice net weight or tare.

(c) *Schedule tare*. The following tares, which, from experience, have proved to be the average for certain classes of merchandise shall be known as schedule tares and shall be applied, except as provided in paragraph (d) of this section:

Apple boxes. 2.984 kilograms per box. This schedule tare includes the paper wrappers, if any, on the apples.

China clay in so-called half-ton casks: 26.856 kilograms per cask.

Figs in skeleton cases: Actual tare for outer containers plus 13 percent of the gross weight of the inside wooden boxes and figs.

Fresh tomatoes: 113 grams per 100 paper wrappings.

Lemons and oranges: 283 grams per box and 142 grams per half box for paper wrappings, and actual tare for outer containers.

Ocher, dry, in casks: Eight percent of the gross weight.

Ocher, in oil, in casks: Twelve percent of the gross weight.

Pimientos in tins imported from Spain: The following schedule drained weight shall be used as the Customs dutiable weight in the liquidation of entries, the difference between the weight of the new contents of pimientos in tins and such drained weight being the allowance made in liquidation for tare for water:

| Size can | Drained weight |
|---|---|
| 3 kilo ..... | 13.6 kilograms-case of 6 tins. |

| Size can | Drained weight |
|---|---|
| 794 grams ..... | 16.7 kilograms-case of 24 tins. |
| 425 grams ..... | 8.0 kilograms-case of 24 tins. |
| 198 grams ..... | 3.9 kilograms-case of 24 tins. |
| 113 grams ..... | 2.4 kilograms-case of 24 tins. |

Tobacco, leaf not stemmed: 5.9 kilograms per bale: Sumatra: actual tare for outside coverings, plus 1.9 kilograms for the inside matting and, if a certificate is attached to the invoice certifying that the bales contain paper wrapping and specifying whether light or heavy paper has been used, either 113 grams or 227 grams for the paper wrapping according to the thickness of paper used.

(d) *Actual tare*. In the following circumstances, the actual tare shall be ascertained and in so doing the weigher shall empty and weigh as many casks, boxes, and other coverings as he may deem necessary:

(1) If the importer is not satisfied with the invoice tare or with the schedule tare;

(2) If the port director is of the opinion that the invoice or schedule tare does not correctly represent the tare of the merchandise; or

(3) If the weigher has reason to believe that the invoice or schedule tare is greater than the real tare.

(e) *Estimated tare*. When it is impracticable to ascertain the actual tare, the weigher shall state in his report what, in his judgment, constitutes a fair tare allowance.

(f) *Weight for value purposes*. In determining the total dutiable value of merchandise which is subject to ad valorem duty and appraised on the basis of weight, liquidation shall be made on the same basis as appraisement. For example, if appraisement is made on the basis of gross weight, the unit value shall be multiplied by the total gross weight in computing the total value even though net weight may be used for other purposes in liquidation, such as in determining total specific duties.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 89–1, 53 FR 51270, Dec. 21, 1988]

## Subpart C—Conversion of Foreign Currency

### § 159.31 Rates to be used.

Except as otherwise specified in this subpart, no rate or rates of exchange shall be used to convert foreign currency for Customs purposes other than a proclaimed rate or certified rate or rates.

### § 159.32 Date of exportation.

The date of exportation for currency conversion shall be fixed in accordance with § 152.1(c) of this chapter.

### § 159.33 Proclaimed rate.

If a rate of exchange has been proclaimed by the Secretary of the Treasury in accordance with 31 U.S.C. 5151(b) for the currency involved, such proclaimed rate shall be used unless it varies by 5 percent or more from the certified daily rate for the date of exportation as set forth in § 159.35. In determining the percentage of variation between the proclaimed rate and the certified rate, the difference between the two rates shall be divided by the certified rate.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 97–82, 62 FR 51771, Oct. 3, 1997]

### § 159.34 Certified quarterly rate.

(a) *Countries for which quarterly rate is certified*. For the currency of each of the following foreign countries, there will be published in the Customs Bulletin, for the quarter beginning January 1, and for each quarter thereafter, the rate or rates first certified by the Federal Reserve Bank of New York for such foreign currency for a day in that quarter:

Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Hong Kong, India, Iran, Ireland, Italy, Japan, Malaysia, Mexico, Netherlands, New Zealand, Norway, People's Republic of China, Philippines, Portugal, Republic of South Africa, Singapore, Spain, Sri Lanka (Ceylon), Sweden, Switzerland, Thailand, United Kingdom, Venezuela.

(b) *When certified quarterly rate is used*. The certified quarterly rate established under paragraph (a) of this

section shall be used for Customs purposes for any date of exportation within the quarter, except in the following cases:

(1) *Proclaimed rate.* If a rate has been proclaimed by the Secretary of the Treasury under § 159.33 which does not vary by 5 percent or more from the appropriate certified daily rate, notice of such variance shall be published in the Customs Bulletin and the proclaimed rate shall be used for Customs purposes in connection with merchandise exported on such date.

(2) *Certified daily rate.* If the certified daily rate for the date of exportation varies by 5 percent or more from the certified quarterly rate, notice of such variation and the rate or rates certified for such day shall be published in the Customs Bulletin, and such certified daily rate shall be used for Customs purposes in connection with merchandise exported on such day.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 81–117, 46 FR 24944, May 4, 1981]

### § 159.35 Certified daily rate.

The daily buying rate of foreign currency which is determined by the Federal Reserve Bank of New York and certified to the Secretary of the Treasury in accordance with 31 U.S.C. 5151(e) shall be used for the conversion of foreign currency whenever a proclaimed rate or certified quarterly rate is not applicable under the provisions of §§ 159.33 and 159.34. If the date of exportation is one on which banks are generally closed in New York City, then the certified daily rate for the last preceding business day shall be considered the certified daily rate for the day of exportation.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 97–82, 62 FR 51771, Oct. 3, 1997]

### § 159.36 Multiple certified rates.

The following procedures shall apply when the Federal Reserve Bank of New York certifies two or more rates of exchange (e.g., official and free) for a foreign currency:

(a) *Rates to be published.* When the Federal Reserve Bank of New York certifies two or more rates of exchange for the currency of any country, those rates will be published in the Customs Bulletin.

(b) *Laws of country of exportation followed.* When multiple rates have been certified for a foreign currency, the rate to be used for Customs purposes shall be the type of certified rate which the port director is satisfied, from information in his own files, information obtained and presented to him by the importer, or information obtained from other sources, is uniformly applicable under the laws and regulations of the country of exportation to the particular class of merchandise on the date of exportation. In cases where two or more types of certified rates are uniformly applicable on a percentage bases, each type of certified rate shall be used for the percentage of value to which it is applicable. The percentages used shall be those which reflect realistically the percentage for which each type of rate is uniformly applicable under the laws and regulations of the country of exportation on the date of exportation.

(c) *Procedure when multiple certified rates not uniformly applicable.* If the port director has credible information that a type of rate or combination of types of rates which would otherwise be applicable under paragraph (b) of this section were not required or permitted, as the case may be, under the laws and regulations of the country of exportation to be used uniformly during any period in connection with the payment for all merchandise of the class involved, he shall immediately submit a detailed report to the Commissioner of Customs, and shall suspend appraisement and liquidation as to all merchandise of the class involved exported to the United States during the period involved, until instructions are received from the Commissioner of Customs.

(d) *Rate for merchandise different from rate for costs.* If the port director has credible information that a type of rate or combination of types of rates not applicable to payment for the merchandise was required or permitted in payment of costs, charges, or expenses, the currency conversions for the exchange covering payment for the merchandise and for the exchange covering such costs, charges, or expenses shall

be calculated separately. In deducting nondutiable costs, charges, or expenses, the foreign exchange shall be at the rate or rates actually used in payment of such costs, charges, or expenses, whether or not certified in accordance with § 159.34 or § 159.35. If the costs, charges or expenses are dutiable, they shall be calculated according to the rules set forth in this subpart. In the event that any type of rate uniformly applicable to payment of such dutiable costs, charges, or expenses for merchandise of the class involved was a type of rate not certified in accordance with § 159.34 or § 159.35, the port director shall immediately submit a detailed report to the Commissioner of Customs, and shall suspend appraisement and liquidation as to all merchandise of the class involved exported to the United States during the period involved, until instructions are received from the Commissioner.

### § 159.37 Suspension of certification of rates.

Whenever the Federal Reserve Bank of New York advises that its certification of rates for a currency is being suspended pending determination of the question whether it will certify multiple rates for that currency, the following procedures shall apply:

(a) *Notification of suspension.* Customs field officers will be informed when certification of a currency is being suspended. Currency information received from the Federal Reserve Bank, or otherwise available, which might be helpful in calculating estimated duties during the period of suspension will be furnished to the Customs field officers.

(b) *Suspension of liquidation.* In any case where for the purposes of the assessment and collection of duties it is necessary to determine the proper rate or rates for a currency during the period when it has been suspended from certification, appraisement and liquidation shall be suspended until resumption of certification.

(c) *Resumption of certification.* When certification is resumed by the Federal Reserve Bank, the procedures in § 159.36 shall apply.

### § 159.38 Rates for estimated duties.

For purposes of calculating estimated duties, the port director shall use the rate or rates appearing to be applicable under the instructions in this subpart to the merchandise involved. When it is not yet known what certified rate or rates are applicable or no rate has been certified, the port director shall take into account all the information in his possession and shall use the highest rate or combination of rates (*i.e.*, the rate or combination of rates showing the highest amount of United States money), certified or uncertified as the case may be, which could be applicable.

## Subpart D—Special Duties

### § 159.41 Antidumping duties.

Antidumping duties shall be assessed in accordance with part 353, chapter III of this title.

[T.D. 80–271, 45 FR 75641, Nov. 17, 1980]

### § 159.42 Discriminating duties.

The discriminating duties provided for in subsection 1 of paragraph J, section IV, Tariff Act of 1913, as amended by the Act of March 4, 1915 (19 U.S.C. 128, 131), and the discriminating duties and penalties provided for in section 338, Tariff Act of 1930 (19 U.S.C. 1338), shall be imposed only in pursuance of specific instructions from the Commissioner of Customs.

### § 159.43 Duties contingent upon foreign export duties, charges, or restrictions.

U.S. Note 1 to Section X, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), provides for the imposition under certain conditions of additional duties on merchandise covered thereby. The assessment of these additional duties is dependent upon action by the President, and notice of such action, if taken, will be published in the Customs Bulletin.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 89–1, 53 FR 51270, Dec. 21, 1988; T.D. 97–82, 62 FR 51771, Oct. 3, 1997]

**§ 159.44 Special duties on merchandise imported under agreements in restraint of trade.**

Whenever it appears that imported articles may be subject to the special duties provided for in section 802, Act of September 8, 1916 (15 U.S.C. 73), the port director shall report the matter to the Commissioner of Customs and await instructions with respect to the imposition of such duties.

**§ 159.45 Additional duty for unauthentic claims of antiquity.**

When additional duty is imposed in accordance with § 10.53 of this chapter for an unauthentic claim of antiquity, such duty shall be assessed in addition to any other duty imposed on the merchandise by law.

**§ 159.46 Marking duties.**

(a) *Based on dutiable value.* The marking duty prescribed by section 304(f), Tariff Act of 1930, as amended (19 U.S.C. 1304(f)), shall be assessed upon the dutiable value as defined in section 503, Tariff Act of 1930, as amended (19 U.S.C. 1503).

(b) *Suspension of liquidation.* The liquidation of entries shall not be suspended merely because the merchandise covered thereby is not legally marked, but, upon special application by the importer, the liquidation may be deferred for a reasonable time to permit the marking, destruction, or exportation of the merchandise.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 90–51, 55 FR 28191, July 10, 1990]

**§ 159.47 Countervailing duties.**

Countervailing duties shall be assessed in accordance with part 353, chapter III, of this title.

[T.D. 80–271, 45 FR 75641, Nov. 17, 1980]

## Subpart E—Suspension of Liquidation

**§ 159.51 General.**

Liquidation of entries shall be suspended only when provided by law or regulation, or when directed by the Commissioner of Customs. Liquidation of entries shall not be suspended simply because issues involved therein may be before the Customs Court in pending litigation, since the importer may seek relief by protesting the entries after liquidation.

**§ 159.52 Warehouse entry not liquidated until final withdrawal.**

Liquidation of a warehouse or rewarehouse entry shall be suspended until all merchandise covered by the entry has been accounted for within the bonded period by withdrawal, abandonment, or destruction, or until the bonded period has expired if the merchandise has not been so accounted for before that time.

**§ 159.53 Proof of duty-free or reduced-duty status.**

Various provisions in part 10 of this chapter provide for suspending liquidation of entries covering certain merchandise entered at a conditionally free or conditionally reduced rate of duty, pending production of required proof. Upon production of the required proof, or upon failure to produce the proof within the required time, the entries shall be liquidated accordingly.

**§ 159.54 Open bonds for production of documents.**

The liquidation of entries on which bonds are open for the production of documents affecting the rate of duty shall be suspended pending the performance or nonperformance under the bond, unless production of the document is waived in accordance with § 141.92 of this chapter.

**§ 159.55 Possible prohibited food, drugs, or other articles.**

(a) *Suspension of liquidation.* The liquidation of each entry covering merchandise the subject of § 12.1 of this chapter (which pertains to certain foods, drugs, cosmetics, economic poisons, hazardous substances, dangerous caustic or corrosive substances, and related items) shall be suspended until it is determined whether admission of the merchandise into the United States is permitted under the law.

(b) *Allowance for exportation or destruction.* In any case where the admission of such merchandise into the

United States is refused and the merchandise is exported under Customs supervision in accordance with § 158.45(b) of this chapter, or destroyed under Customs supervision in accordance with § 158.41 of this chapter, the merchandise is exempt from duty and any duties collected thereon shall be refunded.

### § 159.57 Merchandise affected by an American manufacturer's cause of action sustained by the court.

Liquidation of entries for merchandise of the character covered by a decision of the Secretary of the Treasury published in accordance with § 175.24 of this chapter, entered or withdrawn for consumption after the date of publication of a decision of the U.S. Court of International Trade sustaining in whole or in part the cause of action of an American manufacturer, producer, or wholesaler, shall be suspended until final disposition is made of the cause of action. Upon final disposition, such entries shall be liquidated, or, if necessary, reliquidated in accordance with the final judicial decision.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 85–90, 50 FR 21430, May 24, 1985]

### § 159.58 Dumping and countervailing duties; action by port director.

(a) *Antidumping matters.* Upon receipt of notification from the Commissioner, each port director shall suspend liquidation on merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the ''Notice of Preliminary Affirmative Antidumping Determination,'' ''Notice of Final Affirmative Antidumping Determination'' or ''Notice of Violation of Agreement'' as provided by part 353, chapter III, of this title. Each port director shall immediately notify the importer, consignee, or agent of each entry of merchandise in question with respect to which liquidation is suspended. The notice shall indicate the relevant ascertained and determined or estimated antidumping duty.

(b) *Countervailing matters.* Upon receipt of notification from the Commissioner, each port director shall suspend liquidation on merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the ''Notice of Preliminary Affirmative Countervailing Duty Determination,'' ''Notice of Final Affirmative Countervailing Duty Determination'' or ''Notice of Violation of Agreement,'' as provided by part 355, Chapter III, of this title. Each port director shall immediately notify the importer, consignee, or agent of each entry of merchandise in question with respect to which liquidation is suspended. The notice shall indicate the relevant ascertained and determined or estimated countervailing duty.

[T.D. 80–271, 45 FR 75642, Nov. 17, 1980]

## Subpart F—Continued Dumping and Subsidy Offset

SOURCE: T.D. 01–68, 66 FR 48552, Sept. 21, 2001, unless otherwise noted.

### § 159.61 General.

(a) *Continued dumping and subsidy offset.* Under section 754 of the Tariff Act of 1930, as amended by Public Law 106–387, 114 Stat. 1549 (19 U.S.C. 1675c), known as the Continued Dumping and Subsidy Offset Act of 2000, assessed duties received on or after October 1, 2000 under a countervailing duty order, an antidumping duty order, or a finding under the Antidumping Act of 1921, will be distributed, as provided under this subpart, to affected domestic producers for certain qualifying expenditures that these affected domestic producers incur after the issuance of such an antidumping duty order or finding, or countervailing duty order. This distribution is called the continued dumping and subsidy offset.

(b) *Affected domestic producer*—(1) *General rule.* Except as provided in paragraph (b)(2) of this section, an ''affected domestic producer'' under paragraph (a) of this section means any manufacturer, producer, farmer, rancher or worker representative (including any association of such persons) that remains in operation continuing to produce the product covered by the antidumping duty order or finding or countervailing duty order, and that was a petitioner or an interested party that supported a petition concerning an antidumping duty order, a finding

under the Antidumping Act of 1921, or a countervailing duty order that was entered. It is the responsibility of the U.S. International Trade Commission (USITC) to ascertain and timely forward to Customs a list of the domestic producers potentially considered ''affected domestic producers'' eligible to receive a distribution in connection with each order or finding. In addition to the potential ''affected domestic producers'' set forth on the USITC list, the following parties also are potential ''affected domestic producers'':

(i) *Successor company*. In the case of a company that has succeeded to the operations of a predecessor company that appeared on the USITC list, the successor company may file a certification to claim an offset as an affected domestic producer on behalf of the predecessor company. In its certification, the company must name the predecessor company to which it has succeeded and it must describe in detail the duly authorized succession by which it is entitled to file the certification.

(ii) *A member company of an association*. A member company of an association appearing on the USITC list for an order or finding may file a certification to claim an offset as an affected domestic producer, even though the member company does not itself appear on the USITC list, provided that the company also meets the other requirements of the statute. In its certification, the company must name the association of which it is a member and the company must specifically establish that it was a member of the association at the time the association filed the petition with the USITC.

(2) *Exceptions*. A party who is named on the USITC list is not an ''affected domestic producer'' under the following circumstances:

(i) *Product no longer produced*. A company, business or person that has ceased production of the product covered by the antidumping duty order or finding, or countervailing duty order, *i.e.*, did not manufacture that product at all during the fiscal year that is the subject of the disbursement, is not an affected domestic producer under this section.

(ii) *Acquisition by related company*—(A) *Related company defined*. A company, business or person is not an affected domestic producer if that company, business, or person has been acquired by another company or business that is related to a company that opposed the antidumping or countervailing duty investigation that led to the order or finding. For purposes of this paragraph, a company, business or person is related to another company, business or person if:

(*1*) The company, business or person directly or indirectly controls or is controlled by the other company, business or person;

(*2*) A third party directly or indirectly controls both companies, businesses or persons; or

(*3*) Both companies, businesses or persons directly or indirectly control a third party and there is reason to believe that the relationship causes the first company, business or person to act differently than a nonrelated party.

(B) *Control of one party by another*. For purposes of paragraphs (b)(2)(ii)(A)(*1*) through (b)(2)(ii)(A)(*3*) of this section, one party would be considered to directly or indirectly control another party if the party was legally or operationally in a position to exercise restraint or direction over the other party.

(c) *Qualifying expenditures*. Qualifying expenditures which may be offset by a distribution of assessed antidumping and countervailing duties must fall within the categories described in paragraphs (c)(1) through (c)(10) of this section. These expenditures must be incurred after the issuance, and prior to the termination, of the antidumping duty order or finding or countervailing duty order under which the distribution is sought. Further, these expenditures must be related to the production of the same product that is the subject of the related order or finding, with the exception of expenses incurred by associations which must relate to a specific case.

(1) Manufacturing facilities;

(2) Equipment;

(3) Research and development;

(4) Personnel training;

(5) Acquisition of technology;

(6) Health care benefits for employees paid for by the employer;

(7) Pension benefits for employees paid for by the employer;

(8) Environmental equipment, training, or technology;

(9) Acquisition of raw materials and other inputs; and

(10) Working capital or other funds needed to maintain production.

### § 159.62 Notice of distribution.

(a) *Publication of notice.* At least 90 days before the end of a fiscal year, Customs will publish in the FEDERAL REGISTER a notice of intention to distribute assessed duties received as the continued dumping and subsidy offset for that fiscal year. The notice will include the list of domestic producers, based upon the list supplied by the USITC (see § 159.61(b)(1)), that would be potentially eligible to receive the distribution.

(b) *Content of notice.* The notice of intention to distribute the offset will also contain the following:

(1) The case name and number of the particular order or finding concerned, together with the dollar amount contained in the special account for that order or finding as of June 1 of the subject fiscal year (see § 159.64(a)(1)); and

(2) The instructions for filing the certification under § 159.63 in order to claim a distribution.

### § 159.63 Certifications.

(a) *Requirement and purpose for certification.* In order to obtain a distribution of the offset, each affected domestic producer must submit a certification, in triplicate, or electronically as authorized by Customs, to the Assistant Commissioner, Office of Regulations and Rulings, Headquarters, or designee, that must be received within 60 days after the date of publication of the notice in the FEDERAL REGISTER, indicating that the affected domestic producer desires to receive a distribution. The certification must enumerate the qualifying expenditures incurred by the domestic producer since the issuance of an order or finding for which a distribution has not previously been made, and it must demonstrate that the domestic producer is eligible to receive a distribution as an affected domestic producer.

(b) *Content of certification.* While there is no established format for a certification, the certification must identify the date of the FEDERAL REGISTER notice under which it is submitted, and the case name and the number of the particular order or finding cited in the FEDERAL REGISTER notice. The certification must be executed and dated by a party legally authorized to bind the domestic producer. The certification must also state that the information contained in the certification is true and accurate to the best of the certifier's knowledge and belief under penalty of law, and that the domestic producer has records to support the qualifying expenditures being claimed.

(1) *Identifying information for domestic producer.* The certification must include the following identifying information related to the domestic producer:

(i) The name of the domestic producer and any name qualifier, if applicable (for example, any other name under which the domestic producer does business or is also known);

(ii) The address of the domestic producer (if a post office box, the secondary street address must also be included);

(iii) The Internal Revenue Service (IRS) number (with suffix) of the domestic producer, employer identification number, or social security number, as applicable;

(iv) The specific business organization of the domestic producer (corporation, partnership, sole proprietorship); and

(v) The name(s) of any individual(s) designated by the domestic producer as the contact person(s) concerning the certification, together with the phone number(s) and/or facsimile transmission number(s) and electronic mail (email) address(es) for the person(s).

(2) *Amount of claim.* In calculating the amount of the distribution being claimed as an offset, the certification must enumerate the following:

(i) The total amount of qualifying expenditures currently and previously certified by the domestic producer, and the amount certified by category (see § 159.61(c)(1) through (c)(10));

(ii) The total amount of those expenditures which have been the subject of any prior distribution under section 754, Tariff Act of 1930, as amended (19 U.S.C. 1675c); and

(iii) The net amount for new and remaining qualifying expenditures being claimed in the current certification (the total amount currently and previously certified as noted in paragraph (b)(2)(i) of this section minus the total amount the subject of any prior distribution as noted in paragraph (b)(2)(ii) of this section).

(3) *Statement of eligibility to receive distribution.* The certification must contain a statement that the domestic producer desires to receive a distribution and is eligible to receive the distribution as an affected domestic producer (see § 159.61(b)(1) and (b)(2)).

(i) *Amount certified for payment.* The affected domestic producer must affirm that the net amount certified for distribution does not encompass any qualifying expenditures for which distribution has previously been made (see paragraphs (b)(2)(ii) and (b)(2)(iii) of this section).

(ii) *Same qualifying expenditures included on more than one certification.* Where the domestic producer is listed as an affected domestic producer on more than one order or finding covering the same product and files a separate certification for each order or finding using the same qualifying expenditures as the basis for distribution in each case, each certification must list all the other orders or findings where the producer is claiming the same qualifying expenditures.

(iii) *Continued production of product covered by order or finding; acquisition by related company.* The statement must include information as to whether the domestic producer remains in operation and continues to produce the product covered by the particular order or finding under which the distribution is sought (see § 159.61(b)(2)(i)). In addition, the domestic producer must state whether it has been acquired by a company or business that is related to a company, within the meaning of § 159.61(b)(2)(ii)(A)(*1*) through (*3*), that opposed the antidumping or countervailing duty investigation that resulted in the order or finding under which the distribution is sought.

(c) *Review and correction of certification.* A certification that is submitted in response to a notice of distribution and received within 60 days after the date of publication of the notice in the FEDERAL REGISTER may be reviewed before acceptance to ensure that all informational requirements are complied with and that any amounts set forth in the certification for current and prior qualifying expenditures, including the amount claimed for distribution, appear to be correct (see paragraph (b)(2) of this section). A certification that is found to be materially incorrect or incomplete will be returned to the domestic producer within 15 days after the close of the 60-day filing period. Within 10 days of the date that Customs returns a certification as being materially incorrect or incomplete, Customs must receive a corrected certification from the affected domestic producer. Customs will make every effort to assist companies to perfect their certifications and will not return claims for minor errors or omissions. However, it remains the sole responsibility of the domestic producer to ensure that the certification is correct, complete and satisfactory so as to demonstrate the entitlement of the domestic producer to the distribution requested. Failure to ensure that the certification is correct, complete and satisfactory as provided in this paragraph will result in the domestic producer not receiving a distribution.

(d) *Verification of certification; supporting records.* Certifications are subject to verification. Parties, therefore, are required to maintain the accounting records used in developing their claims, for a period of five years after the filing of the certification. The records supporting certifications must be those that are normally kept in the ordinary course of business (see § 163.1(a)(1) and (a)(2)(vi) of this chapter). Parties must be able to demonstrate that their records specifically support each qualifying expenditure enumerated in a certification. In addition, the claimant must be able to support how qualifying expenditures are

determined to be related to the production of the product covered by the order or finding.

(e) *Disclosure of information in certifications; acceptance by producer*. The name of the affected domestic producer, the total dollar amount claimed by that party on the certification, as well as the total dollar amount that Customs actually disburses to that company as an offset, will be available for disclosure to the public (see § 159.64(g)(1)). The submission of the certification will be construed as an understanding and acceptance on the part of the domestic producer that this information will be disclosed to the public. Alternatively, a statement in a certification that this information is proprietary and exempt from disclosure will result in Customs rejection of the certification.

**§ 159.64 Distribution of offset.**

(a) *The creation of Special Accounts and Clearing Accounts*—(1) *Special Accounts*. As directed in the legislation (19 U.S.C. 1675c(e)), Customs will establish Special Accounts for each antidumping duty order or finding or countervailing duty order, into which funds will be transferred as set out in paragraph (b) of this section. All distributions to affected domestic producers will be made from the Special Accounts.

(2) *Clearing Accounts*. In order to properly manage and account for dumping and subsidy offsets, as well as any requisite refunds to importers, Customs will also establish Clearing Accounts. All estimated antidumping and countervailing duties received pursuant to an antidumping or countervailing order or finding in effect on January 1, 1999, or thereafter, will be deposited into a Clearing Account.

(b) *Distribution of assessed duties received from the Special Accounts; refunds resulting from reliquidation or court action; and overpayments to affected domestic producers*—(1) *Distribution of assessed duties received from the Special Accounts*. (i) No later than 60 days after the end of a fiscal year, Customs will distribute the assessed duties transferred from the Clearing Accounts and received into the Special Accounts. The amount distributed shall be referred to as the dumping and subsidy offset;

(ii) Transfers from the Clearing Accounts to the Special Accounts will be made by Customs throughout the fiscal year. Transfers will occur between a Clearing Account and a Special Fund Account when an entry upon which antidumping or countervailing duties are owed is properly liquidated pursuant to an order, finding or receipt of liquidation instructions;

(iii) The amount transferred at liquidation to the Special Account will be dependent upon the amount actually collected on the entry and in the Clearing Account. Following liquidation, additional transfers will be made on the liquidated entry to the corresponding Special Account, as additional antidumping or countervailing duties are collected.

(2) *Refunds resulting from reliquidation or court action*. If any of the underlying entries composing a prior distribution should reliquidate for a refund, such refund will be recovered from the corresponding Special Account. Similarly, refunds to importers resulting from any court action involving those entries will also be recovered from the corresponding Special Account. Refunds to importers will not be delayed pending the recovery of overpayments from domestic producers as set out in paragraph (b)(3) of this section.

(3) *Overpayments to affected domestic producers*. Overpayments to affected domestic producers resulting from subsequent reliquidations and/or court actions and determined by Customs to be not otherwise recoverable from the corresponding Special Account as set out in paragraph (b)(2) of this section will be collected from the affected domestic producers. The amount of each affected domestic producer's bill will be directly proportional to the total dumping and subsidy offset amounts that the affected domestic producer previously received under the related Special Account. All available collection methods will be used by Customs to collect outstanding bills, including but not limited to, administrative offset. Interest at the same rate set out at § 24.3a(c) of this chapter will begin to accrue on unpaid bills 30 days from the bill date.

(c) *Payment of certified claims.* (1) If the total amount of the certified net claims filed by affected domestic producers does not exceed the amount of the offset available for distribution in the corresponding Special Account, the certified net claim for each affected domestic producer will be paid in full.

(2) If the certified net claims exceed the dumping and subsidy offset amount available in the corresponding Special Account, such offset will be made on a pro rata basis based on each affected domestic producer's total certified claim.

(3) In any case where the distribution is not for the entire certified qualifying expenditure submitted by an affected domestic producer, and if the affected domestic producer believes that the reduction was the result of clerical error or mistake by Customs, it must file a request for reconsideration within 30 calendar days to the address given in the notification. After considering the matter, the Customs Service will notify the party requesting reconsideration of its decision. However, any adjustments will be made only from funds remaining in the account for that case in the current or future fiscal years, and will be paid prior to any future distributions.

(d) *Final distribution and termination of the Special Account.* (1) A Special Account will be terminated and a final distribution will occur when:

(i) The order or finding with respect to which the account was established has terminated; and

(ii) All entries relating to the order or finding are liquidated, all outstanding amounts collected or properly accounted for by Customs, all related protests, petitions, and court actions fully concluded, and all refunds due to importers on the underlying entries are paid in full.

(2) Once the requirements set out in paragraph (d)(1) of this section have been met, notice of a final distribution will be issued pursuant to § 159.62.

(3) Amounts not timely claimed under the notice of final distribution will be permanently deposited into the General Fund of the Treasury.

(e) *Interest on Special Accounts and Clearing Accounts.* In accordance with Federal appropriations law, and Treasury guidelines on Special Accounts, funds in such accounts are not interest-bearing unless specified by Congress. Likewise, funds being held in Clearing Accounts are not interest-bearing unless specified by Congress. Therefore, no interest will accrue in these accounts. However, statutory interest charged on antidumping and countervailing duties at liquidation will be transferred to the Special Account, when collected from the importer.

(f) *Distribution final and conclusive.* Except as provided in paragraphs (b)(3) and (c)(3) of this section, any distribution made to an affected domestic producer under this section shall be final and conclusive on the affected domestic producer.

(g) *Annual report; disclosure of information.* Although it is not mandated in the law (19 U.S.C. 1675c), Customs will issue an annual report on the disbursements. This report will be available to the public via the Customs website. The annual report will address any initiatives that have been implemented to improve the liquidation and disbursement process. In addition, the annual report will include the information described in paragraphs (g)(1) and (g)(2) of this section.

(1) *Company-specific information.* The annual report will include the following information concerning those parties that have submitted certifications for a distribution of the offset with respect to each order or finding as identified by its case number:

(i) The name of the claimant;

(ii) The total dollar amount claimed by that party on its certification; and

(iii) The total dollar amount disbursed to that company by Customs.

(2) *General information.* The annual report will include the following general information for each order or finding as identified by its case number:

(i) The number of entries and dollar amounts in the clearing account at the beginning of each fiscal year;

(ii) The number and amount of Customs re-liquidations during the fiscal year; and

(iii) The dollar amounts remaining uncollected from Customs bills issued during the fiscal year.

# PART 161—GENERAL ENFORCEMENT PROVISIONS

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161.12 Eligibility for compensation.
161.14 Advising informant of entitlement.
161.15 Confidentiality for informant.
161.16 Filing of claim for informant compensation.

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1600, 1619, 1624.

Section 161.2 also issued under 12 U.S.C. 95a; 18 U.S.C. 545; 19 U.S.C. 1595(a); 22 U.S.C. 401, 1934, 2349aa8–9; 42 U.S.C. 1804, 1807; 50 U.S.C. 1641 *et seq.*, 1701 *et seq.;* 50 U.S.C. App. 1–44, 2411.

SOURCE: T.D. 72–211, 37 FR 16487, Aug. 15, 1972, unless otherwise noted.

### § 161.0 Scope.

This part provides general information concerning Customs enforcement of certain import and export laws administered by other federal agencies, the filing of offers in compromise of government claims, the eligibility of individuals for informant compensation, and the filing of claims for informant compensation.

[T.D. 98–22, 63 FR 11826, Mar. 11, 1998]

## Subpart A—General Provisions

### § 161.2 Enforcement for other agencies.

(a) *Laws enforced by Customs Service for administering agencies*. Some of the laws enforced in whole or in part by the Customs Service for administering agencies are:

(1) Importations and exportations of arms, ammunition, implements of war, helium gas, and other munitions of war are governed by laws administered by the Bureau of Alcohol, Tobacco and Firearms and Department of State;

(2) Importations and exportations of controlled substances are governed by laws administered by the Drug Enforcement Administration of the Department of Justice;

(3) Importations, exportations, and transactions involving identified goods, services, and technology with any of those countries designated as subject to economic sanctions under the laws and regulations administered by the Office of Foreign Assets Control of the Department of the Treasury.

(4) Importations and exportations of atomic energy source material, fissionable material, and equipment and devices for utilizing or producing fissionable material are subject to laws administered by the Nuclear Regulatory Commission; and

(5) The exportation of articles, other than those previously mentioned herein, are subject to requirements of laws administered by the Department of Commerce.

(b) *Seizure for violation of law*. When articles are imported or are intended to be, are being, or have been exported from the United States in violation of law, such articles and any vessel, vehicle, or aircraft knowingly used in their transportation shall be seized and proceeded against.

[T.D. 72–211, 37 FR 16487, Aug. 15, 1972, as amended by T.D. 76–21, 41 FR 2383, Jan. 16, 1976; T.D. 78–329, 43 FR 43456, Sept. 26, 1978; T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 96–42, 61 FR 24889, May 17, 1996]

### § 161.5 Compromise of Government claims.

(a) *Offer*. An offer made pursuant to section 617, Tariff Act of 1930, as amended (19 U.S.C. 1617), in compromise of a Government claim arising under the Customs laws and the terms upon which it is made shall be stated in writing addressed to the Commissioner of Customs. The offer shall be limited to the civil liability of the proponent in the matter which is the subject of the Government's claim.

(b) *Deposit of specific sum tendered*. No offer in which a specific sum of money is tendered in compromise of a Government claim under the Customs laws will be considered by the Commissioner of Customs until due notice is received that such sum has been properly deposited in the name of the person submitting the offer with the Treasurer of the United States or a Federal Reserve bank. A proponent at a distance from a Federal Reserve bank may perfect his

offer by tendering a bank draft for the amount of the offer payable to the Secretary of the Treasury for collection and deposit. If the offer is rejected, the money will be returned to the proponent.

(Sec. 617, 46 Stat. 757, as amended; 19 U.S.C. 1617)

## Subpart B—Compensation of Informant

SOURCE: T.D. 91–14, 56 FR 5349, Feb. 11, 1991, unless otherwise noted.

### § 161.12 Eligibility for compensation.

In accordance with section 619, Tariff Act of 1930, as amended (19 U.S.C. 1619), any person not an employee or officer of the United States who either furnishes original information concerning any fraud upon the customs revenue or any violation, perpetrated or contemplated, of the customs or navigation laws or any other laws administered or enforced by Customs, or detects and seizes any item subject to seizure and forfeiture under the customs or navigationlaws or other laws enforced by Customs and reports the same to a Customs officer, may file a claim for compensation, provided there is a net amount recovered from such detection and seizure or such information, unless other laws specify different procedures. Any employee or officer of the United States who receives, accepts, or contracts for any portion of such compensation, either directly or indirectly, is subject to criminal prosecution and civil liability as provided by 19 U.S.C. 1620.

[T.D. 98–22, 63 FR 11826, Mar. 11, 1998]

### § 161.14 Advising informant of entitlement.

Any Customs officer who receives information shall advise the informant that, in the event of a recovery, he may be entitled to compensation. He shall also advise the informant that, if the informant has executed a stipulation to that effect, any amount received by the informant in the form of purchase of evidence or purchase of information will be deducted from any compensation which may be awarded.

### § 161.15 Confidentiality for informant.

The name and address of the informant shall be kept confidential. No files or information shall be revealed which might aid in the unauthorized identification of an informant. Release of information is governed by §§ 103.12(g)(4) and 103.12(i) of this chapter.

### § 161.16 Filing a claim for informant compensation.

(a) *Limitations on claims.* Pursuant to 19 U.S.C. 1619, an informant may be paid up to 25 percent of the net recovery to the government from duties withheld; from any fine (civil or criminal), forfeited bail bond, penalty, or forfeiture incurred; or, if the forfeiture is remitted, from the monetary penalty recovered for remission of the forfeiture. The amount of the award paid to informants shall not exceed $250,000 for any one case, regardless of the number of recoveries that result from the information furnished; however, no claim of less than $100 will be paid.

(b) *Filing of claim.* A claim shall be filed, in duplicate, on Customs Form 4623 with the Special Agent in Charge, who shall make a recommendation on the form as to approval and the amount of the award. The Special Agent in Charge shall forward the form to the port director, who shall make a recommendation on the form as to approval and the amount of the award. The port director shall forward the form to Customs Headquarters for action. If for any reason a claim has not been transmitted by the port director, the claimant may apply directly to Customs Headquarters.

[T.D. 98–22, 63 FR 11826, Mar. 11, 1998]

# PART 162—INSPECTION, SEARCH, AND SEIZURE

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AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

Section 162.3 also issued under 19 U.S.C. 1581;

Section 162.4 also issued under 39 U.S.C. 604, 605;

Section 162.5 also issued under 19 U.S.C. 1581, 49 U.S.C. 1509;

Section 162.6 also issued under 19 U.S.C. 1461, 1467, 1496;

Section 162.7 also issued under 19 U.S.C. 482;

Section 162.8 also issued under 9 U.S.C. 1629;

Section 162.21 also issued under 19 U.S.C. 482, 1581, 1582, 1602;

Section 162.22 also issued under 18 U.S.C. 546; 19 U.S.C. 1459, 1460, 1594, 1595a, 1701, 1703–1708.

Section 162.23 also issued under 19 U.S.C. 1595a(c).

Section 162.32 also issued under 19 U.S.C. 1603, 1610;

Section 162.32 also issued under 19 U.S.C. 1603, 1610;

Section 162.43 also issued under 19 U.S.C. 1606, 1608;

Section 162.44 also issued under 19 U.S.C. 1614;

Section 162.45 also issued under 19 U.S.C. 1607, 1608;

Section 162.45a also issued under 21 U.S.C. 881;

Section 162.46 also issued under 19 U.S.C. 1609, 1611;

Section 162.47 also issued under 19 U.S.C. 1608;

Section 162.48 also issued under 19 U.S.C. 1606, 1607, 1608, 1612, 1613b, 1618;

Section 162.49 also issued under 26 U.S.C. 5688;

Section 162.50 also issued under 19 U.S.C. 1611, 1705;

Section 162.61 also issued under 21 U.S.C. 952, 953, 957;

Section 162.62 also issued under 21 U.S.C. 952, 956;

Sections 162.63, 162.64 also issued under 21 U.S.C. 881, 966;

Section 162.65 also issued under 19 U.S.C. 1584, 21 U.S.C. 960, 961.

Sections 162.65 and 162.72 also issued under 19 U.S.C. 1431(b) and 19 U.S.C. 1644.

Sections 162.91 through 162.96 also issued under 18 U.S.C. 983.

SOURCE: T.D. 72–211, 37 FR 16488, Aug. 15, 1972, unless otherwise noted.

### § 162.0 Scope.

This part contains provisions for the inspection, examination, and search of persons, vessels, aircraft, vehicles, and merchandise involved in importation, for the seizure of property, and for the forfeiture and sale of seized property. It also contains provisions for Customs enforcement of the controlled substances laws. Provisions relating to petitions for remission or mitigation of fines, penalties, and forfeitures incurred are contained in part 171 of this chapter. Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters and producers under the U.S.-Chile Free Trade Agreement are contained in Part 10, Subpart H of this chapter.

[T.D. 98–56, 63 FR 32945, June 16, 1998, as amended by CBP Dec. 05–07, 70 FR 10884, Mar. 7, 2005]

## Subpart A—Inspection, Examination, and Search

SOURCE: T.D. 79–159, 44 FR 31970, June 4, 1979, unless otherwise noted.

### §§ 162.1–162.2 [Reserved]

### § 162.3 Boarding and search of vessels.

(a) *General authority*. A Customs officer, for the purpose of examining the manifest and other documents and papers and examining, inspecting and searching the vessel, may at any time go on board:

(1) Any vessel at any place in the United States or within the Customs waters of the United States;

(2) Any American vessel on the high seas;

(3) Any vessel within a Customs-enforcement area designated such under the provisions of the Anti-Smuggling Act (Act of August 5, 1935, as amended, 49 Stat. 517; 19 U.S.C. 1701, 1703 through 1711), but Customs officers shall not board a foreign vessel upon the high seas in contravention of any treaty with a foreign government, or in the absence of a special arrangement with the foreign government concerned.

(b) *Search of army or navy vessel*. If the port director or special agent in charge believes that sufficient grounds exist to justify a search of any army or navy vessel, the facts shall be reported to the commanding officer or master of the vessel with a request that he cause a full search to be made, and advise the port director or special agent in charge of the result of such search. If, after the cargo has been discharged, passengers and their baggage landed, and the baggage of officers and crewmembers examined and passed, the port director or special agent in charge believes that sufficient grounds exist to justify the continuance of Customs supervision of the vessel, the commanding officer or master of the vessel shall be advised accordingly.

(c) *Assistance of other agencies*. Customs officers are authorized to assist

any other agency in the enforcement of United States laws on any vessel.

[T.D. 84–18, 48 FR 52899, Nov. 23, 1983]

### § 162.4 Search for letters.

A Customs officer may search vessels for letters which may be on board or may have been conveyed contrary to law on board any vessel or on any post route, and shall seize such letters and deliver them to the nearest post office or detain them subject to the orders of the postal authorities.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972]

### § 162.5 Search of arriving vehicles and aircraft.

A customs officer may stop any vehicle and board any aircraft arriving in the United States from a foreign country for the purpose of examining the manifest and other documents and papers and examining, inspecting, and searching the vehicle or aircraft.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 90–34, 55 FR 17597, Apr. 26, 1990]

### § 162.6 Search of persons, baggage, and merchandise.

All persons, baggage, and merchandise arriving in the Customs territory of the United States from places outside thereof are liable to inspection and search by a Customs officer. Port directors and special agents in charge are authorized to cause inspection, examination, and search to be made under section 467, Tariff Act of 1930, as amended (19 U.S.C. 1467), of persons, baggage, or merchandise, even though such persons, baggage, or merchandise were inspected, examined, searched, or taken on board the vessel at another port or place in the United States or the Virgin Islands, if such action is deemed necessary or appropriate.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972]

### § 162.7 Search of vehicles, persons, or beasts.

A Customs officer may stop, search, and examine any vehicle, person, or beast, or search any trunk or envelope wherever found, in accordance with section 3061 of the Revised Statutes (19 U.S.C. 482).

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 90–34, 55 FR 17597, Apr. 26, 1990]

### § 162.8 Preclearance inspections and examinations.

In connection with inspections and examinations conducted in accordance with § 148.22(a) of this chapter, United States Customs officers stationed in a foreign country may exercise such functions and perform such duties (including inspections, examinations, searches, seizures, and arrests), as may be permitted by treaty, agreement, or law of the country in which they are stationed.

[T.D. 89–22, 54 FR 5077, Feb. 1, 1989]

## Subpart B—Search Warrants

### § 162.11 Authority to procure warrants.

Customs officers are authorized to procure search warrants under the provisions of section 595, Tariff Act of 1930, as amended (19 U.S.C. 1595). However, a Customs officer who is lawfully on any premises and is able to identify merchandise which has been imported contrary to law may seize such merchandise without a warrant. If merchandise is in a building on the boundary, see § 123.71 of this chapter.

### § 162.12 Service of search warrant.

A search warrant shall be served in person by the officer to whom it is issued and addressed. In serving a search warrant, the officer shall leave a copy of the warrant with the person in charge or possession of the premises, or in the absence of any person, the copy shall be left in some conspicuous place on the premises searched.

### § 162.13 Search of rooms not described in warrant.

When a Customs officer is acting under a warrant to search the rooms in a building occupied by persons named or described in the warrant, no search shall be made of any rooms in such building which are not described in the warrant as occupied by such persons.

### § 162.15 Receipt for seized property.

A receipt for property seized under a search warrant shall be left with the person in charge or possession of the premises, or in the absence of any person, the receipt shall be left in some conspicuous place on the premises searched.

## Subpart C—Seizures

### § 162.21 Responsibility and authority for seizures.

(a) *Seizures by Customs officers*. Property may be seized, if available, by any Customs officer who has reasonable cause to believe that any law or regulation enforced by the Customs Service has been violated, by reason of which the property has become subject to seizure or forfeiture. This paragraph does not authorize seizure when seizure or forfeiture is restricted by law or regulation (see, for example, § 162.75), nor does it authorize a remedy other than seizure when seizure or forfeiture is required by law or regulation. A receipt for seized property shall be given at the time of seizure to the person from whom the property is seized.

(b) *Seizure by persons other than Customs officers*. The port director may adopt a seizure made by a person other than a Customs officer if such port director has reasonable cause to believe that the property is subject to forfeiture under the Customs laws.

(c) *Seizure by State official*. If a duly constituted State official has seized any merchandise, vessel, aircraft, vehicle, or other conveyance under provisions of the statutes of such State, such property shall not be seized by a Customs officer unless the property is voluntarily turned over to him to be proceeded against under the Federal statutes.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 79–160, 44 FR 31956, June 4, 1979]

### § 162.22 Seizure of conveyances.

(a) *General applicability*. If it shall appear to any officer authorized to board conveyances and make seizures that there has been a violation of any law of the United States whereby a vessel, vehicle, aircraft, or other conveyance, or any merchandise on board of or imported by such vessel, vehicle, aircraft, or other conveyance is liable to forfeiture, the officer shall seize such conveyance and arrest any person engaged in such violation. Common carriers are exempted from seizure except under certain specified conditions as provided for in section 594, Tariff Act of 1930 (19 U.S.C. 1594).

(b) *Facilitating importation contrary to law*. Except as provided in § 171.52(b), every vessel, vehicle, animal, aircraft, or other thing, which is being or has been used in, or to aid or facilitate, the importation, bringing in, unlading, landing, removal, concealing, harboring or subsequent transportation of any article which is being, or has been introduced or attempted to be introduced into the United States contrary to law, shall be seized and held subject to forfeiture. Any person who directs, assists financially or otherwise, or is in any way concerned in any such unlawful activity shall be liable to a penalty equal to the value of the article or articles involved.

(c) *Common carrier clearance*. Unless specifically authorized by law, clearance of vessels within the common carrier exception of section 594, Tariff Act of 1930 (19 U.S.C. 1594), shall not be refused for the purpose of collecting a fine imposed upon the master or owner, unless either of them was a party to the illegal act. The Government's remedy in such cases is limited to an action against the master or owner.

(d) *Retention of vessel or vehicle pending penalty payment*. If a penalty is incurred under section 460, Tariff Act of 1930, as amended (19 U.S.C. 1460), by a person in charge of a vessel or vehicle and the vessel or vehicle is not subject to seizure, such vessel or vehicle may be held by the port director under section 594, Tariff Act of 1930, until the penalty incurred by the person in charge has been settled.

(e) *Maritime Administration vessels; exemption from penalty*. (1) When a vessel owned or chartered under bareboat charter by the Maritime Administration and operated for its account becomes liable for the payment of a penalty incurred for violation of the Customs revenue or navigation laws, clearance of the vessel shall not be withheld

nor shall any proceedings be taken against the vessel itself looking to the enforcement of such liability.

(2) This exemption shall not in any way be considered to relieve the master of any such vessel or other person incurring such penalties from personal liability for payment.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 89–86, 54 FR 37602, Sept. 11, 1989]

### § 162.23 Seizure under section 596(c), Tariff Act of 1930, as amended (19 U.S.C. 1595a(c)).

(a) *Mandatory seizures*. The following, if introduced or attempted to be introduced into the United States contrary to law, shall be seized pursuant to section 596(c), Tariff Act of 1930, as amended (19 U.S.C. 1595a(c)):

(1) Merchandise that is stolen, smuggled, or clandestinely imported or introduced;

(2) A controlled substance, as defined in the Controlled Substance Act (21 U.S.C. 801 *et seq.*), not imported in accordance with law;

(3) A contraband article, as defined in section 1 of the Act of August 9, 1939 (49 U.S.C. 80302); or

(4) A plastic explosive, as defined in section 841(q) of title 18, United States Code, which does not contain a detection agent, as defined in section 841(p) of that title.

(b) *Permissive seizures*. The following, if introduced or attempted to be introduced into the United States contrary to law, may be seized pursuant to section 596(c), Tariff Act of 1930, as amended (19 U.S.C. 1595a(c)):

(1) Merchandise the importation or entry of which is subject to any restriction or prohibition imposed by law relating to health, safety, or conservation, and which is not in compliance with the applicable rule, regulation or statute;

(2) Merchandise the importation or entry of which requires a license, permit or other authorization of a United States Government agency, and which is not accompanied by such license, permit or authorization;

(3) Merchandise or packaging in which copyright, trademark or trade name protection violations are involved (including, but not limited to, a violation of sections 42, 43 or 45 of the Act of July 5, 1946 (15 U.S.C. 1124, 1125 or 1127), sections 506 or 509 of title 17, United States Code, or sections 2318 or 2320 of title 18, United States Code);

(4) Trade dress merchandise involved in the violation of a court order citing section 43 of the Act of July 5, 1946 (15 U.S.C. 1125);

(5) Merchandise marked intentionally in violation of 19 U.S.C. 1304;

(6) Merchandise for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have been in violation of 19 U.S.C. 1304; or

(7) Merchandise subject to quantitative restrictions, found to bear a counterfeit visa, permit, license, or similar document, or stamp from the United States or from a foreign government or issuing authority pursuant to a multilateral or bilateral agreement (but see paragraph (e), of this section).

(c) *Resolution of seizure under § 1595a(c)*. When merchandise is either required or authorized to be seized under this section, the forfeiture incurred may be remitted in accord with 19 U.S.C. 1618, to include as a possible option the exportation of the merchandise under such conditions as Customs shall impose, unless its release would adversely affect health, safety, or conservation, or be in contravention of a bilateral or multilateral agreement or treaty.

(d) *Seizure under 19 U.S.C. 1592*. If merchandise is imported, introduced or attempted to be introduced contrary to a provision of law governing its classification or value, and there is no issue of admissibility, such merchandise shall not be seized pursuant to 19 U.S.C. 1595a(c). Any seizure of such merchandise shall be in accordance with section 1592 (see § 162.75 of this chapter).

(e) *Detention only*. Merchandise subject to quantitative restrictions requiring a visa, permit, license, or other similar document, or stamp from the United States Government or from a foreign government or issuing authority pursuant to a bilateral or multilateral agreement, shall be subject to detention in accordance with 19 U.S.C.

1499, unless the appropriate visa, permit, license, or similar document, or stamp is presented to Customs (but see paragraph (b)(7), of this section for instances when seizure may occur).

[T.D. 96–2, 60 FR 67058, Dec. 28, 1995, as amended by T.D. 99–4, 64 FR 1123, Jan. 8, 1999]

## Subpart D—Procedure When Fine, Penalty, or Forfeiture Incurred

### § 162.31 Notice of fine, penalty, or forfeiture incurred.

(a) *Notice.* Written notice of any fine or penalty incurred as well as any liability to forfeiture shall be given to each party that the facts of record indicate has an interest in the claim or seized property. The notice shall also inform each interested party of his right to apply for relief under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), or any other applicable statute authorizing mitigation of penalties or remission of forfeitures, in accordance with part 171 of this chapter. The notice shall inform any interested party in a case involving forfeiture of seized property that unless the petitioner provides an express agreement to defer judicial or administrative forfeiture proceedings until completion of the administrative process, the case will be referred promptly to the U.S. attorney or the Department of Justice if the penalty was assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), for institution of judicial proceedings, or summary forfeiture proceedings will be begun. For violations involving the possession of personal use quantities of a controlled substance, also see § 171.55.

(b) *Contents of notice.* The notice shall contain the following:

(1) The provisions of law alleged to have been violated;

(2) A description of the specific acts or omissions forming the basis of the alleged violations;

(3) If the alleged violations involve the entry or attempted entry of merchandise,

(i) A description of the merchandise and the circumstances of its entry or attempted entry, and

(ii) The identity of each entry, if specific entries are involved; and

(4) If the alleged violations involve a loss of revenue,

(i) The total loss of revenue and how it was computed, and

(ii) The loss of revenue attributable to each entry, if readily susceptible to calculation.

(c) *Demand for deposit in case of smuggled articles of small value.* In the case of smuggled articles of small value, demand shall be made for immediate deposit of an amount equivalent to the domestic value of the articles on account of the liability to a penalty incurred as distinct from liability of the goods to forfeiture. Such sum shall be deposited whether or not a petition for relief is filed in accordance with part 171 of this chapter. A demand for deposit need not be made in connection with any liability incurred by the master of a vessel under the provisions of section 453, Tariff Act of 1930, as amended (19 U.S.C. 1453).

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 78–38, 43 FR 4255, Feb. 1, 1978; T.D. 79–160, 44 FR 31956, June 4, 1979; T.D. 85–90, 50 FR 21431, May 24, 1985; T.D. 89–86, 54 FR 37602, Sept. 11, 1989]

### § 162.32 Where petition for relief not filed.

(a) *Fines, penalties and forfeitures.* If any person who is liable for a fine, penalty, or claim for a monetary amount, or who has an interest in property subject to forfeiture, fails to petition for relief as set forth in part 171 of this chapter, or fails to pay the fine or penalty within 30 days from the mailing date of the violation/penalty notice provided in § 162.31 (unless additional time is authorized for filing a petition, as set forth in part 171 of this chapter) the Fines, Penalties, and Forfeitures Officer, shall, after any required collection action is complete, refer any fine or penalty case promptly to the U.S. attorney, or the Department of Justice if the penalty was assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). In the case of property subject to forfeiture, the Fines, Penalties, and Forfeitures Officer, where appropriate, shall complete administrative forfeiture proceedings or shall refer the matter promptly to the U.S. attorney, or the Department of Justice if the case arose under section 592, in

accordance with the provisions of subparagraph (c) below, unless the Commissioner of Customs expressly authorizes other action.

(b) *Institution of forefeiture proceedings before completion of administrative procedures*. Nothing in these regulations is intended to prevent the institution of forfeiture proceedings before completion of the administrative remission or mitigation procedures pursuant to section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618).

(c) *Seized property not eligible for administrative forfeiture*. If the seized property is not eligible for administrative forfeiture, and neither a petition for relief in accordance with part 171 of this chapter, nor an offer to pay the domestic value as provided for in § 162.44, is made within 30 days (unless additional time has been authorized under part 171 of this chapter), the Fines, Penalties, and Forfeitures Officer shall refer the case promptly to the U.S. attorney for the judicial district in which the seizure was made, or the Department of Justice if the penalty was assessed under section 592.

[T.D. 85–195, 50 FR 50289, Dec. 10, 1985, as amended by T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

## Subpart E—Treatment of Seized Merchandise

### § 162.41 [Reserved]

### § 162.42 Proceedings by libel.

If seizure is made under a statute which provides that the property may be seized and proceeded against by libel, the summary forfeiture procedures set forth in §§ 162.45, 162.46, and 162.47 do not apply. Such cases shall be referred to the U.S. attorney. The Fines, Penalties, and Forfeitures Officer may request the U.S. attorney to seek a decree of forfeiture providing for delivery of the property to the Fines, Penalties, and Forfeitures Officer for sale or other appropriate disposition, if such property is not to be retained for official use.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1999, as amended by T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

### § 162.43 Appraisement.

(a) *Property under seizure and subject to forfeiture*. Seized property shall be appraised as required by section 606, Tariff Act of 1930, as amended (19 U.S.C. 1606). The term ''domestic value'' as used therein shall mean the price at which such or similar property is freely offered for sale at the time and place of appraisement, in the same quantity or quantities as seized, and in the ordinary course of trade. If there is no market for the seized property at the place of appraisement, such value in the principal market nearest to the place of appraisement shall be reported.

(b) *Property not under seizure*. The basis for a claim for forfeiture value or for an assessment of a penalty relating to the forfeiture value of property not under seizure is the domestic value as defined in paragraph (a) of this section, except that the value shall be fixed as of the date of the violation. In the case of entered merchandise, the date of the violation shall be the date of the entry, or the date of the filing of the document, or the commission of the act forming the basis of the claim, whichever is later.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 79–160, 44 FR 31957, June 4, 1979; T.D. 85–123, 50 FR 29956, July 23, 1985]

### § 162.44 Release on payment of appraised value.

(a) *Value exceeding $100,000*. Any offer to pay the appraised domestic value of seized property in order to obtain the immediate release of the property which was seized under the Customs laws or laws administered by Customs and exceeding $100,000 in appraised domestic value, or which was seized under the navigation laws, shall be in writing, addressed to the Commissioner of Customs, and signed by the claimant or his attorney. It shall be submitted in duplicate to the Fines, Penalties, and Forfeitures Officer having jurisdiction at the port where the property was seized. Proof of ownership shall be submitted with the application if the facts in the case make such action necessary.

(b) *Value not over $100,000*—(1) *Authority to accept offer*. The Fines, Penalties, and Forfeitures Officer is authorized to

accept a written offer pursuant to section 614, Tariff Act of 1930, as amended (19 U.S.C. 1614), to pay the appraised domestic value of property seized under the Customs laws and to release such property if:

(i) The appraised domestic value of the seized property does not exceed $100,000.

(ii) The Fines, Penalties, and Forfeitures Officer is satisfied that the claimant has, in fact, a substantial interest in the property; and

(iii) Entry of the seized property into the commerce of the United States is not prohibited by law.

(2) *Referral of offer*. The Fines, Penalties, and Forfeitures Officer shall refer to the Commissioner of Customs any offer where it appears that the claimant does not have a substantial interest in the seized property or where it appears it would not be in the best interest of the United States to accept.

(c) *Retention of property*. The Fines, Penalties, and Forfeitures Officer shall retain custody of the property pending payment of the amount of the offer when the application is approved.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 74–276, 39 FR 37633, Oct. 23, 1974; T.D. 85–195, 50 FR 50289, Dec. 10, 1985; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

### § 162.45 Summary forfeiture: Property other than Schedule I and Schedule II controlled substances. Notice of seizure and sale.

(a) *Contents*. The notice required by section 607, Tariff Act of 1930, as amended (19 U.S.C. 1607), of seizure and intent to forfeit and sell or otherwise dispose of according to law property not exceeding $500,000 in value, or any seized merchandise the importation of which is prohibited, or any seized vessel, vehicle or aircraft that was used to import, export, transport, or store any controlled substance, or such seized merchandise is any monetary instrument within the meaning of 31 U.S.C. 5312(a)(3), shall:

(1) Describe the property seized and in the case of motor vehicles, specify the motor and serial numbers;

(2) State the time, cause, and place of seizure;

(3) State that any person desiring to claim property must appear at a designated place and file with the Fines, Penalties, and Forfeitures Officer within 20 days from the date of first publication of the notice a claim to such property and a bond in the sum of $5,000 or 10% of the value of the claimed property, whichever is lower, but not less than $250, in default of which the property will be disposed of in accordance with the law; and

(4) State the name and place of residence of the person to whom any vessel or merchandise seized for forfeiture under the navigation laws belongs or is consigned, if that information is known to the Fines, Penalties, and Forfeitures Officer.

(b) *Publication*. (1) If the appraised value of any property in one seizure from one person, other than Schedule I and Schedule II controlled substances (as defined in 21 U.S.C. 802(6) and 812), exceeds $5,000, the notice will be published for at least three successive weeks in a newspaper circulated at the Customs port and in the judicial district where the property was seized. All known parties-in-interest shall be notified of the newspaper and expected dates of publication of such notice.

(2) In all other cases, except for Schedule I and Schedule II controlled substances (see § 162.45a), the notice will be published by posting it in the customhouse nearest the place of seizure. It will be posted in a conspicuous place that is accessible to the public, with the date of posting noted thereon, and will be kept posted for at least three successive weeks. Articles of small value of the same class or kind included in two or more seizures will be advertised as one unit.

(c) *Delay of publication*. Publication of the notice of seizure and intent to summarily forfeit and dispose of property eligible for such treatment may be delayed for a period not to exceed 30 days in those cases where the Fines, Penalties, and Forfeitures Officer has reason to believe that a petition for administrative relief in accord with part 171 of this chapter will be filed.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 83–72, 48 FR 11423, Mar. 18, 1983; T.D. 85–123, 50 FR 29956, July 23, 1985; T.D. 85–195, 50 FR 50290, Dec. 10, 1985; T.D. 91–52, 56 FR 25364, June 4, 1991; T.D. 99–27, 64 FR 13676, Mar. 22, 1999; T.D. 00–37, 65 FR 33254, May 23, 2000; CBP Dec. 05–02, 70 FR 8510, Feb. 22, 2005]

### § 162.45a Summary forfeiture of Schedule I and Schedule II controlled substances.

The Controlled Substances Act (84 Stat. 1242, 21 U.S.C. 801 *et seq.*) provides that all controlled substances in Schedule I and Schedule II (as defined in 21 U.S.C. 802(6) and 812) that are possessed, transferred, sold or offered for sale in violation of the Act will be deemed contraband, seized and summarily forfeited to the United States (21 U.S.C. 881(f)). The Controlled Substances Import and Export Act (21 U.S.C. 951 *et seq.*) incorporates by reference this contraband forfeiture provision of 21 U.S.C. 881. See 21 U.S.C. 965. Accordingly, in the case of a seizure of Schedule I or Schedule II controlled substances, the Fines, Penalties, and Forfeitures Officer or his designee will contact the appropriate Drug Enforcement Administration official responsible for issuing permits authorizing the importation of such substances (see 21 CFR part 1312). If upon inquiry the Fines, Penalties, and Forfeitures Officer or his designee is notified that no permit for lawful importation has been issued, he will declare the seized substances contraband and forfeited pursuant to 21 U.S.C. 881(f). Inasmuch as such substances are Schedule I and Schedule II controlled substances, the notice procedures set forth in § 162.45 are inapplicable. When seized controlled substances are required as evidence in a court proceeding, they will be preserved to the extent and in the quantities necessary for that purpose.

[T.D. 00–37, 65 FR 33254, May 23, 2000]

### § 162.46 Summary forfeiture: Disposition of goods.

(a) *General.* If no petition for relief from the forfeiture is filed in accordance with the provision of part 171 of this chapter, or if a petition was filed and has been denied, and the property is not retained for official use, it shall be disposed of in accordance with section 609, Tariff Act of 1930, as amended (19 U.S.C. 1609) or section 491(b), Tariff Act of 1930, as amended (19 U.S.C. 1491(b)).

(b) *Articles required to be inspected by other Government agencies.* Before seized drugs, insecticides, seeds, plants, nursery stock, and other articles required to be inspected by other Government agencies are sold, they shall be inspected by a representative of such agency to ascertain whether or not they meet the requirements of the laws and regulations of that agency, and if found not to meet such requirements, they shall be destroyed forthwith.

(c) *Sale*—(1) *General.* If the forfeited property is cleared for sale, it shall be sold in accordance with the applicable provisions of part 127 of this chapter. The Fines, Penalties, and Forfeitures Officer may postpone the sale of small seizures until he believes the proceeds of a consolidated sale will pay all expenses.

(2) *Transfer to another port for sale.* Property shall be moved to and sold at such other Customs port as the Commissioner of Customs may direct pursuant to the provisions of section 611, Tariff Act of 1930 (19 U.S.C. 1611), if:

(i) The laws of a State in which property is seized and forfeited prohibit the sale of such property; or

(ii) The Commissioner is of the opinion that the sale of forfeited property may be made more advantageously at another Customs port.

(d) *Destruction.* If, after summary forfeiture of property is completed, it appears that the net proceeds of sale will not be sufficient to pay the costs of sale, the Fines, Penalties, and Forfeitures Officer may order destruction of the property. Any vessel or vehicle summarily forfeited for violation of any law respecting the Customs revenue may be destroyed in lieu of the sale thereof when such destruction is authorized by the Commissioner of Customs to protect the revenue.

(e) *Disposition of distilled spirits, wines, and malt liquor.* In addition to disposition by sale or destruction as provided for by this section, distilled spirits, wines, and malt liquor may be delivered:

(1) To any Government agency the Commissioner of Customs or his designee determines has a need for these articles for medical, scientific, or mechanical purposes, or for any other official purpose for which appropriated funds may be expended by a Government agency, or

(2) By gift to any charitable institution the Commissioner of Customs or his designee determines has a need for the articles for medical purposes.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 77–12, 41 FR 56629, Dec. 29, 1976; T.D. 79–159, 44 FR 31971, June 4, 1979; T.D. 85–195, 50 FR 50290, Dec. 10, 1985; T.D. 92–69, 57 FR 30640, July 10, 1992; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

### § 162.47 Claim for property subject to summary forfeiture.

(a) *Filing of claim.* Any person desiring to claim under the provisions of section 608, Tariff Act of 1930, as amended (19 U.S.C. 1608), seized property not exceeding $500,000 in value (however there is no limit in value of merchandise, the importation of which is prohibited, or in the value of vessels, vehicles or aircraft used to import, export, transport, or store any controlled substance, or in the amount of any monetary instruments within the meaning of 31 U.S.C. 5312(a)(3), that may be seized and forfeited) and subject to summary forfeiture, shall file a claim to such property with the Fines, Penalties, and Forfeitures Officer within 20 days from the date of the first publication of the notice prescribed in § 162.45.

(b) *Bond for costs.* Except as provided in paragraph (e) of this section, the bond in the penal sum of $5,000 or 10% of the value of the claimed property, whichever is lower, but not less than $250, required by section 608, Tariff Act of 1930, as amended, to be filed with a claim for seized property shall be on Customs Form 301, containing the bond conditions set forth in § 113.72 of this chapter.

(c) *Claimant not entitled to possession.* The filing of a claim and the giving of a bond, if required, pursuant to section 608, Tariff Act of 1930, shall not be construed to entitle the claimant to possession of the property. Such action only stops the summary forfeiture proceeding.

(d) *Report to the U.S. attorney.* When the claim and bond, if required, are filed within the 20-day period, the Fines, Penalties, and Forfeitures Officer shall report the case to the U.S. attorney for the institution of condemnation proceedings.

(e) *Waiver of bond.* Upon satisfactory proof of financial inability to post the bond, the Fines, Penalties, and Forfeitures Officer shall waive the bond requirement for any person who claims an interest in the seized property.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 81–1, 45 FR 84994, Dec. 24, 1980; T.D. 84–213, 49 FR 41186, Oct. 19, 1984; T.D. 85–123, 50 FR 29956, July 23, 1985; T.D. 91–52, 56 FR 25364, June 4, 1991; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

### § 162.48 Disposition of perishable and other seized property.

(a) *Disposition of perishable property.* Seized property which is perishable or otherwise enumerated in section 612, Tariff Act of 1930, as amended (19 U.S.C. 1612), and is covered by the provisions of section 607, Tariff Act of 1930, as amended (19 U.S.C. 1607), shall be advertised for sale and sold at public auction at the earliest possible date. The Fines, Penalties, and Forfeitures Officer shall proceed to give notice by advertisement of the summary sale for such time as he considers reasonable. This notice shall be of sale only and not notice of seizure and intent to forfeit. The proceeds of the sale shall be held subject to the claims of parties in interest in the same manner as the seized property would have been subject to such claims.

(b) *Disposition of other seized property.* (1) If the expense of keeping any vessel, vehicle, aircraft, merchandise or baggage is disproportionate to the value thereof, destruction or other disposition of such property may be ordered by the appropriate Customs officer. Storage expenses are presumed to be disproportionate to the value of the property where the expense has reached or is anticipated to reach 50 percent of the value of the property.

The right of a claimant to seized property which has been destroyed or otherwise disposed of shall not be extinguished.

(2) Publication of a notice of the seizure, regardless of the disposition of the property, will be required pursuant to 19 U.S.C. 1607. Claimants to seized property will be permitted to file a petition for remission of the forfeiture pursuant to 19 U.S.C. 1618, and part 171 of this chapter. A claimant receiving full or partial relief from the forfeiture shall be reimbursed the difference between the value of the merchandise at the time of the seizure, pursuant to 19 U.S.C. 1606 and § 162.43 of this part, and any remitted forfeiture amount that the claimant is required to pay.

(3) A claimant to destroyed or otherwise disposed of seized property requesting relief in the form of payment may file a claim and cost bond and seek judicial hearing on the forfeiture pursuant to 19 U.S.C. 1608.

(4) Successful claimants shall be compensated from Customs Forfeiture Fund pursuant to 19 U.S.C. 1613b.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 85–195, 50 FR 50290, Dec. 10, 1985; T.D. 92–69, 57 FR 30640, July 10, 1992; T.D. 99–27, 64 FR 13676, Mar. 22, 1999; T.D. 00–57, 65 FR 53575, Sept. 5, 2000]

### § 162.49 Forfeiture by court decree.

(a) *Report to the U.S. attorney or the Department of Justice if the penalty was assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).* When it is necessary to institute legal proceedings in order to forfeit seized property, or to forfeit the value of property subject to forfeiture, the Fines, Penalties, and Forfeitures Officer or the special agent in charge of the area involved shall furnish a report to the U.S. attorney or the Department of Justice if the penalty was assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), in accordance with the provisions of section 603, Tariff Act of 1930, as amended (19 U.S.C. 1603).

(b) *Bonding of seized property.* When a claimant desires to file a bond for the release of seized property which is the subject of a court proceeding, he shall be referred to the U.S. attorney. The Government is entitled to recover the penal sum of the bond if forfeiture is then decreed.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 85–90, 50 FR 21431, May 24, 1985; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

### § 162.50 Forfeiture by court decree: Disposition.

(a) *Sale.* Forfeited property decreed by the court for sale or disposition by the Fines, Penalties, and Forfeitures Officer shall be disposed of in the same manner as property summarily forfeited. (See § 162.46.)

(b) *Transfer to other ports for sale.* If the laws of the State in which property is seized and forfeited prohibit the sale of such property, or if the Commissioner of Customs is of the opinion that the sale of forfeited property may be made more advantageously at another port, application may be made to the court to permit disposition in accordance with the provisions of section 611, Tariff Act of 1930 (19 U.S.C. 1611). If the court permits such disposition, the property shall be moved to and sold at such other port as the Commissioner may direct provided it has been cleared for sale.

(c) *Destruction*—(1) *Proceeds of sale not sufficient.* Property forfeited under a decree of any court may be destroyed if it is provided in the decree of forfeiture that the property shall be delivered to the Secretary of the Treasury or the Commissioner of Customs for disposition in accordance with section 611, Tariff Act of 1930 (19 U.S.C. 1611).

(2) *For protection of the revenue.* Any vessel or vehicle forfeited under a decree of any court for violation of any law respecting the Customs revenue may be destroyed in lieu of sale when such destruction is authorized by the Commissioner of Customs to protect the revenue if it is provided in the decree of forfeiture that the property shall be delivered to the Secretary of the Treasury or Commissioner of Customs for disposition under the provisions of 19 U.S.C. 1705.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

**§ 162.51 Disposition of proceeds of sale of property seized and forfeited other than under 19 U.S.C. 1592.**

(a) *Order of payment of expenses incurred*—(1) *When application for remission and restoration is filed and approved.* Section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613), and § 171.41 of this chapter authorize the filing of an application for remission of the forfeiture and restoration of the proceeds from the sale of seized and forfeited property. If the application is filed within 3 months after the date of sale and is approved, the proceeds of the sale, or any part thereof, shall be restored to the applicant after deducting the following charges in the order named:

(i) Internal revenue taxes.

(ii) Marshal's fees and court costs.

(iii) Expenses of advertising and sale.

(iv) Expenses of cartage, storage, and labor. When the proceeds are insufficient to pay these expenses fully, they shall be paid pro rata.

(v) Duties.

(vi) Any sum due to satisfy a lien for freight, charges, or contributions in general average, provided notice of the lien has been given in the manner prescribed by law.

(2) *When no application for remission and restoration is filed or the application is denied.* If no application for remission and restoration is filed within 3 months after the date of sale of seized and forfeited property, or if the application is denied, the proceeds of the sale shall be disbursed in the following order:

(i) Internal revenue taxes.

(ii) Marshal's fees and court costs.

(iii) Expenses of advertising and sale.

(iv) Expenses of cartage, storage, and labor. When the proceeds are insufficient to pay these expenses fully, they shall be paid pro rata.

(v) Any sum due to satisfy a lien for freight, charges, or contributions in general average, provided notice of the lien has been given in the manner prescribed by law.

(vi) The residue, if any, shall be deposited with the Treasurer of the United States as a customs or navigation fine.

(b) *Transfer of seized and forfeited property to another Federal agency.* In the event that the seized and forfeited property has been authorized for transfer to another Federal agency for official use, the receiving agency shall reimburse Customs for the costs incurred in moving and storing the property from the date of seizure to the date of delivery.

[T.D. 79–160, 44 FR 31957, June 4, 1979; 44 FR 36376, June 22, 1979, as amended by T.D. 84–78, 49 FR 13492, Apr. 5, 1984]

**§ 162.52 Disposition of proceeds of sale of property seized and forfeited under 19 U.S.C. 1592.**

(a) *Order of disposition of proceeds.* Section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613), provides for the disposition of the proceeds from the sale of property seized and forfeited under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), as provided for in § 162.75 of this part. Distribution shall be made in the following order:

(1) Internal revenue taxes.

(2) Marshal's fees and court costs.

(3) Expenses of advertising and sale.

(4) Expenses of cartage, storage, and labor. When proceeds are insufficient to pay these expenses fully, they shall be paid pro rata.

(5) Duties.

(6) Any sum due to satisfy a lien for freight, charges, or contributions in general average, provided notice of the lien has been given in the manner prescribed by law.

(7) The monetary penalty assessed under 19 U.S.C. 1592.

(8) The remaining proceeds, if any, shall be paid to the appropriate party-in-interest as provided in paragraph (b).

(b) *Determination of appropriate party-in-interest.* (1) If the property is subject to a judicial forfeiture proceeding and if it appears at the time of this proceeding that 2 or more parties claim an interest in the remaining proceeds referred to in paragraph (a)(8), each of the parties shall be joined in the proceeding so that the issue of proper distribution may be determined by the court.

(2) If the property is sold under the summary forfeiture procedure, or if the court has not specified the manner of distribution, the Fines, Penalties, and

Forfeitures Officer shall hold the excess proceeds for 3 months from the date of the sale to allow any party-in-interest to claim the proceeds.

(3) If there is one alleged violator and no petition has been filed for the excess proceeds by another person, the excess proceeds shall be disbursed to the person against whom the penalty was assessed.

(4) If there are 2 or more persons with claims or possible claims to the excess proceeds, the Fines, Penalties, and Forfeitures Officer shall attempt to obtain a written agreement from the parties as to the distribution. If an agreement cannot be reached, the matter shall be referred to Customs Headquarters for determination.

(c) *Official use of seized and forfeited property*. If the seized and forfeited property has been authorized for official use, its retention or delivery shall be regarded as a ''sale'' for the purposes of section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613). The appropriation available to the receiving agency for the purchase, hire, operation, maintenance, and repair of the type of property involved shall be distributed as provided in paragraphs (a) and (b).

[T.D. 79–160, 44 FR 31958, June 4, 1979, as amended by T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

## Subpart F—Controlled Substances, Narcotics, and Marihuana

### § 162.61 Importing and exporting controlled substances.

It shall be unlawful to import to or export from the United States any controlled substance or narcotic drug listed in schedules I through V of the Controlled Substances Act (Sec. 202, 84 Stat. 1247; 21 U.S.C. 812), unless there has been compliance with the provisions of said Act, the Controlled Substances Import and Export Act and the regulations of the Drug Enforcement Administration.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 78–99, 43 FR 13062, Mar. 29, 1978]

### § 162.62 Permissible controlled substances on vessels, aircraft, and individuals.

Upon compliance with the provisions of the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801), the Controlled Substances Import and Export Act (84 Stat. 1285; 21 U.S.C. 951), and the regulations of the Drug Enforcement Administration (21 CFR 1301.28, 1311.27), controlled substances listed in schedules I through V of the Controlled Substances Act may be held:

(a) On vessels engaged in international trade in medicine chests and dispensaries.

(b) In aircraft operated by an air carrier under a certificate or permit issued by the Federal Aviation Administration for stocking in medicine chests and first aid packets.

(c) By an individual where lawfully obtained for personal medical use or for administration to an animal accompanying him to enter or depart the United States.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 78–99, 43 FR 13062, Mar. 29, 1978]

### § 162.63 Arrests and seizures.

Arrests and seizures under the Controlled Substances Act (84 Stat. 1242, 21 U.S.C. 801 *et seq.*), and the Controlled Substances Import and Export Act (84 Stat. 1285, 21 U.S.C. 951 *et seq.*), will be handled in the same manner as other Customs arrests and seizures. However, Schedule I and Schedule II controlled substances (as defined in 21 U.S.C. 802(6) and 812) imported contrary to law will be seized and forfeited in the manner provided in the Controlled Substances Act (21 U.S.C. 881(f)). See § 162.45a.

[T.D. 00–37, 65 FR 33255, May 23, 2000]

### § 162.64 Custody of controlled substances.

All controlled substances seized by a Customs officer shall be delivered immediately into the custody of the

Fines, Penalties, and Forfeitures Officer having jurisdiction where the seizure is made, together with a full report of the circumstances of the seizure.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

### § 162.65 Penalties for failure to manifest narcotic drugs or marihuana.

(a) *Cargo or baggage containing unmanifested narcotic drugs or marihuana.* When a package of regular cargo or a passenger's baggage otherwise properly manifested is found to contain any narcotic drug or marihuana imported for sale or other commercial purpose and not shown as such on the manifest, the penalties prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed with respect to such narcotic drug or marihuana.

(b) *Unmanifested narcotic drugs or marihuana.* When an unmanifested narcotic drug or marihuana is found on board of, or after having been unladen from, a vessel, vehicle, or aircraft, the penalties prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed. The penalty shall be applied without exception and without regard to any question of negligence or responsibility.

(c) *Notice and demand for payment of penalty.* A written notice and demand for payment of the penalty for failure to manifest incurred under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be sent to the master of the vessel, or commander of the aircraft, or the person in charge of the vehicle, and to the owner of the vessel, aircraft, or vehicle or any person directly or indirectly responsible. In the case of a vessel, if bond has been given, the notice also shall be sent to each surety. When a petition for relief from such penalty has been filed in accordance with part 171 of this chapter, and a decision has been made thereon, the Fines, Penalties, and Forfeitures Officer shall send notice of such decision to the interested persons together with a demand for any payment required under the terms of such decision.

(d) *Referral to the U.S. attorney.* If the penalty incurred under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), is not paid, or a petition is not filed as provided in part 171 of this chapter, or if payment is not made in accordance with the decision on a petition or a supplemental petition, the Fines, Penalties, and Forfeitures Officer, after required collection action, shall refer the case to the U.S. attorney.

(e) *Withholding clearance of vessel.* Where a penalty has been incurred under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), for failure to manifest narcotic drugs or marihuana, clearance of the vessel involved shall be withheld until the penalty is paid or a bond satisfactory to the Fines, Penalties, and Forfeitures Officer is given for the payment thereof unless

(1) The narcotics or marihuana were discovered in a passenger's baggage and the Fines, Penalties, and Forfeitures Officer is satisfied that neither the master nor any of the officers nor the owner of the vessel knew or had any reason to know or suspect that the narcotics or marihuana had been on board the vessel, or

(2) Prior authority for the clearance without payment of the penalty or the furnishing of the bond is obtained from Customs.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 79–160, 44 FR 31958, June 4, 1979; T.D. 86–59, 51 FR 8489, Mar. 12, 1986; T.D. 99–27, 64 FR 13676, Mar. 22, 1999; T.D. 99–64, 64 FR 43267, Aug. 10, 1999]

### § 162.66 Penalties for unlading narcotic drugs or marihuana without a permit.

In every case where a narcotic drug or marihuana is unladen without a permit, the penalties prescribed in section 453, Tariff Act of 1930, as amended (19 U.S.C. 1453), shall be assessed. Penalties shall be assessed under this section when a package of regular cargo or a passenger's baggage otherwise covered by a permit to unlade is found to contain any narcotic drug or marihuana imported for sale or other commercial purpose and not specifically covered by a permit to unlade.

## Subpart G—Special Procedures for Certain Violations

SOURCE: T.D. 79–160, 44 FR 31958, June 4, 1979, unless otherwise noted.

### § 162.70 Applicability.

(a) The provisions of this subpart apply only to fines, penalties, or forfeitures incurred for the following violations of the customs laws:

(1) Violations of sections 466 and 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1466, 1584(a)(1)), that occur after October 3, 1978, and

(2) Except as provided in paragraph (b) of this section, violations of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), with respect to which preceedings have commenced after December 31, 1978. For purposes of this subparagraph, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of a claim for a monetary penalty.

(b) The provisions of this subpart do not apply to alleged intentional violations of 19 U.S.C. 1592 if the alleged violation:

(1) Involves television receivers that are the products of Japan and were or are the subject to antidumping proceedings,

(2) Occurred before October 3, 1978, and

(3) Was the subject of a Customs investigation begun before October 3, 1978.

(c) The provisions of subparts A through F of this part shall apply to the violations referred to in paragraph (a) of this section unless this subpart specifically provides otherwise.

[T.D. 79–160, 44 FR 31958, June 4, 1979; 44 FR 35208, June 19, 1979, as amended by T.D. 90–34, 55 FR 17597, Apr. 26, 1990]

### § 162.71 Definitions.

When used in this subpart, the following terms shall have the meanings indicated:

(a) *Loss of duties under section 592.* ''Loss of duties'' means the duties of which the Government is or may be deprived by reason of the violation and includes both actual and potential loss of duties.

(1) *Actual loss of duties.* ''Actual loss of duties'' means the duties of which the Government has been deprived by reason of the violation in respect of entries on which liquidation had become final.

(2) *Potential loss of duties.* ''Potential loss of duties'' means the duties of which the Government tentatively was deprived by reason of the violation in respect of entries on which liquidation had not become final.

(b) *Loss of revenue under section 593A.* When used in § 162.73a, the term ''loss of revenue'' means the amount of drawback (see § 191.2(i) of this chapter) that is claimed and to which the claimant is not entitled and includes both actual and potential loss of revenue.

(1) *Actual loss of revenue.* When used in §§ 162.73a, 162.74, 162.77a and 162.79b, the term ''actual loss of revenue'' means the amount of drawback (see § 191.2(i) of this chapter) that is claimed and has been paid to the claimant and to which the claimant is not entitled.

(2) *Potential loss of revenue.* When used in § 162.77a, the term ''potential loss of revenue'' means the amount of drawback (see § 191.2(i) of this chapter) that is claimed and has not been paid to the claimant and to which the claimant is not entitled.

(c) *Repetitive violation.* When used in § 162.73a to describe a violation, ''repetitive'' has reference to a violation by a person that involves the same issue as a prior violation by that person.

(d) *Noncommercial importation.* ''Noncommercial importation'' means merchandise imported by a traveler for an individual's personal or household use, or as a gift, but not imported for sale or other commercial purposes.

(e) *Clerical error.* ''Clerical error'' means an error in the preparation, assembly, or submission of a document which results when a person intends to do one thing but does something else. It includes, for example, errors in transcribing numbers, errors in arithmetic, and the failure to assemble all the documents in a record.

(f) *Mistake of fact.* ''Mistake of fact'' means an action based upon a belief by a person that the material facts are other than they really are; it can be that a fact exists but is unknown to

the person, or that he believes something is a fact when in reality it is not. An action is not a mistake of fact if the erroneous belief is caused by the neglect of a legal duty.

[T.D. 79–160, 44 FR 31958, June 4, 1979, as amended by T.D. 84–18, 49 FR 1678, Jan. 13, 1984; 49 FR 3986, Feb. 1, 1984; T.D. 98–49, 63 FR 29131, May 28, 1998; T.D. 00–5, 65 FR 3808, Jan. 25, 2000]

### § 162.72 Penalties and forfeitures under sections 466 and 584(a)(1), Tariff Act of 1930, as amended.

(a) *Foreign repairs and equipment purchases; election to proceed.* If the Fines, Penalties, and Forfeitures Officer has reasonable cause to believe that a violation of section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), has occurred, he may elect to proceed against the vessel or aircraft, or against the violator for forfeiture of a monetary amount up to the domestic value of the vessel or aircraft.

(b) *Lack of manifest or discrepancy in manifest.* The penalties for violation of section 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1584(a)(1)), are as follows:

(1) A penalty of $1,000 against the master of a vessel, the commander of an aircraft, or the person in charge of a vehicle bound to the United States who does not produce the manifest on demand.

(2) A penalty of $1,000 against the master of a vessel, the commander of an aircraft, the person in charge of a vehicle, or the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible for the discrepancy, if any merchandise described in the manifest is not found on board (a ''shortage'').

(3)(i) A penalty equal to the lesser of $10,000 or the domestic value of merchandise found on board of or after having been unladen from a vessel or vehicle, or

(ii) A penalty of $1,000 (see § 122.161 of this chapter) if merchandise (other than narcotics or marihuana—see § 162.65 of this chapter) is found on board of or after having been unladen from an aircraft—if the merchandise is not included or described in the manifest or does not agree with the manifest (an ''overage'').

(iii) Unmanifested merchandise belonging to or consigned to the master or crew of the vessel, the commander or crew of the aircraft, or to the owner or person in charge of the vehicle, also shall be subject to forfeiture.

The appropriate of these penalties may be assessed against the master or crew of the vessel, the commander or crew of the aircraft, the person in charge of the vehicle, the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible for the discrepancy.

(c) *Exception.* There is no violation, and consequently no penalty incurred under paragraph (b), in the circumstances described in §§ 4.12(a)(5) and 122.162 of this chapter.

[T.D. 79–160, 44 FR 31958, June 4, 1979, as amended by T.D. 86–59, 51 FR 8490, Mar. 12, 1986; T.D. 88–12, 53 FR 9315, Mar. 22, 1988; T.D. 99–27, 64 FR 13676, Mar. 22, 1999; T.D. 99–64, 64 FR 43267, Aug. 10, 1999]

### § 162.73 Penalties under section 592, Tariff Act of 1930, as amended.

(a) *Maximum penalty without prior disclosure.* If the person concerned has not made a prior disclosure as provided in § 162.74, the monetary penalty under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), shall not exceed:

(1) For fraudulent violations, the domestic value of the merchandise;

(2) For grossly negligent violations,

(i) The lesser of the domestic value of the merchandise or four times the loss of duties, taxes and fees or

(ii) If there is no loss of duties, taxes and fees 40 percent of the dutiable value of the merchandise; and

(3) For negligent violations,

(i) The lesser of the domestic value of the merchandise or two times the loss of duties, taxes and fees or

(ii) If there is no loss of duties, taxes and fees 20 percent of the dutiable value of the merchandise.

(b) *Maximum penalty with prior disclosure.* If the person concerned has made a prior disclosure, the monetary penalty shall not exceed:

(1) For fraudulent violations,

(i) One times the loss of duties, taxes and fees or

(ii) If there is no loss of duties, taxes and fees 10 percent of the dutiable value of the merchandise; and

(2) For grossly negligent and negligent violations, the interest on any loss of duties, taxes and fees. The interest shall be computed from the date of liquidation at the prevailing rate of interest applied under section 6621, Internal Revenue Code of 1954, as amended (26 U.S.C. 6621).

(c) *Exception; clerical error or mistake of fact*. There is no violation and, consequently, no penalty incurred, if the falsity or omission is due solely to clerical error or mistake of fact, unless the error or mistake is part of the pattern of negligent conduct.

[T.D. 79–160, 44 FR 31958, June 4, 1979, as mended by T.D. 99–64, 64 FR 43267, Aug. 10, 1999]

### § 162.73a Penalties under section 593A, Tariff Act of 1930, as amended.

(a) *Maximum penalty without prior disclosure for a drawback compliance program nonparticipant*. If the person concerned has not made a prior disclosure as provided in § 162.74 and has not been certified as a participant in the drawback compliance program under part 191 of this chapter, the monetary penalty under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), cannot exceed:

(1) For fraudulent violations, three times the loss of revenue; and

(2) For negligent violations,

(i) 20 percent of the loss of revenue for the first violation,

(ii) 50 percent of the loss of revenue for the first repetitive violation, or

(iii) One times the loss of revenue for the second and each subsequent repetitive violation.

(b) *Maximum penalty without prior disclosure for a drawback compliance program participant*——(1) *General*. If the person concerned has not made a prior disclosure as provided in § 162.74 and has been certified as a participant in, and is generally in compliance with the procedures and requirements of, the drawback compliance program provided for in part 191 of this chapter, the monetary penalty or other sanction under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), cannot exceed:

(i) For fraudulent violations, three times the loss of revenue; and

(ii) For negligent violations,

(A) Issuance of a written notice of a violation (warning letter) for the first violation and for any other violation that is not repetitive or that is repetitive but does not occur within three years from the date of the violation of which it is repetitive,

(B) 20 percent of the loss of revenue for the first repetitive violation that occurs within three years from the date of the violation of which it is repetitive,

(C) 50 percent of the loss of revenue for the second repetitive violation that occurs within three years from the date of the first of two violations of which it is repetitive, or

(D) One times the loss of revenue for the third and each subsequent repetitive violation that occurs within three years from the date of the first of three or more violations of which it is repetitive.

(2) *Notice of violation and required response to notice*(i) The notice issued by Customs under paragraph (b)(1)(ii)(A) of this section will:

(A) State that the person concerned has violated section 593A;

(B) Explain the nature of the violation; and

(C) Warn the person concerned that future violations of section 593A may result in the imposition of monetary penalties. The notice will also warn the person concerned that repetitive violations may result in removal of certification under the drawback compliance program provided for in part 191 of this chapter until the person takes corrective action that is satisfactory to Customs.

(ii) Within 30 days from the date of mailing of the notice issued under paragraph (b)(1)(ii)(A) of this section:

(A) The person concerned must notify Customs in writing of the steps that have been taken to prevent a recurrence of the violation; or

(B) If the person concerned believes that no violation took place, he may advise Customs in writing of the basis for that position. If Customs agrees on further review that no violation in fact took place, Customs will in writing advise the person concerned and rescind

the notice of violation. If on further review Customs remains of the opinion that the violation took place as alleged in the notice of violation, Customs will issue a written affirmation of the notice of violation advising the person concerned that the notice requirement of paragraph (b)(2)(ii)(A) of this section remains applicable and must be complied with either within the remainder of the prescribed 30-day period or within 15 days after issuance of the written affirmation, whichever period is longer.

(c) *Maximum penalty with prior disclosure*. If the person concerned has made a prior disclosure as provided in § 162.74, whether or not such person has been certified as a participant in the drawback compliance program under part 191 of this chapter, the monetary penalty under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), cannot exceed:

(1) For fraudulent violations, one times the loss of revenue; and

(2) For negligent violations, an amount equal to the interest accruing on the actual loss of revenue during the period from the date of overpayment of the claim to the date on which the person concerned tenders the amount of the overpayment based on the prevailing rate of interest under 26 U.S.C. 6621.

[T.D. 00–5, 65 FR 3808, Jan. 25, 2000]

### § 162.74 Prior disclosure.

(a) *In general*—(1) A prior disclosure is made if the person concerned discloses the circumstances of a violation (as defined in paragraph (b) of this section) of 19 U.S.C. 1592 or 19 U.S.C. 1593a, either orally or in writing to a Customs officer before, or without knowledge of, the commencement of a formal investigation of that violation, and makes a tender of any actual loss of duties, taxes and fees or actual loss of revenue in accordance with paragraph (c) of this section. A Customs officer who receives such a tender in connection with a prior disclosure shall ensure that the tender is deposited with the concerned local Customs entry officer.

(2) A person shall be accorded the full benefits of prior disclosure treatment if that person provides information orally or in writing to Customs with respect to a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a if the concerned Fines, Penalties, and Forfeitures Officer is satisfied the information was provided before, or without knowledge of, the commencement of a formal investigation, and the information provided includes substantially the information specified in paragraph (b) of this section. In the case of an oral disclosure, the disclosing party shall confirm the oral disclosure by providing a written record of the information conveyed to Customs in the oral disclosure to the concerned Fines, Penalties, and Forfeitures Officer within 10 days of the date of the oral disclosure. The concerned Fines, Penalties and Forfeiture Officer may, upon request of the disclosing party which establishes a showing of good cause, waive the oral disclosure written confirmation requirement. Failure to provide the written confirmation of the oral disclosure or obtain a waiver of the requirement may result in denial of the oral prior disclosure.

(b) *Disclosure of the circumstances of a violation*. The term ''discloses the circumstances of a violation'' means the act of providing to Customs a statement orally or in writing that:

(1) Identifies the class or kind of merchandise involved in the violation;

(2) Identifies the importation or drawback claim included in the disclosure by entry number, drawback claim number, or by indicating each concerned Customs port of entry and the approximate dates of entry or dates of drawback claims;

(3) Specifies the material false statements, omissions or acts including an explanation as to how and when they occurred; and

(4) Sets forth, to the best of the disclosing party's knowledge, the true and accurate information or data that should have been provided in the entry or drawback claim documents, and states that the disclosing party will provide any information or data unknown at the time of disclosure within 30 days of the initial disclosure date. Extensions of the 30-day period may be requested by the disclosing party from the concerned Fines, Penalties, and

Forfeitures Officer to enable the party to obtain the information or data.

(c) *Tender of actual loss of duties, taxes and fees or actual loss of revenue.* A person who discloses the circumstances of the violation shall tender any actual loss of duties, taxes and fees or actual loss of revenue. The disclosing party may choose to make the tender either at the time of the claimed prior disclosure, or within 30 days after Customs notifies the person in writing of Customs calculation of the actual loss of duties, taxes and fees or actual loss of revenue. The Fines, Penalties, and Forfeitures Officer may extend the 30-day period if there is good cause to do so. The disclosing party may request that the basis for determining Customs asserted actual loss of duties, taxes or fees be reviewed by Headquarters, provided that the actual loss of duties, taxes or fees determined by Customs exceeds $100,000 and is deposited with Customs, more than 1 year remains under the statute of limitations involving the shipments covered by the claimed disclosure, and the disclosing party has complied with all other prior disclosure regulatory provisions. A grant of review is within the discretion of Customs Headquarters in consultation with the appropriate field office, and such Headquarters review shall be limited to determining issues of correct tariff classification, correct rate of duty, elements of dutiable value, and correct application of any special rules (GSP, CBI, HTS 9802, etc.). The concerned Fines, Penalties, and Forfeitures Officer shall forward appropriate review requests to the Chief, Penalties Branch, Customs Headquarters, Office of Regulations and Rulings. After Headquarters renders its decision, the concerned Fines, Penalties, and Forfeitures Officer will be notified and the concerned Customs port will recalculate the loss, if necessary, and notify the disclosing party of any actual loss of duties, taxes or fees increases. Any increases must be deposited within 30 days, unless the local Customs office authorizes a longer period. Any reductions of the Customs calculated actual loss of duties, or and fees shall be refunded to the disclosing party. Such Headquarters review decisions are final and not subject to appeal. Further, disclosing parties requesting and obtaining such a review waive their right to contest either administratively or judicially the actual loss of duties, taxes and fees or actual loss of revenue finally calculated by Customs under this procedure. Failure to tender the actual loss of duties, taxes and fees or actual loss of revenue finally calculated by Customs shall result in denial of the prior disclosure.

(d) *Effective time and date of prior disclosure*—(1) If the documents that provide the disclosing information are sent by registered or certified mail, return-receipt requested, and are received by Customs, the disclosure shall be deemed to have been made at the time of mailing.

(2) If the documents are sent by other methods, including in-person delivery, the disclosure shall be deemed to have been made at the time of receipt by Customs. If the documents are delivered in person, the person delivering the documents will, upon request, be furnished a receipt from Customs stating the time and date of receipt.

(3) The provision of information that is not in writing but that qualifies for prior disclosure treatment pursuant to paragraph (a)(2) of this section shall be deemed to have occurred at the time that Customs was provided with information that substantially complies with the requirements set forth in paragraph (b) of this section.

(e) *Addressing and filing prior disclosure*—(1) A written prior disclosure should be addressed to the Commissioner of Customs, have conspicuously printed on the face of the envelope the words ''prior disclosure,'' and be presented to a Customs officer at the Customs port of entry of the disclosed violation.

(2) In the case of a prior disclosure involving violations at multiple ports of entry, the disclosing party may orally disclose or provide copies of the disclosure to all concerned Fines, Penalties, and Forfeitures Officers. In accordance with internal Customs procedures, the officers will then seek consolidation of the disposition and handling of the disclosure. In the event that the claimed ''multi-port'' disclosure is made to a Customs officer other than the concerned Fines, Penalties,

and Forfeitures Officer, the disclosing party must identify all ports involved to enable the concerned Customs officer to refer the disclosure to the concerned Fines, Penalties, and Forfeitures Officer for consolidation of the proceedings.

(f) *Verification of disclosure*. Upon receipt of a prior disclosure, the Customs officer shall notify Customs Office of Investigations of the disclosure. In the event the claimed prior disclosure is made to a Customs officer other than the concerned Fines, Penalties, and Forfeitures Officer, it is incumbent upon the Customs officer to provide a copy of the disclosure to the concerned Fines, Penalties, and Forfeitures Officer. The disclosing party may request, in the oral or written prior disclosure, that the concerned Fines, Penalties, and Forfeitures Officer request that the Office of Investigations withhold the initiation of disclosure verification proceedings until after the party has provided the information or data within the time limits specified in paragraph (b)(4) of this section. It is within the discretion of the concerned Fines, Penalties and Forfeitures Officer to grant or deny such requests.

(g) *Commencement of a formal investigation*. A formal investigation of a violation is considered to be commenced with regard to the disclosing party on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received that caused the Customs Service to believe that a possibility of a violation existed. In the event that a party affirmatively asserts a prior disclosure (*i.e.*, identified or labeled as a prior disclosure) and is denied prior disclosure treatment on the basis that Customs had commenced a formal investigation of the disclosed violation, and Customs initiates a penalty action against the disclosing party involving the disclosed violation, a copy of a ''writing'' evidencing the commencement of a formal investigation of the disclosed violation shall be attached to any required prepenalty notice issued to the disclosing party pursuant to 19 U.S.C. 1592 or 19 U.S.C. 1593a.

(h) *Scope of the disclosure and expansion of a formal investigation*. A formal investigation is deemed to have commenced as to additional violations not included or specified by the disclosing party in the party's original prior disclosure on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received that caused the Customs Service to believe that a possibility of such additional violations existed. Additional violations not disclosed or covered within the scope of the party's prior disclosure that are discovered by Customs as a result of an investigation and/or verification of the prior disclosure shall not be entitled to treatment under the prior disclosure provisions.

(i) *Knowledge of the commencement of a formal investigation*—(1) A disclosing party who claims lack of knowledge of the commencement of a formal investigation has the burden to prove that lack of knowledge. A person shall be presumed to have had knowledge of the commencement of a formal investigation of a violation if before the claimed prior disclosure of the violation a formal investigation has been commenced and:

(i) Customs, having reasonable cause to believe that there has been a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a, so informed the person of the type of or circumstances of the disclosed violation; or

(ii) A Customs Special Agent, having properly identified himself or herself and the nature of his or her inquiry, had, either orally or in writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation; or

(iii) A Customs Special Agent, having properly identified himself or herself and the nature of his or her inquiry, requested specific books and/or records of the person relating to the disclosed violation; or

(iv) Customs issues a prepenalty or penalty notice to the disclosing party pursuant to 19 U.S.C. 1592 or 19 U.S.C. 1593a relating to the type of or circumstances of the disclosed violation; or

(v) The merchandise that is the subject of the disclosure was seized; or

(vi) In the case of violations involving merchandise accompanying persons

entering the United States or commercial merchandise inspected in connection with entry, the person has received oral or written notification of Customs finding of a violation.

(2) The presumption of knowledge may be rebutted by evidence that, notwithstanding the foregoing notice, inquiry or request, the person did not have knowledge that an investigation had commenced with respect to the disclosed information.

[T.D. 98–49, 63 FR 29131, May 28, 1998; 63 FR 35798, July 1, 1998; T.D. 99–27, 64 FR 13676, Mar. 22, 1999; T.D. 99–64, 64 FR 43267, Aug. 10, 1999; T.D. 00–5, 65 FR 3809, Jan. 25, 2000; T.D. 00–57, 65 FR 53575, Sept. 5, 2000]

### § 162.75 Seizures limited under section 592, Tariff Act of 1930, as amended.

(a) *When authorized.* Merchandise may be seized for violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592) *only* if the port director has reasonable cause to believe that a person has violated the statute and that

(1) The person is insolvent,

(2) The person is beyond the jurisdiction of the United States,

(3) Seizure otherwise is essential to protect the revenue, or

(4) Seizure is essential to prevent the introduction of prohibited or restricted merchandise into the Customs territory of the United States.

(b) *No seizure if prior disclosure.* Under no circumstances shall merchandise be seized under the authority of 19 U.S.C. 1592 if there has been a prior disclosure of the violation. This paragraph does not limit seizures under the authority of any other applicable law or regulation.

(c) *Seizure notice.* If merchandise is seized, the Fines, Penalties, and Forfeitures Officer shall promptly issue a written notice of seizure to the person concerned and to any other person the facts of record indicate has an interest in the merchandise. The seizure notice shall contain the information required by § 162.31 and shall state why the seizure was necessary.

(d) *Release of seized merchandise*—(1) *To person from whom seized.* The Fines, Penalties, and Forfeitures Officer shall return seized mechandise to the person from whom seized upon the deposit of security, in a form acceptable to the Fines, Penalties, and Forfeitures Officer, equal to the maximum penalty which may be assessed, if the entry of the merchandise into the commerce of the United States is not prohibited or restricted.

(2) *To others.* The Fines, Penalties, and Forfeitures Officer may release seized merchandise to any other person upon the deposit of adequate security, in a form acceptable to the Fines, Penalties, and Forfeitures Officer, if the entry of the merchandise into the commerce of the United States is not prohibited or restricted, and if:

(i) The Fines, Penalties, and Forfeitures Officer is satisfied that the person has a substantial interest in the merchandise, and

(ii) The person submits either an agreement to hold the United States and its officers and employees harmless, or a release from the owner and/or the person from whom the merchandise was seized.

(3) *Forfeiture.* If neither a petition for relief is filed in accordance with part 171 of this chapter, nor compliance made with the decision within the time provided by law, the Fines, Penalties, and Forfeitures Officer immediately shall report the facts and refer the case to the Department of Justice for the institution of court proceedings.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 84–18, 49 FR 1679, Jan. 13, 1984; T.D. 85–90, 50 FR 21431, May 24, 1985; T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 88–43, 53 FR 28195, July 27, 1988; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

### § 162.76 Prepenalty notice for violations of sections 466 or 584(a)(1), Tariff Act of 1930, as amended.

(a) *When required.* If the Fines, Penalties, and Forfeitures Officer has reasonable cause to believe that a violation of section 466 or 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1466, 1584(a)(1)), has occurred and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intent to issue a penalty claim or a claim of forfeiture, as appropriate.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall:

(i) Describe the merchandise, if applicable,

(ii) Set forth the details of the error in the manifest, if applicable,

(iii) Specify all laws and regulations allegedly violated,

(iv) Describe all material facts and circumstances which establish the alleged violation, and

(v) State the estimated loss of duties, if any, and, taking into account all circumstances, the amount of the proposed penalty claim or claim of forfeiture, as appropriate.

(2) *Right to make presentation.* The prepenalty notice also shall inform the person of his right to make a written and an oral presentation within 30 days of the mailing of the notice (or such shorter period as may be prescribed under § 162.78) as to why a penalty claim or claim of forfeiture should not be issued or, if issued and it involves a monetary amount, why it should be in a lesser amount than proposed.

(c) *Exception.* No prepenalty notice shall be issued if the proposed penalty for an alleged violation of 19 U.S.C. 1584(a)(1) is $1,000 or less.

[T.D. 79–160, 44 FR 31958, June 4, 1979, as amended by T.D. 99–27, 64 FR 13676, Mar. 22, 1999; CBP Dec. 04–28, 69 FR 52600, Aug. 27, 2004]

### § 162.77 Prepenalty notice for violations of section 592, Tariff Act of 1930, as amended.

(a) *When required.* If the Fines, Penalties, and Forfeitures Officer has reasonable cause to believe that a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), has occurred, and determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to issue a claim for a monetary penalty. The prepenalty notice shall be issued whether or not a seizure has been made.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall:

(i) Describe the merchandise,

(ii) Set forth the details of the entry or introduction, the attempted entry or introduction, or the aiding or abetting of the entry, introduction, or attempt,

(iii) Specify all laws and regulatons allegedly violated,

(iv) Disclose all material facts which establish the alleged violation,

(v) State whether the alleged violation occured as the result of fraud, gross negligence, or negligence, and

(vi) State the estimated loss of duties, if any, and, taking into account all circumstances, the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make an oral and a written presentation within 30 days of the mailing of the notice (or such shorter period as may be prescribed under § 162.78) as to why a claim for a monetary penalty should not be issued or, if issued, why it should be in a lesser amount than proposed.

(c) *Exceptions.* A prepenalty notice shall not be issued if:

(1) The claim is for $1,000 or less, or

(2) The violation occurred with respect to a noncommercial importation.

[T.D. 79–160, 44 FR 31958, June 4, 1979, as amended by T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

### § 162.77a Prepenalty notice for violation of section 593A, Tariff Act of 1930, as amended.

(a) *When required.* If the appropriate Customs field officer has reasonable cause to believe that a violation of section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a) has occurred, and determines that further proceedings are warranted, the officer will issue to the person concerned a notice of intent to issue a claim for a monetary penalty.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice will:

(i) Identify the drawback claim;

(ii) Set forth the details relating to the seeking, inducing, or affecting, or the attempted seeking, inducing, or affecting, or the aiding or procuring of, the drawback claim;

(iii) Specify all laws and regulations allegedly violated;

(iv) Disclose all the material facts which establish the alleged violation;

(v) State whether the alleged violation occurred as a result of fraud or negligence; and

(vi) State the estimated actual or potential loss of revenue due to the drawback claim and, taking into account all circumstances, the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also will inform the person of his right to make an oral and a written presentation within 30 days of mailing of the notice (or such shorter period as may be prescribed under § 162.78) as to why a claim for a monetary penalty should not be issued or, if issued, why it should be in a lesser amount than proposed.

(c) *Exceptions.* A prepenalty notice will not be issued for a violation of 19 U.S.C. 1593a if the amount of the proposed monetary penalty is $1,000 or less.

(d) *Prior approval.* If an alleged violation of 19 U.S.C. 1593a occurred as a result of fraud, a prepenalty notice will not be issued without prior approval by Customs Headquarters.

[T.D. 00–5; 65 FR 3809, Jan. 25, 2000]

### § 162.78 Presentations responding to prepenalty notice.

(a) *Time within which to respond.* Unless a shorter period is specified in the prepenalty notice or an extension is given in accordance with paragraph (b) of this section, the named person shall have 30 days from the date of mailing of the prepenalty notice to make a written and an oral presentation. The Fines, Penalties, and Forfeitures Officer may specify a shorter reasonable period of time, but not less than 7 days, if less than 1 year remains before the statute of limitations may be asserted as a defense. If a period of fewer than 30 days is specified, the Fines, Penalties, and Forfeitures Officer, if possible, shall inform the named person of the prepenalty notice and its contents by telephone at or about the time of issuance.

(b) *Extensions.* If at least 1 year remains before the statute of limitations may be asserted as a defense, the Fines, Penalties, and Forfeitures Officer, upon written request, may extend the time for filing a written presentation, or making an oral presentation, or both, for any of the reasons given in part 171 of this chapter (except for the reason described in § 171.15(a)(4)), relating to extensions of time for filing petitions for relief. In addition, an extension may be granted if, upon the request of the alleged violator, the Commissioner of Customs determines that the case involves an issue which is a proper matter for submission to Customs Headquarters under the internal advice procedures of § 177.11(b)(2) of this chapter. Other extensions may be authorized only by Headquarters.

(c) *Form and contents of written presentation.* The written presentation need not be in any particular form, but shall contain information sufficient to indicate that it is the written presentation in response to the prepenalty notice. It should contain answers to the allegations in the prepenalty notice and set forth the reasons why the person believes the claim should not be issued or, if issued, why it should be in a lesser amount than proposed.

(d) *Additional presentations.* In addition to one written and one oral presentation, the Fines, Penalties, and Forfeitures Officer, in his discretion, may allow further presentations.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 85–195, 50 FR 50290, Dec. 10, 1985; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

### § 162.79 Determination as to violation.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice, the Fines, Penalties, and Forfeitures Officer determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no claim for a monetary penalty will be issued.

(b) *Violation*—(1) *Written notice of claim.* If, after considering any presentations made in response to the prepenalty notice, the Fines, Penalties, and Forfeitures Officer determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of a claim for a monetary penalty to that person.

(2) *Contents.* The notice of a claim for a monetary penalty shall contain any changes in the information provided in the prepenalty notice, and shall inform the person of his right to apply for relief under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), in accordance with part 171 of this chapter. If the person to whom the notice is issued is liable for any actual loss of duties recoverable under section 592(d),

Tariff Act of 1930, as amended (19 U.S.C. 1592(d)), the notice shall identify the entries involved, state the amount of duties payable and how it was calculated, and require the person to deposit or arrange for payment of the duties within 30 days of the date of the notice.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 84–18, 49 FR 1680, Jan. 13, 1984; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

### § 162.79a Other notice.

If no prepenalty notice is issued, a written notice of any monetary penalty incurred shall contain the information required under § 162.76(b)(1), § 162.77(b)(1) or § 162.77a(b)(1) and (b)(2), except that the notice shall state the amount of the claim for a monetary penalty. The notice also shall inform the person of his right to apply for relief under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), in accordance with part 171 of this chapter.

[T.D. 79–160, 44 FR 31958, June 4, 1979, as amended by T.D. 00–5, 65 FR 3809, Jan. 25, 2000]

### § 162.79b Recovery of actual loss of duties, taxes and fees or actual loss of revenue.

Whether or not a monetary penalty is assessed under this subpart, the appropriate Customs field officer will require the deposit of any actual loss of duties, taxes and fees resulting from a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592) or any actual loss of revenue resulting from a violation of section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), notwithstanding that the liquidation of the entry to which the loss is attributable has become final. If a person is liable for the payment of actual loss of duties, taxes and fees or actual loss of revenue in any case in which a monetary penalty is not assessed or a written notification of claim of monetary penalty is not issued, the port director will issue a written notice to the person of the liability for the actual loss of duties, taxes and fees or actual loss of revenue. The notice will identify the merchandise and entries involved, state the loss of duties, taxes and fees or loss of revenue and how it was calculated, and require the person to deposit or arrange for payment of the duties, taxes and fees or revenue within 30 days from the date of the notice. Any determination of actual loss of duties, taxes and fees or actual loss of revenue under this section is subject to review upon written application to the Commissioner of Customs.

[T.D. 00–5, 65 FR 3809, Jan. 25, 2000]

### § 162.80 Liability for duties; liquidation of entries.

(a)(1) When an entry is the subject of an investigation for possible violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), or of a penalty action established under that section, the port director, subject to the provisions of paragraph (a)(2) of this section, may liquidate the entry and collect duties before the conclusion of the investigation or final disposition of the penalty action if he determines that liquidation would be in the interest of the Government.

(2)(i) An entry not liquidated within 1 year from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent unless the time for liquidation is extended by the port director because—

(A) Information needed by Customs for the proper appraisement or classification of the merchandise is not available.

(B) The importer, his consignee, or agent requests an extension and demonstrates good cause why the extention should be granted, or

(C) The 1-year liquidation period is suspended as required by statute or court order.

(ii) An entry not liquidated within 4 years from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent unless liquidation continues to be suspended by statute or court order. In that event, the entry shall be liquidated within 90 days after removal of the suspension.

(iii) The port director promptly shall notify the importer or consignee concerned and any authorized agent and surety of the importer or consignee in writing of any extension or suspension of the liquidation period.

(b) When merchandise not covered by an entry is subject to section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), a demand shall be made on the importer for payment of the duty estimated to be due on such merchandise.

(c) Any applicable internal revenue tax shall also be demanded unless the merchandise is to be, or has been, forfeited.

[T.D. 84–18, 49 FR 1680, Jan. 13, 1984]

## Subpart H—Civil Asset Forfeiture Reform Act

SOURCE: T.D. 00–88, 65 FR 78091, Dec. 14, 2000, unless otherwise noted.

### § 162.91 Exemptions.

The provisions of this subpart will apply to all seizures of property for civil forfeiture made by Customs officers except for those seizures of property to be forfeited under the following statutes: The Tariff Act of 1930 or any other provision of law codified in title19, United States Code; the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*); the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*); the Trading with the Enemy Act (50 U.S.C. App. 1 *et seq.*); the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 *et seq.*); and section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. 401).

[T.D. 02–08, 67 FR 9191, Feb. 28, 2002]

### § 162.92 Notice of seizure.

(a) *Generally*. Customs will send written notice of seizure as provided in this section to all known interested parties as soon as practicable. Except as provided in paragraphs (b), (c) and (d) of this section, in no case may notice be sent more than 60 calendar days after the date of seizure. Any notice issued under this section will include all information that is required by § 162.31(a) and (b) of this part.

(b) *Seizure by state or local authorities*. In a case in which property is seized by a state or local law enforcement agency and turned over to Customs for the purpose of forfeiture under Federal law, notice will be sent not more than 90 calendar days after the date of seizure by the State or local law enforcement agency.

(c) *Identity or interest of party not determined*. If the identity or interest of a party is not determined until after the seizure or turnover, but it is determined before a declaration of forfeiture, notice will be sent to such interested party not later than 60 calendar days after the determination by Customs of the identity of the party or the party's interest.

(d) *Extensions by Customs*. (1) The Assistant Commissioner, Investigations, or his designee, may extend the period for sending notice under this section for a period not to exceed 30 calendar days, if it is determined that issuance of the notice within 60 calendar days of seizure may have an adverse result, including:

(i) Endangering the life or physical safety of an individual;

(ii) Flight from prosecution;

(iii) Destruction of or tampering with evidence;

(iv) Intimidation of potential witnesses; or

(v) Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(2) The period for sending notice of seizure as provided in paragraph (d)(1) of this section may not be further extended except by order of a court of competent jurisdiction as prescribed in paragraph (e) of this section.

(e) *Extensions by a court*. Upon motion by the Government, a court of competent jurisdiction may extend the period for sending notice for a period not to exceed 60 calendar days. This period may be further extended by the court for additional 60 calendar-day periods, as necessary, if the court determines, based on a written certification of the Assistant Commissioner, Investigations, or designee, that the conditions set forth in paragraph (d) of this section are present.

### § 162.93 Failure to issue notice of seizure.

If Customs does not send notice of a seizure of property in accordance with § 162.92 to the person from whom the property was seized, and no extension of time is granted, Customs will return the property to that person without prejudice to the right of the Government to commence a forfeiture proceeding at a later time. Customs is not, however, required to return contraband or other property that the person may not legally possess.

### § 162.94 Filing of a claim for seized property.

(a) *Generally*. In lieu of filing a petition for relief in accordance with part 171 of this chapter, any person claiming property seized by Customs in a non-judicial civil forfeiture proceeding may file a claim with the appropriate Fines, Penalties, and Forfeitures Officer.

(b) *When filed*. Unless the Fines, Penalties, and Forfeitures Officer provides additional time to the person filing a claim for seized property pursuant to paragraph (a) of this section, the claim must be filed within 35 calendar days after the date the notice of seizure is mailed. If the notice of seizure is not received, a claim may be filed not later than 30 calendar days after the date of final publication of notice of seizure and intent to forfeit the property.

(c) *Form of claim*. The claim must be in writing but need not be made in any particular form. Claim forms will be made generally available upon request.

(d) *Content of claim*. The claim must:

(1) Identify the specific property being claimed;

(2) State the claimant's interest in the property; and

(3) Be made under oath, subject to penalty of perjury.

(e) *No bond required*. Any person may make a claim under this section without posting a bond.

(f) *Effect of claim*. Not later than 90 calendar days after a claim has been filed, the Government will file an appropriate complaint for forfeiture, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

[T.D. 00–88, 65 FR 78091, Dec. 14, 2000, as amended by T.D. 02–08, 67 FR 9191, Feb. 28, 2002]

### § 162.95 Release of seized property.

(a) *Generally*. Except as provided in paragraph (b) of this section, a claimant to seized property under 18 U.S.C. 983(a) is entitled to immediate release of the property if:

(1) The claimant has a possessory interest in the property;

(2) The claimant has sufficient ties to the community to provide assurance that the property will be available at the time of trial;

(3) The continued possession of the property by Customs pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing an individual from working, or leaving an individual homeless; and

(4) The claimant's likely hardship from the continued possession by Customs of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceedings.

(b) *Exceptions*. Immediate release of seized property under paragraph (a) of this section will not apply if the seized property:

(1) Is contraband, currency or other monetary instrument, or electronic funds, unless, in the case of currency, other monetary instrument or electronic funds, such property comprises the assets of a legitimate business which has been seized;

(2) Is to be used as evidence of a violation of the law;

(3) By reason of design or other characteristic, is particularly suited for use in illegal activities; or

(4) Is likely to be used to commit additional criminal acts if returned to the claimant.

(c) *Request for release*. A claimant seeking release of property under this section must request possession of the property from the Fines, Penalties, and Forfeitures Officer who issued the notice of seizure. The request need not be made in any particular form, but must

be in writing and set forth the basis on which the requirements of paragraph (a) of this section have been met. The request may be filed at any time during which the property remains under seizure.

(d) *Granting request for release.* The Fines, Penalties, and Forfeitures Officer may release the property if it is determined to be appropriate under paragraphs (a) through (c) of this section.

(e) *Denial of or failure to act on request for release.* If the Fines, Penalties, and Forfeitures Officer denies the request for release or fails to make a decision on the request by the 15th calendar day after the date the request is received by Customs, the claimant may file a petition in the district court in which the complaint has been filed, or, if no complaint has been filed, in the U.S. district court in which the seizure warrant was issued or in the U.S. district court for the district in which the property was seized.

[T.D. 00–88, 65 FR 78091, Dec. 14, 2000, as amended by T.D. 02–08, 67 FR 9191, Feb. 28, 2002]

### § 162.96 Remission of forfeitures and payment of fees, costs or interest.

When a person elects to petition for relief before, or in lieu of, filing a claim under § 162.94, any seizure subject to forfeiture under this subpart may be remitted or mitigated pursuant to the provisions of 19 U.S.C. 1618 or 31 U.S.C. 5321(c), as applicable. Any person who accepts a remission or mitigation decision will not be considered to have substantially prevailed in a civil forfeiture proceeding for purposes of collection of any fees, costs or interest from the Government.

## PART 163—RECORDKEEPING

Sec.

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APPENDIX TO PART 163—INTERIM (a)(1)(A) LIST

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

SOURCE: T.D. 98–56, 63 FR 32946, June 16, 1998, unless otherwise noted.

### § 163.0 Scope.

This part sets forth the recordkeeping requirements and procedures governing the maintenance, production, inspection, and examination of records. It also sets forth the procedures governing the examination of persons in connection with any investigation or compliance assessment, audit or other inquiry conducted for the purposes of ascertaining the correctness of any entry, for determining the liability of any person for duties, fees and taxes due or that may be due, for determining liability for fines, penalties and forfeitures, or for ensuring compliance with the laws and regulations administered or enforced by Customs. Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters, and producers under the United States-Canada Free Trade Agreement and the North American Free Trade Agreement are contained in parts 10 and 181 of this chapter, respectively.

### § 163.1 Definitions.

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

(a) *Records*—(1) *In general.* The term ''records'' means any information made or normally kept in the ordinary course of business that pertains to any activity listed in paragraph (a)(2) of this section. The term includes any information required for the entry of merchandise (the (a)(1)(A) list) and other information pertaining to, or from which is derived, any information element set forth in a collection of information required by the Tariff Act of 1930, as amended, in connection with any activity listed in paragraph (a)(2)

of this section. The term includes, but is not limited to, the following: Statements; declarations; documents; electronically generated or machine readable data; electronically stored or transmitted information or data; books; papers; correspondence; accounts; financial accounting data; technical data; computer programs necessary to retrieve information in a usable form; and entry records (contained in the (a)(1)(A) list).

(2) *Activities*. The following are activities for purposes of paragraph (a)(1) of this section:

(i) Any importation, declaration or entry;

(ii) The transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;

(iii) The filing of a drawback claim;

(iv) The completion and signature of a NAFTA Certificate of Origin pursuant to §181.11(b) of this chapter;

(v) The collection, or payment to Customs, of duties, fees and taxes; or

(vi) The completion and signature of a Chile FTA certification of origin and any other supporting documentation pursuant to the United States-Chile Free Trade Agreement.

(vii) Any other activity required to be undertaken pursuant to the laws or regulations administered by Customs.

(b) *(a)(1)(A) list*. See the definition of ''entry records''.

(c) *Audit*. ''Audit'' means a Customs regulatory audit verification of information contained in records required to be maintained and produced by persons listed in §163.2 or pursuant to other applicable laws and regulations administered by Customs but does not include a quantity verification for a customs bonded warehouse or general purpose foreign trade zone. The purpose of an audit is to determine that information submitted or required is accurate, complete and in accordance with laws and regulations administered by Customs.

(d) *Certified recordkeeper*. A ''certified recordkeeper'' is a person who is required to keep records under this chapter and who is a participant in the Recordkeeping Compliance Program provided for in §163.12.

(e) *Compliance assessment*. A ''compliance assessment'' is a type of importer audit performed by a Customs Compliance Assessment Team which uses various audit techniques, including statistical testing of import and financial transactions, to assess the importer's compliance level in trade areas, to determine the adequacy of the importer's internal controls over its customs operations, and to determine the importer's rates of compliance.

(f) *Entry records/(a)(1)(A) list*. The terms ''entry records'' and ''(a)(1)(A) list'' refer to records required by law or regulation for the entry of merchandise (whether or not Customs required their presentation at the time of entry). The (a)(1)(A) list is contained in the Appendix to this part.

(g) *Inquiry*. An ''inquiry'' is any formal or informal procedure, other than an investigation, through which a request for information is made by a Customs officer.

(h) *Original*. The term ''original'', when used in the context of maintenance of records, has reference to records that are in the condition in which they were made or received by the person responsible for maintaining the records pursuant to 19 U.S.C. 1508 and the provisions of this chapter, including records consisting of the following:

(1) Electronic information which was used to develop other electronic records or paper documents;

(2) Electronic information which is in a readable format such as a facsimile paper format or an electronic or hardcopy spreadsheet;

(3) In the case of a paper record that is part of a multi-part form where all parts of the form are made by the same impression, one of the carbon-copy parts or a facsimile copy or photocopy of one of the parts; and

(4) A copy of a record that was provided to another government agency which retained it, provided that, if required by Customs, a signed statement accompanies the copy certifying it to be a true copy of the record provided to the other government agency.

(i) *Party/person*. The terms ''party'' and ''person'' refer to a natural person, corporation, partnership, association, or other entity or group.

(j) *Summons.* ''Summons'' means any summons issued under this part that requires the production of records or the giving of testimony, or both.

(k) *Technical data.* ''Technical data'' are records which include diagrams and other data with regard to a business or an engineering or exploration operation, whether conducted inside or outside the United States, and whether on paper, cards, photographs, blueprints, tapes, microfiche, film, or other media or in electronic or magnetic storage.

(l) *Third-party recordkeeper.* ''Third-party recordkeeper'' means any attorney, any accountant or any customs broker other than a customs broker who is the importer of record on an entry.

[T.D. 98–56, 63 FR 32946, June 16, 1998, as amended by CBP Dec. 05–07, 70 FR 10884, Mar. 7, 2005]

### § 163.2 Persons required to maintain records.

(a) *General.* Except as otherwise provided in paragraph (b) or (e) of this section, the following persons shall maintain records and shall render such records for examination and inspection by Customs:

(1) An owner, importer, consignee, importer of record, entry filer, or other person who:

(i) Imports merchandise into the customs territory of the United States, files a drawback claim, or transports or stores merchandise carried or held under bond, or

(ii) Knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;

(2) An agent of any person described in paragraph (a)(1) of this section; or

(3) A person whose activities require the filing of a declaration or entry, or both.

(b) *Domestic transactions.* For purposes of paragraph (a)(1)(ii) of this section, a person who orders merchandise from an importer in a domestic transaction knowingly causes merchandise to be imported only if:

(1) The terms and conditions of the importation are controlled by the person placing the order with the importer (for example, the importer is not an independent contractor but rather is the agent of the person placing the order: Whereas a consumer who purchases an imported automobile from a domestic dealer would not be required to maintain records, a transit authority that prepared detailed specifications from which imported subway cars or busses were manufactured would be required to maintain records); or

(2) Technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with the importer with knowledge that they will be used in the manufacture or production of the imported merchandise.

(c) *Recordkeeping required for certain exporters.* Any person who exports goods to Canada or Mexico for which a Certificate of Origin was completed and signed pursuant to the North American Free Trade Agreement must also maintain records in accordance with part 181 of this chapter.

(d) *Recordkeeping required for customs brokers.* Each customs broker must also make and maintain records and make such records available in accordance with part 111 of this chapter.

(e) *Recordkeeping not required for certain travelers.* After having physically cleared the Customs facility, a traveler who made a baggage or oral declaration upon arrival in the United States will not be required to maintain supporting records regarding non-commercial merchandise acquired abroad which falls within the traveler's personal exemptions or which is covered by a flat rate of duty.

### § 163.3 Entry records.

Any person described in § 163.2(a) with reference to an import transaction shall be prepared to produce or transmit to Customs, in accordance with § 163.6(a), any entry records which may be demanded by Customs. If entry records submitted to Customs not pursuant to a demand are returned by Customs, or if production of entry records at the time of entry is waived by Customs, such person shall continue to maintain those entry records in accordance with this part. Entry records which are normally kept in the ordinary course of business must be maintained by such person in accordance

with this part whether or not copies thereof are retained by Customs.

### § 163.4 Record retention period.

(a) *General*. Except as otherwise provided in paragraph (b) of this section, any record required to be made, kept, and rendered for examination and inspection by Customs under § 163.2 or any other provision of this chapter shall be kept for 5 years from the date of entry, if the record relates to an entry, or 5 years from the date of the activity which required creation of the record.

(b) *Exceptions*. (1) Any record relating to a drawback claim shall be kept until the third anniversary of the date of payment of the claim.

(2) Packing lists shall be retained for a period of 60 calendar days from the end of the release or conditional release period, whichever is later, or, if a demand for return to Customs custody has been issued, for a period of 60 calendar days either from the date the goods are redelivered or from the date specified in the demand as the latest redelivery date if redelivery has not taken place.

(3) A consignee who is not the owner or purchaser and who appoints a customs broker shall keep a record pertaining to merchandise covered by an informal entry for 2 years from the date of the informal entry.

(4) Records pertaining to articles that are admitted free of duty and tax pursuant to 19 U.S.C. 1321(a)(2) and §§ 10.151 through 10.153 of this chapter, and carriers' records pertaining to manifested cargo that is exempt from entry under the provisions of this chapter, shall be kept for 2 years from the date of the entry or other activity which required creation of the record.

(5) If another provision of this chapter sets forth a retention period for a specific type of record that differs from the period that would apply under this section, that other provision controls.

### § 163.5 Methods for storage of records.

(a) *Original records*. All persons listed in § 163.2 shall maintain all records required by law and regulation for the required retention periods and as original records, whether paper or electronic, unless alternative storage methods have been adopted in accordance with paragraph (b) of this section. The records, whether in their original format or under an alternative storage method, must be capable of being retrieved upon lawful request or demand by Customs.

(b) *Alternative method of storage*—(1) *General*. Any of the persons listed in § 163.2 may maintain any records, other than records required to be maintained as original records under laws and regulations administered by other Federal government agencies, in an alternative format, provided that the person gives advance written notification of such alternative storage method to the Director, Regulatory Audit Division, U.S. Customs Service, 909 S.E. First Avenue, Miami, Florida 33131, and provided further that the Director of the Miami regulatory audit field office does not instruct the person in writing as provided herein that certain described records may not be maintained in an alternative format. The written notice to the Director of the Miami regulatory audit field office must be provided at least 30 calendar days before implementation of the alternative storage method, must identify the type of alternative storage method to be used, and must state that the alternative storage method complies with the standards set forth in paragraph (b)(2) of this section. If an alternative storage method covers records that pertain to goods under Customs seizure or detention or that relate to a matter that is currently the subject of an inquiry or investigation or administrative or court proceeding, the appropriate Customs office may instruct the person in writing that those records must be maintained as original records and therefore may not be converted to an alternative format until specific written authorization is received from that Customs office. A written instruction to a person under this paragraph may be issued during the 30-day advance notice period prescribed in this section or at any time thereafter, must describe the records in question with reasonable specificity but need not

identify the underlying basis for the instruction, and shall not preclude application of the planned alternative storage method to other records not described therein.

(2) *Standards for alternative storage methods.* Methods commonly used in standard business practice for storage of records include, but are not limited to, machine readable data, CD ROM, and microfiche. Methods that are in compliance with generally accepted business standards will generally satisfy Customs requirements, provided that the method used allows for retrieval of records requested within a reasonable time after the request and provided that adequate provisions exist to prevent alteration, destruction, or deterioration of the records. The following standards must be applied by recordkeepers when using alternative storage methods:

(i) Operational and written procedures are in place to ensure that the imaging and/or other media storage process preserves the integrity, readability, and security of the information contained in the original records. The procedures must include a standardized retrieval process for such records. Vendor specifications/documentation and benchmark data must be available for Customs review;

(ii) There is an effective labeling, naming, filing, and indexing system;

(iii) Except in the case of packing lists (see §163.4(b)(2)), entry records must be maintained in their original formats for a period of 120 calendar days from the end of the release or conditional release period, whichever is later, or, if a demand for return to Customs custody has been issued, for a period of 120 calendar days either from the date the goods are redelivered or from the date specified in the demand as the latest redelivery date if redelivery has not taken place;

(iv) An internal testing of the system must be performed on a yearly basis;

(v) The recordkeeper must have the capability to make, and must bear the cost of, hard-copy reproductions of alternatively stored records that are required by Customs for audit, inquiry, investigation, or inspection of such records; and

(vi) The recordkeeper shall retain and keep available one working copy and one back-up copy of the records stored in a secure location for the required periods as provided in §163.4.

(3) *Changes to alternative storage procedures.* No changes to alternative recordkeeping procedures may be made without first notifying the Director of the Miami regulatory audit field office. The notification must be in writing and must be provided to the director at least 30 calendar days before implementation of the change.

(4) *Penalties.* All persons listed in §163.2 who use alternative storage methods for records and who fail to maintain or produce the records in accordance with this part shall be subject to penalties pursuant to §163.6 for entry records or sanctions pursuant to §§163.9 and 163.10 for other records.

(5) *Failure to comply with alternative storage requirements.* If a person listed in §163.2 uses an alternative storage method for records that is not in compliance with the conditions and requirements of this section, the appropriate Customs office may instruct the person in writing to discontinue use of the alternative storage method. The instruction shall take effect upon receipt thereof and shall remain in effect until the noncompliance has been rectified and alternative storage has recommenced in accordance with the procedures set forth in paragraph (b)(1) of this section.

### §163.6 Production and examination of entry and other records and witnesses; penalties.

(a) *Production of entry records.* Pursuant to written, oral, or electronic notice, any Customs officer may require the production of entry records by any person listed in §163.2(a) who is required under this part to maintain such records, even if the entry records were required at the time of entry. Any oral demand for entry records shall be followed by a written or electronic demand. The entry records shall be produced within 30 calendar days of receipt of the demand or within any

shorter period as Customs may prescribe when the entry records are required in connection with a determination regarding the admissibility or release of merchandise. Should any person from whom Customs has demanded entry records encounter a problem in timely complying with the demand, such person may submit a written or electronic request to Customs for approval of a specific additional period of time in which to produce the records; the request must be received by Customs before the applicable due date for production of the records and must include an explanation of the circumstances giving rise to the request. Customs will promptly advise the requesting person electronically or in writing either that the request is denied or that the requested additional time period, or such shorter period as Customs may deem appropriate, is approved. The mere fact that a request for additional time to produce demanded entry records was submitted under this section shall not by itself preclude the imposition of a monetary penalty or other sanction under this part for failure to timely produce the records, but no such penalty or other sanction will be imposed if the request is approved and the records are produced before expiration of that additional period of time.

(b) *Failure to produce entry records*—(1) *Monetary penalties applicable.* The following penalties may be imposed if a person fails to comply with a lawful demand for the production of an entry record and is not excused from a penalty pursuant to paragraph (b)(3) of this section:

(i) If the failure to comply is a result of the willful failure of the person to maintain, store, or retrieve the demanded record, such person shall be subject to a penalty, for each release of merchandise, not to exceed $100,000, or an amount equal to 75 percent of the appraised value of the merchandise, whichever amount is less; or

(ii) If the failure to comply is a result of negligence of the person in maintaining, storing, or retrieving the demanded record, such person shall be subject to a penalty, for each release of merchandise, not to exceed $10,000, or an amount equal to 40 percent of the appraised value of the merchandise, whichever amount is less.

(2) *Additional actions*—(i) *General.* In addition to any penalty imposed under paragraph (b)(1) of this section, and except as otherwise provided in paragraph (b)(2)(ii) of this section, if the demanded entry record relates to the eligibility of merchandise for a column 1 special rate of duty in the Harmonized Tariff Schedule of the United States (HTSUS), the entry of such merchandise:

(A) If unliquidated, shall be liquidated at the applicable HTSUS column 1 general rate of duty; or

(B) If liquidated within the 2-year period preceding the date of the demand, shall be reliquidated, notwithstanding the time limitation in 19 U.S.C. 1514 or 1520, at the applicable HTSUS column 1 general rate of duty.

(ii) *Exception.* Any liquidation or reliquidation under paragraph (b)(2)(i)(A) or (b)(2)(i)(B) of this section shall be at the applicable HTSUS column 2 rate of duty if Customs demonstrates that the merchandise should be dutiable at such rate.

(3) *Avoidance of penalties.* No penalty may be assessed under paragraph (b)(1) of this section if the person who fails to comply with a lawful demand for entry records can show:

(i) That the loss of the demanded record was the result of an act of God or other natural casualty or disaster beyond the fault of such person or an agent of the person;

(ii) On the basis of other evidence satisfactory to Customs, that the demand was substantially complied with;

(iii) That the record demanded was presented to and retained by Customs at the time of entry or submitted in response to an earlier demand; or

(iv) That he has been certified as a participant in the Recordkeeping Compliance Program (see § 163.12), that he is generally in compliance with the appropriate procedures and requirements of that program, and that the violation in question is his first violation and was a non-willful violation.

(4) *Penalties not exclusive.* Any penalty imposed under paragraph (b)(1) of this section shall be in addition to any other penalty provided by law except for:

(i) A penalty imposed under 19 U.S.C. 1592 for a material omission of any information contained in the demanded record; or

(ii) Disciplinary action taken under 19 U.S.C. 1641.

(5) *Remission or mitigation of penalties.* A penalty imposed under this section may be remitted or mitigated under 19 U.S.C. 1618.

(6) *Customs summons.* The assessment of a penalty under this section shall not limit or preclude the issuance or enforcement of a summons under this part.

(c) *Examination of entry and other records*—(1) *Reasons for examination.* Customs may initiate an investigation or compliance assessment, audit or other inquiry for the purpose of:

(i) Ascertaining the correctness of any entry, determining the liability of any person for duties, taxes and fees due or duties, taxes and fees which may be due, or determining the liability of any person for fines, penalties and forfeitures; or

(ii) Ensuring compliance with the laws and regulations administered or enforced by Customs.

(2) *Availability of records.* During the course of any investigation or compliance assessment, audit or other inquiry, any Customs officer, during normal business hours, and to the extent possible at a time mutually convenient to the parties, may examine, or cause to be examined, any relevant entry or other records by providing the person responsible for such records with reasonable written, oral or electronic notice that describes the records with reasonable specificity. The examination of entry records shall be subject to the notice and production procedures set forth in paragraph (a) of this section, and a failure to produce entry records may result in the imposition of penalties or the taking of other action as provided in paragraph (b) of this section.

(3) *Examination notice not exclusive.* In addition to, or in lieu of, issuance of an examination notice under paragraph (c)(2) of this section, Customs may issue a summons pursuant to § 163.7, and seek its enforcement pursuant to §§ 163.9 and 163.10, to compel the production of any records required to be maintained and produced under this chapter.

[T.D. 98–56, 63 FR 32946, June 16, 1998; 63 FR 34808, June 26, 1998]

### § 163.7 Summons.

(a) *Who may be served.* During the course of any investigation or compliance assessment, audit or other inquiry initiated for the reasons set forth in § 163.6(c), the Commissioner of Customs or his designee, but no designee of the Commissioner below the rank of port director, field director of regulatory audit or special agent in charge, may issue a summons requiring a person within a reasonable period of time to appear before the appropriate Customs officer and to produce records or give relevant testimony under oath or both. Such a summons may be issued to any person who:

(1) Imported, or knowingly caused to be imported, merchandise into the customs territory of the United States;

(2) Exported merchandise, or knowingly caused merchandise to be exported, to a NAFTA country as defined in 19 U.S.C. 3301(4) (see also part 181 of this chapter) or to Canada during such time as the United States-Canada Free Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada;

(3) Transported or stored merchandise that was or is carried or held under customs bond, or knowingly caused such transportation or storage;

(4) Filed a declaration, entry, or drawback claim with Customs;

(5) Is an officer, employee, or agent of any person described in paragraph (a)(1) through (a)(4) of this section;

(6) Has possession, custody or care of records relating to an importation or other activity described in paragraph (a)(1) through (a)(4) of this section; or

(7) Customs may deem proper.

(b) *Contents of summons*—(1) *Appearance of person.* Any summons issued under this section to compel the appearance of a person shall state:

(i) The name, title, and telephone number of the Customs officer before whom the appearance shall take place;

(ii) The address within the customs territory of the United States where the person shall appear, not to exceed

100 miles from the place where the summons was served;

(iii) The time of appearance; and

(iv) The name, address, and telephone number of the Customs officer issuing the summons.

(2) *Production of records.* If a summons issued under this section requires the production of records, the summons shall set forth the information specified in paragraph (b)(1) of this section and shall also describe the records in question with reasonable specificity.

(c) *Service of summons*—(1) *Who may serve.* Any Customs officer is authorized to serve a summons issued under this section if designated in the summons to serve it.

(2) *Method of service*—(i) *Natural person.* Service upon a natural person shall be made by personal delivery.

(ii) *Corporation, partnership, association.* Service shall be made upon a domestic or foreign corporation, or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivery to an officer, managing or general agent, or any other agent authorized by appointment or law to receive service of process.

(3) *Certificate of service.* On the hearing of an application for the enforcement of a summons, the certificate of service signed by the person serving the summons is prima facie evidence of the facts it states.

(d) *Transcript of testimony under oath.* Testimony of any person taken pursuant to a summons may be taken under oath and when so taken shall be transcribed or otherwise recorded. When testimony is transcribed or otherwise recorded, a copy shall be made available on request to the witness unless for good cause shown the issuing officer determines under 5 U.S.C. 555 that a copy should not be provided. In that event, the witness shall be limited to inspection of the official transcript of the testimony. The testimony or transcript may be in the form of a written statement under oath provided by the person examined at the request of the Customs officer.

## § 163.8 Third-party recordkeeper summons.

(a) *Notice required.* Except as otherwise provided in paragraph (f) of this section, if a summons issued under § 163.7 to a third-party recordkeeper requires the production of, or the giving of testimony relating to, records pertaining to transactions of any person, other than the person summoned, who is identified in the description of the records contained in the summons, then notice of the summons shall be provided to the person so identified in the summons.

(b) *Time of notice.* The notice of service of summons required by paragraph (a) of this section should be provided by the issuing officer immediately after service of summons is obtained under § 163.7(c), but in no event shall notice be given less than 10 business days before the date set in the summons for the production of records or the giving of testimony.

(c) *Contents of notice.* The issuing officer shall ensure that any notice issued under this section includes a copy of the summons and provides the following information:

(1) That compliance with the summons may be stayed if written direction not to comply with the summons is given by the person receiving notice to the person summoned;

(2) That a copy of any such direction to not comply and a copy of the summons shall be sent by registered or certified mail to the person summoned and to the Customs officer who issued the summons; and

(3) That the actions under paragraphs (c)(1) and (c)(2) of this section shall be accomplished not later than the day before the day fixed in the summons as the day upon which the records are to be examined or the testimony is to be given.

(d) *Service of notice.* The Customs officer who issues the summons shall serve the notice required by paragraph (a) of this section in the same manner as is prescribed in § 163.7(c)(2) for the service of a summons, or by certified or registered mail to the last known address of the person entitled to notice.

(e) *Examination of records precluded.* If notice is required by this section, no record may be examined before the

date fixed in the summons as the date to produce the records. If the person entitled to notice under paragraph (a) of this section issues a stay of compliance with the summons in accordance with paragraph (c) of this section, no examination of records shall take place except with the consent of the person staying compliance or pursuant to an order issued by a U.S. district court.

(f) *Exceptions to notice and stay of summons provisions*—(1) *Personal liability for duties, fees, or taxes.* The notice provisions of paragraph (a) of this section shall not apply to any summons served on the person, or on any officer or employee of the person, with respect to whose liability for duties, fees, or taxes the summons is issued.

(2) *Verification of existence of records.* The notice provisions of paragraph (a) of this section shall not apply to any summons issued to determine whether or not records of transactions of an identified person have been made or kept.

(3) *Judicial determination.* The notice provisions of paragraph (a) of this section and the stay of compliance provisions of paragraph (c) of this section shall not apply with respect to a summons described in paragraph (a) of this section if a U.S. district court determines, upon petition by the issuing Customs officer, that reasonable cause exists to believe that the giving of notice may lead to an attempt:

(i) To conceal, destroy, or alter relevant records;

(ii) To prevent the communication of information from other persons through intimidation, bribery, or collusion; or

(iii) To flee to avoid prosecution, testifying, or production of records.

### § 163.9 Enforcement of summons.

Whenever a person does not comply with a Customs summons, the issuing officer may request the appropriate U.S. attorney to seek an order requiring compliance from the U.S. district court for the district in which the person is found or resides or is doing business. A person who is entitled to notice under § 163.8(a) shall have a right to intervene in any such enforcement proceeding.

### § 163.10 Failure to comply with court order; penalties.

(a) *Monetary penalties.* The U.S. district court for any judicial district in which a person served with a Customs summons is found or resides or is doing business may order such person to comply with the summons. Upon the failure of a person to obey a court order to comply with a Customs summons, the court may find such person in contempt and may assess a monetary penalty.

(b) *Importations prohibited.* If a person fails to comply with a court order to comply with a Customs summons and is adjudged guilty of contempt, the Commissioner of Customs, with the approval of the Secretary of the Treasury, for so long as that person remains in contempt:

(1) May prohibit importation of merchandise by that person, directly or indirectly, or for that person's account; and

(2) May withhold delivery of merchandise imported by that person, directly or indirectly, or for that person's account.

(c) *Sale of merchandise.* If any person remains in contempt for more than 1 year after the Commissioner issues instructions to withhold delivery under paragraph (b)(2) of this section, the merchandise shall be considered abandoned and shall be sold at public auction or otherwise disposed of in accordance with subpart E of part 162 of this chapter.

### § 163.11 Compliance assessment and other audit procedures.

(a) *Conduct of a Customs compliance assessment or other audit.* In conducting a compliance assessment or other audit, the Customs auditors, except as otherwise provided in paragraph (c) of this section, shall:

(1) Provide notice, telephonically and in writing, to the person who is to be the subject of the compliance assessment or other audit, in advance of the compliance assessment or other audit and with a reasonable estimate of the time to be required for the compliance assessment or other audit;

(2) Inform the person who is to be the subject of the compliance assessment or other audit, in writing and before

commencing the compliance assessment or other audit, of his right to an entry conference at which time the objectives and records requirements of the compliance assessment or other audit will be explained and the estimated termination date will be set;

(3) Provide a further estimate of any additional time for the compliance assessment or other audit if, in the course of the compliance assessment or other audit, it becomes apparent that additional time will be required;

(4) Schedule a closing conference upon completion of the compliance assessment or other audit on-site work to explain the preliminary results of the compliance assessment or other audit;

(5) Complete a formal written compliance assessment or other audit report within 90 calendar days following the closing conference referred to in paragraph (a)(4) of this section, unless the Director, Regulatory Audit Division, at Customs Headquarters provides written notice to the person who was the subject of the compliance assessment or other audit of the reason for any delay and the anticipated completion date; and

(6) After application of any exemption contained in 5 U.S.C. 552, send a copy of the formal written compliance assessment or other audit report to the person who was the subject of the compliance assessment or other audit within 30 calendar days following completion of the report.

(b) *Petition procedures for failure to conduct closing conference.* Except as otherwise provided in paragraph (c) of this section, if the estimated or actual termination date for a compliance assessment or other audit passes without a Customs auditor providing a closing conference to explain the results of the compliance assessment or other audit, the person who was the subject of the compliance assessment or other audit may petition in writing for such a conference to the Director, Regulatory Audit Division, U.S. Customs Service, Washington, DC 20229. Upon receipt of such a request, the Director shall provide for such a conference to be held within 15 calendar days after the date of receipt.

(c) *Exception to procedures.* Paragraphs (a)(5), (a)(6) and (b) of this section shall not apply after Customs commences a formal investigation with respect to the issue involved.

**§ 163.12 Recordkeeping Compliance Program.**

(a) *General.* The Recordkeeping Compliance Program is a voluntary Customs program under which certified recordkeepers may be eligible for alternatives to penalties (see paragraph (d) of this section) that might be assessed under § 163.6 for failure to produce a demanded entry record. However, even where a certified recordkeeper is eligible for an alternative to a penalty, participation in the Recordkeeping Compliance Program has no limiting effect on the authority of Customs to use a summons, court order or other legal process to compel the production of records by that certified recordkeeper.

(b) *Certification procedures*—(1) *Who may apply.* Any person described in § 163.2(a) who is required to maintain and produce entry records under this part may apply to participate in the Recordkeeping Compliance Program.

(2) *Where to apply.* An application for certification to participate in the Recordkeeping Compliance Program shall be submitted to the Director, Regulatory Audit Division, U.S. Customs Service, 909 S.E. First Avenue, Miami, Florida 33131. The application shall be submitted in accordance with the guidelines contained in the Customs Recordkeeping Compliance Handbook which may be obtained by downloading it from the Customs Electronic Bulletin Board (703–921–6155) or by writing to the Recordkeeping Compliance Program, Regulatory Audit Division, Office of Strategic Trade, U.S. Customs Service, 909 S.E. First Avenue, Suite 710, Miami, Florida 33131.

(3) *Certification requirements.* A recordkeeper may be certified as a participant in the Recordkeeping Compliance Program after meeting the general recordkeeping requirements established under this section or after negotiating an alternative program suited to the needs of the recordkeeper and Customs. To be certified, a recordkeeper must be in compliance with Customs laws and

regulations. Customs will take into account the size and nature of the importing business and the volume of imports and Customs workload constraints prior to granting certification. In order to be certified, a recordkeeper must meet the applicable requirements set forth in the Customs Recordkeeping Compliance Handbook and must be able to demonstrate that it:

(i) Understands the legal requirements for recordkeeping, including the nature of the records required to be maintained and produced and the time periods relating thereto;

(ii) Has in place procedures to explain the recordkeeping requirements to those employees who are involved in the preparation, maintenance and production of required records;

(iii) Has in place procedures regarding the preparation and maintenance of required records, and the production of such records to Customs;

(iv) Has designated a dependable individual or individuals to be responsible for recordkeeping compliance under the program and whose duties include maintaining familiarity with the recordkeeping requirements of Customs;

(v) Has a record maintenance procedure acceptable to Customs for original records or has an alternative records maintenance procedure adopted in accordance with § 163.5(b); and

(vi) Has procedures for notifying Customs of any occurrence of a variance from, or violation of, the requirements of the Recordkeeping Compliance Program or negotiated alternative program, as well as procedures for taking corrective action when notified by Customs of violations or problems regarding such program. For purposes of this paragraph, the term ''variance'' means a deviation from the Recordkeeping Compliance Program that does not involve a failure to maintain or produce records or a failure to meet the requirements set forth in this section. For purposes of this paragraph, the term ''violation'' means a deviation from the Recordkeeping Compliance Program that involves a failure to maintain or produce records or a failure to meet the requirements set forth in this section.

(c) *Application review and approval and certification process*—(1) *Review of applications*. The Miami regulatory audit field office will process the application and will coordinate and consult, as may be necessary, with the appropriate Customs Headquarters and field officials. The Miami regulatory audit field office will review and verify the information contained in the application and may initiate an on-site verification prior to approval and certification. If an on-site visit is warranted, the Miami regulatory audit field office shall inform the applicant. If additional information is necessary to process the application, the applicant shall be notified. Customs requests for information not submitted with the application or for additional explanation of details will cause a delay in the application approval and certification of applicants and may result in the suspension of the application approval and certification process until the requested information is received by Customs.

(2) *Approval and certification*. If, upon review, Customs determines that the application should be approved and that certification should be granted, the Director of the Miami regulatory audit field office shall issue the certification with all the applicable conditions stated therein.

(d) *Alternatives to penalties*—(1) *General*. If a certified participant in the Recordkeeping Compliance Program does not produce a demanded entry record for a specific release or provide the information contained in the demanded entry record by acceptable alternate means, Customs shall, in lieu of a monetary penalty provided for in § 163.6(b), issue a written notice of violation to the person as described in paragraph (d)(2) of this section, provided that the certified participant is generally in compliance with the procedures and requirements of the program and provided that the violation was not a willful violation and was not a repeat violation. A willful failure to produce demanded entry records or repeated failures to produce demanded entry records may result in the issuance of penalties under § 163.6(b) and removal of certification under the program (see § 163.13) until corrective action satisfactory to Customs is taken.

(2) *Contents of notice.* A notice of violation issued to a participant in the Recordkeeping Compliance Program for failure to produce a demanded entry record or information contained therein shall:

(i) State that the recordkeeper has violated the recordkeeping requirements;

(ii) Identify the record or information which was demanded and not produced;

(iii) Warn the recordkeeper that future failures to produce demanded entry records or information contained therein may result in the imposition of monetary penalties and could result in the removal of the recordkeeper from the Recordkeeping Compliance Program.

(3) *Response to notice.* Within a reasonable time after receiving written notice under paragraph (d)(1) of this section, the recordkeeper shall notify Customs of the steps it has taken to prevent a recurrence of the violation.

**§ 163.13 Denial and removal of program certification; appeal procedures.**

(a) *General.* Customs may take, and applicants and participants may appeal and obtain administrative review of, the following decisions regarding the Recordkeeping Compliance Program provided for in § 163.12:

(1) Denial of certification for program participation in accordance with paragraph (b) of this section; and

(2) Removal of certification for program participation in accordance with paragraph (c) of this section.

(b) *Denial of certification for program participation*—(1) *Grounds for denial.* Customs may deny an application for certification for participation in the Recordkeeping Compliance Program for any of the following reasons:

(i) The applicant fails to meet the requirements set forth in § 163.12(b)(3);

(ii) A circumstance involving the applicant arises that would justify initiation of a certification removal action under paragraph (c) of this section; or

(iii) In the judgment of Customs, the applicant appears not to be in compliance with Customs laws and regulations.

(2) *Denial procedure.* If the Director of the Miami regulatory audit field office determines that an application submitted under § 163.12 should not be approved and that certification for participation in the Recordkeeping Compliance Program should not be granted, the Director shall issue a written notice of denial to the applicant. The notice of denial shall set forth the reasons for the denial and shall advise the applicant of its right to file an appeal of the denial in accordance with paragraph (d) of this section.

(c) *Certification removal*—(1) *Grounds for removal.* The certification for participation in the Recordkeeping Compliance Program by a certified recordkeeper may be removed when any of the following conditions are discovered:

(i) The certification privilege was obtained through fraud or mistake of fact;

(ii) The program participant no longer has a valid bond;

(iii) The program participant fails on a recurring basis to provide entry records when demanded by Customs;

(iv) The program participant willfully refuses to produce a demanded or requested record;

(v) The program participant is no longer in compliance with the Customs laws and regulations, including the requirements set forth in § 163.12(b)(3); or

(vi) The program participant is convicted of any felony or has committed acts which would constitute a misdemeanor or felony involving theft, smuggling, or any theft-connected crime.

(2) *Removal procedure.* If Customs determines that the certification of a program participant should be removed, the Director of the Miami regulatory audit field office shall serve the program participant with written notice of the removal. Such notice shall inform the program participant of the grounds for the removal and shall advise the program participant of its right to file an appeal of the removal in accordance with paragraph (d) of this section.

(3) *Effect of removal.* The removal of certification shall be effective immediately in cases of willfulness on the part of the program participant or

when required by public health, interest, or safety. In all other cases, the removal of certification shall be effective when the program participant has received notice under paragraph (c)(2) of this section and either no appeal has been filed within the time limit prescribed in paragraph (d)(2) of this section or all appeal procedures thereunder have been concluded by a decision that upholds the removal action. Removal of certification may subject the affected person to penalties.

(d) *Appeal of certification denial or removal*—(1) *Appeal of certification denial.* A person may challenge a denial of an application for certification for participation in the Recordkeeping Compliance Program by filing a written appeal with the Director, Regulatory Audit Division, U.S. Customs Service, Washington, DC 20229. The appeal must be received by the Director, Regulatory Audit Division, within 30 calendar days after issuance of the notice of denial. The Director, Regulatory Audit Division, will review the appeal and will respond with a written decision within 30 calendar days after receipt of the appeal unless circumstances require a delay in issuance of the decision. If the decision cannot be issued within the 30-day period, the Director, Regulatory Audit Division, will advise the appellant of the reasons for the delay and of any further actions which will be carried out to complete the appeal review and of the anticipated date for issuance of the appeal decision.

(2) *Appeal of certification removal.* A certified recordkeeper who has received a Customs notice of removal of certification for participation in the Recordkeeping Compliance Program may challenge the removal by filing a written appeal with the Director, Regulatory Audit Division, U.S. Customs Service, Washington, DC 20229. The appeal must be received by the Director, Regulatory Audit Division, within 30 calendar days after issuance of the notice of removal. The Director, Regulatory Audit Division, shall consider the allegations upon which the removal was based and the responses made thereto by the appellant and shall render a written decision on the appeal within 30 calendar days after receipt of the appeal.

## APPENDIX TO PART 163—INTERIM (a)(1)(A) LIST

*List of Records Required for the Entry of Merchandise*

General Information

(1) Section 508 of the Tariff Act of 1930, as amended (19 U.S.C. 1508), sets forth the general recordkeeping requirements for Customs-related activities. Section 509 of the Tariff Act of 1930, as amended (19 U.S.C. 1509) sets forth the procedures for the production and examination of those records (which includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data).

(2) Section 509(a)(1)(A) of the Tariff Act of 1930, as amended by title VI of Public Law 103–182, commonly referred to as the Customs Modernization Act (19 U.S.C. 1509(a)(1)(A)), requires the production, within a reasonable time after demand by the Customs Service is made (taking into consideration the number, type and age of the item demanded) if ''such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry).'' Section 509(e) of the Tariff Act of 1930, as amended by Public Law 103–182 (19 U.S.C. 1509(e)) requires the Customs Service to identify and publish a list of the records and entry information that is required to be maintained and produced under subsection (a)(1)(A) of section 509 (19 U.S.C. 1509(a)(1)(A)). This list is commonly referred to as ''the (a)(1)(A) list.''

(3) The Customs Service has tried to identify all the presently required entry information or records on the following list. However, as automated programs and new procedures are introduced, these may change. In addition, errors and omissions to the list may be discovered upon further review by Customs officials or the trade. Pursuant to section 509(g), the failure to produce listed records or information upon reasonable demand may result in penalty action or liquidation or reliquidation at a higher rate than entered. A recordkeeping penalty may not be assessed if the listed information or records are transmitted to and retained by Customs.

(4) *Other recordkeeping requirements:* The importing community and Customs officials are reminded that the (a)(1)(A) list only pertains to records or information required for the entry of merchandise. An owner, importer, consignee, importer of record, entry filer, or other party who imports merchandise, files a drawback claim or transports or stores bonded merchandise, any agent of the foregoing, or any person whose activities require them to file a declaration or entry, is also required to make, keep and render for

examination and inspection records (including, but not limited to, statements, declarations, documents and electronically generated or machine readable data) which pertain to any such activity or the information contained in the records required by the Tariff Act in connection with any such activity, and are normally kept in the ordinary course of business. While these records are not subject to administrative penalties, they are subject to examination and/or summons by Customs officers. Failure to comply could result in the imposition of significant judicially imposed penalties and denial of import privileges.

(5) The following list does not replace entry requirements, but is merely provided for information and reference. In the case of the list conflicting with regulatory or statutory requirements, the latter will govern.

*List of Records and Information Required for the Entry of Merchandise*

The following records (which include, but are not limited to, any statement, declaration, document, or electronically generated or machine readable data) are required by law or regulation for the entry of merchandise and are required to be maintained and produced to Customs upon reasonable demand (whether or not Customs required their presentation at the time of entry). Information may be submitted to Customs at the time of entry in a Customs authorized electronic or paper format. Not every entry of merchandise requires all of the following information. Only those records or information applicable to the entry requirements for the merchandise in question will be required/mandatory. The list may be amended as Customs reviews its requirements and continues to implement the Customs Modernization Act. When a record or information is filed with and retained by Customs, the record is not subject to recordkeeping penalties, although the underlying backup or supporting information from which it is obtained may also be subject to the general record retention regulations and examination or summons pursuant to 19 U.S.C. 1508 and 1509. (All references, unless otherwise indicated, are to the current edition of title 19, Code of Federal Regulations, as amended by subsequent Federal Register documents.)

I. General list of records required for most entries. Information shown with an asterisk (*) is usually on the appropriate form and filed with and retained by Customs:

**§§ 141.11 through 141.15 Evidence of right to make entry (airway bill/bill of lading or *carrier certificate, etc.) when goods are imported on a common carrier**
**§ 141.19 *Declaration of entry (usually contained on the entry summary or warehouse entry)**
**§ 141.32 Power of attorney (when required by regulations)**
**§ 141.54 Consolidated shipments authority to make entry (if this procedure is utilized)**
**§ 142.3 Packing list (where appropriate)**
**§ 142.4 Bond information (except if 10.101 or 142.4(c) applies)**
**Parts 4, 18, 122, 123 *Vessel, Vehicle or Air Manifest (filed by the carrier)**

II. The following records or information are required by §141.61 on Customs Form (CF) 3461 or CF 7533 or the regulations cited. Information shown with an asterisk (*) is contained on the appropriate form and/or otherwise filed with and retained by Customs:

**§§ 142.3, 142.3a *Entry Number**
*Entry Type Code
*Elected Entry Date
*Port Code
**§ 142.4 *Bond information**
**§§ 141.61, 142.3a *Broker/Importer Filer Number**
**§§ 141.61, 142.3 *Ultimate Consignee Name and Number/street address of premises to be delivered**
**§ 141.61 *Importer of Record Number**
*Country of Origin
**§ 141.11 *IT/BL/AWB Number and Code**
*Arrival Date
**§ 141.61 *Carrier Code**
*Voyage/Flight/Trip
*Vessel Code/Name
*Manufacturer ID Number (for AD/CVD must be actual mfr.)
*Location of Goods-Code(s)/Name(s)
*U.S. Port of Unlading
*General Order Number (only when required by the regulations)
**§ 142.6 *Description of Merchandise**
**§ 142.6 *HTSUSA Number**
**§ 142.6 *Manifest Quantity**
*Total Value
*Signature of Applicant

III. In addition to the information listed above, the following records or items of information are required by law and regulation for the entry of merchandise and are presently required to be produced by the importer of record at the time the Customs Form 7501 is filed:

**§ 141.61 *Entry Summary Date**
**§ 141.61 *Entry Date**
**§ 142.3 *Bond Number, Bond Type Code and Surety code**
**§ 142.3 *Ultimate Consignee Address**
**§ 141.61 *Importer of Record Name and Address**
**§ 141.61 *Exporting Country and Date Exported**
*I.T. (In-bond) Entry Date (for IT Entries only)
*Mode of Transportation (MOT Code)

**§ 141.61 *Importing Carrier Name**
**§ 141.82 Conveyance Name/Number**
*Foreign Port of Lading
*Import Date and Line Numbers
*Reference Number
*HTSUS Number
**§ 141.61 *Identification number for merchandise subject to Anti-dumping or Countervailing duty order (ADA/CVD Case Number)**
**§ 141.61 *Gross Weight**
*Manifest Quantity
**§ 141.61 *Net Quantity in HTSUSA Units**
**§ 141.61 *Entered Value, Charges, and Relationship**
**§ 141.61 *Applicable HTSUSA Rate, ADA/CVD Rate, I.R.C. Rate, and/or Visa Number, Duty, I.R. Tax, and Fees (e.g. HMF, MPF, Cotton)**
**§ 141.61 Non-Dutiable Charges**
**§ 141.61 *Signature of Declarant, Title, and Date**
*Textile Category Number
**§ 141.83, 141.86 Invoice information which includes, e.g., date, number, merchandise (commercial product) description, quantities, values, unit price, trade terms, part, model, style, marks and numbers, name and address of foreign party responsible for invoicing, kind of currency**
Terms of Sale
Shipping Quantities
Shipping Units of Measurements
Manifest Description of Goods
Foreign Trade Zone Designation and Status
Designation (if applicable)
Indication of Eligibility for Special Access Program (9802/GSP/CBI)
**§ 141.89 CF 5523**
**Part 141 Corrected Commercial Invoice**
**141.86 (e) Packing List**
**177.8 *Binding Ruling Identification Number (or a copy of the ruling)**
**§ 10.102 Duty Free Entry Certificate (9808.00.30009 HTS)**
**§ 10.108 Lease Statement**

IV. Documents/records or information required for entry of special categories of merchandise (the listed documents or information is only required for merchandise entered [or required to be entered] in accordance with the provisions of the sections of 19 CFR [the Customs Regulations] listed). These are in addition to any documents/records or information required by other agencies in their regulations for the entry of merchandise:

**§ 4.14 CF 226 Information for vessel repairs, parts and equipment**
**§ 7.3(f) CF 3229 Origin certificate for insular possessions Shipper's and importer's declaration for insular possessions**
**Part 10 Documents required for entry of articles exported and returned:**
**§§ 10.1 through 10.6 Foreign shipper's declaration or master's certificate, declaration for free entry by owner, importer or consignee**
**§ 10.7 Certificate from foreign shipper for reusable containers**
**§ 10.8 Declaration of person performing alterations or repairs**
Declaration for non-conforming merchandise
**§ 10.9 Declaration of processing**
**§ 10.24 Declaration by assembler Endorsement by importer**
**§§ 10.31, 10.35 Documents required for Temporary Importations Under Bond:**
Information required, Bond or Carnet
**§ 10.36 Lists for samples, professional equipment, theatrical effects**
Documents required for Instruments of International Traffic:
**§ 10.41 Application, Bond or TIR carnet**
NOTE: additional 19 U.S.C. 1508 records: see § 10.41b(e)
**§ 10.43 Documents required for exempt organizations**
**§ 10.46 Request from head of agency for 9808.00.10 or 9808.00.20 HTSUS treatment**
Documents required for works of art
**§ 10.48 Declaration of artist, seller or shipper, curator, etc.**
**§§ 10.49, 10.52 Declaration by institution**
**§ 10.53 Declaration by importer**
USFWS Form 3–177, if appropriate
**§§ 10.59, 10.63 Documents/CF 5125 for withdrawal of ship supplies**
**§§ 10.66, 10.67 Declarations for articles exported and returned**
**§§ 10.68, 10.69 Documents for commercial samples, tools, theatrical effects**
**§§ 10.70, 10.71 Purebred breeding certificate**
**§ 10.84 Automotive Products certificate**
**§ 10.90 Master records and metal matrices: detailed statement of cost of production**
**§ 10.98 Declarations for copper fluxing material**
**§ 10.99 Declaration of non-beverage ethyl alcohol, ATF permit**
**§§ 10.101 through 10.102 Stipulation for government shipments and/or certification for government duty-free entries, etc.**
**§ 10.107 Report for rescue and relief equipment**
**15 CFR part 301 Requirements for entry of scientific and educational apparatus**
**§ 10.121 Certificate from USIA for visual/auditory materials**
**§ 10.134 Declaration of actual use (When classification involves actual use)**
**§ 10.138 End Use Certificate**
**§§ 10.171 through 10.178 Documents, etc. required for entries of GSP merchandise, GSP Declaration (plus supporting documentation)**
**§ 10.174 Evidence of direct shipment**
**§ 10.179 Certificate of importer of crude petroleum**

**§ 10.180 Certificate of fresh, chilled or frozen beef**
**§ 10.183 Civil aircraft parts/simulator documentation and certifications**
**§§ 10.191 through 10.198 Documents, etc. required for entries of CBI merchandise, CBI declaration of origin (plus supporting information)**
**§ 10.194 Evidence of direct shipment**
**§ 10.199 Documents, etc. required for duty-free entry of spirituous beverages produced in Canada from CBI rum, declaration of Canadian processor (plus supporting information)**
**§ 10.216 AGOA Textile Certificate of Origin and supporting records**
**§ 10.226 CBTPA Textile Certificate of Origin and supporting records**
**§ 10.228 CBTPA Declaration of Compliance for brassieres**
**§ 10.236 CBTPA Non-textile Certificate of Origin and supporting records**
**§ 10.246 ATPDEA Textile Certificate of Origin**
**§ 10.248 ATPDEA Declaration of Compliance for Brassieres**
**§ 10.256 ATPDEA Non-textile Certificate of Origin**
**†[§ 10.306 Evidence of direct shipment for CFTA]**
**†[§ 10.307 Documents, etc. required for entries under CFTA Certificate of origin of CF 353]**
[†CFTA provisions are suspended while NAFTA remains in effect. See part 181]
**§ 10.410 US-CFTA Certification of origin and supporting records.**
**§ 12.6 European Community cheese affidavit**
**§ 12.7 HHS permit for milk or cream importation**
**§ 12.11 Notice of arrival for plant and plant products**
**§ 12.17 APHIS Permit animal viruses, serums and toxins**
**§ 12.21 HHS license for viruses, toxins, antitoxins, etc. for treatment of man**
**§ 12.23 Notice of claimed investigational exemption for a new drug**
**§§ 12.26 through 12.31 Necessary permits from APHIS, FWS & foreign government certificates when required by the applicable regulation**
**§ 12.33 Chop list, proforma invoice and release permit from HHS**
**§ 12.34 Certificate of match inspection and importer's declaration**
**§ 12.43 Certificate of origin/declarations for goods made by forced labor, etc.**
**§ 12.61 Shipper's declaration, official certificate for seal and otter skins**
**§§ 12.73, 12.80 Motor vehicle declarations**
**§ 12.85 Boat declarations (CG–5096) and USCG exemption**
**§ 12.91 FDA form 2877 and required declarations for electronics products**
**§ 12.99 Declarations for switchblade knives**
**§§ 12.104 through 12.104i Cultural property declarations, statements and certificates of origin**
**§ 12.105 through 12.109 Pre-Columbian monumental and architectural sculpture and murals**
Certificate of legal exportation
Evidence of exemption
**§ 12.110 Pesticides, etc. notice of arrival**
**§§ 12.118 through 12.127 Toxic substances: TSCA statements**
**§ 12.140 Province of first manufacture, export permit number and fee status of softwood lumber from Canada**
**§ 54.5 Declaration by importer of use of certain metal articles**
**§ 54.6(a) Re-Melting Certificate**
**§ 102.25 NAFTA textile requirements**
**Part 113, Appendix B—Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, as Amended**
**Part 114 Carnets (serves as entry and bond document where applicable)**
**Part 115 Container certificate of approval**
**Part 128 Express consignments**
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**§§ 132.15, 132.17 Export certificates, respectively, for beef or sugar-containing products subject to tariff-rate quota.**
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**§ 132.23 Acknowledgment of delivery for mailed items subject to quota**
**§§ 133.21(e), 133.22(c)(3) and 133.23(e) Consent from trademark or trade name holder to import otherwise restricted goods**
**§§ 134.25, 134.36 Certificate of marking; notice to repacker**
**§ 141.88 Computed value information**
**§ 141.89 Additional invoice information required for certain classes of merchandise including, but not limited to:**
*Textile Entries:* Quota charge Statement, if applicable including Style Number, Article Number and Product
*Steel Entries:* Ordering specifications, including but not limited to, all applicable industry standards and mill certificates, including but not limited to, chemical composition.
**§ 143.13 Documents required for appraisement entries Bills, statements of costs of production Value declaration**
**§ 143.23 Informal entry: commercial invoice plus declaration**
**§ 144.12 Warehouse entry information**
**§ 145.11 Customs Declaration for Mail, Invoice**
**§ 145.12 Mail entry information (CF 3419 is completed by Customs but formal entry may be required.)**
**Part 148 Supporting documents for personal importations**
**Part 151, subpart B Scale Weight**

**Part 151, subpart B Sugar imports sampling/lab information (Chemical Analysis)**
**Part 151, subpart C Petroleum imports sampling/lab information Out turn Report 24. to 25.—Reserved**
**Part 151, subpart E Wool and Hair invoice information, additional documents**
**Part 151, subpart F Cotton invoice information, additional documents**
**§ 181.22 NAFTA Certificate of origin and supporting records**
**19 U.S.C. 1356k Coffee Form O (currently suspended)**

*Other Federal and State Agency Documents*

*State and Local Government Records*

*Other Federal Agency Records (See 19 CFR part 12, 19 U.S.C. 1484, 1499)*

*Licenses, Authorizations, Permits*

*Foreign Trade Zones*

**§ 146.32 Supporting documents to CF 214**

[T.D. 98–56, 63 FR 32946, June 16, 1998; as amended by T.D. 00–7, 65 FR 5431, Feb 4, 2000; T.D. 00–68, T.D. 00–67, 65 FR 59666, 59681, Oct. 5, 2000; T.D. 00–87, 65 FR 77816, Dec. 13, 2000; T.D. 01–17, 66 FR 9647, Feb. 9, 2001; T.D. 01–35, 66 FR 21667, May 1, 2001; T.D. 01–74, 66 FR 50541, Oct. 4, 2001; T.D. 02–36, 67 FR 46588, July 16, 2002; T.D. 02–59, 67 FR 62884, Oct. 9, 2002; T.D. 03–16, 68 FR 14500, Mar. 25, 2003; CBP Dec. 04–28, 69 FR 52600, Aug. 27, 2004; CBP Dec. 05–07, 70 FR 10884, Mar. 7, 2005; CBP Dec. 05–32, 70 FR 58016, Oct. 5, 2005]

# PART 171—FINES, PENALTIES, AND FORFEITURES

Sec.

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AUTHORITY: 18 U.S.C. 983; 19 U.S.C. 66, 1592, 1593a, 1618, 1624; 22 U.S.C. 401; 31 U.S.C. 5321; 46 U.S.C. App. 320.

Subpart F also issued under 19 U.S.C. 1595a, 1605, 1614.

SOURCE: T.D. 70–249, 35 FR 18265, Dec. 1, 1970, unless otherwise noted.

### § 171.0 Scope.

This part contains provisions relating to petitions for relief from fines, forfeitures, and certain penalties incurred, and petitions for the restoration of proceeds from sale of seized and forfeited property. This part does not

relate to petitions on claims for liquidated damages or penalties which are guaranteed by the conditions of the International Carrier Bond (*see* § 113.64 of this Chapter).

[T.D. 00–57, 65 FR 53576, Sept. 5, 2000]

## Subpart A—Application for Relief

SOURCE: T.D. 00–57, 65 FR 53576, Sept. 5, 2000, unless otherwise noted.

### § 171.1 Petition for relief.

(a) *To whom addressed.* Petitions for the remission or mitigation of a fine, penalty, or forfeiture incurred under any law administered by Customs must be addressed to the Fines, Penalties, and Forfeitures Officer designated in the notice of claim.

(b) *Signature.* For commercial violations, the petition for remission or mitigation must be signed by the petitioner, his attorney-at-law or a Customs broker. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory official of the corporation, or a responsible employee representative of the corporation. Electronic signatures are acceptable. In non-commercial violations, a non-English speaking petitioner or petitioner who has a disability which may impede his ability to file a petition may enlist a family member or other representative to file a petition on his behalf. The deciding Customs officer may, in his or her discretion, require proof of representation before consideration of any petition.

(c) *Form.* The petition for remission or mitigation need not be in any particular form. Customs can require that the petition and any documents submitted in support of the petition be in English or be accompanied by an English translation. The petition must set forth the following:

(1) A description of the property involved (if a seizure);

(2) The date and place of the violation or seizure;

(3) The facts and circumstances relied upon by the petitioner to justify remission or mitigation; and

(4) If a seizure case, proof of a petitionable interest in the seized property.

(d) *False statement in petition.* A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

### § 171.2 Filing a petition.

(a) *Where filed.* A petition for relief must be filed with the Fines, Penalties, and Forfeitures office whose address is given in the notice.

(b) *When filed*—(1) Seizures. Petitions for relief from seizures must be filed within 30 days from the date of mailing of the notice of seizure.

(2) *Penalties.* Petitions for relief from penalties must be filed within 60 days of the mailing of the notice of penalty incurred.

(c) *Extensions.* The Fines, Penalties, and Forfeitures Officer is empowered to grant extensions of time to file petitions when the circumstances so warrant.

(d) *Number of copies.* The petition must be filed in duplicate unless filed electronically.

(e) *Exception for certain cases.* If a penalty is assessed or a seizure is made and less than 180 days remain before the statute of limitations may be asserted as a defense, the Fines, Penalties, and Forfeitures Officer may specify in the seizure or penalty notice a reasonable period of time, but not less than 7 working days, for the filing of a petition for relief. If a petition is not filed within the time specified, the matter will be transmitted promptly to the appropriate Office of the Chief Counsel for referral to the Department of Justice.

### § 171.3 Oral presentations seeking relief.

(a) *For violation of section 592 or section 593A.* If the penalty incurred is for a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), or section 593A, Tariff Act of 1930, as added (19 U.S.C. 1593a), the person named in the notice, in addition to filing a petition, may make an oral presentation seeking relief in accordance with this paragraph.

(b) *Other oral presentations.* Oral presentations other than those provided in paragraph (a) of this section may be allowed in the discretion of any official of the Customs Service or Department

of the Treasury authorized to act on a petition or supplemental petition.

## Subpart B—Action on Petitions

SOURCE: T.D. 00–57, 65 FR 53576, Sept. 5, 2000, unless otherwise noted.

### § 171.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.

(a) *Remission or mitigation authority.* Upon receipt of a petition for relief submitted pursuant to the provisions of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), or section 5321(c) of title 31, United States Code (31 U.S.C. 5321(c)), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), the Fines, Penalties, and Forfeitures Officer is empowered to remit or mitigate on such terms and conditions as, under law and in view of the circumstances, he or she deems appropriate in accordance with appropriate delegations of authority.

(b) *When violation did not occur.* Notwithstanding any other delegation of authority, the Fines, Penalties, and Forfeitures Officer is always empowered to cancel any claim when he or she definitely determines that the act or omission forming the basis of any claim of penalty or forfeiture did not occur.

(c) *When violation is result of vessel in distress.* The Fines, Penalties, and Forfeitures Officer may remit without payment any penalty which arises for violation of the coastwise laws if he or she is satisfied that the violation occurred as a direct result of an arrival of the transporting vessel in distress.

### § 171.12 Petitions acted on at Customs Headquarters.

Upon receipt of a petition for relief filed pursuant to the provisions of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), section 5321(c) of title 31, United States Code (31 U.S.C. 5321(c)), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), involving fines, penalties, and forfeitures which are outside of his or her delegated authority, the Fines, Penalties, and Forfeitures Officer will refer that petition to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who is empowered to remit or mitigate on such terms and conditions as, under law and in view of the circumstances, he or she deems appropriate, unless there has been no delegation to act by the Secretary of the Treasury or his designee. In those cases where there has been no delegation to act by the Secretary, the Chief, Penalties Branch, will forward the matter to the Department with a recommendation.

### § 171.13 Limitations on consideration of petitions.

(a) *Cases referred for institution of legal proceedings.* No action will be taken on any petition after the case has been referred to the Department of Justice for institution of legal proceedings. The petition will be forwarded to the Department of Justice.

(b) *Conveyance awarded for official use.* No petition for remission of forfeiture of a seized conveyance which has been forfeited and retained for official use will be considered unless it is filed before final disposition of the property is made. This does not affect petitions for restoration of proceeds of sale filed pursuant to the provisions of section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613).

### § 171.14 Headquarters advice.

The advice of the Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters, may be sought in any case (except as provided in this section), without regard to delegated authority to act on a petition or offer, when a novel or complex issue concerning a ruling, policy, or procedure is presented concerning a Customs action(s) or potential Customs action(s) relating to seizures and forfeitures, penalties, or mitigating or remitting any claim. This section does not apply to actual duty loss tenders determined by Customs pursuant to § 162.74(c) of this Chapter relating to prior disclosure and to actual duty loss demands made under § 162.79b of this Chapter. The request for advice may be initiated by the alleged violator or any Customs officer, but must be submitted to the Fines, Penalties, and Forfeitures Officer. The Fines, Penalties, and Forfeitures Officer retains the authority to

refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in any case.

## Subpart C—Disposition of Petitions

SOURCE: T.D. 00–57, 65 FR 53577, Sept. 5, 2000, unless otherwise noted.

### § 171.21 Written decisions.

If a petition for relief relates to a violation of sections 592, 593A or 641, Tariff Act of 1930, as amended (19 U.S.C. 1592, 19 U.S.C. 1593a, or 19 U.S.C. 1641), the petitioner will be provided with a written statement setting forth the decision on the matter and the findings of fact and conclusions of law upon which the decision is based.

### § 171.22 Decisions effective for limited time.

A decision to mitigate a penalty or to remit a forfeiture upon condition that a stated amount is paid will be effective for not more than 60 days from the date of notice to the petitioner of such decision unless the decision itself prescribes a different effective period. If payment of the stated amount or arrangements for such payment are not made, or a supplemental petition is not filed in accordance with regulation, the full penalty or claim for forfeiture will be deemed applicable and will be enforced by promptly referring the matter, after required collection action, if appropriate, to the appropriate Office of the Chief Counsel for preparation for referral to the Department of Justice unless other action has been directed by the Commissioner of Customs.

### § 171.23 Decisions not protestable.

(a) *Mitigation decision not subject to protest.* Any decision to remit a forfeiture or mitigate a penalty is not a protestable decision as defined under the provisions of 19 U.S.C. 1514. Any payment made in compliance with any decision to remit a forfeiture or mitigate a penalty is not a charge or exaction and therefore is not a protestable action as defined under the provisions of 19 U.S.C. 1514.

(b) *Payment of mitigated amount as accord and satisfaction.* Payment of a mitigated amount in compliance with an administrative decision on a petition or supplemental petition for relief will be considered an election of administrative proceedings and full disposition of the case. Payment of a mitigated amount will act as an accord and satisfaction of the Government claim. Payment of a mitigated amount will never serve as a bar to filing a supplemental petition for relief.

### § 171.24 Remission of forfeitures and payment of fees, costs or interest.

Any seizure subject to forfeiture may be remitted or mitigated pursuant to the provisions of 19 U.S.C. 1618 or 31 U.S.C. 5321, as applicable. Any person who accepts a remission or mitigation decision will not be considered to have substantially prevailed in a civil forfeiture proceeding for purposes of collection of any fees, costs or interest from the Government.

[T.D. 00–88, 65 FR 78093, Dec. 14, 2000]

## Subpart D—Offers in Compromise

SOURCE: T.D. 00–57, 65 FR 53577, Sept. 5, 2000, unless otherwise noted.

### § 171.31 Form of offers.

Offers in compromise submitted pursuant to the provisions of section 617 of the Tariff Act of 1930, as amended (19 U.S.C. 1617) must expressly state that they are being submitted in accordance with the provisions of that section. The amount of the offer must be deposited with Customs in accordance with the provisions of § 161.5 of this chapter.

### § 171.32 Acceptance of offers in compromise.

An offer in compromise will be considered accepted only when the offeror is so notified in writing. As a condition to accepting an offer in compromise, the offeror may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interest of the United States.

## Subpart E—Restoration of Proceeds of Sale

SOURCE: T.D. 00–57, 65 FR 53577, Sept. 5, 2000, unless otherwise noted.

### § 171.41 Application of provisions for petitions for relief.

The general provisions of subpart A of this part on filing and content of petitions for relief apply to petitions for restoration of proceeds of sale except insofar as modified by this subpart.

### § 171.42 Time limit for filing petition for restoration.

A petition for the restoration of proceeds of sale under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613) must be filed within 3 months after the date of the sale.

### § 171.43 Evidence required.

In addition to such other evidence as may be required under the provisions of subpart A of this part, the petition for restoration of proceeds of sale under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), must show the interest of the petitioner in the property. The petition must be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration or decree of forfeiture and was in such circumstances as prevented him from knowing of it.

### § 171.44 Forfeited property authorized for official use.

If forfeited property which is the subject of a claim under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613) has been authorized for official use, retention or delivery will be regarded as the sale thereof for the purposes of section 613. The appropriation available to the receiving agency for the purchase, hire, operation, maintenance and repair of property of the kind so received is available for the granting of relief to the claimant and for the satisfaction of liens for freight, charges and contributions in general average that may have been filed.

## Subpart F—Expedited Petitioning Procedures

### § 171.51 Application and definitions.

(a) *Application*. The following definitions, regulations, and criteria are designed to establish and implement procedures required by section 6079 of the Anti-Drug Abuse Act of 1988, Pub. L. 100–690, title VI (102 Stat. 4181). They are intended to supplement existing law and procedures relative to the forfeiture of property under the identified statutory authority. The provisions of these regulations do not affect the existing legal and equitable rights and remedies of those with an interest in property seized for forfeiture, nor do these provisions relieve interested parties from their existing obligations and responsibilities in pursuing their interests through such courses of action. These regulations are intended to reflect the intent of Congress to minimize the adverse impact occasioned by the prolonged detention of property subject to forfeiture due to violations of law involving possession of personal use quantities of controlled substances. The definition of personal use quantities of controlled substance as contained herein is intended to distinguish between those quantities small in amount which are generally considered to be possessed for personal consumption and not for distribution, and those larger quantities generally considered to be subject to distribution.

(b) *Definitions*. As used in this subpart, the following terms shall have the meanings specified:

(1) *Appraised value*. ''Appraised value'' has the meaning given in § 162.43(a) of this chapter.

(2) *Commercial fishing industry vessel*. ''Commercial fishing industry vessel'' means a vessel that:

(i) Commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish;

(ii) Commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling; or

(iii) Commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related

to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or fish processing facility.

(3) *Controlled substance.* ''Controlled substance'' has the meaning given in 21 U.S.C. 802.

(4) *Normal and customary manner.* ''Normal and customary manner'' means that inquiry suggested by particular facts and circumstances which would customarily be undertaken by a reasonably prudent individual in a like or similar situation. Actual knowledge of such facts and circumstances is unnecessary, and implied, imputed, or constructive knowledge is sufficient. An established norm, standard, or custom is persuasive but not conclusive or controlling in determining whether a petitioner acted in a normal and customary manner to ascertain how property would be used by another legally in possession of the property.

(5) *Owner or interested party.* ''Owner or interested party'' means one having a legal and possessory interest in the property seized for foreiture or one who was in legal possession of the property at the time of seizure and is entitled to legal possession at the time of granting the petition for expedited procedure. This includes a lienholder, to the extent of his interest in the property, whose claim is in writing (except for a maritime lien which need not be in writing), unless the collateral is in the possession of the secured party. The agreement securing such a lien must create or provide for a security interest in the collateral, describe the collateral and be signed by the debtor.

(6) *Personal use quantities.* ''Personal use quantities'' means possession of controlled substances in circumstances where there is no evidence of intent to distribute, or to facilitate the manufacturing, compounding, processing, delivering, importing or exporting of any controlled substance. A quantity of a controlled substance is presumed to be for personal use if the amounts possessed do not exceed the quantities set forth in paragraph (b)(6)(i) of this section if there is no evidence of illicit drug trafficking or distribution such as, but not limited to the factors set forth in paragraph (b)(6)(ii) of this section. The possession of a narcotic, a depressant, a stimulant, a hallucinogin or a cannabis-controlled substance will be considered in excess of personal use quantities if the dosage unit amount possessed provides the same or greater equivalent efficacy as described in paragraph (b)(6)(i) of this section.

(i) *Quantities presumed to be for personal use unless evidence of illicit drug trafficking or distribution exists.* (A) One gram of a mixture of substance containing a detectable amount of heroin;

(B) One gram of a mixture of substance containing a detectable amount of—

(*1*) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivations of ecgonine or their salts have been removed;

(*2*) Cocaine, its salts, optional and geometric isomers, and salts of isomers;

(*3*) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(*4*) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (b)(6)(i)(B) (*1*) through (*3*) of this section;

(C) 1/10th gram of a mixture of substances described in paragraph (b)(6)(i)(B) of this section which contains cocaine base;

(D) 1/10th gram of mixture of substance containing a detectable amount of phencyclidine (PCP);

(E) 500 micrograms of a mixture of substance containing a detectable amount of lysergic acid diethylamide (LSD);

(F) One ounce of a mixture of substance containing a detectable amount of marihuana; or

(G) One gram of methamphetamine, its salts, isomers, and salts of its isomers, or one gram of a mixture of substances containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

(ii) *Evidence of possession for other than personal use.* Quantities shall not be considered to be for personal use if sweepings are present or there is other evidence of possession for other than personal use such as:

(A) Evidence such as drug scales, drug distribution paraphernalia, drug records, drug packaging material,

method of drug packaging, drug ''cutting'' agents and other equipment, that indicates an intent to process, package or distribute a controlled substance;

(B) Information from reliable sources indicating possession of a controlled substance with intent to distribute;

(C) The arrest and/or conviction record of the person or persons in actual or constructive possession of the controlled substance for offenses under Federal, State or local law that indicates an intent to distribute a controlled substance;

(D) The controlled substance is related to large amounts of cash or any amount of prerecorded government funds;

(E) The controlled substance is possessed under circumstances that indicate such a controlled substance is a sample intended for distribution in anticipation of a transaction involving large quantities, or is part of a larger delivery; or

(F) Statements by the possessor, or otherwise attributable to the possessor, including statements of conspirators, that indicate possession with intent to distribute.

(7) *Property*. ''Property'' means property subject to forfeiture under 19 U.S.C. 1595a.

(8) *Seizing agency*. ''Seizing agency'' means the Federal agency which has seized the property or adopted the seizure of another agency, and has the responsibility for administratively forfeiting the property.

(9) *Sworn to*. ''Sworn to'' refers to the oath as provided by 28 U.S.C. 1746 or as notarized in accordance with state law.

[T.D. 89–86, 54 FR 37602, Sept. 11, 1989; 54 FR 41364, Oct. 6, 1989, as amended by T.D. 00–88, 65 FR 78093, Dec. 14, 2000; CBP Dec. 04–28, 69 FR 52600, Aug. 27, 2004]

### § 171.52 Petition for expedited procedures in an administrative forfeiture proceeding.

(a) *Procedures for violations involving possession of controlled substance in personal use quantities*. The usual procedures for petitions for relief when property is seized are set forth in subpart B of this part. However, where property is seized for administrative forfeiture pursuant to 19 U.S.C. 1595a due to violations involving controlled substances in personal use quantities, a petition may be filed pursuant to paragraphs (c) and (d) of this section to seek expedited procedures for release of the property. A petition filed pursuant to this subpart shall also serve as a petition for relief filed under subpart B of this part. The petition may be filed by an owner or interested party.

(b) *Commercial fishing industry vessels*. Where a commercial fishing industry vessel proceeding to or from a fishing area or intermediate port of call or actually engaged in fishing operations is subject to seizure for administrative forfeiture for a violation of law involving controlled substances in personal use quantities, a summons to appear shall be issued in lieu of a physical seizure. The vessel shall report to the port designated in the summons no later than the date specified in the summons. When a commercial fishing industry vessel reports, the appropriate Customs officer shall, depending on the facts and circumstances, either issue another summons to appear at a time deemed appropriate, execute a constructive seizure agreement pursuant to 19 U.S.C. 1605, or take physical custody of the vessel. When a summons to appear has been issued, the seizing agency may be authorized to institute administrative forfeiture as if the vessel had been physically seized. When a summons to appear has been issued, the owner or interested party may file a petition for expedited procedures pursuant to subsection (a); the provisions of subsection (a) and other provisions in this subpart relating to a petition for expedited release shall apply as if the vessel had been physically seized.

(c) *Elements to be established in petition*. (1) The petition for expedited procedures shall establish that:

(i) The petitioner has a valid, good faith interest in the seized property as owner or otherwise;

(ii) The petitioner reasonably attempted to ascertain the use of the property in a normal and customary manner; and

(iii) The petitioner did not know or consent to the illegal use of the property or, in the event that the petitioner knew or should have known of the illegal use, the petitioner did what

reasonably could be expected to prevent the violation.

(2) In addition, the petitioner may submit evidence to establish that he has statutory rights or defenses such that he would prevail in a judicial proceeding on the issue of forfeiture.

(d) *Manner of filing.* A petition for expedited procedures must be filed in a timely manner to be considered by Customs. To be filed in a timely manner, the petition must be received by Customs within 20 days from the date the notice of seizure was mailed, or in the case of a commercial fishing industry vessel for which a summons to appear is issued, 20 days from the original date when the vessel is required to report. The petition must be sworn to by the petitioner and signed by the petitioner or his attorney at law. If the petitioner is a corporation, the petition may be sworn to by an officer or responsible supervisory employee thereof and signed by that individual or an attorney at law representing the corporation. Both the envelope and the request must be clearly marked ''PETITION FOR EXPEDITED PROCEDURES.'' The petition shall be addressed to the U.S. Customs Service and filed in triplicate with the Fines, Penalties, and Forfeitures Officer for the port where the property was seized, or for commercial fishing industry vessels, with the Fines, Penalties, and Forfeitures Officer for the port to which the vessel was required to report.

(e) *Contents of petition.* The petition shall include the following:

(1) A complete description of the property, including identification numbers, if any, and the date and place of the violation and seizure;

(2) A description of the petitioner's interest in the property, supported by the documentation, bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(3) A statement of the facts and circumstances relied upon by the petitioner to justify expedited return of the seized property, supported by satisfactory evidence.

[T.D. 89–86, 54 FR 37602, Sept. 11, 1989; 54 FR 41364, Oct. 6, 1989, as amended by T.D. 99–27, 64 FR 13676, Mar. 22, 1999; T.D. 00–88, 65 FR 78093, Dec. 14, 2000; CBP Dec. 04–28, 69 FR 52600, Aug. 27, 2004]

### § 171.53 Ruling on petition for expedited procedures.

(a) *Final administrative determination.* Upon receipt of a petition filed pursuant to § 171.52, Customs shall determine first whether a final administrative determination of the case can be made within 21 days of the seizure. If such a final administrative determination is made within 21 days, no further action need be taken under this subpart.

(b) *Determination within 20 days.* If no such final administrative determination is made within 21 days of the seizure, Customs shall within 20 days after the receipt of the petition make a determination as follows:

(1) If Customs determines that the factors listed in § 171.52(c) have been established, it shall terminate the administrative proceedings and release the property from seizure, or in the case of a commercial fishing industry vessel for which a summons has been issued, but not yet answered, dismiss the summons. The property shall not be returned if it is evidence of a violation of law.

(2) If Customs determines that the factors listed in § 171.52(c) have not been established, it shall proceed with the administrative forfeiture.

[T.D. 89–86, 54 FR 37602, Sept. 11, 1989]

### § 171.54 Substitute res in an administrative forfeiture action.

(a) *Substitute res.* Where property is seized for administrative forfeiture for a violation involving controlled substances in personal use quantities, the owner or interested party may offer to post an amount equal to the appraised value of the property (the res) to obtain release of the property. The offer, which may be tendered at any time subsequent to seizure and up until the completion of administrative forfeiture proceedings, must be in the form of cash, irrevocable letter of credit, certified funds such as a certified check, traveler's check(s), or money order made payable to U.S. Customs. Unless the property is evidence of a violation of law or has other characteristics that particularly suit it for use in illegal activities, it will be released to the owner or interested party subsequent to tender of the substitute res.

(b) *Forfeiture of res.* If a substitute res is posted and it is determined that the property should be administratively forfeited, the res will be forfeited in lieu of the property.

[T.D. 89–86, 54 FR 37602, Sept. 11, 1989]

### § 171.55 Notice provisions.

(a) *Special notice provision.* At the time of seizure of property defined in § 171.51, written notice must be provided to the possessor of the property regarding applicable statutes and Federal regulations including the procedures established for the filing of a petition for expedited procedures as set forth in section 6079 of the Anti-Drug Abuse Act of 1988 and implementing regulations.

(b) *Notice provision.* The notice as required by section 1607 of Title 19, United States Code and applicable regulations shall be made at the earliest practicable opportunity after determining ownership of, or interest in, the seized property and shall include a statement of the applicable law under which the property is seized and a statement of the circumstances of the seizure sufficiently precise to enable an owner or interested party to identify the date, place and use or acquisition which makes the property subject to forfeiture.

[T.D. 89–86, 54 FR 37602, Sept. 11, 1989; 54 FR 43424, Oct. 25, 1989]

## Subpart G—Supplemental Petitions for Relief

SOURCE: T.D. 00–57, 65 FR 53578, Sept. 5, 2000, unless otherwise noted.

### § 171.61 Time and place of filing.

If the petitioner is not satisfied with a decision of the deciding official on an original petition for relief, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the violation occurred. Such supplemental petition must be filed within 60 days from the date of notice to the petitioner of the decision from which further relief is requested or within 60 days following an administrative or judicial decision with respect to the entries involved in a penalty case which reduces the loss of duties upon which the mitigated penalty amount was based (whichever is later) unless another time to file such a supplemental petition is prescribed in the decision. The filing of a supplemental petition may be subject to the conditions prescribed in § 171.64 of this part. A supplemental petition may be filed whether or not the mitigated penalty or forfeiture remission amount designated in the decision on the original petition is paid.

### § 171.62 Supplemental petition decision authority.

(a) *Decisions of Fines, Penalties, and Forfeitures Officers.* Supplemental petitions filed on cases where the original decision was made by the Fines, Penalties, and Forfeitures Officer, will be initially reviewed by that official. The Fines, Penalties, and Forfeitures Officer may choose to grant more relief and issue a decision indicating that additional relief to the petitioner. If the petitioner is dissatisfied with the further relief granted or if the Fines, Penalties, and Forfeitures Officer decides to grant no further relief, the supplemental petition will be forwarded to a designated Headquarters official assigned to a field location for review and decision, except that supplemental petitions filed in cases involving violations of 19 U.S.C. 1641 where the amount of the penalty assessed exceeds $10,000 will be forwarded to the Chief, Penalties Branch, Office of Regulations and Rulings.

(b) *Decisions of Customs Headquarters.* Supplemental petitions filed on cases where the original decision was made by the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, will be forwarded to the Director, International Trade Compliance Division, Customs Headquarters, for review and decision.

(c) *Decisions of Treasury Department.* Supplemental petitions filed on cases where the original decision was made in the Treasury Department, will be referred to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who will forward the supplemental petitions to the Department with a recommendation.

(d) *Authority of Assistant Commissioner*. Any authority given to any Headquarters official by this part may also be exercised by the Assistant Commissioner, Office of Regulations and Rulings, or his designee.

### § 171.63 Appeals to the Secretary of the Treasury in certain 1592 cases.

A petitioner filing a supplemental petition pursuant to this subpart from a decision of the Chief, Penalties Branch, Office of Regulations and Rulings, with respect to any liability assessed under 19 U.S.C. 1592 may request that the petition be accepted as an appeal to the Secretary of the Treasury. The Secretary will accept for decision any such supplemental petition when in his discretion he determines that such petition raises a question of fact, law or policy of such importance as to require a decision by the Secretary. If the Secretary declines to accept an appeal for decision, the petitioner will be so informed. In such a case, a decision will be issued thereon by the Director, International Trade Compliance Division.

### § 171.64 Waiver of statute of limitations.

The deciding Customs official always reserves the right to require a waiver of the statute of limitations executed by the claimants to the property or charged party or parties as a condition precedent before accepting a supplemental petition in any case in which less than one year remains before the statute will be available as a defense to all or part of that case.

## APPENDIX A TO PART 171—GUIDELINES FOR DISPOSITION OF VIOLATIONS OF 19 U.S.C. 1497

Liabilities incurred under section 497, Tariff Act of 1930 (19 U.S.C. 1497), shall be mitigated or remitted in accordance with the following guidelines (see also part 148, Customs Regulations):

I. *Violations Involving Dutiable Articles*. For violations involving articles subject to duty and for which there is no applicable exemption from duty, the following rules apply:

1. *Mitigated Penalty for First Offense*. For violations which are the first offense, where there is knowledge of the declaration requirements, and where the undeclared articles are discovered by the Customs officers, the liabilities shall be remitted upon payment of Three Times the Duty (but not less than $50), or the domestic value, whichever is lower.

2. *Mitigating Factors*. When one or more of the following mitigating factors are present, the deciding officer may, within his discretion, remit the liabilities upon payment of Between One and One-Half and Three Times the Duty or the domestic value, whichever is lower:

a. Communications with the violator are impaired because of language barrier, mental condition, or physical ailment;

b. Violator cooperates with Customs officers after discovery of the violation by providing additional information which facilitates conclusion of the case;

c. Violator is an inexperienced traveler;

d. There is contributory Customs error (for example, violator demonstrates he was given incorrect advice by a Customs officer).

3. *Aggravating Factors*. When one or more of the following aggravating factors are present, the deciding officer may, within his discretion, remit the liabilities upon payment of Between Three and Six Times the Duty (but not less than $100), or the domestic value, whichever is lower:

a. Documentary or other evidence discovered establishes violator's intent;

b. Informant provides information which tends to establish violator's intent and leads to discovery of the violation after the violator has been given an opportunity to properly declare;

c. Violator is an experienced traveler;

d. Undeclared articles are concealed to evade U.S. law;

e. There is behavior, including extreme lack of cooperation, verbal or physical abuse, or attempted escape, which tends to demonstrate a lack of respect for law and authority.

4. *Commercial Articles*. When the undeclared articles are brought in for commercial purposes, the liabilities shall be remitted upon the payment of Six Times the Duty (but not less than $100), or the domestic value, whichever is lower. Mitigating factors may be used to lower this amount to as little as Three Times the Duty; aggravating factors may be used to increase this amount up to Eight Times the Duty.

5. *Extraordinary Mitigating Factor*.

a. When an individual who has been cleared through Customs without discovery of any undeclared article returns to the examination area and declares that article, the deciding officer may, within his discretion, remit the liabilities upon payment of One Times the Duty.

b. An individual who declares articles some time later (hours, days, weeks, etc.) may be treated similarly.

6. *Extraordinary Aggravating Factors*.

a. When the offense is a second or subsequent violation, the deciding officer may, within his discretion, remit the liabilities upon payment of Between Six and Eight Times the Duty (but not less than $250), or the domestic value, whichever is lower.

b. When the offense is a second or subsequent violation, and there are aggravating factors present, generally there shall either be a denial of relief or mitigation to No Less Than Eight Times the Duty or the domestic value, whichever is lower.

c. When there is evidence of an ongoing scheme to defraud the revenue involving multiple entries without declaration of articles subject to declaration, the deciding officer shall act in accordance with the preceding paragraph.

II. *Violations Involving Absolutely or Conditionally Free Articles*. For violations involving articles either entitled to entry free of duty absolutely (classifiable under a duty-free provision in Chapters 1–97, Harmonized Tariff Schedule of the United States (HTSUS); (19 U.S.C. 1202)), or entry free of duty conditionally (entitled to treatment under the Generalized System of Preferences (see §§10.171–10.178, Customs Regulations) or Chapter 98, HTSUS), the following rules apply:

1. *Mitigated Penalty for First Offense*.

a. For violations which are first offense, and involve articles entitled to the benefit of GSP or Chapter 98, HTSUS, the liabilities shall be remitted upon payment of One Times the Duty which would have been due if the articles had not been entitled to the benefit.

b. For violations which are first offense, and involve absolutely duty-free articles, the liabilities shall be remitted upon payment of Between One and Five Percent of the Domestic Value, but not less than $50 (or the domestic value, whichever is less) nor more than $1,000.

2. *Mitigating Factors*. When mitigating factors such as those outlined above are present, the deciding officer may, in his discretion, reduce the mitigated amount to a lower figure.

3. *Aggravating Factors*.

a. When aggravating factors such as those outlined above are present, the deciding officer may, in his discretion, remit the liabilities for conditionally free articles upon the payment of Between One and Two Times the Duty (but not less than $100), or the domestic value, whichever is lower.

b. For absolutely free articles, the deciding officer may remit the liabilities upon payment of Between Five and Ten Percent of the Domestic Value, but not less than $100.

4. *Commercial Merchandise*.

The fact that undeclared duty-free articles are imported for commercial purposes may be considered an aggravating factor under section II.3. of these guidelines.

III. *Other Applicable Rules*.

1. These guidelines provide a framework and procedure by which violations of 19 U.S.C. 1497 are to be analyzed. They are not mandatory in the sense that they must be absolutely applied. Customs officers varying from these guidelines must provide reasons for doing so in the case record.

2. Customs officers shall document mitigating and aggravating factors found in each case in the case file. There must be a basis shown for mitigated amounts.

3. It is intended that mitigating and aggravating factors shall be considered together and used to offset each other where appropriate.

4. The rate of duty to be used in calculating the mitigated penalty shall be the appropriate rate from Chapters 1–97, HTSUS, and not the flat rate from Chapter 98, HTSUS.

5. ''Duty'' means Customs duties and any internal revenue taxes which would have attached upon importation (see section 101.1(i), Customs Regulations). Therefore, multiples will also be applied to internal revenue taxes which would have been due.

6. Customs officers may, within their discretion, consider other factors not here delineated as aggravating or mitigating and apply the guidelines accordingly. These additional factors must also be documented in the case file.

7. These guidelines are not authority for admitting into the commerce of the United States articles which are conditionally or absolutely prohibited from entry.

8. The presence of one or more extraordinary aggravating factors, including but not limited to those set forth in section I.6. of these guidelines, may within the discretion of the deciding officer be a basis for denial of relief.

9. If the violator is being prosecuted criminally, the civil (19 U.S.C. 1497) liability generally is administratively settled only after completion of the prosecution or with the express approval of the appropriate U.S. attorney. Criminal prosecution of the violator, however, is insufficient grounds to delay indefinitely determination of the civil liability. The Fines, Penalties, and Forfeitures Officer should contact the Chief Counsel representative in the field to determine the best course of action to follow with respect to the civil liability. Chief Counsel representative will consult with the U.S. attorney and the Penalties Branch at Customs Headquarters. Because of time delay problems, all *seizures* involving criminal prosecutions must be promptly coordinated in this manner, and consideration should be given to immediate referral of the forfeiture action to the U.S.

attorney for the institution of a judicial proceeding.

[T.D. 83–145, 48 FR 30100, June 30, 1983, as amended by T.D. 89–1, 53 FR 51271, Dec. 21, 1988; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

## APPENDIX B TO PART 171—CUSTOMS REGULATIONS, GUIDELINES FOR THE IMPOSITION AND MITIGATION OF PENALTIES FOR VIOLATIONS OF 19 U.S.C. 1592

A monetary penalty incurred under section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592; hereinafter referred to as section 592) may be remitted or mitigated under section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), if it is determined that there are mitigating circumstances to justify remission or mitigation. The guidelines below will be used by the Customs Service in arriving at a just and reasonable assessment and disposition of liabilities arising under section 592 within the stated limitations. It is intended that these guidelines shall be applied by Customs officers in pre-penalty proceedings and in determining the monetary penalty assessed in any penalty notice. The assessed penalty or penalty amount set forth in Customs administrative disposition determined in accordance with these guidelines does not limit the penalty amount which the Government may seek in bringing a civil enforcement action pursuant to section 592(e). It should be understood that any mitigated penalty is conditioned upon payment of any actual loss of duty as well as a release by the party that indicates that the mitigation decision constitutes full accord and satisfaction. Further, mitigation decisions are not rulings within the meaning of part 177 of the Customs Regulations (19 CFR part 177). Lastly, these guidelines may supplement, and are not intended to preclude application of, any other special guidelines promulgated by Customs.

### *(A) Violations of Section 592*

Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty, tax or fee thereby, a violation of section 592 occurs when a person, through fraud, gross negligence, or negligence, enters, introduces, or attempts to enter or introduce any merchandise into the commerce of the United States by means of any document, electronic transmission of data or information, written or oral statement, or act that is material and false, or any omission that is material; or when a person aids or abets any other person in the entry, introduction, or attempted entry or introduction of merchandise by such means. It should be noted that the language ''entry, introduction, or attempted entry or introduction'' encompasses placing merchandise in-bond (e.g., filing an immediate transportation application). There is no violation if the falsity or omission is due solely to clerical error or mistake of fact, unless the error or mistake is part of a pattern of negligent conduct. Also, the unintentional repetition by an electronic system of an initial clerical error generally will not constitute a pattern of negligent conduct. Nevertheless, if Customs has drawn the party's attention to the unintentional repetition by an electronic system of an initial clerical error, subsequent failure to correct the error could constitute a violation of section 592. Also, the unintentional repetition of a clerical mistake over a significant period of time or involving many entries could indicate a pattern of negligent conduct and a failure to exercise reasonable care.

### *(B) Definition of Materiality Under Section 592*

A document, statement, act, or omission is material if it has the natural tendency to influence or is capable of influencing agency action including, but not limited to a Customs action regarding: (1) Determination of the classification, appraisement, or admissibility of merchandise (e.g., whether merchandise is prohibited or restricted); (2) determination of an importer's liability for duty (including marking, antidumping, and/or countervailing duty); (3) collection and reporting of accurate trade statistics; (4) determination as to the source, origin, or quality of merchandise; (5) determination of whether an unfair trade practice has been committed under the anti-dumping or countervailing duty laws or a similar statute; (6) determination of whether an unfair act has been committed involving patent, trademark, or copyright infringement; or (7) the determination of whether any other unfair trade practice has been committed in violation of federal law. The ''but for'' test of materiality is inapplicable under section 592.

### *(C) Degrees of Culpability Under Section 592*

The three degrees of culpability under section 592 for the purposes of administrative proceedings are:

(1) *Negligence*. A violation is determined to be negligent if it results from an act or acts (of commission or omission) done through either the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances either: (a) in ascertaining the facts or in drawing inferences therefrom, in ascertaining the offender's obligations under the statute; or (b) in communicating information in a manner so that it may be understood by the recipient. As a general rule, a violation is negligent if it results from failure to exercise reasonable care and competence: (a) to ensure that statements made and information provided in connection with the importation

of merchandise are complete and accurate; or (b) to perform any material act required by statute or regulation.

(2) *Gross Negligence*. A violation is deemed to be grossly negligent if it results from an act or acts (of commission or omission) done with actual knowledge of or wanton disregard for the relevant facts and with indifference to or disregard for the offender's obligations under the statute.

(3) *Fraud*. A violation is determined to be fraudulent if a material false statement, omission, or act in connection with the transaction was committed (or omitted) knowingly, *i.e.*, was done voluntarily and intentionally, as established by clear and convincing evidence.

*(D) Discussion of Additional Terms*

(1) *Duty Loss Violations*. A section 592 duty loss violation involves those cases where there has been a loss of duty including any marking, anti-dumping, or countervailing duties, or any tax and fee (e.g., merchandise processing and/or harbor maintenance fees) attributable to an alleged violation.

(2) *Non-duty Loss Violations*. A section 592 non-duty loss violation involves cases where the record indicates that an alleged violation is principally attributable to, for example, evasion of a prohibition, restriction, or other non-duty related consideration involving the importation of the merchandise.

(3) *Actual Loss of Duties*. An actual loss of duty occurs where there is a loss of duty including any marking, anti-dumping, or countervailing duties, or any tax and fee (e.g., merchandise processing and/or harbor maintenance fees) attributable to a liquidated Customs entry, and the merchandise covered by the entry has been entered or introduced (or attempted to be entered or introduced) in violation of section 592.

(4) *Potential Loss of Duties*. A potential loss of duty occurs where an entry remains unliquidated and there is a loss of duty, including any marking, anti-dumping or countervailing duties or any tax and fee (e.g., merchandise processing and/or harbor maintenance fees) attributable to a violation of section 592, but the violation was discovered prior to liquidation. In addition, a potential loss of duty exists where Customs discovers the violation and corrects the entry to reflect liquidation at the proper classification and value. In other words, the potential loss in such cases equals the amount of duty, tax and fee that would have occurred had Customs not discovered the violation prior to liquidation and taken steps to correct the entry.

(5) *Total Loss of Duty*. The total loss of duty is the sum of any actual and potential loss of duty attributable to alleged violations of section 592 in a particular case. Payment of any actual and/or potential loss of duty shall not affect or reduce the total loss of duty used for assessing penalties as set forth in these guidelines. The ''multiples'' set forth below in paragraph (F)(2) involving assessment and disposition of cases shall utilize the ''total loss of duty'' amount in arriving at the appropriate assessment or disposition.

(6) *Reasonable Care*. General Standard: All parties, including importers of record or their agents, are required to exercise reasonable care in fulfilling their responsibilities involving entry of merchandise. These responsibilities include, but are not limited to: providing a classification and value for the merchandise; furnishing information sufficient to permit Customs to determine the final classification and valuation of merchandise; taking measures that will lead to and assure the preparation of accurate documentation, and determining whether any applicable requirements of law with respect to these issues are met. In addition, all parties, including the importer, must use reasonable care to provide accurate information or documentation to enable Customs to determine if the merchandise may be released. Customs may consider an importer's failure to follow a binding Customs ruling a lack of reasonable care. In addition, unreasonable classification will be considered a lack of reasonable care (e.g., imported snow skis are classified as water skis). Failure to exercise reasonable care in connection with the importation of merchandise may result in imposition of a section 592 penalty for fraud, gross negligence or negligence.

(7) *Clerical Error*. A clerical error is an error in the preparation, assembly or submission of import documentation or information provided to Customs that results from a mistake in arithmetic or transcription that is not part of a pattern of negligence. The mere non-intentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligence. Nevertheless, as stated earlier, if Customs has drawn a party's attention to the non-intentional repetition by an electronic system of an initial clerical error, subsequent failure to correct the error could constitute a violation of section 592. Also, the unintentional repetition of a clerical mistake over a significant period of time or involving many entries could indicate a pattern of negligent conduct and a failure to exercise reasonable care.

(8) *Mistake of Fact*. A mistake of fact is a false statement or omission that is based on a bona fide erroneous belief as to the facts, so long as the belief itself did not result from negligence in ascertaining the accuracy of the facts.

*(E) Penalty Assessment*

(1) *Case Initiation—Pre-penalty Notice*.

(a) *Generally*. As provided in §162.77, Customs Regulations (19 CFR 162.77), if the appropriate Customs field officer has reasonable cause to believe that a violation of section 592 has occurred and determines that further proceedings are warranted, the Customs field officer will issue to each person concerned a notice of intent to issue a claim for a monetary penalty (*i.e.*, the ''pre-penalty notice''). In issuing such a pre-penalty notice, the Customs field officer will make a tentative determination of the degree of culpability and the amount of the proposed claim. Payment of any actual and/or potential loss of duty will not affect or reduce the total loss of duty used for assessing penalties as set forth in these guidelines. The ''multiples'' set forth in paragraphs (F)(2)(a)(i), (b)(i) and (c)(i) involving assessment and disposition of duty loss violation cases will use the amount of total loss of duty in arriving at the appropriate assessment or disposition. Further, where separate duty loss and non-duty loss violations occur on the same entry, it is within the Customs field officer's discretion to assess both duty loss and non-duty loss penalties, or only one of them. Where only one of the penalties is assessed, the Customs field officer has the discretion to select which penalty (duty loss or non-duty loss) shall be assessed. Also, where there is a violation accompanied by an incidental or nominal loss of duties, the Customs field officer may assess a non-duty loss penalty where the incidental or nominal duty loss resulted from a separate non-duty loss violation. The Customs field officer will propose a level of culpability in the pre-penalty notice that conforms to the level of culpability suggested by the evidence at the time of issuance. Moreover, the pre-penalty notice will include a statement that it is Customs practice to base its actions on the earliest point in time that the statute of limitations may be asserted (*i.e.*, the date of occurrence of the alleged violation) inasmuch as the final resolution of a case in court may be less than a finding of fraud. A pre-penalty notice that is issued to a party in a case where Customs determines a claimed prior disclosure is not valid—owing to the disclosing party's knowledge of the commencement of a formal investigation of a disclosed violation—will include a copy of a written document that evidences the commencement of a formal investigation. In addition, a pre-penalty notice is not required if a violation involves a non-commercial importation or if the proposed claim does not exceed $1,000. Special guidelines relating to penalty assessment and dispositions involving ''Arriving Travelers,'' are set forth in section (L) below.

(b) *Pre-penalty Notice—Proposed Claim Amount*

(i) *Fraud*. In general, if a violation is determined to be the result of fraud, the proposed claim ordinarily will be assessed in an amount equal to the domestic value of the merchandise. Exceptions to assessing the penalty at the domestic value may be warranted in unusual circumstances such as a case where the domestic value of the merchandise is disproportionately high in comparison to the loss of duty attributable to an alleged violation (e.g., a total loss of duty of $10,000 involving 10 entries with a total domestic value of $2,000,000). Also, it is incumbent upon the appropriate Customs field officer to consider whether mitigating factors are present warranting a reduction in the customary domestic value assessment. In all section 592 cases of this nature regardless of the dollar amount of the proposed claim, the Customs field officer will obtain the approval of the Penalties Branch at Headquarters prior to issuance of a pre-penalty notice at an amount less than domestic value.

(ii) *Gross Negligence and Negligence*. In determining the amount of the proposed claim in cases involving gross negligence and negligence, the appropriate Customs field officer will take into account the gravity of the offense, the amount of loss of duty, the extent of wrongdoing, mitigating or aggravating factors, and other factors bearing upon the seriousness of a violation, but in no case will the assessed penalty exceed the statutory ceilings prescribed in section 592. In cases involving gross negligence and negligence, penalties equivalent to the ceilings stated in paragraphs (F)(2)(b) and (c) regarding disposition of cases may be appropriate in cases involving serious violations, e.g., violations involving a high loss of duty or significant evasion of import prohibitions or restrictions. A ''serious'' violation need not result in a loss of duty. The violation may be serious because it affects the admissibility of merchandise or the enforcement of other laws, as in the case of quota evasions, false statements made to conceal the dumping of merchandise, or violations of exclusionary orders of the International Trade Commission.

(c) *Technical Violations*. Violations where the loss of duty is nonexistent or minimal and/or that have an insignificant impact on enforcement of the laws of the United States may justify a proposed penalty in a fixed amount not related to the value of merchandise, but an amount believed sufficient to have a deterrent effect: e.g., violations involving the subsequent sale of merchandise or vehicles entered for personal use; violations involving failure to comply with declaration or entry requirements that do not change the admissibility or entry status of merchandise or its appraised value or classification; violations involving the illegal diversion to domestic use of instruments of international traffic; and local point-to-point traffic violations. Generally, a penalty

in a fixed amount ranging from $1,000 to $2,000 is appropriate in cases where there are no prior violations of the same kind. However, fixed sums ranging from $2,000 to $10,000 may be appropriate in the case of multiple or repeated violations. Fixed sum penalty amounts are not subject to further mitigation and may not exceed the maximum amounts stated in section 592 and in these guidelines.

(d) *Statute of Limitations Considerations—Waivers.* Prior to issuance of any section 592 pre-penalty notice, the appropriate Customs field officer will calculate the statute of limitations attributable to an alleged violation. Inasmuch as section 592 cases are reviewed de novo by the Court of International Trade, the statute of limitations calculation in cases alleging fraud should assume a level of culpability of gross negligence or negligence, *i.e.,* ordinarily applying a shorter period of time for statute of limitations purposes. In accordance with section 162.78 of the Customs Regulations (19 CFR 162.78), if less than 1 year remains before the statute of limitations may be raised as a defense, a shortened response time may be specified in the notice—but in no case, less than 7 business days from the date of mailing. In cases of shortened response times, the Customs field officer should notify alleged violators by telephone and use all reasonable means (e.g., facsimile transmission of a copy of the notice) to expedite receipt of the notice by the alleged violators. Also in such cases, the appropriate Customs field officer should advise the alleged violator that additional time to respond to the pre-penalty notice will be granted only if an acceptable waiver of the statute of limitations is submitted to Customs. With regard to waivers of the statute of limitations, it is Customs practice to request waivers concurrently both from all potential alleged violators and their sureties.

(2) *Closure of Case or Issuance of Penalty Notice.*

(a) *Case Closure.* The appropriate Customs field officer may find, after consideration of the record in the case, including any pre-penalty response/oral presentation, that issuance of a penalty notice is not warranted. In such cases, the Customs field officer will provide written notification to the alleged violator who received the subject pre-penalty notice that the case is closed.

(b) *Issuance of Penalty Notice.* In the event that circumstances warrant issuance of a notice of penalty pursuant to § 162.79 of the Customs Regulations (19 CFR 162.79), the appropriate Customs field officer will give consideration to all available evidence with respect to the existence of material false statements or omissions (including evidence presented by an alleged violator), the degree of culpability, the existence of a prior disclosure, the seriousness of the violation, and the existence of mitigating or aggravating factors. In cases involving fraud, the penalty notice will be in the amount of the domestic value of the merchandise unless a lesser amount is warranted as described in paragraph (E)(1)(b)(i). In general, the degree of culpability or proposed penalty amount stated in a pre-penalty notice will not be increased in the penalty notice. If, subsequent to the issuance of a pre-penalty notice and upon further review of the record, the appropriate Customs field officer determines that a higher degree of culpability exists, the original pre-penalty notice should be rescinded and a new pre-penalty notice issued that indicates the higher degree of culpability and increased proposed penalty amount. However, if less than 9 months remain before expiration of the statute of limitations or any waiver thereof by the party named in the pre-penalty notice, the higher degree of culpability and higher penalty amount may be indicated in the notice of penalty without rescinding the earlier pre-penalty notice. In such cases, the Customs field officer will consider whether a lower degree of culpability is appropriate or whether to change the information contained in the pre-penalty notice.

(c) *Statute of Limitations Considerations.* Prior to issuance of any section 592 penalty notice, the appropriate Customs field officer again shall calculate the statute of limitations attributable to the alleged violation and request a waiver(s) of the statute, if necessary. In accordance with part 171 of the Customs Regulations (19 CFR part 171), if less than 180 days remain before the statute of limitations may be raised as a defense, a shortened response time may be specified in the notice—but in no case less than 7 business days from the date of mailing. In such cases, the Customs field officer should notify an alleged violator by telephone and use all reasonable means (e.g., facsimile transmission of a copy) to expedite receipt of the penalty notice by the alleged violator. Also, in such cases, the Customs field officer should advise an alleged violator that, if an acceptable waiver of the statute of limitations is provided, additional time to respond to the penalty notice may be granted.

*(F) Administrative Penalty Disposition*

(1) *Generally.* It is the policy of the Department of the Treasury and the Customs Service to grant mitigation in appropriate circumstances. In certain cases, based upon criteria to be developed by Customs, mitigation may take an alternative form, whereby a violator may eliminate or reduce his or her section 592 penalty liability by taking action(s) to correct problems that caused the violation. In any case, in determining the administrative section 592 penalty disposition, the appropriate Customs field officer will consider the entire case record—taking into

account the presence of any mitigating or aggravating factors. All such factors should be set forth in the written administrative section 592 penalty decision. Once again, Customs emphasizes that any penalty liability which is mitigated is conditioned upon payment of any actual loss of duty in addition to that penalty as well as a release by the party that indicates that the mitigation decision constitutes full accord and satisfaction. Finally, section 592 penalty dispositions in duty-loss and non-duty-loss cases will proceed in the manner set forth below.

(2) *Dispositions.*

(a) *Fraudulent Violation.* Penalty dispositions for a fraudulent violation will be calculated as follows:

(i) *Duty Loss Violation.* An amount ranging from a minimum of 5 times the total loss of duty to a maximum of 8 times the total loss of duty—but in any such case the amount may not exceed the domestic value of the merchandise. A penalty disposition greater than 8 times the total loss of duty may be imposed in a case involving an egregious violation, or a public health and safety violation, or due to the presence of aggravating factors, but again, the amount may not exceed the domestic value of the merchandise.

(ii) *Non-Duty Loss Violation.* An amount ranging from a minimum of 50 percent of the dutiable value to a maximum of 80 percent of the dutiable value of the merchandise. A penalty disposition greater than 80 percent of the dutiable value may be imposed in a case involving an egregious violation, or a public health and safety violation, or due to the presence of aggravating factors, but the amount may not exceed the domestic value of the merchandise.

(b) *Grossly Negligent Violation.* Penalty dispositions for a grossly negligent violation shall be calculated as follows:

(i) *Duty Loss Violation.* An amount ranging from a minimum of 2.5 times the total loss of duty to a maximum of 4 times the total loss of duty—but in any such case, the amount may not exceed the domestic value of the merchandise.

(ii) *Non-Duty Loss Violation.* An amount ranging from a minimum of 25 percent of the dutiable value to a maximum of 40 percent of the dutiable value of the merchandise—but in any such case, the amount may not exceed the domestic value of the merchandise.

(c) *Negligent Violation.* Penalty dispositions for a negligent violation shall be calculated as follows:

(i) *Duty Loss Violation.* An amount ranging from a minimum of 0.5 times the total loss of duty to a maximum of 2 times the total loss of duty but, in any such case, the amount may not exceed the domestic value of the merchandise.

(ii) *Non-Duty Loss Violation.* An amount ranging from a minimum of 5 percent of the dutiable value to a maximum of 20 percent of the dutiable value of the merchandise, but, in any such case, the amount may not exceed the domestic value of the merchandise.

(d) *Authority to Cancel Claim.* Upon issuance of a penalty notice, Customs has set forth its formal monetary penalty claim. Except as provided in 19 CFR part 171, in those section 592 cases within the administrative jurisdiction of the concerned Customs field office, the appropriate Customs field officer will cancel any such formal claim whenever it is determined that an essential element of the alleged violation is not established by the agency record, including pre-penalty and penalty responses provided by the alleged violator. Except as provided in 19 CFR part 171, in those section 592 cases within Customs Headquarters jurisdiction, the appropriate Customs field officer will cancel any such formal claim whenever it is determined that an essential element of the alleged violation is not established by the agency record, and such cancellation action precedes the date of the Customs field officer's receipt of the alleged violator's petition responding to the penalty notice. On and after the date of Customs receipt of the petition responding to the penalty notice, jurisdiction over the action rests with Customs Headquarters including the authority to cancel the claim.

(e) *Remission of Claim.* If the Customs field officer believes that a claim for monetary penalty should be remitted for a reason not set forth in these guidelines, the Customs field officer should first seek approval from the Chief, Penalties Branch, Customs Service Headquarters.

(f) *Prior Disclosure Dispositions.* It is the policy of the Department of the Treasury and the Customs Service to encourage the submission of valid prior disclosures that comport with the laws, regulations, and policies governing this provision of section 592. Customs will determine the validity of the prior disclosure including whether or not the prior disclosure sets forth all the required elements of a violation of section 592. A valid prior disclosure warrants the imposition of the reduced Customs civil penalties set forth below:

(1) *Fraudulent Violation.*

(a) *Duty Loss Violation.* The claim for monetary penalty shall be equal to 100 percent of the total loss of duty (*i.e.*, actual + potential) resulting from the violation. No mitigation will be afforded.

(b) *Non-Duty Loss Violation.* The claim for monetary penalty shall be equal to 10 percent of the dutiable value of the merchandise in question. No mitigation will be afforded.

(2) *Gross Negligence and Negligence Violation.*

(a) *Duty Loss Violation.* The claim for monetary penalty shall be equal to the interest on the actual loss of duty computed from the date of liquidation to the date of the party's tender of the actual loss of duty resulting from the violation. Customs notes that there

is no monetary penalty in these cases if the duty loss is potential in nature. Absent extraordinary circumstances, no mitigation will be afforded.

(b) *Non-Duty Loss Violation*. There is no monetary penalty in such cases and any claim for monetary penalty which had been issued prior to the decision granting prior disclosure will be remitted in full.

*(G) Mitigating Factors*

The following factors will be considered in mitigation of the proposed or assessed penalty claim or the amount of the administrative penalty decision, provided that the case record sufficiently establishes their existence. The list is not all-inclusive.

(1) *Contributory Customs Error*. This factor includes misleading or erroneous advice given by a Customs official *in writing* to the alleged violator, or established by a contemporaneously created written Customs record, only if it appears that the alleged violator reasonably relied upon the information and the alleged violator fully and accurately informed Customs of all relevant facts. The concept of comparative negligence may be utilized in determining the weight to be assigned to this factor. If it is determined that the Customs error was the sole cause of the violation, the proposed or assessed penalty claim shall be canceled. If the Customs error contributed to the violation, but the violator also is culpable, the Customs error will be considered as a mitigating factor.

(2) *Cooperation with the Investigation*. To obtain the benefits of this factor, the violator must exhibit extraordinary cooperation beyond that expected from a person under investigation for a Customs violation. Some examples of the cooperation contemplated include assisting Customs officers to an unusual degree in auditing the books and records of the violator (e.g., incurring extraordinary expenses in providing computer runs solely for submission to Customs to assist the agency in cases involving an unusually large number of entries and/or complex issues). Another example consists of assisting Customs in obtaining additional information relating to the subject violation or other violations. Merely providing the books and records of the violator should not be considered cooperation justifying mitigation inasmuch as Customs has the right to examine an importer's books and records pursuant to 19 U.S.C. 1508–1509.

(3) *Immediate Remedial Action*. This factor includes the payment of the actual loss of duty prior to the issuance of a penalty notice and within 30 days after Customs notifies the alleged violator of the actual loss of duties attributable to the alleged violation. In appropriate cases, where the violator provides evidence that immediately after learning of the violation, substantial remedial action was taken to correct organizational or procedural defects, immediate remedial action may be granted as a mitigating factor. Customs encourages immediate remedial action to ensure against future incidents of noncompliance.

(4) *Inexperience in Importing*. Inexperience is a factor only if it contributes to the violation and the violation is not due to fraud or gross negligence.

(5) *Prior Good Record*. Prior good record is a factor only if the alleged violator is able to demonstrate a consistent pattern of importations without violation of section 592, or any other statute prohibiting false or fraudulent importation practices. This factor will not be considered in alleged fraudulent violations of section 592.

(6) *Inability to Pay the Customs Penalty*. The party claiming the existence of this factor must present documentary evidence in support thereof, including copies of income tax returns for the previous 3 years, and an audited financial statement for the most recent fiscal quarter. In certain cases, Customs may waive the production of an audited financial statement or may request alternative or additional financial data in order to facilitate an analysis of a claim of inability to pay (e.g., examination of the financial records of a foreign entity related to the U.S. company claiming inability to pay).

(7) *Customs Knowledge*. Additional relief in non-fraud cases (which also are not the subject of a criminal investigation) will be granted if it is determined that Customs had actual knowledge of a violation and, without justification, failed to inform the violator so that it could have taken earlier corrective action. In such cases, if a penalty is to be assessed involving repeated violations of the same kind, the maximum penalty amount for violations occurring after the date on which actual knowledge was obtained by Customs will be limited to two times the loss of duty in duty-loss cases or twenty percent of the dutiable value in non-duty-loss cases if the continuing violations were the result of gross negligence, or the lesser of one time the loss of duty in duty-loss cases or ten percent of dutiable value in non-duty-loss cases if the violations were the result of negligence. This factor will not be applicable when a substantial delay in the investigation is attributable to the alleged violator.

*(H) Aggravating Factors*

Certain factors may be determined to be aggravating factors in calculating the amount of the proposed or assessed penalty claim or the amount of the administrative penalty decision. The presence of one or more aggravating factors may not be used to raise the level of culpability attributable to the alleged violations, but may be utilized to offset the presence of mitigating factors. The following factors will be considered ''aggravating factors,'' provided that the case

record sufficiently establishes their existence. The list is not exclusive.

(1) Obstructing an investigation or audit,

(2) Withholding evidence,

(3) Providing misleading information concerning the violation,

(4) Prior substantive violations of section 592 for which a final administrative finding of culpability has been made,

(5) Textile imports that have been the subject of illegal transshipment (*i.e.*, false country of origin declaration), whether or not the merchandise bears false country of origin markings,

(6) Evidence of a motive to evade a prohibition or restriction on the admissibility of the merchandise (e.g., evading a quota restriction),

(7) Failure to comply with a lawful demand for records or a Customs summons.

*(I) Offers in Compromise (''Settlement Offers'')*

Parties who wish to submit a civil offer in compromise pursuant to 19 U.S.C. 1617 (also known as a ''settlement offer'' ) in connection with any section 592 claim or potential section 592 claim should follow the procedures outlined in §161.5 of the Customs Regulations (19 CFR 161.5). Settlement offers do not involve ''mitigation'' of a claim or potential claim, but rather ''compromise'' an action or potential action where Customs evaluation of potential litigation risks, or the alleged violator's financial position, justifies such a disposition. In any case where a portion of the offered amount represents a tender of unpaid duties, taxes and fees, Customs letter of acceptance may identify the portion representing any such duty, tax and fee. The offered amount should be deposited at the Customs field office responsible for handling the section 592 claim or potential section 592 claim. The offered amount will be held in a suspense account pending acceptance or rejection of the offer in compromise. In the event the offer is rejected, the concerned Customs field office will promptly initiate a refund of the money deposited in the suspense account to the offeror.

*(J) Section 592(d) Demands*

Section 592(d) demands for actual losses of duty ordinarily are issued in connection with a penalty action, or as a separate demand without an associated penalty action. In either case, information must be present establishing a violation of section 592(a). In those cases where the appropriate Customs field officer determines that issuance of a penalty under section 592 is not warranted (notwithstanding the presence of information establishing a violation of section 592(a)), but that circumstances do warrant issuance of a demand for payment of an actual loss of duty pursuant to section 592(d), the Customs field officer shall follow the procedures set forth in section 162.79b of the Customs Regulations (19 CFR 162.79b). Except in cases where less than one year remains before the statute of limitations may be raised as a defense, information copies of all section 592(d) demands should be sent to all concerned sureties and the importer of record if such party is not an alleged violator. Also, except in cases where less than one year remains before the statute of limitations may be raised as a defense, Customs will endeavor to issue all section 592(d) demands to concerned sureties and non-violator importers of record only after default by principals.

*(K) Customs Brokers*

If a customs broker commits a section 592 violation and the violation involves fraud, or the broker commits a grossly negligent or negligent violation and shares in the benefits of the violation to an extent over and above customary brokerage fees, the customs broker will be subject to these guidelines. However, if the customs broker commits either a grossly negligent or negligent violation of section 592 (without sharing in the benefits of the violation as described above), the concerned Customs field officer may proceed against the customs broker pursuant to the remedies provided under 19 U.S.C. 1641.

*(L) Arriving Travelers*

(1) *Liability*. Except as set forth below, proposed and assessed penalties for violations by an arriving traveler must be determined in accordance with these guidelines.

(2) *Limitations on Liability on Non-commercial Violations*. In the absence of a referral for criminal prosecution, monetary penalties assessed in the case of an alleged first-offense, non-commercial, fraudulent violation by an arriving traveler will generally be limited as follows:

(a) *Fraud—Duty Loss Violation*. An amount ranging from a minimum of three times the loss of duty to a maximum of five times the loss of duty, provided the loss of duty is also paid;

(b) *Fraud—Non-duty Loss Violation*. An amount ranging from a minimum of 30 percent of the dutiable value of the merchandise to a maximum of 50 percent of its dutiable value;

(c) *Gross Negligence—Duty Loss Violation*. An amount ranging from a minimum of 1.5 times the loss of duty to a maximum of 2.5 times the loss of duty provided the loss of duty is also paid;

(d) *Gross Negligence—Non-duty Loss Violation*. An amount ranging from a minimum of 15 percent of the dutiable value of the merchandise to a maximum of 25 percent of its dutiable value;

(e) *Negligence—Duty Loss Violation*. An amount ranging from a minimum of .25

times the loss of duty to a maximum of 1.25 times the loss of duty provided that the loss of duty is also paid;

(f) *Negligence—Non-duty Loss Violation*. An amount ranging from a minimum of 2.5 percent of the dutiable value of the merchandise to a maximum of 12.5 percent of its dutiable value;

(g) *Special Assessments/Dispositions*. No penalty action under section 592 will be initiated against an arriving traveler if the violation is not fraudulent or commercial, the loss of duty is $100.00 or less, and there are no other concurrent or prior violations of section 592 or other statutes prohibiting false or fraudulent importation practices. However, all lawful duties, taxes and fees will be collected. Also, no penalty under section 592 will be initiated against an arriving traveler if the violation is not fraudulent or commercial, there are no other concurrent or prior violations of section 592, and a penalty is not believed necessary to deter future violations or to serve a law enforcement purpose.

*(M) Violations of Laws Administered by Other Federal Agencies*.

Violations of laws administered by other federal agencies (such as the Food and Drug Administration, Consumer Product Safety Commission, Office of Foreign Assets Control, Department of Agriculture, Fish and Wildlife Service) should be referred to the appropriate agency for its recommendation. Such recommendation, if promptly tendered, will be given due consideration, and may be followed provided the recommendation would not result in a disposition inconsistent with these guidelines.

*(N) Section 592 Violations by Small Entities*

In compliance with the mandate of the Small Business Regulatory Enforcement Fairness Act of 1996, under appropriate circumstances, the issuance of a penalty under section 592 may be waived for businesses qualifying as small business entities.

Procedures established for small business entities regarding violations of 19 U.S.C. 1592 were published as Treasury Decision 97–46 in the FEDERAL REGISTER (62 FR 30378) on June 3, 1997.

[T.D. 00–41, 65 FR 39093, June 23, 2000]

## APPENDIX C TO PART 171—CUSTOMS REGULATIONS GUIDELINES FOR THE IMPOSITION AND MITIGATION OF PENALTIES FOR VIOLATIONS OF 19 U.S.C. 1641

The Trade and Tariff Act of 1984 promulgated numerous changes to the current statute relating to Customs brokers. The following document attempts to define that conduct which is to be proscribed and to suggest penalty amounts to be assessed for such violations. It also chronicles procedures to be followed in assessment and mitigation of penalties.

NOTE: Assessment of a monetary penalty is an alternative sanction to revocation or suspension of the broker's license or permit.

### I. PENALTY ASSESSMENT PROCEDURES—19 CFR PART 111, SUBPART E

A. When a penalty against a broker is contemplated, the ''appropriate Customs officer'', (*i.e.*, the Fines, Penalties, and Forfeitures Officer) shall issue a written notice which advises the violator of the allegations which would warrant imposition of a penalty. The written notice shall be in a format similar to a prepenalty notice that would be issued in contemplation of assessment of a penalty under section 1592 or 1584.

B. The written notice shall inform the violator that he has 30 days to respond as to why a penalty should not be issued. See 19 CFR 111.92.

C. If no response is received from the violator, or, if after receipt of the response, it is determined that the penalty should be issued as stated in the prepenalty notice, a notice of penalty CF–5955A shall be issued formally assessing a monetary penalty against the broker.

D. The Fines, Penalties, and Forfeitures Officer may reduce the amount of the contemplated penalty or cancel its issuance altogether if, after review of the violator's submission in response to the prepenalty notice, he is satisfied that the acts which are the basis for the penalty did not occur as charged or occurred in a manner that would permit a reduction in the contemplated penalty.

E. After issuance of a penalty notice, the petitioning provisions of part 171 of the Customs Regulations are in effect.

F. If the broker does not comply with a final mitigation decision within 60 days, the matter shall be referred to the Department of Justice for commencement of judicial action.

### II. PENALTY ASSESSMENT—CONDUCTING CUSTOMS BUSINESS WITHOUT A LICENSE (19 U.S.C. 1641(B)(6))

A. No person may conduct Customs business, other than solely on behalf of that person, without a broker's license.

B. Penalty amount:

1. The maximum penalty for any one incident of conducting Customs business without a license is $10,000.

2. Total aggregate penalties for violation of this or any other section of the broker penalty statute is $30,000. As a general rule, $10,000 will be the maximum assessment for a

violation solely involving conducting Customs business without a license, without regard to the frequency of violations. In particularly aggravated circumstances, this rule shall be suspended.

C. Customs business includes:

1. Classification and valuation.

2. Payment of duties, taxes or other charges.

3. Drawback or refund of duties.

4. Filing of entries or other documents relating to issues covered by 1–3.

D. Customs business does not include:

1. Marine transactions.

2. In-bond movement or transportation of merchandise.

3. Foreign Trade Zone admissions. See C.S.D. 84–23.

E. Penalty amounts to be imposed for transacting Customs business without a license are as follows:

1. No penalty action when importation is conducted on behalf of a family member. For purposes of this subsection, ''family member'' is defined as a parent, child, spouse, sibling, grandparent or grandchild.

2. No penalty action against an individual who has a power of attorney to act as an unpaid agent on a non-commercial shipment. See 19 CFR 141.33.

3. A $250 penalty for:

a. First violation when transaction is non-commercial but is conducted on behalf of any business entity, or

b. First violation where the importation is commercial in nature (*i.e.*, imported merchandise is for resale) *or* where the violator is compensated for his action, e.g., an importation of raw material or parts of merchandise that is to be manufactured, refined or assembled here before resale would be a commercial entry because the merchandise eventually would be resold, albeit in another form than that which it was entered.

4. A $1,000 penalty for repeat violation involving:

a. Commercial importation.

b. Non-commercial importation made on behalf of a business entity.

c. Non-commercial importation for which compensation is received by the violator.

5. A $10,000 penalty when:

a. Violator falsely holds himself out as being a licensed Customs broker.

b. A continuing course of conduct can be shown (determined by frequency of violations or number of entries involved) which would indicate that the violator is entering merchandise for others on a regular commercial basis, e.g., if the violator has incurred numerous penalties under subsections (3) and (4) above, but the smaller penalties have had no deterrent effect, the $10,000 penalty under this subsection should be assessed in an action separate from those smaller penalties.

F. Mitigation—No mitigation will be afforded for any violation involving conducting Customs business without a license unless the violator can show an inability to pay such penalty.

G. IMPORTANT: As a general rule, a separate penalty should not be imposed for each unlawful Customs business transaction if numerous transactions occur contemporaneously. For example:

1. If an unlicensed individual files six commercial entries at one time, that should be treated as one violation. It should not be treated as six violations because the entries were presented contemporaneously.

2. If Customs discovers that an individual has conducted Customs business without a license on numerous occasions, but such individual acted without knowledge of the prohibition on such conduct, those numerous transactions should be treated as one violation for purposes of imposition of any penalty.

H. NOTE: Conducting Customs business without a license is not the same violation as conducting Customs business without a permit. The latter violation is discussed later in this appendix in the section involving Violation of Other Laws or Regulations Enforced by Customs.

I. Intent to violate the law is not an element of this violation. Reference to ''intentionally transacts Customs business'' in subsection 1641(b)(6) relates to the intentional transaction of the business itself, not to any intentional attempt to violate the terms of the statute.

III. SECTION 1641(D)(1)(A)—MAKING A FALSE OR MISLEADING STATEMENT OR AN OMISSION AS TO MATERIAL FACT WHICH WAS REQUIRED TO BE STATED IN ANY APPLICATION FOR A LICENSE OR PERMIT

A. If the license would not have been issued but for the false statement, the proper sanction would be suspension or revocation of the license. If the false or misleading statement would not have absolutely resulted in the denial, revocation or suspension of a license, then penalty sanctions are proper.

B. Material facts include but are not limited to:

1. Facts as to identity.

2. Facts as to citizenship status of an individual.

3. Facts as to moral character of an individual which relate to his fitness to conduct Customs business.

4. The organization of any corporation, association or partnership.

5. The status of the license of a license holder who is a corporate officer or partner.

C. Penalty Amount—$5,000 for each false statement, to a maximum of $30,000.

D. Examples of situations where revocation of the license is appropriate.

1. An applicant states that he is 21 years old (as required by 19 CFR 111.11) and he is

not. But for the false statement, the applicant could not meet the age requirement for a license.

2. An applicant provides an alias in the application which is a material false statement as to identity.

E. Mitigation guidelines.

1. Violation due to clerical error (clerical error as defined by 19 U.S.C. 1520(c)(1)), mitigated without payment.

2. Violation due to negligence.

a. This is defined as more than clerical error, but not an intentional violation. Examples include:

i. Failing to list a new corporate office because corporate records have not been kept current.

ii. Listing an incorrect address for a reference because applicant has failed to update his records.

b. Mitigate to $500 for each $5,000 penalty assessed.

c. This category excludes cases of harmless error, *i.e.*, a mistake which could not possibly harm the government's interests. Cases falling in this category should be mitigated in full.

3. Intentional violations—Revocation of a license which has been granted is the preferred sanction. If no license has been granted, no mitigation.

IV. SECTION 1641(D)(1)(B)—BROKER CONVICTED OF CERTAIN FELONIES OR MISDEMEANORS SUBSEQUENT TO FILING LICENSE APPLICATION

A. As a general rule, license revocation is the standard sanction for these violations. If the conviction occurs subsequent to the filing of an application, monetary penalties may be assessed according to the following criteria.

B. Unlawful conduct must relate to:

1. Importation or exportation of merchandise.

2. Conduct of Customs business (this shall include violations relating to taxes and duties and documents required to be filed with regard to such taxes and duties).

3. Relevant convictions would include:

a. 18 U.S.C. 1001—making a false statement to Customs or any other agency with regard to any relevant transaction.

b. 18 U.S.C. 545—unlawful importation of merchandise.

c. 18 U.S.C. 542—unlawful importation by means of a fraudulent act or omission.

d. 22 U.S.C. 2778—illegal exportation of munitions.

C. Monetary penalties may not be imposed in connection with convictions relating to conduct described in subsection 1641(d)(1)(B)(iii) including larceny, theft, robbery, extortion, counterfeiting, fraudulent concealment or conversion, embezzlement or misappropriation of funds. Either suspension or revocation is the appropriate penalty for these infractions.

D. Penalty amounts.

1. $15,000 for a misdemeanor conviction.

2. $30,000 for a felony conviction.

E. Mitigation.

1. For a misdemeanor conviction, mitigation to a lesser amount is permitted if the conviction related to Customs business and the domestic value of the merchandise involved is less than $15,000. In such case, mitigation to an amount equal to the domestic value of the merchandise is appropriate.

2. For other misdemeanor convictions, no relief.

3. Felony convictions, no relief.

V. SECTION 1641(D)(1)(C)—VIOLATION OF ANY LAW ENFORCED BY THE CUSTOMS SERVICE OR THE RULES OR REGULATIONS ISSUED UNDER ANY SUCH PROVISION

A. Penalties under this section may be imposed in addition to any penalty provided for under the law enforced by Customs. *Exception:* Penalties imposed against a broker under 19 U.S.C. 1592 at a culpability level of less than fraud or under 19 U.S.C. 1595a(b) shall not be imposed in addition to a broker's penalty.

B. Additional penalties under this section shall also be imposed against any broker where the other statute violated only moves against property, or the violator has demonstrated a continuing course of illegal conduct or evidence exists which indicates repeated violations of other statutes or regulations.

C. Conducting Customs business without a permit penalties should be assessed under this section.

1. The penalty notice should also cite 19 CFR 111.19 as the regulation violated. A party operating without a permit is required to apply for one under the above-noted regulation.

2. Assessment amount—$1,000 per transaction conducted without a permit.

3. Mitigation.

a. Negligence, mitigate to $250–$500 per transaction depending on the presence of mitigating factors (lack of knowledge of permit requirement).

b. Intentional, grant no relief.

c. No mitigation if permit revoked by operation of law.

4. Generally, a separate penalty should not be assessed for each non-permitted transaction if numerous transactions occurred contemporaneously. For example, if a broker files 30 entries the day after a permit expires, the 30 filings should be treated as one violation, not 30 separate violations.

D. Penalties for failure to exercise due diligence in payment, refund or deposit of monies received from clients in connection with

clients' Customs business also should be assessed under this section. This includes failure to pay over to a client, or file a written statement to a client accounting for, funds received.

1. The penalty notice should also cite 19 CFR 111.29 as the regulation violated.

2. Assessment amount—an amount equal to the value of any monies up to a maximum of $30,000, to be deposited with Customs or refunded or accounted for to a client.

3. No mitigation shall be afforded until the monies are properly paid to Customs or refunded or accounted for to the clients.

4. If any claims for liquidated damages result against the client's bond from the failure to pay monies to Customs, no mitigation from the penalty shall be granted until the claim for liquidated damages is settled *by the violating broker* either through payment of the full claim or a mitigated amount.

5. After monies are paid or accounted for and/or liquidated damages claims are settled as stated in 3. and 4. above, mitigation may be afforded. If the violator is found to be negligent, the penalty may be mitigated to an amount between 25 and 50 percent of the assessed amount, but no lower than $250. No mitigation from an intentional violation.

E. Penalties for failure to retain powers of attorney from clients to act in their names.

1. The penalty notice should also cite 19 CFR 141.46 as the regulation violated.

2. Assessment amount—$1,000 for each power of attorney not on file.

3. Mitigation—for a first offense, mitigate to an amount between $250 and $500 unless extraordinary mitigating factors are present, in which case full mitigation should be afforded. An extraordinary mitigating factor would be a fire, theft or other destruction of records beyond broker control. Subsequent offenses—no mitigation unless extraordinary mitigating factors are present.

4. Penalty should be mitigated in full if it can be established that a valid power of attorney had been issued to the broker, but it was misplaced or destroyed through clerical error or mistake.

F. If the other statute violated moves only against property, the violator shall incur a monetary penalty equal to the domestic value of such property or $30,000, whichever is less.

e.g., Violation of 22 U.S.C. 401 for unlawful exportation of merchandise results in seizure and forfeiture of the violative merchandise. There are no penalty provisions which Customs enforces against parties responsible for the seizable offense. If brokers are recalcitrant and are constantly responsible for offenses which result in seizure of merchandise, a penalty equal to the domestic value of such merchandise (in no case to exceed $30,000) should be imposed.

G. Use of a broker's importation bond to aid an importer who has had his immediate delivery privileges revoked.

1. The broker has aided his client in avoiding the immediate delivery sanctions. The penalty notice should cite 19 CFR 142.25(c) as the regulation violated. Before assessment of this penalty, the broker should be shown to have known or been negligent in not knowing of the client's sanction.

2. A penalty equal to the value of the merchandise, not to exceed $30,000, should be assessed.

3. Mitigation—The penalty shall be mitigated to an amount between 25 and 50 percent of that assessed for a first violation where negligence is shown. Any knowing violation or a subsequent negligent violation (not necessarily involving the same client) will result in no mitigation.

H. If the other statute violated provides for a personal penalty, the violator shall incur an additional monetary penalty under this section equal to such personal penalty or $30,000, whichever is less.

I. Penalties assessed under this provision are not limited to violations just involving Customs business as defined in the statute.

J. Mitigation guidelines.

1. If the other law violated moves only against property, mitigate the penalty using guidelines in effect for the other statute violated. For example, if the broker is responsible for a 401 seizure of merchandise valued at $45,000, he incurs a penalty of $30,000. The guidelines for remission of the 401 forfeiture are applicable to mitigation of the broker penalty. Thus, if the forfeiture is remitted upon payment of 5 percent of the merchandise's value, the penalty will be mitigated upon payment of a like amount.

2. If the other law violated provides for a personal penalty, mitigate the broker penalty using guidelines in effect for the other statute violated.

For example, a broker incurs a $40,000 penalty under 1592. The penalty amount represents eight times the loss of revenue because a preliminary finding of fraud is made (see section V.A. of this appendix). A penalty of $30,000, in addition to the $40,000 penalty issued under 1592, may be assessed. The 1592 penalty is later mitigated to $25,000, an amount equal to five times the loss of revenue, as the finding of fraud is upheld and it is also determined that the broker shared in the financial benefits of the violation. The broker penalty also should be mitigated to that $25,000 figure, for a total collection of $50,000.

VI. SECTION 1641(D)(1)(D)—COUNSELING, COMMANDING, INDUCING, PROCURING OR KNOWINGLY AIDING AND ABETTING VIOLATIONS BY ANY OTHER PERSON OF ANY LAW ENFORCED BY THE CUSTOMS SERVICE

A. If the law violated by another moves only against property, a monetary penalty equal to the domestic value of such property or $30,000 whichever is less, may be imposed against the broker who counsels, commands or knowingly aids and abets such violation.

B. If the law violated provides for only a personal penalty against the actual violator, a penalty may be imposed against the broker in an amount equal to that assessed against the violator, but in no case can the penalty exceed $30,000.

C. If the broker is assessed a penalty under the statute violated by the other person, he may be assessed a penalty under this section in addition to any other penalties.

D. Examples of violations of this subsection:

1. A broker counsels a client that certain gemstones are absolutely free of duty and need not be declared upon entry into the United States. The client arrives in the United States and fails to declare a quantity of gemstones worth $45,000. A penalty of $30,000 may be imposed against the broker for such counseling. The client would incur a personal penalty of $45,000 under the provisions of title 19, United States Code, section 1497, but the penalty against the broker cannot exceed $30,000.

2. A client imports $15,000 worth of merchandise by vessel. The merchandise is unladen at the wharf but Customs has not appraised or released it. Customs informs the broker that the shipment must be held for an intensive examination. The broker informs the client that the merchandise can be moved and delivered to the consignee. The broker assures his client that he will handle all the necessary paperwork. The merchandise is moved from the wharf. The broker is subject to a $15,000 penalty for counseling and inducing his client to violate the provisions of title 19, United States Code, section 1448 and title 19, United States Code, section 1595a(b).

E. Mitigation—Follow guidelines applicable to the other penalty or forfeiture statute involved.

VII. SECTION 1641(D)(1)(E)—KNOWINGLY EMPLOYING OR CONTINUING TO EMPLOY ANY PERSON WHO HAS BEEN CONVICTED OF A FELONY, WITHOUT WRITTEN APPROVAL OF SUCH EMPLOYMENT FROM THE SECRETARY OF THE TREASURY

A. A broker has 30 days to seek approval of the Secretary for such employment. If he seeks the approval within such time, no penalty will be assessed.

B. A $5,000 penalty for knowingly employing any convicted felon and failing to make application with the Secretary approving such employment within 30 days of the date of discovery of the felony conviction.

C. A $25,000 penalty for knowingly employing any convicted felon without seeking approval for employment.

D. A $30,000 penalty for knowingly employing any convicted felon and continuing to employ same after approval has been denied (generally revocation or suspension of the license would be appropriate under this circumstance).

E. *Example:* If a broker unknowingly employs a convicted felon and 1 year after employment discovers the existence of such a conviction, the following actions would dictate imposition of a penalty:

1. If he seeks approval of the Secretary within 30 days after discovery of the existence of the conviction, no penalty will be assessed.

2. If he seeks approval at some time after 30 days from the date of discovery, a $5,000 penalty would lie.

3. If he does not seek approval until after Customs becomes aware of the violation, a $25,000 penalty would lie.

4. If he seeks approval, but is denied, and continues to employ the convicted felon, a $30,000 penalty would lie.

F. Customs discovery of a felony conviction. If Customs discovers the felony conviction and there is no indication that the employer is aware of same, Customs may inform the employer of such conviction. Discretion should be used in divulging this information.

G. Mitigation will only be permitted from the $5,000 penalty as follows:

1. If the application for approval is submitted within 60 days, but after 30 days, mitigate to $2,000.

2. If there is no application beyond the 60-day period, no mitigation shall be granted. Continued employment will result in further penalties as described above in sections E.3 and E.4.

VIII. SECTION 1641(D)(1)(F)—IN THE COURSE OF CUSTOMS BUSINESS, WITH INTENT TO DEFRAUD, KNOWINGLY DECEIVING, MISLEADING OR THREATENING ANY CLIENT OR PROSPECTIVE CLIENT

A. An unsubstantiated accusation by a client is inadequate basis to assess any penalty under this section of law.

B. A $30,000 penalty should be imposed for any violation of this section.

C. Mitigation—Inasmuch as evidence of intent must be shown before a penalty can be imposed, no mitigation should be permitted if a violation is found to lie. A petition for mitigation could be entertained only on the issue of whether such violation did, in fact, occur.

IX. SECTION 1641(B)(5)—THE FAILURE OF A CUSTOMS BROKER THAT IS LICENSED AS A CORPORATION, ASSOCIATION OR PARTNERSHIP TO HAVE, FOR ANY CONTINUOUS PERIOD OF 120 DAYS, AT LEAST ONE OFFICER OF THE CORPORATION OR ASSOCIATION OR ONE MEMBER OF THE PARTNERSHIP VALIDLY LICENSED

A. *Important:* Violation of this section results in the revocation of the broker's license by operation of law.

B. A $10,000 penalty may be imposed pursuant to section 1641(b)(6) because the revocation by operation of law results in the broker conducting Customs business without a license. No penalty liability would be incurred specifically under section 1641(b)(5).

C. Mitigation—Grant no mitigation from any penalty incurred by a broker for conducting Customs business without a license as a result of revocation of that license by operation of law.

X. SECTION 1641(C)(3)—FAILURE OF A CUSTOMS BROKER GRANTED A PERMIT TO CONDUCT BUSINESS IN A CERTAIN DISTRICT TO EMPLOY, FOR A CONTINUOUS PERIOD OF 180 DAYS, AT LEAST ONE INDIVIDUAL WHO IS LICENSED WITHIN THE DISTRICT OR REGION

A. *Important:* Violation of this section results in the revocation of a permit by operation of law.

B. Penalties may be imposed for violation of the provisions of 1641(d)(1)(C), violation of other laws enforced by Customs. Guidelines for imposition of penalties for conducting Customs business without a permit should be followed.

C. Mitigation—No mitigation should be permitted from any penalty imposed for failure to have a permit when the permit lapses by operation of law.

XI. SECTION 1641(B)(4)—FAILURE OF A LICENSED BROKER TO EXERCISE RESPONSIBLE SUPERVISION AND CONTROL OVER THE CUSTOMS BUSINESS THAT IT CONDUCTS

A. Standards of responsible supervision and control shall be issued by the Commissioner of Customs. Statutory authority to set such standards is provided by section 1641(f).

NOTE: All penalties assessed for violation of 1641(b)(4) shall also cite section 1641(d)(1)(C) as the statute violated in all notices issued to the alleged violator.

B. The following penalty amounts shall be assessed against brokers who fail to exercise responsible supervision and control over business conducted at district level.

1. A penalty of $1,000 against any broker who:

a. Continuously makes the same errors on a particular type of entry;

b. Fails to properly instruct employees about Customs business, thereby resulting in the filing of incorrect entries or the mishandling of transactions relating to Customs business;

c. Knowingly allows his entry bond to be used to effect release of merchandise in districts where he does not have a license or permit (this is imposed in addition to any penalty for conducting Customs business without a license);

d. Fails to comply with regulations or procedures but does not commit violations that would warrant any higher penalty amount as described below.

2. A penalty of $5,000 against any broker who, when requested, is unable to produce documents relating to specific Customs business which are material to that business (e.g., if the business regards an entry he should have the invoice, packing list, etc.). This requirement excludes documents not required to be kept by a broker.

3. A penalty of $5,000 against any broker who is unable to satisfy the deciding Customs official that he has a working knowledge of any operation material to his ability to render valuable service to others in the conduct of Customs business.

Examples include:

a. A working knowledge of all automated systems in use in the district;

b. A knowledge of the cash flow procedures in each district of operation;

c. Retention of copies of all surety bonds in proper form and in sufficient dollar amount;

d. Knowledge of filing systems and document record storage in each district;

e. Continuous monitoring to ensure timely payment of all obligations including duties, taxes and refunds.

4. A penalty of $5,000 against any broker who fails to exercise responsible supervision and control over the Customs business that it conducts as defined in section XI.C. of this appendix.

5. A penalty of $10,000 against any broker who is found to have failed to maintain satisfactory accounting records or records of documents filed with Customs on any matter.

C. The following factors shall be indicative of a lack of supervision or lack of working knowledge of Customs procedures (the list is not conclusive):

1. A high rate of entry rejections when compared with other brokers in the permitted district.

2. A high rate of late filing liquidated damages cases when compared with other brokers in the permitted district.

3. In the case of entry summaries filed in the broker's name, a high number of missing document cases when compared with other brokers in the permitted district.

4. An inordinate number of entries for which free entry is claimed, but no documentation supporting such claim is submitted, resulting in liquidation of the entries as dutiable.

5. Inability to assist or failure to cooperate with an audit, including failure to provide all records and any other necessary information pertaining to a broker's Customs business to assist auditors.

6. Failure to settle (including petitioning) liquidated damages claims in a timely manner.

7. Evidence to indicate that timely duty refunds to clients are not made or accounted for and adequate records of same are not kept (usually will result in penalty assessed in accordance with section B.5. above).

8. Employing a licensed individual for a minimal number of days each 120- or 180-day period (see sections 1641(b)(5) and 1641(c)(3) so as to avoid violation of the statute.

a. For purposes of imposition of penalties under this subsection, a minimal number of days shall be 10 working days for each 120-day period or 15 working days for each 180-day period.

b. It shall be presumed that temporary employment of such a licensed individual is undertaken solely to avoid revocation of a license or permit. Such minimal employment shall be *prima facie* evidence of lack of supervision.

D. Mitigation.

1. $1,000 penalties shall not be mitigated unless the broker can show that extraordinary mitigating factors are present.

2. $5,000 penalties for failure to produce documents may be mitigated to an amount between $2,000 and $3,500 if the documents are produced but not in a timely fashion. No mitigation shall be afforded if the documents are not produced, unless the broker can satisfactorily demonstrate that such failure to produce was caused by circumstances beyond the control of the broker or his client (e.g., a rupture of relations with the party responsible for generating the documents). Full mitigation shall be afforded in the case of destruction of records by events beyond a broker's control, such as theft, flood, fire or other acts of God.

3. $5,000 penalty for failure to have a working knowledge of any operation for which a broker is licensed to do business may be mitigated to a lesser amount upon a showing by the broker that steps have been taken to improve instruction and supervision of employees and an improvement in the knowledge of his operation occurs.

4. $5,000 penalty for failure to exercise responsible supervision and control may be mitigated to a lesser amount if the broker immediately corrects the problem which was the basis for the assessment and sufficiently monitors the situation to avoid recurrence.

5. $10,000 penalty for failure to maintain satisfactory accounting records will only be subject to mitigation in full if the broker can prove that satisfactory accounting records and documents records are being kept. Mitigation in a lesser degree may be afforded upon a showing by the broker that a *bona fide* attempt was made to establish a satisfactory accounting and/or record-keeping system, or upgrade a deficient system, but such efforts proved unsuccessful or only partially effective.

6. Penalty equal to the value of monies not properly paid or accounted for.

a. If the broker shows that the monies were paid or accounted for and requisite notifications were made, albeit in an untimely fashion not to exceed 30 days after any due date, the penalty may be mitigated upon payment of 25 percent of the assessed amount, but no less than $250.

b. If the monies were paid and notifications made more than 30 days after any due date, the penalty may be mitigated upon payment of 50 percent of the assessed amount, but not less than $1,000.

c. If there is no proof of proper payment of duties, refunds, etc., no mitigation shall be granted.

## XII. Limits of Penalty Assessments

A. A broker shall be penalized a maximum of $30,000 for any violation or violations of the statute in any one penalty notice.

B. If a broker is penalized to the maximum the statue will allow and continues to commit the same violation or violations, revocation or suspension of his license would be the appropriate sanction. Barring such revocation or suspension action, he may again be penalized to the maximum the statute will allow.

C. From any one audit, the maximum aggregate penalty for all violations discovered is $30,000.

## XIII. Consolidation of Cases

Whenever multiple penalties arising from a particular fact situation or pattern are contemplated against brokers or individuals operating in different districts, the cases may be consolidated in one district. Approval for consolidation must be sought from the Brokers Compliance Branch, Office of Trade Compliance at Headquarters.

[T.D. 90–20, 55 FR 10056, Mar. 19, 1990, as amended by T.D. 97–82, 62 FR 51771, Oct. 3, 1997; T.D. 99–27, 64 FR 13676, Mar. 22, 1999; T.D. 00–57, 65 FR 53578, Sept. 5, 2000; 65 FR 65770, Nov. 2, 2000]

## APPENDIX D TO PART 171—GUIDELINES FOR THE IMPOSITION AND MITIGATION OF PENALTIES FOR VIOLATIONS OF 19 U.S.C. 1593A

A monetary penalty incurred under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a; hereinafter referred to as section 593A), may be remitted or mitigated under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618; hereinafter referred to as section 618), if it is determined that there exist such mitigating circumstances as to justify remission or mitigation. The guidelines below will be used by Customs in arriving at a just and reasonable assessment and disposition of liabilities arising under section 593A within the stated limitations. It is intended that these guidelines will be applied by Customs officers in prepenalty proceedings, in determining the monetary penalty assessed in the penalty notice, and in arriving at a final penalty disposition. The assessed or mitigated penalty amount set forth in Customs administrative disposition determined in accordance with these guidelines does not limit the penalty amount which the Government may seek in bringing a civil enforcement action pursuant to 19 U.S.C. 1593a(i).

### *(A) Violations of Section 593A*

A violation of section 593A occurs when a person, through fraud or negligence, seeks, induces, or affects, or attempts to seek, induce, or affect, the payment or credit to that person or others of any drawback claim by means of any document, written or oral statement, or electronically transmitted data or information, or act which is material and false, or any omission which is material, or aids or abets any other person in the foregoing violation. There is no violation if the falsity is due solely to clerical error or mistake of fact unless the error or mistake is part of a pattern of negligent conduct. Also, the mere nonintentional repetition by an electronic system of an initial clerical error will not constitute a pattern of negligent conduct. Nevertheless, if Customs has drawn the person's attention to the nonintentional repetition by an electronic system of an initial clerical error, subsequent failure to correct the error could constitute a violation of section 593A.

### *(B) Degrees of Culpability*

There are two degrees of culpability under section 593A: negligence and fraud.

(1) *Negligence.* A violation is determined to be negligent if it results from an act or acts (of commission or omission) done with actual knowledge of, or wanton disregard for, the relevant facts and with indifference to, or disregard for, the offender's obligations under the statute or done through the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances in ascertaining the facts or in drawing inferences from those facts, in ascertaining the offender's obligations under the statute, or in communicating information so that it may be understood by the recipient. As a general rule, a violation is determined to be negligent if it results from the offender's failure to exercise reasonable care and competence to ensure that a statement made is correct.

(2) *Fraud.* A violation is determined to be fraudulent if the material false statement, omission or act in connection with the transaction was committed (or omitted) knowingly, *i.e.*, was done voluntarily and intentionally, as established by clear and convincing evidence.

### *(C) Assessment of Penalties*

(1) *Issuance of Prepenalty Notice.* As provided in §162.77a of the Customs Regulations (19 CFR 162.77a), if Customs has reasonable cause to believe that a violation of section 593A has occurred and determines that further proceedings are warranted, a notice of intent to issue a claim for a monetary penalty will be issued to the person concerned. In issuing such prepenalty notice, the appropriate Customs field officer will make a tentative determination of the degree of culpability and the amount of the proposed claim. A prepenalty notice will not be issued if the claim does not exceed $1,000.

(2) *Issuance of Penalty Notice.* After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (C)(1), the appropriate Customs field officer will determine whether any violation described in section (A) has occurred. If a notice was issued under paragraph (C)(1) and the appropriate Customs field officer determines that there was no violation, Customs will promptly issue a written statement of the determination to the person to whom the notice was sent. If the appropriate Customs field officer determines that there was a violation, Customs will issue a written penalty claim to the person concerned. The written penalty claim will specify all changes in the information provided in the prepenalty notice issued under paragraph (C)(1). The person to whom the penalty notice is issued will have a reasonable opportunity under section 618 to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under section 618, Customs will provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

*(D) Maximum Penalties*

(1) *Fraud.* In the case of a fraudulent violation of section 593A, the monetary penalty will be in an amount not to exceed 3 times the actual or potential loss of revenue.

(2) *Negligence.*

(a) *In General.* In the case of a negligent violation of section 593A, the monetary penalty will be in an amount not to exceed 20 percent of the actual or potential loss of revenue for the first violation.

(b) *Repetitive Violations.* For the first negligent violation that is repetitive (*i.e.*, involves the same issue and the same violator), the penalty will be in an amount not to exceed 50 percent of the actual or potential loss of revenue. The penalty for a second and each subsequent repetitive negligent violation will be in an amount not to exceed the actual or potential loss of revenue.

(3) *Prior Disclosure.*

(a) *In General.* Subject to paragraph (D)(3)(b), if the person concerned discloses the circumstances of a violation of section 593A before, or without knowledge of the commencement of, a formal investigation of such violation, the monetary penalty assessed under this Appendix will not exceed:

(i) In the case of fraud, an amount equal to the actual or potential revenue of which the United States is or may be deprived as a result of overpayment of the claim; or

(ii) If the violation resulted from negligence, an amount equal to the interest computed on the basis of the prevailing rate of interest applied under 26 U.S.C. 6621 on the amount of actual revenue of which the United States is or may be deprived during the period that begins on the date of overpayment of the claim and ends on the date on which the person concerned tenders the amount of the overpayment.

(b) *Condition Affecting Penalty Limitations.* The limitations in paragraph (D)(3)(a) on the amount of the monetary penalty to be assessed apply only if the person concerned tenders the amount of the overpayment made on the claim either at the time of the disclosure or within 30 days (or such longer period as Customs may provide) from the date of notice by Customs of its calculation of the amount of overpayment.

(c) *Burden of Proof.* The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

(d) *Commencement of Investigation.* For purposes of this Appendix, a formal investigation of a violation is considered to be commenced with regard to the disclosing party, and with regard to the disclosed information, on the date recorded in writing by Customs as the date on which facts and circumstances were discovered which caused Customs to believe that a possibility of a violation of section 593A existed.

(e) *Exclusivity.* Penalty claims under section D will be the exclusive civil remedy for any drawback-related violation of section 593A.

*(E) Deprivation of Lawful Revenue*

Notwithstanding section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), if the United States has been deprived of lawful duties and taxes resulting from a violation of section 593A, Customs will require that such duties and taxes be restored whether or not a monetary penalty is assessed.

*(F) Final Disposition of Penalty Cases When the Drawback Claimant Is Not a Certified Participant in the Drawback Compliance Program*

(1) *In General.* Customs will consider all information in the petition and all available evidence, taking into account any mitigating, aggravating, and extraordinary factors, in determining the final assessed penalty. All factors considered should be stated in the decision.

(2) *Penalty Disposition When There Has Been No Prior Disclosure.*

(a) *Nonrepetitive Negligent Violation.* The final penalty disposition will be in an amount ranging from a minimum of 10 percent of the actual or potential loss of revenue to a maximum of 20 percent of the actual or potential loss of revenue.

(b) *Repetitive Negligent Violation.*

(i) *First Repetitive Negligent Violation.* The final penalty disposition will be in an amount ranging from a minimum of 25 percent of the actual or potential loss of revenue to a maximum of 50 percent of the actual or potential loss of revenue.

(ii) *Second and Each Subsequent Repetitive Negligent Violation.* The final penalty disposition will be in an amount ranging from a minimum of 50 percent of the actual or potential loss of revenue to a maximum of 100 percent of the actual or potential loss of revenue.

(c) *Fraudulent Violation.* The final penalty disposition will be in an amount ranging from a minimum of 1.5 times the actual or potential loss of revenue to a maximum of 3 times the actual or potential loss of revenue.

(3) *Penalty Disposition When There Has Been a Prior Disclosure.*

(a) *Negligent Violation.* The final penalty disposition will be in an amount equal to the interest determined in accordance with paragraph (D)(3)(a)(ii).

(b) *Fraudulent Violation.* The final penalty disposition will be in an amount equal to 100 percent of the actual or potential loss of revenue.

(4) *Mitigating Factors.* The following factors will be considered in mitigation of the proposed or assessed penalty claim or final penalty amount, provided that the case record

sufficiently establishes their existence. The list is not exclusive.

(a) *Contributory Customs Error*. This factor includes misleading or erroneous advice given by a Customs official in writing to the alleged violator, but this factor may be applied in such a case only if it appears that the alleged violator reasonably relied upon the written information and the alleged violator fully and accurately informed Customs of all relevant facts. The concept of comparative negligence may be utilized in determining the weight to be assigned to this factor. If the Customs error contributed to the violation, but the alleged violator is also culpable, the Customs error is to be considered as a mitigating factor. If it is determined that the Customs error was the sole cause of the violation, the proposed or assessed penalty is to be cancelled.

(b) *Cooperation With the Investigation*. To obtain the benefits of this factor, the alleged violator must exhibit cooperation beyond that expected from a person under investigation for a Customs violation. An example of the cooperation contemplated includes assisting Customs officers to an unusual degree in auditing the books and records of the alleged violator (e.g., incurring extraordinary expenses in providing computer runs solely for submission to Customs to assist the agency in cases involving an unusually large number of entries and/or complex issues). Another example consists of assisting Customs in obtaining additional information relating to the subject violation or other violations. Merely providing the books and records of the alleged violator may not be considered cooperation justifying mitigation inasmuch as Customs has the right to examine an importer's books and records pursuant to 19 U.S.C. 1508–1509.

(c) *Immediate Remedial Action*. This factor includes the payment of the actual loss of revenue prior to the issuance of a penalty notice and within 30 days after Customs notifies the alleged violator of the actual loss of revenue attributable to the violation. In appropriate cases, where the alleged violator provides evidence that, immediately after learning of the violation, substantial remedial action was taken to correct organizational or procedural defects, immediate remedial action may be granted as a mitigating factor. Customs encourages immediate remedial action to ensure against future incidents of non-compliance.

(d) *Prior Good Record*. Prior good record is a factor only if the alleged violator is able to demonstrate a consistent pattern of filing drawback claims without violation of section 593A, or any other statute prohibiting the making or filing of a false statement or document in connection with a drawback claim. This factor will not be considered in alleged fraudulent violations of section 593A.

(e) *Inability to Pay the Customs Penalty*. The party claiming the existence of this factor must present documentary evidence in support thereof, including copies of income tax returns for the previous 3 years and an audited financial statement for the most recent fiscal quarter. In certain cases, Customs may waive the production of an audited financial statement or may request alternative or additional financial data in order to facilitate an analysis of a claim of inability to pay (e.g., examination of the financial records of a foreign entity related to the U.S. company claiming inability to pay). In addition, the alleged violator must present information reflecting ownership and related domestic and foreign parties and must provide information reflecting its current financial condition, including books and records of account, bank statements, other tax records (for example, sales tax returns) and a list of assets with current values; if the alleged violator is a closely held corporation, similar current financial information must be provided on the shareholders, wherever they are located.

(f) *Customs Knowledge*. This factor may be used in non-fraud cases (which also are not the subject of a criminal investigation) if it is determined that Customs had actual knowledge of a violation and failed, without justification, to inform the violator so that it could have taken earlier remedial action. This factor is not applicable when a substantial delay in the investigation is attributable to the alleged violator.

(5) *Aggravating Factors*. Certain factors may be determined to be aggravating factors in calculating the amount of the proposed or assessed penalty claim or the amount of the final administrative penalty. The presence of one or more aggravating factors may not be used to raise the level of culpability attributable to the alleged violations, but may be used to offset the presence of mitigating factors. The following factors will be considered ''aggravating factors'', provided that the case record sufficiently establishes their existence. The list is not exclusive.

(a) Obstructing an investigation or audit.

(b) Withholding evidence.

(c) Providing misleading information concerning the violation.

(d) Prior substantive violations of section 593A for which a final administrative finding of culpability has been made.

(e) Failure to comply with a Customs summons or lawful demand for records.

*(G) Drawback Compliance Program Participants*

(1) *In General*. Special alternative procedures and penalty assessment standards apply in the case of negligent violations of section 593A committed by persons who are certified as participants in the Customs drawback compliance program and who are generally in compliance with the procedures

and requirements of that program. Provisions regarding the operation of the drawback compliance program are set forth in part 191 of the Customs Regulations (19 CFR part 191).

(2) *Alternatives to Penalties*. When a participant described in paragraph (G)(1) commits a violation of section 593A, in the absence of fraud or repeated violations and in lieu of a monetary penalty, Customs will issue a written notice of the violation (warning letter).

(a) *Contents of Notice*. The notice will:

(i) State that the person has violated section 593A;

(ii) Explain the nature of the violation; and

(iii) Warn the person that future violations of section 593A may result in the imposition of monetary penalties and that repetitive violations may result in removal of certification under the drawback compliance program until the person takes corrective action that is satisfactory to Customs.

(b) *Response to Notice*. Within 30 days from the date of mailing of the written notice, the person must notify Customs in writing of the steps that have been taken to prevent a recurrence of the violation unless the person establishes to the satisfaction of Customs that no violation took place (see §162.73a(b)(2)(ii) of the Customs Regulations, 19 CFR 162.73a(b)(2)(ii)). If the person fails to provide the required notification in a timely manner, any penalty assessed for a repetitive violation under paragraph (G)(3) will not be subject to mitigation under this Appendix.

(3) *Repetitive Violations*.

(a) *In General*. A person who has been issued a written notice under paragraph (G)(2) and who subsequently commits a negligent violation that is repetitive (*i.e.*, involves the same issue), and any other person who is a participant described in paragraph (G)(1) and who commits a repetitive negligent violation, is subject to one of the following monetary penalties:

(i) An amount not to exceed 20 percent of the loss of revenue for the first repetitive violation that occurs within three years from the date of the violation of which it is repetitive;

(ii) An amount not to exceed 50 percent of the loss of revenue for the second repetitive violation that occurs within three years from the date of the first of two violations of which it is repetitive ; and

(iii) An amount not to exceed 100 percent of the loss of revenue for the third and each subsequent repetitive violation that occurs within three years from the date of the first of three or more violations of which it is repetitive.

(b) *Repetitive Violations Outside 3-Year Period*. If a participant described in paragraph (G)(1) commits a negligent violation that is repetitive but that did not occur within 3 years of the violation of which it is repetitive, the new violation will be treated as a first violation for which a written notice will be issued in accordance with paragraph (G)(2), and each repetitive violation subsequent to that violation that occurs within any 3-year period described in paragraph (G)(3)(a) will result in the assessment of the applicable monetary penalty prescribed in that paragraph.

(4) *Final Penalty Disposition When There Has Been No Prior Disclosure*.

(a) *In General*. Customs will consider all information in the petition and all available evidence, taking into account any mitigating factors (see paragraph (F)(4)), aggravating factors (see paragraph (F)(5)), and extraordinary factors in determining the final assessed penalty. All factors considered should be stated in the decision.

(b) *First Repetitive Negligent Violation Within 3 Years of Violation Handled Under Paragraph (G)(2)*. The final penalty disposition will be in an amount ranging from a minimum of 10 percent of the loss of revenue to a maximum of 20 percent of the loss of revenue.

(c) *Second Repetitive Negligent Violation Within 3 Years of Violation Handled Under Paragraph (G)(2) or (G)(3)*. The final penalty disposition will be in an amount ranging from a minimum of 25 percent of the loss of revenue to a maximum of 50 percent of the loss of revenue.

(d) *Third and Each Subsequent Repetitive Negligent Violation Within 3 Years of Violation Handled Under Paragraph (G)(2) or (G)(3)*. The final penalty disposition will be in an amount ranging from a minimum of 50 percent of the loss of revenue to a maximum of 100 percent of the loss of revenue.

(e) *Fraudulent Violations*. The final penalty disposition will be determined in the same manner as in the case of fraudulent violations committed by persons who are not participants in the drawback compliance program (see paragraph (F)(2)(c)).

(5) *Final Penalty Disposition When There Has Been A Prior Disclosure*. The final penalty disposition will be determined in the same manner as in the case of persons who are not participants in the drawback compliance program (see paragraph (F)(3)).

*(H) Violations by Small Entities*

In compliance with the mandate of the Small Business Regulatory Enforcement Fairness Act of 1996, under appropriate circumstances, the issuance of a penalty under section 593A may be waived for businesses qualifying as small business entities. Procedures that were established for small business entities regarding violations of 19 U.S.C. 1592 in Treasury Decision 97–46 published in the FEDERAL REGISTER (62 FR 30378) are also applicable for small entities regarding violations of section 593A.

[T.D. 00–5, 65 FR 3809, Jan. 25, 2000]

# PART 172—CLAIMS FOR LIQUIDATED DAMAGES; PENALTIES SECURED BY BONDS

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AUTHORITY: 19 U.S.C. 66, 1618, 1623, 1624; 46 U.S.C. App. 320.

SOURCE: T.D. 00–57, 65 FR 53578, Sept. 5, 2000, unless otherwise noted.

### § 172.0 Scope.

This part contains provisions relating to petitions for relief from claims for liquidated damages arising under any Customs bond and penalties incurred which are secured by the conditions of the International Carrier Bond (see § 113.64 of this Chapter). This part does not relate to petitions on unsecured fines or penalties or seizures and forfeitures, nor does it relate to petitions for the restoration of proceeds of sale pursuant to 19 U.S.C. 1613.

## Subpart A—Notice of Claim and Application for Relief

### § 172.1 Notice of liquidated damages or penalty incurred and right to petition for relief.

(a) *Notice of liquidated damages or penalty incurred.* When there is a failure to meet the conditions of any bond posted with Customs or when a violation occurs which results in assessment of a penalty which is secured by a Customs bond, the principal will be notified in writing of any liability for liquidated damages or penalty incurred and a demand will be made for payment. The sureties on such bond will also be notified in writing of any such liability at the same time.

(b) *Notice of right to petition for relief.* The notice will inform the principal that application may be made for relief from payment of liquidated damages or penalty.

### § 172.2 Petition for relief.

(a) *To whom addressed.* Petitions for the cancellation of any claim for liquidated damages or remission or mitigation of a fine or penalty secured by a Customs bond incurred under any law or regulation administered by Customs must be addressed to the Fines, Penalties, and Forfeitures Officer designated in the notice of claim.

(b) *Signature.* The petition for remission or mitigation must be signed by the petitioner, his attorney-at-law or a Customs broker. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory official of the corporation, or responsible employee representative of the corporation. Electronic signatures are acceptable. The deciding Customs officer may, in his or her discretion and with articulable cause, require proof of representation before consideration of any petition.

(c) *Form.* The petition for cancellation, remission or mitigation need not be in any particular form. Customs can require that the petition and any documents submitted in support of the petition be in English or be accompanied by an English translation. The petition must set forth the following:

(1) The date and place of the violation; and

(2) The facts and circumstances relied upon by the petitioner to justify cancellation, remission or mitigation.

(d) *False statement in petition*. A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

### § 172.3 Filing a petition.

(a) *Where filed*. A petition for relief must be filed by the bond principal with the Fines, Penalties, and Forfeitures office whose address is given in the notice.

(b) *When filed*. Petitions for relief must be filed within 60 days from the date of mailing to the bond principal the notice of claim for liquidated damages or penalty secured by a bond.

(c) *Extensions*. The Fines, Penalties, and Forfeitures Officer is empowered to grant extensions of time to file petitions when the circumstances so warrant.

(d) *Number of copies*. The petition must be filed in duplicate unless filed electronically.

(e) *Exception for certain cases*. If a penalty or claim for liquidated damages is assessed and fewer than 180 days remain from the date of penalty or liquidated damages notice before the statute of limitations may be asserted as a defense, the Fines, Penalties, and Forfeitures Officer may specify in the notice a reasonable period of time, but not less than 7 working days, for the filing of a petition for relief. If a petition is not filed within the time specified, the matter will be transmitted promptly to the appropriate Office of the Chief Counsel for referral to the Department of Justice.

### § 172.4 Demand on surety.

If the principal fails to file a petition for relief or fails to comply in the prescribed time with a decision to mitigate a penalty or cancel a claim for liquidated damages issued with regard to a petition for relief, Customs will make a demand for payment on surety. The surety will then have 60 days from the date of the demand to file a petition for relief.

## Subpart B—Action on Petitions

### § 172.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.

(a) *Mitigation or cancellation authority*. Upon receipt of a petition for relief submitted pursuant to the provisions of section 618 or 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 or 19 U.S.C. 1623), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), the Fines, Penalties, and Forfeitures Officer, notwithstanding any other law or regulation, is empowered to mitigate any penalty or cancel any claim for liquidated damages on such terms and conditions as, under law and in view of the circumstances, he or she shall deem appropriate in accordance with appropriate delegations of authority.

(b) *When violation did not occur*. Notwithstanding any other delegation of authority, the Fines, Penalties, and Forfeitures Officer is always empowered to cancel any case without payment of a mitigated or cancellation amount when he or she definitely determines that the act or omission forming the basis of any claim of penalty or claim for liquidated damages did not occur.

### § 172.12 Petitions acted on at Customs Headquarters.

Upon receipt of a petition for relief filed pursuant to the provisions of section 618 or 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 or 19 U.S.C. 1623), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), involving fines, penalties, and claims for liquidated damages which are outside of his or her delegated authority the Fines, Penalties, and Forfeitures Officer will refer that petition to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who is empowered, notwithstanding any other law or regulation, to mitigate penalties or cancel bond claims on such terms and conditions as, under law and in view of the circumstances, he or she deems appropriate.

**§ 172.13 Limitations on consideration of petitions.**

(a) *Cases referred for institution of legal proceedings.* No action will be taken on any petition if the civil liability has been referred to the Department of Justice for institution of legal proceedings. The petition will be forwarded to the Department of Justice.

(b) *Delinquent sureties.* No action will be taken on any petition from a principal or surety if received after the issuance to surety of a notice to show cause pursuant to the provisions of § 113.38(c)(3) of this chapter.

**§ 172.14 Headquarters advice.**

The advice of the Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters, may be sought in any case (except as provided in this section), without regard to delegated authority to act on a petition or offer, when a novel or complex issue concerning a ruling, policy, or procedure is presented concerning a Customs action(s) or potential Customs action(s) relating to penalties secured by bonds (including penalty-based determinations of duty except as provided in this section), claims for liquidated damages or mitigating any claim. This section does not apply to actual duty loss tenders determined by Customs pursuant to § 162.74(c) of this chapter relating to prior disclosure. The request for advice may be initiated by the bond principal, surety or any Customs officer, but must be submitted to the Fines, Penalties, and Forfeitures Officer. The Fines, Penalties, and Forfeitures Officer retains the authority to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in any case.

## Subpart C—Disposition of Petitions

**§ 172.21 Decisions effective for limited time.**

A decision to mitigate a penalty or to cancel a claim for liquidated damages upon condition that a stated amount is paid will be effective for not more than 60 days from the date of notice to the petitioner of such decision unless the decision itself prescribes a different effective period. If payment of the stated amount is not made or a petition or a supplemental petition is not filed in accordance with regulation, the full penalty or claim for liquidated damages will be deemed applicable and will be enforced by promptly transmitting the matter, after required collection action, if appropriate, to the appropriate office of the Chief Counsel for preparation for referral to the Department of Justice unless other action has been directed by the Commissioner of Customs. Any such case may also be the basis for a sanction action commenced in accordance with regulations in this chapter.

**§ 172.22 Decisions not protestable.**

(a) *Mitigation decision not subject to protest.* Any decision to remit or mitigate a penalty or cancel a claim for liquidated damages upon payment of a lesser amount is not a protestable decision as defined under the provisions of 19 U.S.C. 1514. Any payment made in compliance with any decision to remit or mitigate a penalty or cancel a claim for liquidated damages upon payment of a lesser amount is not a charge or exaction and therefore is not a protestable action as defined under the provisions of 19 U.S.C. 1514.

(b) *Payment of mitigated or cancellation amount as accord and satisfaction.* Payment of a mitigated or cancellation amount in compliance with an administrative decision on a petition or supplemental petition for relief will be considered an election of administrative proceedings and full disposition of the case. Payment of a mitigated or cancellation amount will act as an accord and satisfaction of the Government claim. Payment of a mitigated or cancellation amount will never serve as a bar to filing a supplemental petition for relief.

## Subpart D—Offers in Compromise

**§ 172.31 Form of offers.**

Offers in compromise submitted pursuant to the provisions of section 617 of the Tariff Act of 1930, as amended (19 U.S.C. 1617), must expressly state that they are being submitted in accordance with the provisions of that section. The

amount of the offer must be deposited with Customs in accordance with the provisions of § 161.5 of this chapter.

### § 172.32 Authority to accept offers.

The authority to accept offers in compromise, subject to the recommendation of the General Counsel of the Treasury or his delegee, resides with the official having authority to decide a petition for relief, except that authority to accept offers in compromise submitted with regard to penalties secured by a bond or claims for liquidated damages which are the subject of a letter to show cause issued to a surety in anticipation of possible action involving nonacceptance of bonds authorized under the provisions of part 113 of this chapter will reside with the designated Headquarters official who issued the show cause letter.

### § 172.33 Acceptance of offers in compromise.

An offer in compromise will be considered accepted only when the offeror is so notified in writing. As a condition to accepting an offer in compromise, the offeror may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interest of the United States.

## Subpart E—Supplemental Petitions for Relief

### § 172.41 Time and place of filing.

If the petitioner is not satisfied with a decision of the deciding official on an original petition for relief, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the violation occurred. The petitioner must file such a supplemental petition within 60 days from the date of notice to the petitioner of the decision from which further relief is requested or within 60 days following an administrative or judicial decision with respect to issues serving as the basis for the claim for liquidated damages (whichever is later) unless another time to file such a supplemental petition is prescribed in the decision. A supplemental petition may be filed whether or not the mitigated amount designated in the decision on the original petition is paid.

### § 172.42 Supplemental petition decision authority.

(a) *Decisions of Fines, Penalties, and Forfeitures Officers.* Supplemental petitions filed on cases where the original decision was made by the Fines, Penalties, and Forfeitures Officer, will be initially reviewed by that official. The Fines, Penalties, and Forfeitures Officer may choose to grant more relief and issue a decision indicating additional relief to the petitioner. If the petitioner is dissatisfied with the further relief granted or if the Fines, Penalties, and Forfeitures Officer decides to grant no further relief, the supplemental petition will be forwarded to a designated Headquarters official assigned to a field location for review and decision.

(b) *Decisions of Customs Headquarters.* Supplemental petitions filed on cases where the original decision was made by the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, will be forwarded to the Director, International Trade Compliance Division, for review and decision.

(c) *Authority of Assistant Commissioner.* Any authority given to any Headquarters official by this part may also be exercised by the Assistant Commissioner, Office of Regulations and Rulings, or his designee.

### § 172.43 Waiver of statute of limitations.

The deciding Customs official always reserves the right to require a waiver of the statute of limitations executed by the charged party or parties as a condition precedent before accepting a supplemental petition in any case in which less than one year remains before the statute will be available as a defense to all or part of that case.

# PART 173—ADMINISTRATIVE REVIEW IN GENERAL

Sec.

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173.2 Transactions which may be reviewed and corrected.
173.3 Voluntary reliquidation.

173.4 Correction of clerical error, mistake of fact, or inadvertence.
173.4a Correction of clerical error prior to liquidation.
173.5 Review of entry covering household for personal effects.

AUTHORITY: 19 U.S.C. 66, 1501, 1520, 1624.

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

### § 173.0 Scope.

This part deals with the general authority of review, the authority to reliquidate voluntarily, the authority to correct for clerical error, mistake of fact, or other inadvertence under section 520(c)(1), Tariff Act of 1930, as amended, the authority to review an entry of household or personal effects, and the power to reliquidate an entry on account of fraud.

### § 173.1 Authority to review for error.

Port directors have broad responsibility and authority to review transactions to ensure that the rate and amount of duty assessed on imported merchandise is correct and that the transaction is otherwise in accordance with the law. This authority extends to errors in the construction of a law and to errors adverse to the Government as well as the importer.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 79–221, 44 FR 46830, Aug. 9, 1979]

### § 173.2 Transactions which may be reviewed and corrected.

The port director may review transactions for correctness, and take appropriate action under his general authority to correct errors, including those in appraisement where appropriate, at the time of:

(a) Liquidation of an entry;

(b) Voluntary reliquidation completed within 90 days after liquidation;

(c) Voluntary correction of an exaction within 90 days after the exaction was made;

(d) Reliquidation made pursuant to a valid protest covering the particular merchandise as to which a change is in order; or

(e) Modification, pursuant to a valid protest, of a transaction or decision which is neither a liquidation or reliquidation.

### § 173.3 Voluntary reliquidation.

(a) *Authority to reliquidate.* The port director within 90 days from the date notice of the original liquidation is given to the importer, consignee, or agent, may reliquidate on his own initiative a liquidation or a reliquidation to correct errors in appraisement, classification, or any other element entering into the liquidation or reliquidation, including errors based on misconstruction of applicable law. A voluntary reliquidation may be made even though a protest has been filed, and whether the error is discovered by the port director or is brought to his attention by an interested party.

(b) *Notice of reliquidation.* Notice of a voluntary reliquidation shall be given in accordance with the requirements for giving notice of the original liquidation.

### § 173.4 Correction of clerical error, mistake of fact, or inadvertence.

(a) *Authority to review and correct.* Even though a valid protest was not filed, the port director, upon timely application, may correct pursuant to section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1), a clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (b) of this section, by reliquidation or other appropriate action.

(b) *Transactions which may be corrected.* Correction pursuant to section 520(c)(1), Tariff Act of 1930, as amended, (19 U.S.C. 1520(c)(1), may be made in any entry, liquidation, or other Customs transaction if the clerical error, mistake of fact, or other inadvertence:

(1) Does not amount to an error in the construction of a law;

(2) Is adverse to the importer; and

(3) Is manifest from the record or established by documentary evidence.

(c) *Limitation on time for application.* A clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (b) of this section shall be brought to the attention of the director of the port of entry within 1 year after the date of liquidation or exaction. The party requesting reliquidation under section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1))

shall state, to the best of his knowledge, whether the entry for which correction is requested is the subject of a drawback claim, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback (see §§181.50(b) and 191.81(b) of this chapter).

(d) *''Liquidation'' includes reliquidation.* ''Liquidation'' when used in section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), and in this section, includes reliquidation of an entry.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 79–221, 44 FR 46830, Aug. 9, 1979; T.D. 98–16, 63 FR 11005, Mar. 5, 1998]

### § 173.4a Correction of clerical error prior to liquidation.

Pursuant to section 520(a)(4), Tariff Act of 1930, as amended (19 U.S.C. 1520(a)(4)), the port director may, prior to liquidation of an entry, take appropriate action to correct a clerical error that resulted in the deposit or payment of excess duties, fees, charges, or exactions.

[T.D. 85–123, 50 FR 29957, July 23, 1985]

### § 173.5 Review of entry covering household or personal effects.

An error in the liquidation of an entry covering household or personal effects may be corrected by the port director even though a timely protest was not filed if an application for refund is filed with the port director within 1 year after the date of the entry and no waiver of compliance with applicable regulations is involved other than a waiver which the port director has authority to grant. Where the port director has no authority to grant the waiver, the application shall be referred to the Commissioner of Customs.

## PART 174—PROTESTS

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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 appraisement 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 appraisement 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) *Appraisement not final.* When the appraisement 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 reappraisement 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 reappraisement has become final. Such protest shall not include issues which were raised or could have been raised on the appeal for reappraisement.

(2) *Appraisement final.* When the appraisement 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 reappraisement before the appraisement 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]

## Subpart B—Protests

### § 174.11 Matters subject to protest.

The following decisions of the port director, including the legality of all orders and findings entering into the same, may be protested under the provisions of section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514):

(a) The appraised value of merchandise;

(b) The classification and rate and amount of duties chargeable;

(c) All charges or exactions of whatever character including the accrural of interest within the jurisdiction of the Secretary of the Treasury;

(d) The exclusion of merchandise from entry or delivery under any provision of the Customs laws;

(e) The liquidation or reliquidation of an entry, or any modification thereof;

(f) The refusal to pay a claim for drawback; and

(g) The refusal to reliquidate an entry under section 520(c), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)).

[T.D. 70-181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 99-75, 64 FR 56441, Oct. 20, 1999]

### § 174.12 Filing of protests.

(a) *By whom filed.* Protests may be filed by:

(1) The importer or consignee shown on the entry papers, or their sureties;

(2) Any person paying or receiving a refund of any charge or exaction;

(3) Any person seeking entry or delivery;

(4) Any person filing a claim for drawback;

(5) With respect to a determination of origin under subpart G of part 181 of this chapter, any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a Certificate of Origin covering the merchandise as provided for in § 181.11(a) of this chapter; or

(6) Any authorized agent of any of the persons described in paragraphs (a)(1) through (5) of this section, subject to the provisions of § 174.3.

(b) *Form and number of copies.* Protests against decisions of a port director shall be filed in quadruplicate on Customs Form 19 or a form of the same size clearly labeled ''Protest'' and setting forth the same content in its entirety, in the same order, addressed to the port director. All schedules or other attachments to a protest (other than samples or similar exhibits) shall also be filed in quadruplicate.

(c) *Identity of filer.* The identity of the person filing the protest or his agent,

or attorney shall be noted on the protest. This may be accomplished through a signature which is handwritten in ink, stamped, typed, facsimile, telefax, or by electronic certification in ACS. If the person filing the protest is not the importer of record or consignee, the filer shall include his address and importer number, if any.

(d) *Place of filing*. Protests shall be filed with the port director whose decision is protested.

(e) *Time of filing*. Protests shall be filed, in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), within 90 days after either:

(1) The date of notice of liquidation or reliquidation in accordance with §§ 159.9 or 159.10 of this chapter;

(2) The date of the decision, involving neither a liquidation nor reliquidation, as to which the protest is made (e.g., the date of an exaction, the date of written notice excluding merchandise from entry or delivery under any provision of the Customs laws, the date of a refusal to reliquidate under section 520(c)(1) of the Tariff Act of 1930, as amended, or the date of written notice of a denial of a claim filed under section 520(d) of the Tariff Act of 1930, as amended); or

(3) The date of mailing of notice of demand for payment against a bond in the case of a surety which has an unsatisfied legal claim under a bond written by the surety.

(f) *Date of filing*. The date on which a protest is received by the Customs officer with whom it is required to be filed shall be deemed the date on which it is filed.

(g) *Return of fifth copy*. If a fifth copy of the protest is presented for the purpose of having recorded thereon the date of its receipt and the protest number assigned thereto, such information shall be recorded thereon and the fifth copy shall be returned to the person filing the protest.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 71–15, 36 FR 778, Jan. 16, 1971; 36 FR 1058, Jan. 22, 1971; T.D. 73–175, 38 FR 17488, July 2, 1973; T.D. 80–271, 45 FR 75642, Nov. 17, 1980; T.D. 94–1, 58 FR 69472, Dec. 30, 1993; T.D. 94–55, 59 FR 34971, July 8, 1994; T.D. 95–68, 60 FR 46363, Sept. 6, 1995; T.D. 99-75, 64 FR 56441, Oct. 20, 1999]

## § 174.13 Contents of protest.

(a) *Contents, in general*. A protest shall contain the following information:

(1) The name and address of the protestant, *i.e.*, the importer of record or consignee, and the name and address of his agent or attorney if signed by one of these;

(2) The importer number of the protestant. If the protestant is represented by an agent having power of attorney, the importer number of the agent shall also be shown;

(3) The number and date of the entry;

(4) The date of liquidation of the entry, or the date of a decision not involving a liquidation or reliquidation;

(5) A specific description of the merchandise affected by the decision as to which protest is made;

(6) The nature of, and justification for the objection set forth distinctly and specifically with respect to each category, payment, claim, decision, or refusal;

(7) The date of receipt and protest number of any protest previously filed that is the subject of a pending application for further review pursuant to subpart C of this part and that is alleged to involve the same merchandise and the same issues, if the protesting party requests disposition in accordance with the action taken on such previously filed protest;

(8) If another party has not filed a timely protest, the surety's protest shall certify that the protest is not being filed collusively to extend another authorized person's time to protest; and

(9) A declaration, to the best of the protestant's knowledge, as to whether the entry is the subject of drawback, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback (see §§ 181.50(b) and 191.81(b) of this chapter).

(b) *Multiple entries*. A single protest may be filed with respect to more than one entry at any port if all such entries involve the same protesting party, and if the same category of merchandise and a decision or decisions common to all entries are the subject of the protest. In such circumstances, the entry

numbers, dates of entry, and dates of liquidation of all such entries should be set forth as an attachment to the protest.

(c) *Optional designation for refunds.* If desired by the importer/consignee the statement ''any refunds with respect to the entry under protest shall be mailed to the importer/consignee in care of _____''

(Name and Address of Agent)

may be appended to the protest. This designation supersedes any existing designation previously authorized on Customs Form 4811.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 80–271, 45 FR 75642, Nov. 17, 1980; T.D. 98–16, 63 FR 11005, Mar. 5, 1998; T.D. 99–99–64, 64 FR 43267, Aug. 10, 1999]

### § 174.14 Amendment of protests.

(a) *Time for filing.* A protest may be amended at any time prior to the expiration of the 90–day period within which such protest may be filed determined in accordance with § 174.12(e). The amendment may assert additional claims pertaining to the administrative decision which is the subject of the protest, or may challenge an additional administrative decision relating to the same category of merchandise which is the subject of the protest. For the presentation of additional grounds or arguments in support of a valid protest after the 90-day period has expired see § 174.28.

(b) *Form and number of copies of amendment.* An amendment to a protest shall be filed in quadruplicate on Customs Form 19 or on a form of the same size, clearly labeled ''Amendment to Protest'' at the top of the form. Schedules or other attachments (other than samples or similar exhibits) shall also be filed in quadruplicate.

(c) *Contents.* An amendment to a protest shall contain the following information:

(1) The name, address, and importer number of the protesting party, *i.e.*, the importer of record or consignee, and the name and address of his agent or attorney if filed by one of these;

(2) The number and date of filing of the original protest;

(3) A specific description of the merchandise affected by the decision as to which the amendment to the protest is filed;

(4) The nature of and justification for the objection raised by the amendment set forth distinctly and specifically with respect to each category, payment, claim, decision, or refusal; and

(5) The date of receipt and protest number of any protest previously filed that is the subject of a pending application for further review and that is alleged to involve the same merchandise and the same issues involved in the amendment.

(d) *Identification of filer.* An amendment to a protest may be filed only by the person who originally filed such protest or his agent or attorney subject to the provisions of § 174.3. The identity of the filer shall be noted on the amendment to a protest. Any acceptable method used to identify the filer described in § 174.12(c) as being acceptable on a protest will be acceptable on an amendment to a protest.

(e) *Place and date of filing.* An amendment to a protest shall be filed with the port director with whom the protest was filed. The amendment shall be deemed filed on the date it is received by the Customs officer with whom it is required to be filed.

(f) *Return of fifth copy.* If a fifth copy of the amendment 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 amendment.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 94–55, 59 FR 34971, July 8, 1994]

### § 174.15 Consolidation of protests filed by different parties.

(a) *General.* Subject to paragraph (b) of this section, separate protests relating to one category of merchandise covered by an entry shall be considered as a single protest whether filed as a single protest or filed as separate protests relating to the same category by one or more parties in interest or an authorized agent.

(b) *NAFTA transactions.* The following rules shall apply to a consolidation of multiple protests concerning a determination of origin under subpart G of part 181 of this chapter if one of the

protests is filed by or on behalf of an exporter or producer described in § 174.12(a)(5) of this part:

(1) If consolidation under paragraph (a) of this section is pursuant to specific written requests for consolidation received from all interested parties who filed protests under this part, those interested parties shall be deemed to have waived their rights to confidentiality as regards business information within the meaning of § 181.121 of this chapter. In such cases, a separate notice of the decision will be issued to each interested party under this part but without regard to whether the notice reflects confidential business information obtained from one but not all of those interested parties.

(2) If consolidation under paragraph (a) of this section is done by the port director in the absence of specific written requests for consolidation from all interested parties who filed protests under this part, no waiver of confidentiality by those interested parties shall be deemed to have taken place. In such cases, a separate notice of the decision will be issued to each interested party and each such notice shall adhere to the principle of confidentiality set forth in § 181.121 of this chapter.

[T.D. 94–1, 58 FR 69472, Dec. 30, 1993]

### § 174.16 Limitation on protests after reliquidation.

A protest shall not be filed against the decision of the port director on reliquidation upon any question not involved in the reliquidation.

## 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 importer 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 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 application 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. Customs Service ruling or court decision.

(2) All other protests shall be reviewed by a designee of the port director who did not participate directly in the decision which is the subject of the protest.

### § 174.27 Disposition after further review.

Upon completion of further review, the protest and appropriate documents forwarded for review shall be returned to the port director together with directions for the disposition of the protest.

### § 174.28 Consideration of additional arguments.

In determining whether to allow or deny a protest filed within the time allowed, a reviewing officer may consider alternative claims and additional grounds or arguments submitted in writing by the protesting party with respect to any decision which is the subject of a valid protest at any time prior to disposition of the protest. In any case in which alternative claims or additional grounds or arguments are submitted orally, they shall be considered in the allowance or denial of the protest only if submitted in writing in conjunction with, or no later than 60 days after, such oral submission.

(R.S. 251, as amended, secs. 514, 624, 46 Stat. 734, as amended, 759; 19 U.S.C. 66, 1514, 1624)

[T.D. 71–15, 36 FR 778, Jan. 16, 1971]

### § 174.29 Allowance or denial of protests.

The port director shall allow or deny in whole or in part 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 the protest is allowed in whole or in part the port director shall remit or refund any duties, charge, or exaction found to have been collected in excess, or pay any drawback found due. If a protest of an exporter or producer under § 174.12(a)(5) of this part is allowed in whole or in part, any monies found to have been collected in excess shall be refunded to the party who paid the monies even if such party did not file an appropriate and timely protest under this part. If the protest is denied in whole or in part the port director shall give notice of the denial in the form and manner prescribed in § 174.30.

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

### § 174.30 Notice of denial of protest.

(a) *Issuance of notice.* Notice of denial of a protest shall be mailed to any person filing a protest or his agent in all cases other than those in which accelerated disposition was requested and in which no action has been taken within 30 days after the date of mailing of the request. The notice shall include a

statement of the reasons for the denial, as well as a statement informing the protesting party of the right to file a civil action contesting the denial of the protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514). For purposes of section 515(a), Tariff Act of 1930, as amended (19 U.S.C. 1515(a)), the date appearing on such notice shall be deemed the date on which such notice was mailed.

(b) *Substitution of persons designated to receive notice.* The importer of record or consignee may give notice to the port director instructing that notice of denial of any protest involving merchandise imported in his name or on his behalf shall be mailed to a person other than the person filing such protest or the designee of such person. Such notice of substitution shall be filed in quadruplicate and shall identify the protest by number and date of receipt. Notice of denial of a protest shall be mailed to the substituted person so designated only if the notice of substitution is received by the port director prior to a denial by him of such protest.

(c) *Notification of payment of increased duties.* The port director shall note on the notice of denial of a protest the payment of all liquidated duties, charges, or exactions, if he has actual knowledge of such payment at the time that the protest is denied.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 80–271, 45 FR 75642, Nov. 17, 1980]

### § 174.31 Judicial review of denial of protest.

Any person whose protest has been denied, in whole or in part, may contest the denial by filing a civil action in the United States Court of International Trade in accordance with 28 U.S.C. 2632 within 180 days after—

(a) The date of mailing of notice of denial, in whole or in part, of a protest,

(b) The date a protest, for which accelerated disposition was requested, is deemed to have been denied in accordance with § 174.22(d), or

(c) The date that a protest is deemed denied in accordance with § 174.21(b), or § 151.16(g) of this chapter.

[T.D. 78–17, 43 FR 1938, Jan. 13, 1978, as amended by T.D. 85–90, 50 FR 21430, May 24, 1985; T.D. 99–65, 64 FR 43612, Aug. 11, 1999]

### § 174.32 Publication.

Within 120 days after issuing a protest review decision, the Customs Service shall publish the decision in the Customs Bulletin or otherwise make it available for public inspection. Disclosure is governed by 31 CFR part 1 and 19 CFR part 103.

[T.D. 78–394, 43 FR 49791, Oct. 25, 1978]

## PART 175—PETITIONS BY DOMESTIC INTERESTED PARTIES

Sec.
175.0 Scope.

Subpart A—Request for Classification, Appraised Value and Rate of Duty

175.1 Submission of request.
175.2 Contents of request.
175.3 Domestic interested party.

Subpart B—Petitions

175.11 Filing of petitions.
175.12 Contents of petitions.

Subpart C—Procedure Following Petition

175.21 Notice of filing of petition, inspection of petition, and inspection of documents and papers.
175.22 Publication of decisions following petition.
175.23 Notice of desire to contest decision.
175.24 Publication following notice of desire to contest.
175.25 Procedure at port of entry designated by petitioner.

Subpart D—Procedure Following Court Decision

175.31 Publication of notice of court decision.

AUTHORITY: R.S. 251, as amended, secs. 516, 624, 46 Stat. 735, as amended, 759; 19 U.S.C. 66, 1516, 1624, unless otherwise noted.

SOURCE: T.D. 70–181, 35 FR 13432, Aug. 22, 1970, unless otherwise noted.

### § 175.0 Scope.

This part sets forth the procedures applicable to requests by domestic interested parties for the classification and rate of duty applicable to designated imported merchandise, and to petitions alleging that the appraised value is too low, that the classification is not correct, or that the proper rate of duty is not being assessed upon designated imported merchandise which is claimed to be similar to the class or kind of merchandise manufactured, produced, or wholesaled by the petitioner.

[T.D. 70–181, 35 FR 13432, Aug. 22, 1970, as amended by T.D. 80–271, 45 FR 75642, Nov. 17, 1980]

## Subpart A—Request for Classification, Appraised Value and Rate of Duty

### § 175.1 Submission of request.

Written requests pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), for information as to the classification, appraised value and rate of duty imposed upon designated imported merchandise shall be submitted in triplicate to the Commissioner of Customs.

[T.D. 70–181, 35 FR 13432, Aug. 22, 1970, as amended by T.D. 80–271, 45 FR 75642, Nov. 17, 1980]

### § 175.2 Contents of request.

The request for information shall contain the following information:

(a) The name of the person making the request, his principal place of business, and the fact that he is a domestic interested party;

(b) A designation of the imported merchandise for which the classification, appraised value and rate is requested; and

(c) A showing of the class or kind of merchandise manufactured, produced, or sold by him which is claimed to be similar to the imported merchandise in such detail as will permit the Commissioner to establish the similarity between the domestic and foreign merchandise.

[T.D. 70–181, 35 FR 13432, Aug. 22, 1970, as amended by T.D. 80–271, 45 FR 75642, Nov. 17, 1980]

### § 175.3 Domestic interested party.

''Domestic interested party'', when used in this part, means:

(a) A manufacturer, producer, or wholesaler in the United States of a like product,

(b) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product, or

(c) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

[T.D. 80–271, 45 FR 75642, Nov. 17, 1980]

## Subpart B—Petitions

### § 175.11 Filing of petitions.

(a) *Number of copies and where filed.* All petitions pursuant to section 516 Tariff Act of 1930, as amended (19 U.S.C. 1516), shall be submitted to the Commissioner of Customs in triplicate.

(b) *By whom filed.* Petitions may be filed by the domestic interested parties themselves, or by duly authorized attorneys or agents on their behalf. A petition filed by a corporation shall be signed by an officer thereof, and petition filed by a partnership shall be signed by a member thereof.

[T.D. 70–181, 35 FR 13432, Aug. 22, 1970, as amended by T.D. 80–271, 45 FR 75642, Nov. 17, 1980]

### § 175.12 Contents of petition.

The petition shall be itemized as to each class or kind of merchandise involved, and shall contain the following:

(a) The name of the petitioner, his principal place of business, and the fact that he is a domestic interested party;

(b) A statement showing the class or kind of merchandise manufactured, produced, or sold by him which is claimed to be similar to the imported merchandise in such detail as will permit the Commissioner of Customs to

establish the similarity between the domestic and foreign merchandise; and

(c) A presentation, in detail, of the information required by section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516).

[T.D. 70–181, 35 FR 13432, Aug. 22, 1970, as amended by T.D. 80–271, 45 FR 75642, Nov. 17, 1980]

## Subpart C—Procedure Following Petition

### § 175.21 Notice of filing of petition, inspection of petition, and inspection of documents and papers.

(a) *Notice of filing of petition.* Upon the filing of a petition, a notice shall be published in the FEDERAL REGISTER setting forth that a petition has been filed by a domestic interested party, identifying the merchandise which is the subject of the petition, and its present and claimed appraised value or classification or rate of duty. The notice shall invite interested persons to make such written submissions as they desire within such time as is specified in the notice.

(b) *Inspection of petition; inspection of documents and papers.* The petition filed by a domestic interested party will be made available for inspection by interested parties in accordance with the provisions of § 103.11(b) of this chapter. However, neither a petitioner nor other interested parties shall in any case be permitted to inspect documents or papers of the consignee or importer which are exempted from disclosure by § 103.12(d) of this chapter.

(R.S. 251, as amended, secs. 516, 624, 46 Stat. 735, as amended, 759; 5 U.S.C. 552, 19 U.S.C. 66, 1516, 1624)

[T.D. 74–236, 39 FR 33207, Sept. 16, 1974, as amended by T.D. 80–271, 45 FR 75642, Nov. 17, 1980; T.D. 81–168, 46 FR 32574, June 24, 1981]

### § 175.22 Publication of decisions following petition.

(a) *Incorrect appraised value, classification, or rate of duty.* If the appraised value of, classification of, or rate of duty upon imported merchandise of the character which is the subject of a petition is found to be incorrect, the Commissioner of Customs shall so inform the petitioner, and shall cause the proper value, classification, or rate of duty to be published in the FEDERAL REGISTER and the weekly Customs Bulletin. Such merchandise entered for consumption or withdrawn from warehouse for consumption after 30 days after the date of publication of such notice to the petitioner in the Customs Bulletin shall be appraised, classified, or assessed as to rate of duty in accordance with the published decision.

(b) *Correct appraised value, classification, or rate of duty.* If the appraised value of, classification of, or rate of duty upon the imported merchandise which is the subject of the petition is found to be correct, the Commissioner of Customs shall so notify the petitioner, but the decision shall not be published.

### § 175.23 Notice of desire to contest decision.

If the petitioner is dissatisfied with the decision of the Commissioner that the appraised value, classification, or rate of duty is correct for the merchandise which was the subject of the petition, in accordance with section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516) he may file with the Commissioner of Customs not later than 30 days after the date of the decision a notice that he desires to contest the appraised value of, classification of, or rate of duty assessed upon the imported merchandise. Such notice shall designate the port or ports at which such merchandise is being imported into the United States, and at which the petitioner desires to protest.

### § 175.24 Publication following notice of desire to contest.

Upon receipt of a properly filed petitioner's notice that he desires to contest the decision as to the appraised value of, classification of, or rate of duty assessed upon the imported merchandise, the Commissioner of Customs shall cause to be published in the FEDERAL REGISTER and the weekly Customs Bulletin a notice of his decision as to the proper appraised value of, classification of, or rate of duty assessed upon the imported merchandise, and of petitioner's desire to contest the decision.

### § 175.25 Procedure at port of entry designated by petitioner.

(a) *Information as to character and description of merchandise.* All information secured by the director of the port designated by the petitioner in his notice of desire to contest as to the character and description of merchandise of the kind covered by the petition and entered after publication by the Commissioner of Customs of his decision as to the proper appraised value, classification and rate of duty, and samples of such merchandise, shall be made available to the petitioner upon application by him to the port director.

(b) *Notice of liquidation.* Notice of liquidation of the first of the entries to be liquidated which would enable the petitioner to present the issue desired shall be given to the petitioner by the director of the designated port as required by section 516. Tariff Act of 1930, as amended (19 U.S.C. 1516).

(c) *Further notice when issue not presented.* If, upon examination of the information and inspection of any sample supplied by the port director, the petitioner believes and the port director agrees that the merchandise or the facts surrounding this importation are not sufficient to raise the issue involved in the petition, the port director shall then give the petitioner notice of the first liquidation thereafter which will permit the framing of the issue covered by the petition. The port director shall, under the same conditions, continue to give notice for so long as he is of the opinion that the petitioner affirmatively intends to contest. When the port director concludes that the petitioner does not intend to contest the decision of the Commissioner of Customs, he shall refer the matter to the Commissioner of Customs for his decision before issuing any further notice of liquidation.

[T.D. 70–181, 35 FR 13432, Aug. 22, 1970, as amended by T.D. 99–27, 64 FR 13677, Mar. 22, 1999]

## Subpart D—Procedure Following Court Decision

### § 175.31 Publication of notice of court decision.

Notice of a decision of the Court of International Trade or of the Court of Appeals for the Federal Circuit which sustains, in whole or in part, a cause of action before the court under the provisions of section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), shall be published by the Commissioner of Customs in the FEDERAL REGISTER within 10 days from the date of issuance of the court decision.

[T.D. 80–271, 45 FR 75642, Nov. 17, 1980, as amended by T.D. 85–90, 50 FR 21430, May 24, 1985]

# PART 176—PROCEEDINGS IN THE COURT OF INTERNATIONAL TRADE

Sec.
176.0 Scope.

Subpart A—Service

176.1 Service of summons.
176.2 Service of notice of appeal.

Subpart B—Transmission of Records

176.11 Transmission of records to Court of International Trade.

Subpart C—Statement of Agreed Facts

176.21 Referral of statements of agreed facts for certification.
176.22 Deletion of protest or entry number.

Subpart D—Procedure Following Court Decision

176.31 Reliquidation following decision of court.

AUTHORITY: R.S. 251, as amended, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624, unless otherwise noted.

### § 176.0 Scope.

This part deals with service of summons and notice of appeal in actions before the Court of International Trade, the transmission of records to the court, statements of agreed facts,

and Customs procedures following a decision by the court.

[T.D. 70–181, 35 FR 13433, Aug. 22, 1970, as amended by T.D. 85–90, 50 FR 21430, May 24, 1985]

## Subpart A—Service

### § 176.1 Service of summons.

When an action is initiated in the Court of International Trade a copy of the summons shall be served in the manner prescribed by the Court of International Trade upon the director of each port where a protest cited in the summons was denied, and an additional copy shall be served upon the Assistant Chief Counsel for Court of International Trade Litigation, United States Customs Service, 26 Federal Plaza, New York, N.Y. 10007.

(28 U.S.C. 2632, as amended)

[T.D. 70–181, 35 FR 13433, Aug. 22, 1970, as amended by T.D. 85–90, 50 FR 21430, May 24, 1985]

### § 176.2 Service of notice of appeal.

When the United States is an appellee in an appeal taken to the Court of Appeals for the Federal Circuit, a copy of the notice of appeal shall be served upon the Assistant Chief Counsel for Court of International Trade Litigation.

(28 U.S.C. 2601, as amended)

[T.D. 70–181, 35 FR 13433, Aug. 22, 1970, as amended by T.D. 85–90, 50 FR 21430, May 24, 1985]

## Subpart B—Transmission of Records

### § 176.11 Transmission of records to Court of International Trade.

Upon receipt of service of a summons in an action initiated in the Court of International Trade the following items shall be immediately transmitted to the Court of International Trade as part of the official record by the Customs officer concerned:

(a) Consumption or other entry;

(b) Commercial invoice;

(c) Special Customs invoice;

(d) Copy of protest and any amendments thereto;

(e) Copy of denial or protest in whole or in part;

(f) Importer's exhibits;

(g) Official samples;

(h) Any official laboratory reports;

(i) The summary sheet;

(j) In any case in which one or more of the items listed in paragraphs (a) through (i) of this section do not exist, the Customs officer shall include a statement to that effect, identifying the items which do not exist.

(28 U.S.C. 2632, as amended)

[T.D. 70–181, 35 FR 13433, Aug. 22, 1970, as amended by T.D. 85–90, 50 FR 21430, May 24, 1985]

## Subpart C—Statement of Agreed Facts

### § 176.21 Referral of statement of agreed facts for certification.

Statements of agreed facts (also referred to as stipulations) to be used by the Department of Justice in submitting cases to the Court of International Trade may be referred for certification to Customs officials by the office of the Assistant Attorney General, International Trade Field Office, Civil Division, Department of Justice, 26 Federal Plaza, New York, N.Y. 10278.

[T.D. 70–181, 35 FR 13433, Aug. 22, 1970, as amended by T.D. 85–90, 50 FR 21430, May 24, 1985; T.D. 88–47, 53 FR 30984, Aug. 17, 1988]

### § 176.22 Deletion of protest or entry number.

If any protest number or entry number is to be deleted from a schedule of protest numbers or entry numbers attached to or embodied in a statement of agreed facts, a line shall be drawn through the number and the change shall be initialed by the authorized official making and approving the deletion.

[T.D. 70–181, 35 FR 13433, Aug. 22, 1970]

## Subpart D—Procedure Following Court Decision

### § 176.31 Reliquidation following decision of court.

(a) *Decision of U.S. Court of International Trade.* Except as provided in paragraph (c) of this section, an entry

which is the subject of a decision of the U.S. Court of International Trade shall be reliquidated in accordance with the judgment order thereon at the expiration of 60 days from the date of the decision, unless an appeal or motion for a rehearing is filed. However, entries which are the subject of decisions of the court following a decision of the Court of Appeals for the Federal Circuit which involve the same issue, or which are based on submission of an agreed statement of fact, may be reliquidated immediately upon receipt of the judgment orders from the U.S. Court of International Trade.

(b) *Decision of the Court of Appeals for the Federal Circuit*. Except as provided in paragraph (c) of this section, an entry covering merchandise which is the subject of a decision of the Court of Appeals for the Federal Circuit shall be reliquidated at the expiration of 90 days from the date of entry of decision by that court and only upon receipt of the judgment order from the U.S. Court of International Trade. However, no such entry shall be reliquidated pursuant to such order if a petition for certiorari is taken to the Supreme Court.

(c) *Waiver of right of appeal*. Upon receipt of a letter from the Assistant Attorney General, Civil Division, Department of Justice, signed by the Chief, Customs Section, advising that no appeal will be taken from a decision of the U.S. Court of International Trade or that it has been determined that no petition for certiorari shall be filed in the Supreme Court to review a decision of the Court of Appeals for the Federal Circuit, any entry or entries covered by such decision may be reliquidated pursuant to the judgment of the U.S. Court of International Trade prior to the expiration of the times specified in paragraphs (a) and (b) of this section.

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

[T.D. 70–181, 35 FR 13433, Aug. 22, 1970, as amended by T.D. 85–90, 50 FR 21430, May 24, 1985]

# PART 177—ADMINISTRATIVE RULINGS

Sec.

177.0 Scope.

## Subpart A—General Ruling Procedure

177.1 General ruling practice and definitions.
177.2 Submission of ruling requests.
177.3 Nonconforming requests for rulings.
177.4 Oral discussion of issues.
177.5 Change in status of transaction.
177.6 Withdrawal of ruling requests.
177.7 Situations in which no ruling will be issued.
177.8 Issuance of rulings.
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177.10 Publication of decisions.
177.11 Requests for advice by field offices.
177.12 Modification or revocation of interpretive rulings, protest review decisions, and previous treatment of substantially identical transactions.
177.13 Inconsistent customs decisions.

## Subpart B—Government Procurement; Country-of-Origin Determinations

177.21 Applicability.
177.22 Definitions.
177.23 Who may request a country-of-origin advisory ruling or final determination.
177.24 By whom request is filed.
177.25 Form and content of request.
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177.27 Oral discussion of issues.
177.28 Issuance of advisory rulings and final determinations.
177.29 Publication of notice of final determinations.
177.30 Review of final determinations.
177.31 Reexamination of final determinations.

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1502, 1624, 1625.

### § 177.0 Scope.

This part relates to the issuance of rulings to importers and other interested persons by the United States Customs Service, other than advance rulings under Article 509 of the North American Free Trade Agreement (see subpart I of part 181 of this chapter). It describes the situations in which a ruling may be requested, the procedures to be followed in requesting a ruling, the conditions under which a ruling will be issued, the effect of a ruling when it is issued, and the publication of rulings in the Customs Bulletin. The rulings issued under the provisions of this part will usually be prospective in application and, consequently, will usually not relate to specific matters or situations presently or previously under consideration by any Customs

Service field office. Accordingly, the rulings requested under the provisions of this part should be distinguished from the administrative rulings, determinations, or decisions which may be requested under procedures set forth elsewhere in this chapter, including, but not limited to, those set forth in part 12 (relating to submissions of proof of admissibility of articles detained under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307)), part 103 (relating to disclosure of information in Customs files), part 133 (relating to disputed claims of piratical copying of copyrighted matter), subpart C of part 152 (relating to determinations concerning the dutiable value of merchandise by Customs field officers), part 153 (relating to enforcement of the Antidumping Act, 1921, as amended), part 159 (insofar as it relates to countervailing duties), part 171 (relating to fines, penalties, and forfeitures), part 172 (relating to liquidated damages), part 174 (relating to protests), and part 175 (relating to petitions filed by American manufacturers, producers, or wholesalers pursuant to section 516 of the Tariff Act of 1930, as amended). Nor do the provisions of part 177 apply to requests for decisions of an operational, administrative, or investigative nature which are properly within the cognizance of a Customs Headquarters Office other than the Office of Regulations and Rulings.

[T.D. 80–285, 45 FR 80103, Dec. 3, 1980, as amended by T.D. 84–149, 49 FR 28699, July 16, 1984; T.D. 89–74, 54 FR 31515, July 31, 1989; T.D. 94–1, 58 FR 69473, Dec. 30, 1993]

## Subpart A—General Ruling Procedure

### § 177.1 General ruling practice and definitions.

(a) *The issuance of rulings generally*—(1) *Prospective transactions.* It is in the interest of the sound administration of the Customs and related laws that persons engaging in any transaction affected by those laws fully understand the consequences of that transaction prior to its consummation. For this reason, the Customs Service will give full and careful consideration to written requests from importers and other interested parties for rulings or information setting forth, with respect to a specifically described transaction, a definitive interpretation of applicable law, or other appropriate information. Generally, a ruling may be requested under the provisions of this part only with respect to prospective transactions—that is, transactions which are not already pending before a Customs Service office by reason of arrival, entry, or otherwise.

(2) *Current or completed transactions*—(i) *Current transactions.* A question arising in connection with a Customs transaction already before a Customs Service office will normally be resolved by that office in accordance with the principles and precedents previously announced by the Headquarters Office. If such a question cannot be resolved on the basis of clearly established rules set forth in the Customs and related laws, or in the regulations thereunder, or in applicable Treasury Decisions, rulings, opinions, or court decisions published in the Customs Bulletin, that office may be requested to forward the question to the Headquarters Office for consideration, as more fully described in § 177.11.

(ii) *Completed transactions.* A question arising in connection with an entry of merchandise which has been liquidated, or in connection with any other completed Customs transaction, may not be the subject of a ruling request.

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

(c) *Who may request a ruling.* Except as otherwise provided in subpart I of part 181 of this chapter, a ruling may be requested under this part by any person who, as an importer or exporter of merchandise, or otherwise, has a direct and demonstrable interest in the question or questions presented in the ruling request, or by the authorized

agent of such person. A ''person'' in this context includes an individual, corporation, partnership, association, or other entity or group.

(d) *Definitions.* (1) A ''ruling'' is a written statement issued by the Headquarters Office or the appropriate office of Customs as provided in this part that interprets and applies the provisions of the Customs and related laws to a specific set of facts. A ''ruling letter'' is a ruling issued in response to a written request therefor and set forth in a letter addressed to the person making the request or his designee. A ''published ruling'' is a ruling which has been published in the Customs Bulletin.

(2) An ''information letter'' is a written statement issued by the Customs Service that does no more than call attention to a well-established interpretation or principle of Customs law, without applying it to a specific set of facts. An information letter may be issued in response to a request for a ruling when: (i) The request suggests that general information, rather than a ruling, is actually being sought, (ii) the request is incomplete or otherwise fails to meet the requirements set forth in this part, or (iii) the ruling requested cannot be issued for any other reason, and (iv) it is believed that general information may be of some benefit to the party making the request.

(3) A ''Customs transaction'' is an act or activity to which the Customs and related laws apply. A ''prospective'' Customs transaction is one that is contemplated or is currently being undertaken and has not resulted in any arrival or the filing of any entry or other document, or in any other act to bring the transaction, or any part of it, under the jurisdiction of any Customs Service office. A ''current'' Customs transaction is one which is presently under consideration by a port office of the Customs Service. A ''completed'' Customs transaction is one which has been acted upon by a Customs Service field office and with respect to which that office has issued a determination which is final in nature, but is (or was) subject to appeal, petition, protest, or other review, as provided in the applicable Customs laws and regulations. In a series of identical, recurring transactions, each transaction shall be considered an individual transaction for purposes of this part.

(4) An ''authorized agent'' is a person expressly authorized by a principal to act on his behalf. A ruling requested by an attorney or other person acting as an agent must include a statement describing the authority under which the request is made. With the exception of attorneys whose authority to represent is known, any person appearing before the Customs Service as an agent in connection with a ruling request may be required to present evidence of his authority to represent the principal. The foregoing requirements will not apply to an individual representing his full-time employer, or to a bona-fide officer, director, or other qualified representative of a corporation, association, or organized group.

(5) The term ''Customs and related laws,'' as generally used in this part, includes any provision of the Tariff Act of 1930, as amended (including the Harmonized Tariff Schedule of the United States), or the Customs Regulations, or any provision contained in other legislation (including the navigation laws), regulations, treaties, orders, proclamations, or other agreements administered by the Customs Service.

(6) The term ''Headquarters Office,'' as used herein, means the Office of Regulations and Rulings at Headquarters, United States Customs Service, Washington, DC.

[T.D. 75–186, 40 FR 31929, July 30, 1975, as amended by T.D. 80–285, 45 FR 80104, Dec. 3, 1980; T.D. 84–149, 49 FR 28699, July 16, 1984; T.D. 89–1, 53 FR 51271, Dec. 21, 1988; T.D. 89–74, 54 FR 31515, July 31, 1989; T.D. 94–1, 58 FR 69473, Dec. 30, 1993]

### § 177.2 Submission of ruling requests.

(a) *Form.* A request for a ruling should be in the form of a letter. Requests for Valuation and Carrier rulings should be addressed to the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229. The Division and Branch in the Office of Regulations and Rulings to which the request should be directed may also be indicated, if known. Requests for tariff classification rulings should be addressed to the

Director, National Commodity Specialist Division, U.S. Customs, Attn: Classification Ruling Requests, New York, New York 10048, or to any service port office of the Customs Service.

(b) *Content*—(1) *Generally*. Each request for a ruling must contain a complete statement of all relevant facts relating to the transaction. Such facts include the names, addresses, and other identifying information of all interested parties (if known); the name of the port or place at which any article involved in the transaction will arrive or be entered, 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 type of ruling requested.

(2) *Description of transaction*—(i) *Generally*. The Customs transaction to which the ruling request relates must be described in sufficient detail to permit the proper application of relevant Customs and related laws.

(ii) *Tariff classification rulings*. (A) If the transaction involves the importation of an article for which a ruling as to its proper classification under the provisions of the Harmonized Tariff Schedule of the United States is requested, the request for a ruling should include a full and complete description of the article and whenever germane to the proper classification of the article, information as to the article's chief use in the United States, its commercial, common, or technical designation, and, where the article is composed of two or more materials, the relative quantity (by weight and by volume) and value of each. The ruling request should also note, whenever germane, the purchase price of the article, and its approximate selling price in the United States. Individual requests for rulings submitted to service port offices will be limited to five (5) merchandise items, all of which must be of the same class or kind.

(B) Rulings issued by the Director, National Commodity Specialist Division, or any service port office are limited to prospective transactions. Only the Headquarters Office will prepare final decisions under § 177.11 (Requests for Advice by Field Officers), or § 174.23 (Further Review of Protests), § 177.10 (Change of Practice), decisions under part 175 of this chapter (petitions under section 516, Tariff Act of 1930, as amended), decisions under § 177.13 (Inconsistent Customs decisions), and decisions under Policies and Procedures Manual Supplement 2126–01.

(C) The requesting party may send the request directly to the Director, Commercial Rulings Division, U.S. Customs Service, Washington, DC 20229. The Headquarters Office retains authority to independently review all tariff classification ruling letters issued by the Director, National Commodity Specialist Division, and any service port office. If the importer or other person to whom a ruling letter is issued disagrees with the tariff classification set forth in a ruling issued by the Director, National Commodity Specialist Division, or any service port office, he may petition the Director, Commercial Rulings Division, U.S. Customs Service, Washington, DC 20229, for review of the ruling.

(iii) *Valuation rulings*. If the transaction involves the valuation of an article for Customs purposes, the request for a ruling should include all of the applicable information described in subpart C of part 152 of this chapter, and, insofar as is relevant, the information which would be required on an invoice as described in subpart F of part 141 of this chapter. The request should also describe the nature of the transaction (whether f.o.b./c.i.f., ex-factory, or some other arrangement), the relationship (if any) of the parties, whether the transaction was at arm's-length, whether there have been other sales of the same or similar merchandise in the country of exportation, whether an agency relationship exists, or any other information relevant to a determination under section 402 or 402a of the Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402).

(iv) *Carrier rulings*. If the transaction involves a vessel, the request for a ruling should include information relating to place of build and nationality of registration and, if to be used in waters under the jurisdiction of the United States, the exact place or places of intended use, if known. If the request for a ruling involves a determination as to whether or not the primary object of a

contemplated voyage would be considered to be coastwise transportation in violation of 46 U.S.C. 289 (see § 4.80a of this chapter), the request should completely identify the voyage, including the proposed time of arrival at and departure from every port on the itinerary and any coordination of the voyage with special events at coastwise ports, and should be accompanied by samples, if available, of brochures, advertising, and other information that may be relevant to a determination of the primary object of the proposed voyage.

(3) *Samples.* Each request for a ruling regarding the status of an article under any Customs or related law affecting the importation or arrival of that article should be accompanied by photographs, drawings, or other pictorial representations of the article and, whenever possible, by a sample article, unless a precise description of the article is not essential to the ruling requested. Any article 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. A sample submitted in connection with a request for a ruling becomes a part of the Customs Service file in the matter and will be retained until the ruling is issued or the ruling request is otherwise disposed of. If the return of the sample is desired, the ruling request should so state and should specify the desired means of return. 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 ruling request.

(4) *Related documents.* If the question or questions presented in the 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 ruling request become a part of the Customs Service 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 ruling request.

(5) *Prior or current transactions.* Each request for a ruling must state whether, to the knowledge of the person submitting the request, the same transaction, or one identical to it, has ever been considered, or is currently being considered by any Customs Service office or whether, to the knowledge of the person submitting the request, the issues involved have ever been considered, or are currently being considered, by the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Where the transaction described in the ruling request is but one of a series of similar and related transactions, that fact must also be stated.

(6) *Statement of position.* If the request for a ruling asks that a particular determination or conclusion be reached in the 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 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.

(c) *Signing; instructions as to reply.* The request for a ruling must be signed by a person authorized to make the request, as described in § 177.1(c). A ruling requested by a principal or authorized agent may direct that the ruling letter be addressed to the other.

(d) *Requests for immediate consideration.* The Customs Service will normally process requests for rulings in

the order they are received and as expeditiously as possible. 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 will be treated in the same manner as requests made by letter, but rulings will not ordinarily be issued by telegram. In no event can any assurance be given that a particular request for a ruling will be acted upon by the time requested. However, upon request and where a clear need is shown for such action, a collect telephone call will be made to advise that the ruling letter has been issued and is being mailed.

(R.S. 251, as amended, secs. 481, 484, 624, 46 Stat. 719, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

[T.D. 75–186, 40 FR 31929, July 30, 1975, as amended by T.D. 80–285, 45 FR 80104, Dec. 3, 1980; T.D. 84–149, 49 FR 28699, July 16, 1984; T.D. 85–39, 50 FR 9613, Mar. 11, 1985; T.D. 85–90, 50 FR 21430, May 24, 1985; T.D. 89–1, 53 FR 51271, Dec. 21, 1988; T.D. 89–74, 54 FR 31515, July 31, 1989; T.D. 97–82, 62 FR 51771, Oct. 3, 1997; T.D. 99–27, 64 FR 13677, Mar. 22, 1999; T.D. 02–49, 67 FR 53496, Aug. 16, 2002]

### § 177.3 Nonconforming requests for rulings.

A person submitting a request for a ruling that does not comply with all of the provisions of this part will be so notified in writing, and the requirements that have not been met will be pointed out. Except in the case of ruling requests submitted to Area or District offices, such person will be given a period of thirty (30) 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 ruling request to the requirements referred to in the notice. The Customs Service file with respect to ruling requests which are not brought into compliance with the provisions of this part within the period of time allowed will be administratively closed and the request removed from active consideration until such time as the deficiencies cited in the notice are corrected. A request for a ruling that is removed from active consideration by reason of failing to comply with the provisions of this part may be treated as withdrawn. In the case of ruling requests made to Area or District offices, a failure to comply with the provisions of this part will result in the return of the ruling request with the notice specifying the deficiencies and such requests will not be considered as having been filed until such deficiencies are corrected.

[T.D. 89–74, 54 FR 31515, July 31, 1989]

### § 177.4 Oral discussion of issues.

(a) *Generally*. A person submitting a request for a ruling and desiring an opportunity to orally discuss the issue or issues involved should indicate that desire in writing at the time the ruling request is filed. Such a discussion will only be scheduled when, in the opinion of the Customs personnel by whom the 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 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 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 bound in writing. The conference will not conclude with the issuance of a ruling letter.

(b) *Time, place, and number of conferences*. If a request for a conference is granted, the person making the request will be notified of the time and place of the conference. No more than one conference with respect to the matters set forth in a ruling request will be scheduled, unless, in the opinion of the Customs personnel by whom the ruling request is under consideration, additional conferences are necessary.

(c) *Representation*. A person whose request for a conference has been granted may be accompanied at that conference by counsel or other representatives, or may designate such persons to attend the conference in his place.

(d) *Additional information presented at conferences*. It will be the responsibility of the person submitting the request for a ruling to provide for inclusion in the Customs Service file in the matter a written record setting forth any and all additional information, documents, and exhibits introduced during the conference to the extent that person considers such material relevant to the consideration of the ruling request.

[T.D. 75–186, 40 FR 31929, July 30, 1975, as amended by T.D. 80–285, 45 FR 80105, Dec. 3, 1980; T.D. 84–149, 49 FR 28699, July 16, 1984; T.D. 89–74, 54 FR 31515, July 31, 1989]

### § 177.5 Change in status of transaction.

Each person submitting a request for a ruling in connection with a Customs transaction shall immediately advise Customs in writing of any change in the status of that transaction, as defined in § 177.1(d)(3). In particular, the Customs Service office to which the request was made must be advised when any transaction described in the ruling request as prospective becomes current and under the jurisdiction of a Customs Service field office. In addition, any person engaged in a Customs transaction coming under the jurisdiction of a Customs Service field office and having previously requested a ruling with respect to that transaction shall advise the field office of that fact. The field office will normally withhold action with respect to any transaction for which a ruling has previously been requested pending the disposition of the ruling request.

[T.D. 80–285, 45 FR 80105, Dec. 3, 1980, as amended by T.D. 84–149, 49 FR 28699, July 16, 1984; T.D. 89–74, 54 FR 31516, July 31, 1989]

### § 177.6 Withdrawal of ruling requests.

Any request for a ruling may be withdrawn by the person submitting it at any time before the issuance of a ruling letter or any other final disposition of the request. All correspondence, documents, and exhibits submitted in connection with the request will be retained in the Customs Service file and will not be returned. In addition, the Headquarters Office may forward to Customs Service field offices which have or may have jurisdiction over the transaction to which the ruling request relates, its views in regard to the transaction or the issues involved therein, as well as appropriate information derived from materials in the Customs Service file.

[T.D. 80–285, 45 FR 80105, Dec. 3, 1980]

### § 177.7 Situations in which no ruling will be issued.

(a) *Generally*. No ruling letter will be issued in response to a request for a ruling which fails to comply with the provisions of this part. Moreover, no ruling letter will be issued with regard to transactions or questions which are essentially hypothetical in nature or in any instance in which it appears contrary to the sound administration of the Customs and related laws to do so. No ruling letter will be issued in regard to a completed transaction.

(b) *Pending litigation in the United States Court of International Trade*. No ruling letter will be issued with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Litigation before any other court will not preclude the issuance of a ruling letter, provided neither the Customs Service nor any of its officers or agents is named as a defendant.

[T.D. 75–186, 40 FR 31929, July 30, 1975, as amended by T.D. 85–90, 50 FR 21430, May 24, 1985]

### § 177.8 Issuance of rulings.

(a) *Ruling letters*—(1) *Generally*. The Customs Service will endeavor to issue a ruling letter setting forth a determination with respect to a specifically described Customs transaction whenever a request for such a ruling is submitted in accordance with the provisions of this part and it is in the sound administration of the Customs and related laws to do so. Otherwise, a request for a ruling will be answered by an information letter or, in those situations in which general information is likely to be of little or no value, by a letter stating that no ruling can be issued.

(2) *Submission of ruling letters to field offices*. Any person engaging in a Customs transaction with respect to which a binding tariff classification ruling

letter (including pre-entry classification decisions) has been issued under this part shall ascertain that a copy of the ruling letter is attached to the documents filed with the appropriate Customs Service office in connection with that transaction, or shall otherwise indicate with the information filed for that transaction that a ruling has been received. Any person receiving a ruling setting forth the tariff classification of merchandise shall set forth such classification in the documents or information filed in connection with any subsequent entry of that merchandise; the failure to do so may result in a rejection of the entry and the imposition of such penalties as may be appropriate. A ruling received after the filing of such documents or information shall immediately be brought to the attention of the appropriate Customs Service field office.

(3) *Disclosure of ruling letters.* The ruling letter shall be based on the information set forth in the ruling request. No part of the ruling letter, including names, addresses, or information relating to the business transactions of private parties, shall be deemed to constitute privileged or confidential commercial or financial information or trade secrets exempt from disclosure pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552), unless, as provided in §177.2(b)(7), the information claimed to be exempt from disclosure is clearly identified and the reasons for the exemption are set forth. Before the issuance of the ruling letter, the person submitting the ruling request, will be notified of any decision adverse to his claim for exemption from disclosure and will, upon written request to Customs within 10 working days of the date of notification, be permitted to withdraw the ruling request. All ruling letters issued by the Customs Service will be available, upon written request, for inspection and copying by any person (with any portions determined to be exempt from disclosure deleted).

(b) *Other rulings.* The Headquarters Office may from time to time issue other rulings with respect to issues or transactions described or suggested by requests for rulings submitted under the provisions of this part, or with respect to issues or transactions otherwise brought to its attention. These rulings, which are statements of the official position of the Customs Service which are likely to be of widespread interest and application, are published in the Customs Bulletin, as described in §177.10.

[T.D. 75–186, 40 FR 31929, July 30, 1975, as amended by T.D. 80–285, 45 FR 80105, Dec. 3, 1980; T.D. 84–149, 49 FR 28699, July 16, 1984; T.D. 89–74, 54 FR 31516, July 31, 1989]

### § 177.9 Effect of ruling letters.

(a) *Effect of ruling letters generally.* A ruling letter issued by the Customs Service under the provisions of this part represents the official position of the Customs Service with respect to the particular transaction or issue described therein and is binding on all Customs Service personnel in accordance with the provisions of this section until modified or revoked. In the absence of a change of practice or other modification or revocation which affects the principle of the ruling set forth in the ruling letter, that principle may be cited as authority in the disposition of transactions involving the same circumstances. Generally, a ruling letter is effective on the date it is issued and may be applied to all entries which are unliquidated, or other transactions with respect to which the Customs Service has not taken final action on that date. See, however, §177.10(e) (changes of practice published in the FEDERAL REGISTER) and §177.12 (rulings which modify or revoke previous rulings, decisions, or treatments).

(b) *Application of rulings to transactions*—(1) *Generally.* Each ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of a ruling letter by a Customs Service field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the

ruling was based. If, in the opinion of any Customs Service field office by whom the transaction is under consideration or review, the ruling letter should be modified or revoked, the findings and recommendations of that office will be forwarded to the Headquarters Office for consideration, as provided in § 177.11(b)(1)(i), prior to any final disposition with respect to the transaction by that office. Otherwise, if the transaction described in the ruling letter and the actual transaction are the same, and any and all conditions set forth in the ruling letter have been satisfied, the ruling will be applied to the transaction.

(2) *Tariff classification rulings.* Each ruling letter setting forth the proper classification of an article under the provisions of the Harmonized Tariff Schedule of the United States will be applied only with respect to transactions involving articles identical to the sample submitted with the ruling request or to articles whose description is identical to the description set forth in the ruling letter.

(3) *Valuation rulings.* Each ruling letter setting forth the proper valuation of an article under the provisions of section 402 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a), will be applied only with respect to transactions involving the same merchandise and like facts.

(4) *Carrier rulings.* Each ruling letter setting forth the applicability of the navigation laws to a vessel will be applied only with respect to transactions involving operations identical to those set forth in the ruling letter. Each ruling letter setting forth a determination as to whether or not the primary object of a contemplated voyage is coastwise transportation in violation of 46 U.S.C. 289 will be binding on the United States Customs Service with respect to any transaction identical to the facts and circumstances described in the ruling request and undertaken in reliance on the ruling letter.

(c) *Reliance on ruling letters by others.* Except when public notice and comment procedures apply under § 177.12, a ruling letter is subject to modification or revocation by Customs without notice to any person other than the person to whom the ruling letter was addressed. Accordingly, no other person should rely on the ruling letter or assume that the principles of that ruling will be applied in connection with any transaction other than the one described in the letter. However, any person eligible to request a ruling under § 177.1(c) may request information as to whether a previously-issued ruling letter has been modified or revoked by writing the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229, and either enclosing a copy of the ruling letter or furnishing other information sufficient to permit the ruling letter in question to be identified.

(d)–(e) [Reserved]

[T.D. 75–186, 40 FR 31929, July 30, 1975, as amended by T.D. 80–285, 45 FR 80105, Dec. 3, 1980; T.D. 84–149, 49 FR 28699, July 16, 1984; T.D. 87–89, 52 FR 24446, July 1, 1987; T.D. 89–1, 53 FR 51271, Dec. 21, 1988; T.D. 89–74, 54 FR 31516, July 31, 1989; T.D. 02–49, 67 FR 53496, Aug. 16, 2002]

### § 177.10 Publication of decisions.

(a) *Generally.* Within 90 days after issuing any interpretive decision under the Tariff Act of 1930, as amended, relating to any Customs transaction (prospective, current, or completed), the Customs Service shall publish the decision in the Customs Bulletin or otherwise make it available for public inspection. For purposes of this paragraph an interpretive decision includes any ruling letter, internal advice memorandum, or protest review decision. Disclosure is governed by 31 CFR part 1, 19 CFR part 103, and 19 CFR 177.8(a)(3).

(b) [Reserved]

(c) *Changes of practice.* Before the publication of a ruling which has the effect of changing an established and uniform practice and which results in the assessment of a higher rate of duty within the meaning of 19 U.S.C. 1315(d), notice that the practice (or prior ruling on which that practice was based) is under review will be published in the FEDERAL REGISTER and interested parties will be given an opportunity to make written submissions with respect to the correctness of the contemplated change.

(d) *Limiting rulings.* A published ruling may limit the application of a

court decision to the specific article under litigation, or to an article of a specific class or kind of such merchandise, or to the particular circumstances or entries which were the subject of the litigation.

(e) *Effective dates.* Except as otherwise provided in § 177.12(e) or in the ruling itself, all rulings published under the provisions of this part will be applied immediately. If the ruling involves merchandise, it will be applicable to all unliquidated entries, except that a change of practice resulting in the assessment of a higher rate of duty or increased duties shall be effective only as to merchandise entered for consumption or withdrawn from warehouse for consumption on or after the 90th day after publication of the change in the FEDERAL REGISTER.

[T.D. 75–186, 40 FR 31929, July 30, 1975, as amended by T.D. 78–394, 43 FR 49792, Oct. 25, 1978; T.D. 89–74, 54 FR 31517, July 31, 1989; T.D. 02–49, 67 FR 53496, Aug. 16, 2002]

### § 177.11 Requests for advice by field offices.

(a) *Generally.* Advice or guidance as to the interpretation or proper application of the Customs and related laws with respect to a specific Customs transaction may be requested by Customs Service field offices from the Headquarters Office at any time, whether the transaction is prospective, current, or completed. Advice as to the proper application of the Customs and related laws to a current transaction will be sought by a Customs Service field office whenever that office is requested to do so, pursuant to paragraph (b) of this section, by an importer or other person having an interest in the transaction. Advice or guidance will be furnished by the Headquarters Office as a means of assisting Customs personnel in the orderly processing of Customs transactions under consideration by them and to insure the consistent application of the Customs and related laws in the several Customs districts. Requests for advice received by the Headquarters Office will be processed as expeditiously as possible.

(b) *Certain current transactions*—(1) *When a ruling has been issued*—(i) *Requests by field offices.* If any Customs Service office has issued a ruling letter with respect to a particular Customs transaction and the Customs Service field office having jurisdiction over that transaction believes that the ruling should be modified or revoked, the field office will forward to the Headquarters Office, pursuant to § 177.9(b)(1), a request that the ruling be reconsidered. The field office will notify the importer or other person to whom the ruling letter was issued, in writing, that it has requested the Headquarters Office to reconsider the ruling.

(ii) *Requests by importers and others.* If the importer or other person to whom a ruling letter is issued disagrees with the Customs Service field office having jurisdiction over the transaction to which the ruling relates as to the proper application of the ruling to the transaction, the field office will, upon receipt of a written request submitted in accordance with the procedure set forth in paragraph (b)(3) of this section, request advice from the Headquarters Office as to the proper application of the ruling to the transaction. Such advice may not be requested for the purpose of seeking reconsideration of a ruling with which the importer or other person to whom the ruling letter was issued disagrees.

(2) *When no ruling has been issued.* Internal advice will be sought by a Customs Service field office with respect to a current transaction for which no ruling was requested or issued under the provisions of this part whenever a difference of opinion exists as to the interpretation or proper application of the Customs and related laws to the transaction, and the field office is requested to seek such advice by an importer or other person who would have been entitled, under § 177.1(c), to request a ruling with respect to the transaction, while prospective. The request must be submitted to the field office in writing and in accordance with the provisions of paragraph (b)(3) of this section.

(3) *Form of request by importers and others.* An importer or other person requesting that a Customs Service field office seek advice from the Headquarters Office must make such a request, in writing, to the field office

having jurisdiction over the transaction in question. The request shall contain a complete statement setting forth a description of the transaction, the specific questions presented, the applicable law, and an argument for the conclusions advocated. The statement must also specify whether, to the knowledge of the person submitting the statement, the same transaction, or one identical to it, has ever been considered, or is currently being considered, by any Customs Service office. In addition, the statement should indicate at which port or ports of entry identical or substantially identical merchandise has been entered.

(4) *Review of requests by importers and others.* All requests submitted by importers and other persons under paragraph (b)(3) of this section, will be reviewed by the field office to which they are submitted. In the event a difference of opinion exists as to the description of the transaction or as to the point or points at issue, the person submitting the request will be so advised in writing. If agreement cannot be reached, both the statements of the person submitting the request and the field office will be forwarded to the Headquarters Office for consideration.

(5) *Refusal by Headquarters Office to furnish advice.* The Headquarters Office may refuse to consider the questions presented to it in the form of a request for internal advice whenever (i) the Headquarters Office determines that the period of time necessary to give adequate consideration to the questions presented would result in a withholding of action with respect to the transaction, or in any other situation, that is inconsistent with the sound administration of the Customs and related laws, and (ii) the questions presented can subsequently be raised by the importer or other interested party in the form of a protest filed in accordance with the provisions of part 174 of this chapter.

(6) *Effect of advice received from the Headquarters Office.* Advice furnished by the Headquarters Office in response to a request therefor represents the official position of the Customs Service as to the application of the Customs laws to the facts of a specific transaction. If the field office believes that the advice furnished by the Headquarters Office should be reconsidered, it shall promptly request such reconsideration. Otherwise, the advice furnished by the Headquarters Office will be applied by the field office in its disposition of the Customs transaction in question.

(7) *Publication.* Within 90 days after issuing an internal advice memorandum, the Customs Service shall publish the decision in the Customs Bulletin or otherwise make it available for public inspection. Disclosure is governed by 31 CFR part 1 and 19 CFR part 103.

(8) *Judicial review of importers' requests.* A refusal by the Headquarters Office to consider the questions raised by an importer in the form of a request for internal advice may be appealed to the Court of International Trade if the importer demonstrates to the Court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to the importation of the merchandise.

[T.D. 75–186, 40 FR 31929, July 30, 1975, as amended by T.D. 78–394, 43 FR 49792, Oct. 25, 1978; T.D. 80–285, 45 FR 80106, Dec. 3, 1980; T.D. 84–149, 49 FR 28699, July 16, 1984; T.D. 85–90, 50 FR 21431, May 24, 1985; T.D. 89–74, 54 FR 31517, July 31, 1989; T.D. 02–49, 67 FR 53496, Aug. 16, 2002]

### § 177.12 Modification or revocation of interpretive rulings, protest review decisions, and previous treatment of substantially identical transactions.

(a) *General.* An interpretive ruling, which includes an internal advice decision, issued under this part, or a holding or principle covered by a protest review decision issued under part 174 of this chapter, if found to be in error or not in accord with the current views of Customs, may be modified or revoked by an interpretive ruling issued under this section. In addition, an interpretive ruling issued under this section may have the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions. A modification or revocation under this section must be carried out in accordance with the notice procedures set forth in paragraph (b) or paragraph (c) of this section except as otherwise provided in

paragraph (d) of this section, and the modification or revocation will take effect as provided in paragraph (e) of this section.

(b) *Interpretive rulings or protest review decisions*. Customs may modify or revoke an interpretive ruling or holding or principle covered by a protest review decision that has been in effect for less than 60 calendar days by simply giving written notice of the modification or revocation to the person to whom the original ruling was issued or whose current transaction was the subject of the internal advice decision or, in the case of a protest review decision, to the person identified on the Customs Form 19 as the protestant or to any other person designated to receive notice of denial of a protest under § 174.30(b) of this chapter. However, when Customs contemplates the issuance of an interpretive ruling that would modify or revoke an interpretive ruling or holding or principle covered by a protest review decision which has been in effect for 60 or more calendar days, the following procedures will apply:

(1) *Publication of proposed action*. A notice proposing the modification or revocation and inviting public comment on the proposal will be published in the *Customs Bulletin*. The notice will refer to all previously issued interpretive rulings or protest review decisions that Customs has identified as being the subject of the proposed action and will invite any member of the public who has received another interpretive ruling or protest review decision involving the issue that is the subject of the proposed action to advise Customs of that fact. Interested parties will have 30 calendar days from the date of publication of the notice to submit written comments on the proposed modification or revocation and to advise Customs in writing that they are recipients of an affected interpretive ruling or protest review decision that was not identified in the notice.

(2) *Notice of final action*. In the absence of extraordinary circumstances, within 30 calendar days after the close of the public comment period, any submitted comments will be considered and a final modifying or revoking notice or notice of other appropriate final action on the proposed modification or revocation will be published in the *Customs Bulletin*. In addition, a written decision will be issued to the person to whom, or on whose transaction, the original interpretive ruling was issued or, in the case of a protest review decision, to the person identified on the Customs Form 19 as the protestant or to any other person designated to receive notice of denial of a protest under § 174.30(b) of this chapter. Publication of a final modifying or revoking notice in the *Customs Bulletin* will have the effect of modifying or revoking any interpretive ruling or holding or principle covered by a protest review decision that involves merchandise or an issue that is substantially identical in all material respects to the merchandise or issue that is the subject of the modification or revocation, including an interpretive ruling or holding or principle covered by a protest review decision that is not specifically identified in the final modifying or revoking notice.

(c) *Treatment previously accorded to substantially identical transactions*—(1) *General*. The issuance of an interpretive ruling that has the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions must be in accordance with the procedures set forth in paragraph (c)(2) of this section. The following rules will apply for purposes of determining under this section whether a treatment was previously accorded by Customs to substantially identical transactions of a person:

(i) There must be evidence to establish that:

(A) There was an actual determination by a Customs officer regarding the facts and issues involved in the claimed treatment;

(B) The Customs officer making the actual determination was responsible for the subject matter on which the determination was made; and

(C) Over a 2-year period immediately preceding the claim of treatment, Customs consistently applied that determination on a national basis as reflected in liquidations of entries or reconciliations or other Customs actions with respect to all or substantially all of that person's Customs transactions

involving materially identical facts and issues;

(ii) The determination of whether the requisite treatment occurred will be made by Customs on a case-by-case basis and will involve an assessment of all relevant factors. In particular, Customs will focus on the past transactions to determine whether there was an examination of the merchandise (where applicable) by Customs or the extent to which those transactions were otherwise reviewed by Customs to determine the proper application of the Customs laws and regulations. For purposes of establishing whether the requisite treatment occurred, Customs will give diminished weight to transactions involving small quantities or values, and Customs will give no weight whatsoever to informal entries and to other entries or transactions which Customs, in the interest of commercial facilitation and accommodation, processes expeditiously and without examination or Customs officer review;

(iii) Customs will not find that a treatment was accorded to a person's transactions if:

(A) The person's own transactions were not accorded the treatment in question over the 2-year period immediately preceding the claim of treatment;

(B) The issue in question involves the admissibility of merchandise;

(C) The person made a material false statement or material omission in connection with a Customs transaction or in connection with the review of a Customs transaction and that statement or omission affected the determination on which the treatment claim is based; or

(D) Customs advised the person regarding the manner in which the transactions should be presented to Customs and the person failed to follow that advice; and

(iv) The evidentiary burden as regards the existence of the previous treatment is on the person claiming that treatment. The evidence of previous treatment by Customs must include a list of all materially identical transactions by entry number (or other Customs assigned number), the quantity and value of merchandise covered by each transaction (where applicable), the ports of entry, the dates of final action by Customs, and, if known, the name and location of the Customs officer who made the determination on which the claimed treatment is based. In addition, in cases in which an entry is liquidated without any Customs review (for example, the entry is liquidated automatically as entered), the person claiming a previous treatment must be prepared to submit to Customs written or other appropriate evidence of the earlier actual determination of a Customs officer that the person relied on in preparing the entry and that is consistent with the liquidation of the entry.

(2) *Notice procedures*—(i) When Customs has reason to believe that a contemplated interpretive ruling would have the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions, notice of the intent to modify or revoke that treatment will be published in the *Customs Bulletin* either as a separate action or in connection with a proposed modification or revocation of an interpretive ruling or holding or principle covered by a protest review decision under paragraph (b)(1) of this section. The notice will give interested parties 30 calendar days from the date of publication of the notice to submit written comments on the proposed modification or revocation and will invite any member of the public whose substantially identical transactions have been accorded the same treatment to advise Customs in writing of that fact, supported by appropriate details regarding those transactions, within that 30-day period. Within 30 calendar days after the close of the public comment period, any submitted comments will be considered, notice of the final interpretive ruling or other final action on the proposed modification or revocation will be published in the *Customs Bulletin*. Written confirmation of the applicability of a final modification or revocation will be sent to each person identified as having had substantially identical transactions that were accorded the same treatment.

(ii) If Customs is not aware prior to issuance that a contemplated interpretive ruling would have the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions, the interpretive ruling will be issued and generally will be effective as provided in § 177.9. However, Customs will, upon written application by a person claiming that the interpretive ruling has the effect of modifying or revoking the treatment previously accorded by Customs to his substantially identical transactions, consider delaying the effective date of the interpretive ruling with respect to that person, and continue the treatment previously accorded the substantially identical transactions, pending completion of the procedures set forth in paragraph (c)(2)(i) of this section.

(d) *Exceptions to notice requirements*—(1) *Publication and issuance not required.* The publication and issuance requirements set forth in paragraphs (b) and (c) of this section are inapplicable in circumstances in which a Customs position is modified, revoked or otherwise materially affected by operation of law or by publication pursuant to other legal authority or by other appropriate action taken by Customs in furtherance of an order, instruction or other policy decision of another governmental agency or entity pursuant to statutory or delegated authority. Such circumstances include, but are not limited to, the following:

(i) Adoption or amendment of a statutory provision, including any change to the Harmonized Tariff Schedule of the United States;

(ii) Promulgation of a treaty or other international agreement under the foreign affairs function of the United States;

(iii) Issuance of a Presidential Proclamation or Executive Order, or issuance of a decision or policy determination pursuant to authority delegated by the President;

(iv) Subject to the provisions of § 152.16 of this chapter, the rendering of a judicial decision which has the effect of overturning the Customs position;

(v) Publication of a decision in the FEDERAL REGISTER as a result of a petition by a domestic interested party pursuant to 19 U.S.C. 1516 (see part 175 of this chapter);

(vi) Publication of an interim or final rule in the FEDERAL REGISTER in accordance with 5 U.S.C. 553;

(vii) Publication of a final interpretative rule in the FEDERAL REGISTER in accordance with 5 U.S.C. 553 following public notice and comment procedures; and

(viii) Publication of a final ruling in the FEDERAL REGISTER in accordance with 19 U.S.C. 1315(d) and § 177.10(c) relating to change of established and uniform practice.

(2) *Publication not required.* In the following circumstances a final modifying or revoking ruling will be issued to the person entitled to it under paragraph (b) or (c) of this section but *Customs Bulletin* publication under paragraph (b) or (c) of this section is not required:

(i) The modifying ruling corrects a clerical error; or

(ii) The modifying or revoking ruling is directed to a ruling issued under subpart I of part 181 of this chapter relating to advance rulings under the North American Free Trade Agreement.

(e) *Effective date and application to transactions*—(1) *Rulings or decisions in effect for less than 60 days.* If an interpretive ruling or holding or principle covered by a protest review decision that is modified or revoked under this section had been in effect for less than 60 calendar days, the modifying or revoking interpretive ruling:

(i) Will be effective on its date of issuance with respect to the specific transaction covered by the modifying or revoking interpretive ruling: and

(ii) Will be applicable to merchandise entered, or withdrawn from warehouse for consumption, on and after its date of issuance.

(2) *Rulings or decisions in effect for 60 or more days.* If an interpretive ruling or holding or principle covered by a protest review decision that is modified or revoked under this section had been in effect for 60 or more calendar days, the modifying or revoking notice will, provided that liquidation of the entry in question has not become final, apply to merchandise entered, or withdrawn from warehouse for consumption:

(i) Sixty calendar days after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) of this section; or

(ii) At the option of any person with regard to that person's transaction, on and after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) of this section.

(3) *Previous treatment accorded to substantially identical transactions.* A final notice that modifies or revokes the treatment previously accorded by Customs to substantially identical transactions:

(i) Will be effective with respect to transactions that are substantially identical to the transaction described in the modifying or revoking notice 60 calendar days after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) or paragraph (c)(2)(i) of this section; and

(ii) Provided that liquidation of the entry in question has not become final, will apply to merchandise entered, or withdrawn from warehouse for consumption:

(A) Sixty calendar days after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) or paragraph (c)(2)(i) of this section; or

(B) At the option of a person who makes a valid claim regarding previous treatment, on and after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) or paragraph (c)(2)(i) of this section.

[T.D. 02–49, 67 FR 53497, Aug. 16, 2002; 67 FR 54733, Aug. 26, 2002]

### § 177.13 Inconsistent customs decisions.

(a) *Generally.* Certain decisions made by Customs officials at one field location which are inconsistent with decisions being made by Customs officials at another location may be brought to the attention of Customs Headquarters for resolution by a petition filed by an interested party. The types of decisions which may be the subject of such a petition, a description of the parties who qualify as interested parties, and the period of time in which the petition may be filed are set forth below.

(1) *Inconsistent decisions subject to petition.* The decisions which may be the subject of a petition include:

(i) Decisions described in section 514(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(a)), made with respect to the same, or substantially similar, merchandise; and

(ii) Repeated decisions to conduct intensified inspections or examinations of merchandise at ports of entry.

(2) *Interested Parties.* The following parties shall be considered interested parties entitled to file a petition under this section:

(i) Parties described in section 514(c)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(c)(1)), as eligible to file a protest under section 514;

(ii) A port authority; and

(iii) An ''interested party,'' as described in section 516(a)(2) of the Tariff Act of 1930, as amended (19 U.S.C. 1516(a)(2)).

(3) *Time for filing.* In the case of decisions described in section 514(a) of the Tariff Act, the petition must be filed within the time prescribed by section 514(c)(2), for filing a protest with respect to the later (or latest) of the decisions which are the subject of the petition. In the case of repeated decisions to conduct intensified inspections or examinations of merchandise at ports of entry, the petition must be filed within ninety (90) days of the later (or latest) such decision.

(b) *Petition*—(1) *Form.* The petition shall be in the form of a letter addressed to the Office of Regulations and Rulings, U.S. Customs Service, Washington, DC 20229–0001. Three copies of the petition should be submitted, if possible.

(2) *Content.* The petition should contain a complete description of the inconsistent decisions complained of, including the ports of entry (or other Customs office) where the decisions were made, entry numbers, and the dates (or approximate dates) such decisions were made. The information set forth in the petition must be sufficient to demonstrate the inconsistency of the decisions described and that the merchandise, or circumstances in

which the allegedly inconsistent decisions were made, were substantially similar. In the case of repeated decisions regarding the inspection or examination of merchandise, the decisions must be sufficient in number to demonstrate a pattern of inconsistency not attributable to random selection. Any information which the petitioner considers to be confidential business information should be so noted pursuant to § 177.2(b)(7) of this subpart and a sanitized version of his petition should be submitted as well as the three copies requested in paragraph (b)(1) of this section. Petitions which do not contain information sufficient to permit the Customs Service to verify that the decisions described have occurred will not be considered properly filed and will be returned to the petitioner for additional information. Only one petition will be accepted by the Customs Service with respect to the decisions alleged to be inconsistent.

(i) *Tariff classification decision*. In the case of decisions involving the tariff classification of merchandise, the petition should also include, with respect to each of the decisions described, the information requested in § 177.2 (b)(1) and (b)(2)(ii) of this subpart, including a sample (see § 177.2(b)(3)).

(ii) *Other subjects addressable by administrative rulings*. In the case of other decisions involving subjects which could be addressed under the administrative rulings procedure provided for in §§ 177.1 through 177.10 of this subpart, the information contained in § 177.2 (b)(1), (b)(2)(iii) and/or (b)(2)(iv), as applicable, should be also furnished for each of the decisions addressed by the petition.

(c) *Publication and public comment*. Upon receipt of a properly filed petition, notice will be published in the FEDERAL REGISTER announcing the receipt of the petition and describing the decisions alleged to be inconsistent. Public comment on the petition will be permitted for a period of fifteen (15) days after publication. Public comment regarding the proper disposition of the petition shall be limited to that submitted in writing, either with the petition or in response to the FEDERAL REGISTER solicitation of public comment.

(d) *Determination of petition; distribution and publication*. Within fifteen (15) days after the close of the period for public comment referred to in paragraph (c) of this section, the Customs Service will issue a decision to the petitioner addressing the inconsistency complained of. That decision will either conform the inconsistent decisions to the current views of the Customs Service as to the proper tariff classification or other disposition of the subject of those decisions or explain why no inconsistency exists. Copies of the decisions to the petitioner will be transmitted directly to all ports (or other Customs offices) identified in the petition and will be distributed through the Customs Information Exchange or by other means to such other ports or offices as may be necessary to correct any inconsistency identified. A summary of the decision will also be published in the FEDERAL REGISTER and the weekly Customs Bulletin.

(e) *Effective date*. Unless otherwise specified in the decision, a decision issued in response to a petition filed under this section will be effective immediately and, where applicable, applied to all entries for which liquidation is not final.

(f) *Effect on other procedures*. The filing of a petition under this procedure shall not preclude the petitioner or any other person entitled to do so from filing a protest or a domestic interested party petition regarding the same matter under the procedures set forth in sections 514, 515 and 516 of the Tariff Act of 1930, as amended and parts 174 and 175 of this chapter, provided the applicable requirements set forth therein are complied with. However, the decision issued in response to the petition may serve as the basis for the disposition of any protest so filed, or as an information letter setting forth the position of the Customs Service pursuant to subpart A of part 175 of this chapter. The decision issued in response to a petition filed under this section is not itself a decision subject to protest under sections 514–515 of the Tariff Act and part 174 of this chapter.

[T.D. 89–74, 54 FR 31517, July 31, 1989. Redesignated by T.D. 02–49, 67 FR 53497, Aug. 16, 2002]

## Subpart B—Government Procurement; Country-of-Origin Determinations

AUTHORITY: R.S. 251, as amended (19 U.S.C. 66), sec. 624, 46 Stat. 759 (19 U.S.C. 1624); Pub. L. 96–39, 93 Stat. 144.

SOURCE: T.D. 83–13, 48 FR 1189, Jan. 11, 1983, unless otherwise noted.

### § 177.21 Applicability.

This subpart applies to the issuance of country-of-origin advisory rulings and final determinations relating to Government procurement under Title III, ''Trade Agreements Act of 1979,'' Pub. L. 96–39, 93 Stat. 144, for the purpose of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products for eligible countries. This subpart is intended to be applied consistent with the Federal Procurement Regulations (41 CFR part 1–6) and the Defense Acquisition Regulation (32 CFR section VI).

### § 177.22 Definitions.

(a) *Country of origin*. For the purpose of this subpart, an article is a product of a country or instrumentality only if (1) it is wholly the growth, product, or manufacture of that country or instrumentality, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term ''instrumentality'' shall not be construed to include any agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community.

(b) *Advisory ruling*. An advisory ruling is a non-binding, non-reviewable written statement issued by the Director, Commercial Rulings Division, Headquarters, U.S. Customs Service, which does no more than call attention to a well established interpretation or principal of law relating to the country of origin, without applying it to a particular set of facts. Customs will issue an advisory ruling in response to a request for a final determination if:

(1) The request suggests that general information, rather than a final determination, is actually being sought,

(2) The request is incomplete or otherwise fails to meet the requirements set forth in § 177.25(a), or

(3) The ruling requested cannot be issued for any other reason, and Customs believes that the general information supplied by an advisory ruling may be of some benefit to the party making the request. An advisory ruling is not a ruling issued prior to importation under 28 U.S.C. 1581(h).

(c) *Final determination*. A final determination is a binding judicially reviewable statement issued by the Assistant Commissioner, Office of Regulations and Rulings, Headquarters, U.S. Customs Service, in response to a written request submitted under the provisions of this subpart that interprets and applies the provisions of law and regulation relating to the country of origin to a specific set of facts. A final determination may be issued to a party-at-interest prior to actual entry of the merchandise.

(d) *Party-at-interest*. For purposes of this subpart the term party-at-interest means:

(1) A foreign manufacturer, producer, or exporter, or a United States importer of merchandise which is the subject of a final determination under this subpart,

(2) A manufacturer, producer, or wholesaler in the United States of a like product,

(3) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product, and

(4) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

[T.D. 83–13, 48 FR 1189, Jan. 11, 1983, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

**§ 177.23 Who may request a country-of-origin advisory ruling or final determination.**

A country-of-origin advisory ruling or final determination may be requested by:

(a) A foreign manufacturer, producer, or exporter, or a United States importer of merchandise,

(b) A manufacturer, producer, or wholesaler in the United States of a like product,

(c) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product, or

(d) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

**§ 177.24 By whom request is filed.**

A request may be filed by an individual or organization listed in § 177.23 or by a duly authorized attorney or agent on behalf of the individual or organization. A request filed by a corporation shall be signed by a corporate officer, and a request filed by a partnership shall be signed by a partner.

**§ 177.25 Form and content of request.**

(a) A request for an advisory ruling shall be in writing and shall contain such information as will enable Customs to provide the requester with the applicable principle of law or well established interpretation relating to the particular country of origin.

(b) A request for a final determination shall be in writing and shall contain the following information:

(1) The name of the requester, the requester's principal place of business, and a statement that the requester is authorized to file the request under the provisions of § 177.24;

(2) A description of the existing article for which a country-of-origin determination is requested;

(3) The country or instrumentality an article is claimed to be the product of;

(4) Such further information as will enable Customs to determine if an article is a product of a specific country or instrumentality, and;

(5) If applicable, the specific procurement for which the final determination is requested.

**§ 177.26 Where request filed.**

The request shall be filed with the Director, Office of Regulations and Rulings, Headquarters, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

[T.D. 83–13, 48 FR 1189, Jan. 11, 1983, as amended by T.D. 99–27, 64 FR 13677, Mar. 22, 1999]

**§ 177.27 Oral discussion of issues.**

Any party authorized to request a ruling under the provisions of § 177.23 may request an opportunity for oral discussion of the issues presented in the request. The oral discussion of issues will be governed by the provisions of § 177.4.

**§ 177.28 Issuance of advisory rulings and final determinations.**

(a) Pursuant to a request for an advisory ruling which meets the requirements of this subpart, Customs will promptly issue an advisory ruling.

(b) Pursuant to a request for a final determination which meets the requirements of this subpart, Customs will promptly issue a final determination. If the request does not meet the requirements of this subpart Customs may decline to issue a final determination or may issue instead an advisory ruling.

(c) Requests for final determinations which include the information set forth in § 177.25(b)(5) (relating to a specific procurement) will be considered by Customs before all other requests (advisory rulings and final determinations).

**§ 177.29 Publication of notice of final determinations.**

Notice of all final determinations shall be published in the FEDERAL REGISTER within 60 days of the date the final determination is issued.

**§ 177.30 Review of final determinations.**

Any party-at-interest listed in § 177.22(d) may seek judicial review of a final determination within 30 days after publication of such determination

in the FEDERAL REGISTER, and may seek judicial review of a refusal to issue a final determination within 30 days after such refusal. The Court of International Trade shall have exclusive jurisdiction to review a final determination or a refusal to issue a final determination made under this subpart.

### § 177.31 Reexamination of final determinations.

A party-at-interest, other than the party-at-interest which requested and received the initial final determination, may ask Customs to consider the matter anew and issue, on an expedited basis, a new final determination. Such a request shall specifically identify the previous final determination. Upon receipt of such a request, Customs will issue a new final determination within five working days of receipt of the request unless (a) the previous final determination was the subject of a contested lawsuit timely filed in the Court of International Trade under 28 U.S.C. 1581(e) or, (b) the merchandise at issue in the initial final determination was tendered and deemed responsive to the request for proposals or an invitation for bids in a competitive procurement subject to the Buy American Act (41 U.S.C. 10a *et seq.*) and a contract under such procurement was let. Any new final determination issued under this section shall be published in accordance with § 177.29 and is reviewable under § 177.30.

## PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

Sec.
178.1 Purpose.
178.2 Listing of OMB control numbers.

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

### § 178.1 Purpose.

This part sets forth the control numbers assigned to information collections of the Customs Service by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. This part complies with the requirements of the Paperwork Reduction Act of 1980, and implements regulations promulgated by the Office of Management and Budget, (5 CFR 1320.7(f)(2), 1320.12(d) and 1320.13(j)) which require that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection.

[T.D. 85–53, 50 FR 11849, Mar. 26, 1985]

### § 178.2 Listing of OMB control numbers.

| 19 CFR Section | Description | OMB control No. |
|---|---|---|
| § 4.7a | Unique bill of lading identifier for inward manifests. | 1515–0142 |
| § 4.7a(c)(4) | Transportation manifest (cargo declaration). | 1651–0001 |
| §§ 4.7b, 4.64, 122.49a, 122.49b, 122.49c, 122.75a, 122.75b. | Electronic manifest requirements for carriers transporting passengers and crew onboard vessels and aircraft. | 1651–0088 |
| §§ 4.10, 4.16, 4.30, 4.37, 4.39, 4.91, 10.60, 24.16, 122.29, 122.38, 123.8, 146.32, 146.34. | Application-Permit-Special License, Unlading-Lading, Overtime Services (Customs Form 3171). | 1515–0013 |
| § 4.14 | Vessel repair declaration and entry. | 1515–0082 |
| §§ 4.20, 4.23, and 4.24. | Certification of payment of tonnage tax. | 1515–0113 |
| § 4.37 | Notification regarding imported merchandise or baggage for which entry has not been made. | 1515–0220 |
| § 4.37(c) | Preparation of delivery ticket for transfer of merchandise to general order. | 1515–0224 |
| § 4.76 | Booking information for the Sea Carrier's Module of the AES. | 1515–0221 |
| § 4.94a | Deferral of duty on large yachts imported for sale. | 1515–0223 |
| § 4.97 | Application for foreign vessel to engage in salvage operation/report of salvage operation. | 515–0132 |
| § 7.3 | Claim for duty-free entry of goods imported from U.S. insular possessions. | 1515–0200 |
| § 10.1 | Declarations covering U.S. articles exported and returned without having been advanced in value or improved in condition. | 1515–0194 |
| § 10.8 | Declarations covering articles exported for repairs or alterations and returned. | 1515–0194 |
| § 10.8a(b)(1) | Declaration by person abroad who received and is returning articles to the U.S. that do not conform to samples or specifications. | 1515–0108 |

| 19 CFR Section | Description | OMB control No. |
|---|---|---|
| § 10.8a(b)(2) | Declaration by owner, importer, consignee or agent that articles being reimported into U.S. were previously imported, with payment of duty, and exported, without benefit of drawback. | 1515–0108 |
| § 10.9 | Declarations covering metal articles exported for processing and returned for further processing. | 1515–0194 |
| §§ 10.24, 162.1c. | Declaration by foreign assembler and endorsement by importer that articles were assembled in whole or in part from fabricated components that were products of the U.S. | 1515–0088 |
| § 10.25 | Declaration by foreign assembler and endorsement by importer that articles were assembled in whole or in part from textile components cut to shape in the U.S. | 1515–0207 |
| § 10.41b | Requirement to clearly and conspicuously mark serially numbered substantially holders or containers. | 1515–0116 |
| § 10.41b(e) | Requirement to keep adequate records on current status of serially numbered substantial holders or containers. | 1515–0101 |
| § 10.48 | Declaration by originating artist, or seller or shipper, that work of art being imported into the U.S. is an original work of art. | 1515–0118 |
| § 10.62b | Certificate of compliance for turbine fuel withdrawals. | 1515–0209 |
| § 10.67(a)(2) | Declaration by foreign shipper describing the specific use to which articles exported from U.S. for scientific or educational purposes, and now being returned, were put while abroad. | 1515–0105 |
| § 10.67(a)(3) | Declaration of ultimate consignee of articles previously exported from U.S. for scientific or educational purposes, and now being returned, that such articles have not been changed in condition while abroad. | 1515–0104 |
| § 10.84 | Origin certificate for automotive products from Canada. | 1515–0164 |
| § 10.91 | Importers of merchandise subject to actual use provisions; proof of use for duty rates dependent on actual use. | 1651–0032 and 1651–0038 |
| § 10.99 | Importation of ethyl alcohol for nonbeverage purposes. | 1515–0160 |
| § 10.107 | Report of person who sent article from foreign country, or of person in U.S. for whose account an article was received, to justify duty-free entry of articles imported under conditions of emergency. | 1515–0130 |
| § 10.137 | Requirement of importer to maintain accurate, detailed records on use or other disposition of imported merchandise for "actual use" duty assessment requirements. | 1515–0091 |
| § 10.138 | Certificate of importer to verify actual use of articles imported duty-free or at a reduced rate of duty under actual use provisions. | 1515–0109 |
| § 10.173 | Claim for duty-free entry of eligible articles under the Generalized System of Preferences. | 1515–0194 |
| § 10.184 | Refund of duties on certain wool imports. | 1515–0227 |
| § 10.198 | Claim for duty-free entry of eligible articles under the Caribbean Basin Initiative. | 1515–0194 |
| § 10.199 | Claim for duty-free entry of rum beverages from Canada under the Caribbean Basin Initiative. | 1515–0194 |
| § 10.207 | Claim for duty-free entry of eligible articles under the Andean Trade Preference Act. | 1515–0219 |
| §§ 10.307, 10.310, and 10.311. | Claim for duty-free entry and election to average for automotive products under the U.S.-Canada Free Trade Agreement. | 1515–0164 |
| §§ 10.410 and 10.411. | Claim for preferential tariff treatment under the US-Chile Free Trade Agreement. | 1651–0117 |
| §§ 12.104c, 12.104e. | Certificates and other documentation relating to the importation of items of cultural property. | 1515–0147 |
| § 12.121 | Approval of blanket certification under the Toxic Substances Control Act. | 1515–0173 |
| § 12.130(c) | Declaration of manufacturer, producer, exporter or importer of textiles or textile products as to country of origin of such article. | 1515–0140 |
| § 12.132 | Country of origin declaration covering textile and apparel goods under the North American Free Trade Agreement. | 1515–0205 |
| § 19.2 | Information to be supplied by owner or lessee in support of application to estabilsh a bonded warehouse facility. | 1515–0121 |
| § 19.3 | Application to alter, relocate, or discontinue a bonded warehouse/list of employees engaged in the carriage, receiving, storage or delivery of bonded merchandise. | 1515–0134 |

| 19 CFR Section | Description | OMB control No. |
|---|---|---|
| § 19.9(a) | Preparation of delivery ticket for transfer of merchandise to general order. | 1515–0224 |
| § 19.13(b) | Application for establishment of a manufacturing warehouse. | 1515–0136 |
| § 19.14(c) | Application by proprietor of bonded manufacturing warehouse to receive therein domestic merchandise to be used in connection with the manufacture of articles. | 1515–0133 |
| § 19.17 | Application by manufacturer to bond (or discontinue a previously bonded) establishment engaged in the smelting or refining of metal-bearing materials. | 1515–0127 |
| § 19.19 | Record of smelting and refining operation showing receipt and disposition of each shipment of material. | 1515–0135 |
| § 19.40 | Application for establishment of a container station. | 1515–0117 |
| § 19.42 | Application by container station operator to transfer a container, intact, to a station. | 1515–0142 |
| § 19.46 | List of persons employed by container station operator in moving, receiving, storing or delivering imported merchandise. | 1515–0138 |
| § 24.5 | Importer Identification Information. | 1515–0199 |
| § 24.22 | Users fees for Customs services. | 1515–0154 |
| § 24.24 | Harbor maintenance fee | 1515–0158 |
| § 24.25 | Statement processing and Automated Clearinghouse. | 1515–0167 |
| § 24.26 | Automated Clearinghouse Credit. | 1515–0218 |
| § 103.31 | Disclosure by Customs of information on cargo declarations of inward vessel manifests. | 1515–0124 |
| Part 111 | Issuance of customs broker licenses and permits, monitoring performance of brokers in conducting customs business, and institution of disciplinary action against brokers. | 1515–0076 and 1515–0100. |
| § 111.96 | Users fees for Customs services. | 1515–0154 |
| § 112.29(b) | Requirement to furnish a current list of officers, members or employees, of a customs cartage or lighterage establishment, upon request. | 1515–0126 |
| § 112.49 | Request by cartman or lighterman for temporary identification card pending issuance of permanent identification. | 1515–0128 |
| Part 113 | Customs Bond Structure (Customs Form 301 and Customs Form 5297). | 1515–0144 |
| Part 113—Appendix B. | Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, as Amended. | 1515–0222 |
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| 19 CFR Section | Description | OMB control No. |
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| § 142.6 | Name and address of manufacturer or seller. | 1515–0170 |
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[T.D. 85–53, 50 FR 11849, Mar. 26, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 178.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

# PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

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APPENDIX TO PART 181—RULES OF ORIGIN REGULATIONS

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314;

Subpart D of part 181 also issued under 19 U.S.C. 1520(d).

SOURCE: T.D. 95–68, 60 FR 46364, Sept. 6, 1995, unless otherwise noted.

## § 181.0 Scope.

This part implements the duty preference and related Customs provisions applicable to imported goods under the North American Free Trade Agreement (the NAFTA) entered into on December 17, 1992, and under the North American Free Trade Agreement Implementation Act (107 Stat. 2057) (the Act). Except as otherwise specified in this part, the procedures and other requirements set forth in this part are in addition to the Customs procedures and requirements

of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the NAFTA and the Act are contained in parts 10, 12, 24, 134 and 174 of this chapter.

## Subpart A—General Provisions

### § 181.1 Definitions.

As used in this part, the following terms shall have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular subpart, section or other portion of this part:

(a) *Canada*. *Canada*, when used in a geographical rather than governmental context, means the territory of Canada as defined in Annex 201.1 of the NAFTA.

(b) *Commercial importation*. *Commercial importation* means the importation of a good into the United States, Canada or Mexico for the purpose of sale, or any commercial, industrial or other like use.

(c) *Customs administration*. *Customs administration* means the competent authority that is responsible under the law of the United States, Canada or Mexico for the administration of its customs laws and regulations.

(d) *Customs duty*. *Customs duty* means any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, other than any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the General Agreement on Tariffs and Trade, or any equivalent provision of a successor agreement to which the United States, Canada and Mexico are party, in respect of like, directly competitive or substitutable goods of the United States, Canada or Mexico, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to the domestic law of the United States, Canada or Mexico and that is not applied inconsistently with Chapter Nineteen of the NAFTA;

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(4) Premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels; and

(5) Fee applied pursuant to section 22 of the U.S. Agricultural Adjustment Act, subject to the provisions of Chapter Seven of the NAFTA.

(e) *Determination of origin*. *Determination of origin* means a determination as to whether a good qualifies as a good originating in the United States, Canada and/or Mexico under the rules set forth in General Note 12, HTSUS, and in the appendix to this part.

(f) *Exporter*. *Exporter* means an exporter located, and required under this part to maintain records regarding exportations of a good, in the United States, Canada or Mexico.

(g) *Generally Accepted Accounting Principles*. *Generally Accepted Accounting Principles* means the recognized consensus or substantial authoritative support in the United States, Canada or Mexico with respect to the recording of revenues, expenses, costs, assets and liabilities, the disclosure of information and the preparation of financial statements. Generally Accepted Accounting Principles under this definition may encompass broad guidelines of general application as well as detailed standards, practices and procedures.

(h) *HTSUS*. *HTSUS* means the Harmonized Tariff Schedule of the United States.

(i) *Importer*. *Importer* means an importer located, and required under this part to maintain records regarding importations of a good, in the United States, Canada or Mexico.

(j) *Intermediate material*. *Intermediate material* means an ''intermediate material'' as defined in the appendix to this part.

(k) *Marking Rules*. *Marking Rules* means the ''NAFTA Marking Rules'' as defined in § 134.1(j) of this chapter.

(l) *Measure*. *Measure* means any law, regulation, procedure, requirement or practice.

(m) *Mexico*. *Mexico*, when used in a geographical rather than governmental context, means the territory of Mexico as defined in Annex 201.1 of the NAFTA.

(n) *NAFTA*. *NAFTA* means the North American Free Trade Agreement approved by the Congress under section 101(a) of the North American Free Trade Agreement Implementation Act (107 Stat. 2057).

(o) *NAFTA drawback*. *NAFTA drawback* means any drawback, waiver or reduction of U.S. customs duty provided for in subpart E of this part.

(p) *Net cost of a good*. *Net cost of a good* means the ''net cost of a good'' as defined in the appendix to this part.

(q) *Originating*. *Originating*, when used with regard to a good or a material, means a good or material which qualifies as originating in the United States, Canada and/or Mexico under the rules set forth in General Note 12, HTSUS, and in the appendix to this part.

(r) *Person*. *Person* means a natural person or an enterprise.

(s) *Preferential tariff treatment*. *Preferential tariff treatment* means the duty rate applicable to an originating good or to a good to which appendix 6.B. to Annex 300–B of the NAFTA applies.

(t) *Producer*. *Producer* means a *producer* as defined in the appendix to this part.

(u) *Production*. *Production* means *production* as defined in the appendix to this part.

(v) *Transaction value*. *Transaction value* means transaction value as defined in the appendix to this part.

(w) *United States*. *United States*, when used in a geographical rather than governmental context, means the territory of the United States as defined in Annex 201.1 of the NAFTA.

(x) *Used*. *Used* means *used* as defined in the appendix to this part.

(y) *Value*. *Value* means the value of a good or material for purposes of calculating customs duties or for purposes of applying the provisions of the appendix to this part.

## Subpart B—Export Requirements

### § 181.11 Certificate of Origin.

(a) *General*. A Certificate of Origin shall be employed to certify that a good being exported either from the United States into Canada or Mexico or from Canada or Mexico into the United States qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA.

(b) *Preparation of Certificate in the United States*. An exporter in the United States who completes and signs a Certificate of Origin for the purpose set forth in paragraph (a) of this section shall use Customs Form 434 or such other medium or format as approved by the Canadian or Mexican customs administration for that purpose. Where the U.S. exporter is not the producer of the good, that exporter may complete and sign a Certificate on the basis of:

(1) Its knowledge of whether the good qualifies as an originating good;

(2) Its reasonable reliance on the producer's written representation that the good qualifies as an originating good; or

(3) A completed and signed Certificate for the good voluntarily provided to the exporter by the producer.

(c) *Submission of Certificate to Customs*. An exporter in the United States, and a producer in the United States who has voluntarily provided a copy of a Certificate of Origin to that exporter pursuant to paragraph (b)(3) of this section, shall provide a copy of the Certificate to Customs upon request.

(d) *Notification of errors in Certificate*. An exporter or producer in the United States who has completed and signed a Certificate of Origin, and who has reason to believe that the Certificate contains information that is not correct, shall within 30 calendar days after the date of discovery of the error notify in writing all persons to whom the Certificate was given by the exporter or producer of any change that could affect the accuracy or validity of the Certificate.

### § 181.12 Maintenance and availability of records.

(a) *Maintenance of records*—(1) *General*. An exporter or producer in the United States who completes and signs

a Certificate of Origin shall maintain in the United States, for five years after the date on which the Certificate was signed, the Certificate (or copy thereof) and all other records relating to the origin of a good for which preferential tariff treatment may be claimed in Canada or Mexico, including records associated with:

(i) The purchase of, cost of, value of, and payment for, the good that is exported from the United States;

(ii) The purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from the United States; and

(iii) The production of the good in the form in which the good is exported from the United States.

(2) *Method of maintenance.* The records referred to in paragraph (a) of this section shall be maintained in accordance with the Generally Accepted Accounting Principles applied in the United States and may be maintained in hard-copy form, on microfilm or microfiche or in automated record storage devices (for example, magnetic discs and tapes) if associated computer programs are available to facilitate retrieval of the data in a usable form.

(b) *Availability of records*—(1) *To Customs.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section shall be made available for examination and inspection by the port director or other appropriate Customs officer in the same manner as provided in part 163 of this chapter in the case of U.S. importer records.

(2) *To the Canadian or Mexican customs administration.* If a U.S. exporter or producer receives notification of, and consents to, an origin verification visit by the Canadian or Mexican customs administration under Article 506 of the NAFTA (see § 181.74(e) of this part), such consent shall constitute agreement by the U.S. exporter or producer to make available to an officer of that customs administration all records required to be maintained under this section and to provide facilities for the inspection thereof. If, during the course of an origin verification of a U.S. producer, the Canadian or Mexican customs administration finds that the U.S. producer has failed to maintain its records in accordance with the Generally Accepted Accounting Principles applied in the United States, that customs administration will so inform the U.S. producer in writing and will give the U.S. producer 60 calendar days to conform the records to those Principles. If a U.S. exporter or producer fails to maintain records or make records available to the Canadian or Mexican customs administration in accordance with the provisions of this section, or if a U.S. producer fails to conform its records to Generally Accepted Accounting Principles as provided in this paragraph, the Canadian or Mexican customs administration may deny preferential tariff treatment to the good that is the subject of the verification visit.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as ameded by T.D. 98–56, 63 FR 32955, June 16, 1998]

### § 181.13 Failure to comply with requirements.

The port director may apply such measures as the circumstances may warrant where an exporter or a producer in the United States fails to comply with any requirement of this part. Such measures may include the imposition of penalties pursuant to 19 U.S.C. 1508(e) for failure to retain records required to be maintained under § 181.12.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as ameded by T.D. 98–56, 63 FR 32955, June 16, 1998]

## Subpart C—Import Requirements

### § 181.21 Filing of claim for preferential tariff treatment upon importation.

(a) *Declaration.* In connection with a claim for preferential tariff treatment for a good under the NAFTA, the U.S. importer shall make a written declaration that the good qualifies for such treatment. The written declaration may be made by including on the entry summary, or equivalent documentation, the symbol ''CA'' for a good of Canada, or the symbol ''MX'' for a good of Mexico, as a prefix to the subheading of the HTSUS under which each qualifying good is classified. Except as otherwise provided in § 181.22 of this part

and except in the case of a good to which appendix 6.B. to Annex 300–B of the NAFTA applies (see, however, § 12.132 of this chapter), the declaration shall be based on a complete and properly executed original Certificate of Origin, or copy thereof, which is in the possession of the importer and which covers the good being imported.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section or under § 181.32(b)(2) of this part, the U.S. importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer shall within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration shall be effected by submission of a letter or other written statement to the Customs office where the original declaration was filed.

**§ 181.22 Maintenance of records and submission of Certificate by importer.**

(a) *Maintenance of records.* Each importer claiming preferential tariff treatment for a good imported into the United States shall maintain in the United States, for five years after the date of entry of the good, all documentation relating to the importation of the good. Such documentation shall include a copy of the Certificate of Origin and any other relevant records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential tariff treatment on a good under § 181.21 of this part shall provide, at the request of the port director, a copy of each Certificate of Origin pertaining to the good which is in the possession of the importer. A Certificate of Origin submitted to Customs under this paragraph or under § 181.32(b)(3) of this part:

(1) Shall be on Customs Form 434, including privately-printed copies thereof, or on such other form as approved by the Canadian or Mexican customs administration, or, as an alternative to Customs Form 434 or such other approved form, in an approved computerized format or such other medium or format as is approved by the Office of Field Operations, U.S. Customs Service, Washington, DC 20229. An alternative format must contain the same information and certification set forth on Customs Form 434;

(2) Shall be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Shall be completed either in the English language or in the language of the country from which the good is exported. If the Certificate is completed in a language other than English, the importer shall also provide to the port director, upon request, a written English translation thereof;

(4) Shall be accepted by Customs for four years after the date on which the Certificate was signed by the exporter or producer; and

(5) May be applicable to:

(i) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical goods into the United States that occur within a specified period, not exceeding 12 months, set out therein by the exporter or producer.

(c) *Acceptance of Certificate.* A Certificate of Origin shall be accepted by the port director as valid for the purpose set forth in § 181.11(a) of this part, provided that the Certificate is completed, signed and dated in accordance with the requirements of paragraph (b) of this section. If the port director determines that a Certificate is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer shall be given a period of not less than five working days to submit a corrected Certificate. Acceptance of a Certificate will result in the granting of preferential tariff treatment to the imported good unless, in connection with an origin verification initiated under subpart G of this part or based on a pattern of conduct within the meaning of § 181.76(c) of this part, the port director determines that the imported good does not qualify as an originating good or should not be accorded such treatment for any other reason as specifically provided for elsewhere in this

part. A Certificate shall not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(5)(ii) of this section if, based on an origin verification under subpart G of this part, the port director determined that a previously imported identical good covered by the Certificate did not qualify as an originating good.

(d) *Certificate not required*—(1) *General*. Except as otherwise provided in paragraph (d)(2) of this section, an importer shall not be required to have a Certificate of Origin in his possession for:

(i) An importation of a good for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the good qualifies for preferential tariff treatment under the NAFTA;

(ii) A non-commercial importation of a good; or

(iii) A commercial importation of a good whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the good covered by this shipment qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA.

Check One:
( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception*. If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a certification requirement set forth in this part, the port director shall notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential tariff treatment. The importer shall have 30 calendar days from the date of the written notice to obtain a valid Certificate, and a failure to timely obtain the Certificate will result in denial of the claim for preferential tariff treatment. For purposes of paragraph (d)(2) of this section, a ''series of importations'' means two or more entries covering goods arriving on the same day from the same exporter and consigned to the same person.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as ameded by T.D. 98–56, 63 FR 32955, June 16, 1998]

### § 181.23 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *Effect of noncompliance*. If the importer fails to comply with any requirement under this part, including submission of a Certificate of Origin under § 181.22(b) or submission of a corrected Certificate under § 181.22(c), the port director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment*. Where the requirements for preferential tariff treatment set forth elsewhere in this part are met, the port director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than the United States, Canada or Mexico and the importer of the good does not provide, at the request of the port director, copies of the customs control documents that indicate to the satisfaction of the port director that the good remained under customs control while in such other country.

## Subpart D—Post-Importation Duty Refund Claims

### § 181.31 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, including the right to amend an entry so long as liquidation of the entry has not become final, where a

good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment on that originating good was made at that time under § 181.21(a) of this part, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 181.32 of this part. Subject to the provisions of § 181.23 of this part, Customs may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 181.33(c) of this part.

**§ 181.32 Filing procedures.**

(a) *Place of filing.* A post-importation claim for a refund under § 181.31 of this part shall be filed with the director of the port at which the entry covering the good was filed.

(b) *Contents of claim.* A post-importation claim for a refund shall be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry covering the good;

(2) Subject to § 181.22(d) of this part, a copy of each Certificate of Origin (see § 181.11 of this part) pertaining to the good;

(3) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement shall identify each recipient by name, Customs identification number and address and shall specify the date on which the documentation was provided;

(4) A written statement indicating whether or not the importer of the good is aware of any claim for refund, waiver or reduction of duties relating to the good within the meaning of Article 303 of the NAFTA (see subpart E of this part). If the importer is aware of any such claim, the statement shall identify each claim by number and date and shall identify the person who made the claim by name, Customs identification number and address; and

(5) A written statement indicating whether or not any person has filed a protest or a petition or request for reliquidation relating to the good under any provision of law, and if any such protest or petition or request for reliquidation has been filed, the statement shall identify the protest, petition or request by number and date.

**§ 181.33 Customs processing procedures.**

(a) *Status determination.* After receipt of a post-importation claim under § 181.32 of this part, the port director shall determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest, petition or request for reliquidation or judicial review.* If the port director determines that any protest or any petition or request for reliquidation relating to the good has not been finally decided, the port director shall suspend action on the claim filed under this subpart until the decision on the protest, petition or request becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the port director shall suspend action on the claim filed under this subpart until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has not been liquidated, the port director shall take into account the claim for refund under this subpart in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the port director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties pursuant to this subpart. If the entry is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, the port director shall reliquidate the entry taking into account

the claim for refund under this subpart.

(3) *Information to be provided to Canada or Mexico*. If any information is provided to Customs pursuant to § 181.32(b) (4) or (5) of this part, that information, together with notice of the allowance of the claim and the amount of duty refunded pursuant to this subpart, shall be provided by the port director to the customs administration of the country from which the good was exported.

(d) *Denial of claim*—(1) *General*. The port director may deny a claim for a refund filed under this subpart if the claim was not filed timely, if the importer has not complied with the requirements of this subpart, if the Certificate of Origin submitted under § 181.32(b)(3) of this part cannot be accepted as valid (see § 181.22(c) of this part), or if, following initiation of an origin verification under § 181.72(a) of this part, the port director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 181.72(d), § 181.74(c) or § 181.76(c) of this part.

(2) *Unliquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the port director shall deny the claim in connection with the liquidation of the entry, and written notice of the denial and the reason therefor shall be given to the importer and, in the case of a denial on the merits, to any person who completed and signed a Certificate of Origin relating to the good. Each notice of denial given to a person who completed and signed a Certificate of Origin shall also include a statement regarding the right to file a protest against the denial under part 174 of this chapter.

(3) *Liquidated entry*. If the port director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the port director shall give written notice of the denial and the reason therefor to the importer and, in the case of a denial on the merits, to any person who completed and signed a Certificate of Origin relating to the good. Each notice of denial given to a person who completed and signed a Certificate of Origin shall also include a statement regarding the right to file a protest against the denial under part 174 of this chapter.

## Subpart E—Restrictions on Drawback and Duty-Deferral Programs

### § 181.41 Applicability.

This subpart sets forth the provisions regarding drawback claims and duty-deferral programs under Article 303 of the NAFTA and applies to any good that is a ''good subject to NAFTA drawback'' within the meaning of 19 U.S.C. 3333. Except in the case of § 181.42(d), the provisions of this subpart apply to goods which are imported into the United States and then subsequently exported from the United States to Canada on or after January 1, 1996, or to Mexico on or after January 1, 2001. The requirements and procedures set forth in this subpart for NAFTA drawback are in addition to the general definitions, requirements and procedures for all drawback claims set forth in part 191 of this chapter, unless otherwise specifically provided in this subpart. Also, the requirements and procedures set forth in this subpart for NAFTA duty-deferral programs are in addition to the requirements and procedures for manipulation, manufacturing and smelting and refining warehouses contained in part 19 and part 144 of this chapter, for foreign trade zones under part 146 of this chapter, and for temporary importations under bond contained in part 10 of this chapter.

### § 181.42 Duties and fees not subject to drawback.

The following duties or fees which may be applicable to a good entered for consumption in the Customs territory

of the United States are not subject to drawback under this subpart:

(a) Antidumping and countervailing duties;

(b) A premium offered or collected on a good with respect to quantitative import restrictions, tariff rate quotas or tariff preference levels;

(c) Fees applied under section 22 of the U.S. Agricultural Adjustment Act; and

(d) Customs duties paid or owed under unused merchandise substitution drawback. There shall be no payment of such drawback under 19 U.S.C. 1313(j)(2) on goods exported to Canada or Mexico on or after January 1, 1994.

### § 181.43 Eligible goods subject to drawback.

Except as otherwise provided in this subpart, drawback is authorized for an imported good that is entered for consumption and is:

(a) Subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(j)(1));

(b) Used as a material in the production of another good that is subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(a)); or

(c) Substituted by a good of the same kind and quality as defined in § 181.44(c) of this subpart and used as a material in the production of another good that is subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(b)).

### § 181.44 Calculation of drawback.

(a) *General.* Except in the case of goods specified in § 181.45 of this part, drawback of the duties previously paid upon importation of a good into the United States may be granted by the United States, upon presentation of a NAFTA drawback claim under this subpart, on the lower amount of:

(1) The total duties paid or owed on the good in the United States; or

(2) The total amount of duties paid on the exported good upon subsequent importation into Canada or Mexico.

(b) *Individual relative value and duty comparison principle.* For purposes of this section, relative value shall be determined, and the comparison between the duties referred to in paragraph (a)(1) of this section and the duties referred to in paragraph (a)(2) of this section shall be made, separately with reference to each individual exported good, including where two components or materials are used to produce one exported good or one component or material is divided among multiple exported goods.

*Example.* Upon importation of Chemical X into the United States, Company A entered Chemical X and paid $2.00 in duties. Company A processed Chemical X into Products Y and Z, each having the same relative value; that is, $1.00 in duty is attributable to Product Y and $1.00 in duty is attributable to Product Z. Company A exported Product Y to Canada and Canada assessed a free rate of duty. Company A exported Product Z to Mexico and Mexico assessed the equivalent of US$2.00 in duty. There is no entitlement to drawback on the export of Product Y to Canada because zero is the lesser amount when compared to the $1.00 in duty attributable to Product Y as a result of the separation of Chemical X into Products Y and Z. There would be entitlement to drawback on the export to Mexico, consisting of the $1.00 duty attributable to Product Z, because that amount is the lesser amount when comparing the duty paid to the United States and the US$ equivalent duty paid to Mexico.

(c) *Direct identification manufacturing drawback under 19 U.S.C. 1313(a).* Upon presentation of the NAFTA drawback claim under 19 U.S.C. 1313(a), in which the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico, the amount of drawback refunded shall not exceed 99 percent of the duty paid on such imported merchandise into the United States.

*Example 1.* Upon the importation of Product X to the United States from Japan, Company A paid $2.00 in duties. Company A manufactured the imported Product X into Product Y, and subsequently exported it to Mexico. Mexico assessed the equivalent of US$11.00 in duties upon importation of Product Y. Upon presenting a drawback claim in the United States, in accordance with 19 U.S.C. 1313(a), Company A would be entitled to a refund of 99 percent of the $2.00, or $1.98. The $2.00 paid by Company A (less 1 percent) on the importation of Product X into the United States is a lesser amount of duties than the total amount of customs duties paid to Mexico (the equivalent of US$11.00) on Product Y.

*Example 2.* Upon the importation of Product X into the United States from Hong Kong, Company A entered Product X and paid $5.00 in duties. Company A manufactured Product X into Product Y, sold it to

Company B in Mexico and subsequently exported it to Mexico. Company A reserved its right to drawback. Upon Product Y's importation, Company B was assessed a free rate of duty. Company A's claim for drawback will be denied because Company A is entitled to zero drawback for the reason that, as between the duty paid in the United States and the duty paid in Mexico, the duty in Mexico was zero.

(d) *Substitution manufacturing drawback under 19 U.S.C. 1313(b).* Upon presentation of a NAFTA drawback claim under 19 U.S.C. 1313(b), on which the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico, the amount of drawback is the same as that which would have been allowed had the substituted merchandise used in manufacture been itself imported. For purposes of drawback under this subpart, the term ''same kind and quality'' used in § 1313(b) (see § 191.2(x)(1) of this chapter) shall have the same meaning as the term ''identical or similar good'' used in Article 303 of the NAFTA except that there shall be no requirement that the good be manufactured in the same country.

*Example 1.* Upon importation of Product X from Japan to the United States, Company A paid $5.00 in duties. Company A substituted a same kind and quality domestic Product X for the Japanese Product X in its production of Product Y under its 19 U.S.C. 1313(b) drawback contract. Company A sold Product Y to Company B which subsequently exported it to Canada. On the importation of Product Y by Company B, Company B paid the equivalent of US$2.00 in duties assessed by Revenue Canada and waived its right to drawback to Company A. Company A is entitled to obtain drawback under 19 U.S.C. 1313(b) in the United States in the amount of $1.98 (or 99 percent of the US$2.00 equivalent Company B paid in duty to Canada) since that $2.00 was the lesser of the total amount of customs duties paid on the product to either Canada or the United States.

*Example 2.* Same facts as above example, but Company B paid the equivalent of US$5.00 to Revenue Canada. Company A is entitled to obtain $4.95 in drawback (a refund of 99 percent of $5.00 paid to the United States). Since the same amount of duty was assessed by each country, drawback is allowable because the drawback paid does not exceed the lesser amount paid.

(e) *Meats cured with imported salt.* Meats, whether packed or smoked, which have been cured with imported salt may be eligible for drawback in aggregate amounts of not less than $100 in duties paid on the imported salt upon exportation of the meats to Canada or Mexico (see 19 U.S.C. 1313(f)).

*Example.* Company Z produced Virginia smoked ham on its Smithfield, Virginia farm, using 4,000 pounds of imported salt in curing the meat. The salt was imported from an HTSUS Column 2 country, with a duty of $200. Upon exportation of the hams to Mexico, Company Z pays the equivalent of US$250.00 in duties to Mexico. Company Z is entitled to drawback of the full 100 percent of the $200.00 in duties it paid on the importation of the salt into the United States because that $200.00 is a lesser amount than the total amount of customs duties paid to Mexico on the exported meat.

(f) *Jet aircraft engines.* A foreign-built jet aircraft engine that has been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts, may be eligible for drawback of duties paid on the imported merchandise in aggregate amounts of not less than $100 upon exportation of the engine to Canada or Mexico (19 U.S.C. 1313(h)).

*Example.* A Swedish-made jet aircraft engine is repaired in the United States using imported parts from Korea on which $160.00 in duties have been paid by Company W. The engine is subsequently exported to Canada by Company W and Company W pays the equivalent of US$260.00 in duties to Canada. Upon showing the country in which the engine was manufactured and a description of the processing performed thereon in the United States on Customs Form 7551, appropriately modified, Company W is entitled to the full refund of the duties paid to the United States since that $160.00 was a lesser amount than the duties paid on the engine to Canada.

(g) *Unused goods under 19 U.S.C. 1313(j)(1) that have changed in condition.* An imported good that is unused in the United States under 19 U.S.C. 1313(j)(1) and that is shipped to Canada or Mexico not in the same condition within the meaning of § 181.45(b)(1) may be eligible for drawback under this section, except when the shipment to Canada or Mexico does not constitute an exportation under 19 U.S.C. 1313(j)(4).

*Example.* Upon importation of Product X from Spain to the United States, the U.S.

importer pays $10.00 in duties. While in the original package in the importer's warehouse, Product X becomes damaged. A Canadian purchaser buys Product X and imports it into Canada and pays the equivalent of US$5.00 in duties assessed by Revenue Canada. The Canadian purchaser who exported Product X from the United States to Canada and who otherwise qualifies for drawback is entitled to drawback under 19 U.S.C. 1313(j)(1) in the amount of $4.95 (99 percent of the US$5.00 equivalent in duties paid to Canada). Eligibility for full drawback of the $10.00 in U.S. duties under § 181.45(b) would be precluded because Product X, although unused, was not exported to Canada in the same condition as when imported into the United States within the meaning of § 181.45(b)(1).

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98–16, 63 FR 11005, Mar. 5, 1998]

### § 181.45 Goods eligible for full drawback.

(a) *Goods originating in Canada or Mexico*. A Canadian or Mexican originating good that is dutiable and is imported into the United States is eligible for drawback without regard to the limitation on drawback set forth in § 181.44 of this part if that originating good is:

(1) Subsequently exported to Canada or Mexico;

(2) Used as a material in the production of another good that is subsequently exported to Canada or Mexico; or

(3) Substituted by a good of the same kind and quality and used as a material in the production of another good that is subsequently exported to Canada or Mexico.

*Example*. Company A imports a dutiable (3 percent rate) Canadian originating good. During Company A's manufacturing process, Company A substitutes a German good of the same kind and quality (on which duty was paid at a 2.5 percent rate) in the production of another good that is subsequently exported to Canada. Company A may designate the dutiable Canadian entry and claim full drawback (99 percent) on the 3 percent duty paid under 19 U.S.C. 1313(b). (Note: NAFTA originating goods will continue to receive full drawback as they cross NAFTA borders for successive stages of production until NAFTA tariffs are fully phased out.)

(b) *Claims under 19 U.S.C 1313(j)(1) for goods in same condition*. A good imported into the United States and subsequently exported to Canada or Mexico in the same condition is eligible for drawback under 19 U.S.C. 1313(j)(1) without regard to the limitation on drawback set forth in § 181.44 of this part.

*Example*. X imports a desk into the United States from England and pays $25.00 in duty. X immediately exports the desk to Z in Mexico and Z pays the equivalent of US$10.00 in Mexican duties. X can obtain a refund of 99 percent of the $25.00 paid upon importation of the desk into the United States.

(1) *Same condition defined*. For purposes of this subpart, a reference to a good in the ''same condition'' includes a good that has been subjected to any of the following operations provided that no such operation materially alters the characteristics of the good:

(i) Mere dilution with water or another substance;

(ii) Cleaning, including removal of rust, grease, paint or other coatings;

(iii) Application of preservative, including lubricants, protective encapsulation, or preservation paint;

(iv) Trimming, filing, slitting or cutting;

(v) Putting up in measured doses, or packing, repacking, packaging or repackaging; or

(vi) Testing, marking, labelling, sorting or grading.

(2) *Commingling of fungible goods*—(i) *General*—(A) *Inventory of other than all non-originating goods*. Commingling of fungible originating and non-originating goods in inventory is permissable provided that the origin of the goods and the identification of entries for designation for same condition drawback are on the basis of an approved inventory method set forth in the appendix to this part.

(B) *Inventory of the non-originating goods*. If all goods in a particular inventory are non-originating goods, identification of entries for designation for same condition drawback shall be on the basis of one of the accounting methods in § 191.14 of this chapter, as provided therein.

(ii) *Exception*. Agricultural goods imported from Mexico may not be commingled with fungible agricultural goods in the United States for purposes of same condition drawback under this subpart.

(c) *Goods not conforming to sample or specifications or shipped without consent of consignee under 19 U.S.C. 1313(c).* An imported good exported to Canada or Mexico by reason of failure of the good to conform to sample or specification or by reason of shipment of the good without the consent of the consignee is eligible for drawback under 19 U.S.C. 1313(c) without regard to the limitation on drawback set forth in § 181.44 of this part. Such a good must be returned to Customs custody for exportation under Customs supervision within three years after the release from Customs custody.

*Example.* X orders, after seeing a sample in the ABC Company's catalog, a certain quantity of 2-by-4 lumber from ABC Company located in Honduras. ABC Company, having run out of the specific lumber, ships instead a different kind of lumber. X rejects the lumber because it did not conform to the sample and is asked to send it to a customer of ABC in Canada. X exports it within 90 days of its release from Customs custody. X may recover 99 percent of the $500 duties it paid to U.S. Customs upon the exportation of the lumber, or $495.00.

(d) *Certain goods exported to Canada.* Goods identified in Annex 303.6 of the NAFTA and in sections 203(a) (7) and (8) of the North American Free Trade Agreement Implementation Act, if exported to Canada, are eligible for drawback without regard to the limitation on drawback set forth in § 181.44 of this part.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98–16, 63 FR 11005, Mar. 5, 1998]

### § 181.46 Time and place for filing drawback claim.

(a) *Time of filing.* A drawback claim under this subpart shall be filed or applied for, as applicable, within 3 years after the date of exportation of the goods on which drawback is claimed. No extension will be granted unless it is established that a Customs officer was responsible for the untimely filing. Drawback shall be allowed only if the completed good is exported within 5 years after importation of the merchandise identified or designated to support the claim. A good subject to a claim for same condition drawback must be exported before the close of the 3-year period beginning on the date of importation of the good into the United States.

(b) *Place of filing.* A drawback claim must be filed at the drawback office(s) where the manufacturing drawback contract is on file, whether a general rate or specific rate, but exportation need not occur from that port. To facilitate expedited processing of claims, claimants should file same condition drawback claims in the port where the examination would take place (see § 191.141(b)(3) (ii) and (iii) of this chapter). Customs must be notified at least 2 working days in advance of the intended date of exportation in order to have the opportunity to examine the goods.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98–16, 63 FR 11005, Mar. 5, 1998]

### § 181.47 Completion of claim for drawback.

(a) *General.* A claim for drawback shall be granted, upon the submission of appropriate documentation to substantiate compliance with the drawback laws and regulations of the United States, evidence of exportation to Canada or Mexico, and satisfactory evidence of the payment of duties to Canada or Mexico. Unless otherwise provided in this subpart, the documentation, filing procedures, time and place requirements and other applicable procedures required to determine whether a good qualifies for drawback shall be in accordance with the provisions of part 191 of this chapter; however, a drawback claim subject to the provisions of this subpart shall be filed separately from any part 191 drawback claim (that is, a claim that involves goods exported to countries other than Canada or Mexico). Claims inappropriately filed or otherwise not completed within the 3-year period specified in § 181.46 of this part shall be considered abandoned.

(b) *Complete drawback claim*—(1) *General.* A complete drawback claim under this subpart shall consist of the filing of the appropriate completed drawback entry form, evidence of exportation (a copy of the Canadian or Mexican customs entry showing the amount of duty paid to Canada or Mexico) and its

supporting documents, certificate(s) of delivery, when necessary, or certificate(s) of manufacture and delivery, and a certification from the Canadian or Mexican importer as to the amount of duties paid. Each drawback entry form filed under this subpart shall be conspicuously marked at the top with the word ''NAFTA''.

(2) *Specific claims*. The following documentation, for the drawback claims specified below, must be submitted to Customs in order for a drawback claim to be processed under this subpart. Missing documentation or incorrect or incomplete information on required customs forms or supporting documentation will result in an incomplete drawback claim.

(i) *Manufacturing drawback claim*. The following shall be submitted in connection with a claim for direct identification manufacturing drawback or substitution manufacturing drawback:

(A) A completed Customs Form 331, to establish the manufacture of goods made with imported merchandise and, if applicable, the identity of substituted domestic, duty-paid or duty-free merchandise, and including the tariff classification number of the imported merchandise;

(B) Customs Form 7501 or the import entry number;

(C) Exporter summary procedure, if applicable. For purposes of this subpart, the exporter summary procedure must include the Canadian or Mexican customs entry number and the amount of duty paid to Canada or Mexico;

(D) Evidence of exportation and satisfactory evidence of the payment of duties in Canada or Mexico, as provided in paragraph (c) of this section;

(E) Waiver of right to drawback. If the person exporting to Canada or Mexico was not the importer or the manufacturer, written waivers executed by the importer or manufacturer and by any intervening person to whom the good was transferred shall be submitted in order for the claim to be considered complete; and

(F) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods, that such party has not provided an exporter's Certificate of Origin pertaining to the exported goods to another party except as stated on the drawback claim, and that the party agrees to notify Customs if he subsequently provides such an exporter's Certificate of Origin to any person.

(ii) *Same condition drawback claim under 19 U.S.C. 1313(j)(1)*. The following shall be submitted in connection with a drawback claim covering a good in the same condition:

(A) A completed Customs Form 7551. In addition, the tariff classification number of the imported goods shall be recorded on the form;

(B) Customs Form 7501. The form must show the entry number, date of entry, port of importation, date of importation, importing carrier, and importer of record or ultimate consignee name and Customs or taxpayer identification number. Explicit line item information shall be clearly noted on the Customs Form 7501 so that the subject goods are easily discernible;

(C) Customs Form 7505, if applicable, to trace the movement of the imported goods after importation;

(D) A certificate of delivery on Customs Form 7552, if applicable, for purposes of tracing the transfer of ownership of the imported goods from the importer to the claimant. This is required if the drawback claimant is not the original importer of the merchandise which is the subject of a same condition claim;

(E) Customs Form 7512, if applicable. This is required for merchandise which is examined at one port but exported through border points outside of that port. Such goods must travel in bond from the location where they were examined to the point of the border crossing (exportation). If examination is waived, in-bond transportation is not required;

(F) Notification of intent to export or waiver of prior notice;

(G) Evidence of exportation. Acceptable documentary evidence of exportation to Canada or Mexico shall include a bill of lading, air waybill, freight waybill, export ocean bill of lading, Canadian customs manifest, cargo manifest, or certified copies thereof, issued by the exporting carrier. Supporting documentary evidence shall establish fully the time and fact

of exportation, the identity of the exporter, and the identity and location of the ultimate consignee of the exported goods;

(H) Waiver of right to drawback. If the party exporting to Canada or Mexico was not the importer, a written waiver from the importer and from each intermediate person to whom the goods were transferred shall be required in order for the claim to be considered complete; and

(I) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods.

(iii) *Nonconforming or improperly shipped goods drawback claim.* The following shall be submitted in the case of goods not conforming to sample or specifications or shipped without the consent of the consignee and subject to a drawback claim under 19 U.S.C. 1313(c):

(A) Customs Form 7551, completed and submitted at the time the goods are returned to Customs custody;

(B) Customs Form 7501 to establish the fact of importation, the receipt of the imported goods and the identity of the party to whom drawback is payable (see § 181.48(c) of this part);

(C) Documentary evidence to support the claim that the goods did not conform to sample or specifications or were shipped without the consent of the consignee. In the case of nonconforming goods, such documentation may include a copy of a purchase order and any related documents such as a specification sheet, catalogue or advertising brochure from the supplier, the basis for which the order was placed, and copy of a letter or telex or credit memo from the supplier indicating acceptance of the returned merchandise. This documentation is necessary to establish that the goods are, in fact, being returned to the party from which they were procured or that they are being sent to the supplier's other customer directly;

(D) Customs Form 7512, if applicable; and

(E) Evidence of exportation, as provided in paragraph (b)(2)(ii)(G) of this section.

(iv) *Meats cured with imported salt.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback shall apply to claims for drawback on meats cured with imported salt filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart, and the forms referred to in that paragraph shall be modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

(v) *Jet aircraft engines.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback shall apply to claims for drawback on foreign-built jet aircraft engines repaired or reconditioned in the United States filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart and the provisions of subpart N of part 191 of this chapter.

(c) *Evidence of exportation and of duties paid in Canada or Mexico.* For purposes of this subpart, evidence of exportation and satisfactory evidence of payment of duties in Canada or Mexico shall consist of one of the following types of documentation, provided that, for purposes of evidence of duties paid, such documentation includes the import entry number, the date of importation, the tariff classification number, the rate of duty and the amount of duties paid:

(1) In the case of Canada, the Canadian entry document, referred to as the Canada Customs Invoice or B–3, presented with either the K–84 Statement or the Detailed Coding Statement. A Canadian customs document that is not accompanied by a valid receipt is not adequate evidence of exportation and payment of duty in Canada;

(2) In the case of Mexico, the Mexican entry document (the ''pedimento'');

(3) The final customs duty determination of Canada or Mexico, or a copy thereof, respecting the relevant entry; or

(4) An affidavit, from the person claiming drawback, which is based on information received from the importer of the good in Canada or Mexico.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98–16, 63 FR 11005, Mar. 5, 1998]

### § 181.48 Person entitled to receive drawback.

(a) *Manufacturing drawback*. The person named as exporter on the notice of exportation or on the bill of lading, air waybill, freight waybill, Canadian or Mexican customs manifest, cargo manifest, or certified copies of these documents, shall be considered the exporter and entitled to manufacturing drawback, unless the manufacturer or producer shall reserve the right to claim drawback. The manufacturer or producer who reserves this right may claim drawback, and he shall receive payment upon production of satisfactory evidence that the reservation was made with the knowledge and consent of the exporter. Drawback also may be granted to the agent of the manufacturer, producer, or exporter, or to the person the manufacturer, producer, exporter, or agent directs in writing to receive the drawback of duties.

(b) *Nonconforming or improperly shipped goods drawback*. Only the importer of record or the actual owner of the merchandise or its agent may claim drawback under 19 U.S.C. 1313(c).

(c) *Same condition drawback*. The importer of record on the consumption entry is entitled to claim same condition drawback under 19 U.S.C. 1313(j)(1) unless he has in writing waived his right to claim drawback.

### § 181.49 Retention of records.

All records required to be kept by the exporter, importer, manufacturer or producer under this subpart with respect to manufacturing drawback claims, and all records kept by others which complement the records of the importer, exporter, manufacturer or producer (see § 191.15 (see also §§ 191.26(f), 191.38, 191.175(c)) of this chapter) shall be retained for at least three years after payment of such claims. However, any person who issues a drawback certificate that enables another person to make or perfect a drawback claim shall keep records in support of that certificate commencing on the date that the certificate is issued and shall retain those records for three years following the date of payment of the claim.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98–16, 63 FR 11006, Mar. 5, 1998]

### § 181.50 Liquidation and payment of drawback claims.

(a) *General*. When the drawback claim has been fully completed by the filing of all required documents, and exportation of the articles has been established and the amount of duties paid to Canada or Mexico has been established, the entry will be liquidated to determine the proper amount of drawback due either in accordance with the limitation on drawback set forth in § 181.44 of this part or in accordance with the regular drawback calculation. The liquidation procedures of subpart G of part 191 of this chapter shall control for purposes of this subpart.

(b) *Time for liquidation*. A drawback claim shall not be liquidated until either a written waiver of the right to protest under 19 U.S.C. 1514 is filed with Customs or the liquidation of the import entry has become final under U.S. law. In addition, except in the case of goods covered by § 181.45 of this part, a drawback claim shall not be liquidated for a period of 3 years after the date of entry of the goods in Canada or Mexico. A drawback claim may be adjusted pursuant to 19 U.S.C. 1508(b)(2)(B)(iii) even after liquidation of the U.S. import entry has become final.

(c) *Accelerated payment*. Accelerated drawback payment procedures shall apply as set forth in § 191.92 of this chapter. However, a person who receives drawback of duties under this procedure shall repay the duties paid if a NAFTA drawback claim is adversely affected thereafter by administrative or court action.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98–16, 63 FR 11006, Mar. 5, 1998]

### § 181.51 Prevention of improper payment of claims.

(a) *Double payment of claim*. The drawback claimant shall certify to Customs that he has not earlier received payment on the same import entry for the

same designation of goods. If, notwithstanding such a certification, such an earlier payment was in fact made to the claimant, the claimant shall repay any amount paid on the second claim.

(b) *Preparation of Certificate of Origin.* The drawback claimant shall, within 30 calendar days after the filing of the drawback claim under this subpart, submit to Customs a written statement as to whether he has prepared, or has knowledge that another person has prepared, a Certificate of Origin provided for under § 181.11(a) of this part and pertaining to the goods which are covered by the claim. If, following such 30-day period, the claimant prepares, or otherwise learns of the existence of, any such Certificate of Origin, the claimant shall, within 30 calendar days thereafter, disclose that fact to Customs.

**§ 181.52 Subsequent claims for preferential tariff treatment.**

If a claim for a refund of duties is allowed by the Canadian or Mexican customs administration under Article 502(3) of the NAFTA (post-importation claim) or under any other circumstance after drawback has been granted under this subpart, the appropriate Customs officer shall reliquidate the drawback claim and obtain a refund of the amount paid in drawback in excess of the amount permitted to be paid under § 181.44 of this part.

**§ 181.53 Collection and waiver or reduction of duty under duty-deferral programs.**

(a) *General*—(1) *Definitions.* The following definitions shall apply for purposes of this section:

(i) *Date of exportation.* ''Date of exportation'' means the date of importation into Canada or Mexico as reflected on the applicable Canadian or Mexican entry document (see § 181.47(c) (1) and (2)).

(ii) *Duty-deferral program.* A ''duty-deferral program'' means any measure which postpones duty payment upon arrival of a good in the United States until withdrawn or removed for exportation to Canada or Mexico or for entry into a Canadian or Mexican duty-deferral program. Such measures govern manipulation warehouses, manufacturing warehouses, smelting and refining warehouses, foreign trade zones, and those temporary importations under bond that are specified in paragraph (b)(5) of this section.

(2) *Treatment as entered or withdrawn for consumption*—(i) *General.* (A) Where a good is imported into the United States pursuant to a duty-deferral program and is subsequently withdrawn from the duty-deferral program for exportation to Canada or Mexico or is used as a material in the production of another good that is subsequently withdrawn from the duty-deferral program for exportation to Canada or Mexico, and provided that the good is a ''good subject to NAFTA drawback'' within the meaning of 19 U.S.C. 3333 and is not described in § 181.45 of this part, the documentation required to be filed under this section in connection with the exportation of the good shall, for purposes of this chapter, constitute an entry or withdrawal for consumption and the exported good shall be subject to duty which shall be assessed in accordance with paragraph (b) of this section.

(B) Where a good is imported into the United States pursuant to a duty-deferral program and is subsequently withdrawn from the duty-deferral program and entered into a duty-deferral program in Canada or Mexico or is used as a material in the production of another good that is subsequently withdrawn from the duty-deferral program and entered into a duty-deferral program in Canada or Mexico, and provided that the good is a ''good subject to NAFTA drawback'' within the meaning of 19 U.S.C. 3333 and is not described in § 181.45, the documentation required to be filed under this section in connection with the withdrawal of the good from the U.S. duty-deferral program shall, for purposes of this chapter, constitute an entry or withdrawal for consumption and the withdrawn good shall be subject to duty which shall be assessed in accordance with paragraph (b) of this section.

(C) Any assessment of duty under this section shall include the duties and fees referred to in § 181.42 (a) through (c) and the fees provided for in § 24.23 of this chapter; these inclusions shall not be subject to refund, waiver, reduction or drawback.

(ii) *Bond requirements*. The provisions of § 142.4 of this chapter shall apply to each withdrawal and exportation transaction described in paragraph (a)(2)(i) of this section. However, in applying the provisions of § 142.4 of this chapter in the context of this section, any reference to release from Customs custody in § 142.4 of this chapter shall be taken to mean exportation to Canada or Mexico.

(iii) *Documentation filing and duty payment procedures*—(A) *Persons required to file*. In the circumstances described in paragraph (a)(2)(i) of this section, the documentation described in paragraph (a)(2)(iii)(B) of this section must be filed by one of the following persons:

(*1*) In the case of a withdrawal of the goods from a warehouse, the person who has the right to withdraw the goods;

(*2*) In the case of a temporary importation under bond (TIB) specified in paragraph (b)(5) of this section, the TIB importer whether or not he sells the goods for export to Canada or Mexico unless § 10.31(h) of this chapter applies; or

(*3*) In the case of a withdrawal from a foreign trade zone, the person who has the right to make entry. However, if a zone operator is not the person with the right to make entry of the good, the zone operator shall be responsible for the payment of any duty due in the event the zone operator permits such other person to remove the goods from the zone and such other person fails to comply with §§ 146.67 and 146.68 of this chapter.

(B) *Documentation required to be filed and required filing date*. The person required to file shall file Customs Form 7501 no later than 10 working days after the date of exportation to Canada or Mexico or 10 working days after being entered into a duty-deferral program in Canada or Mexico. Except where the context otherwise requires and except as otherwise specifically provided in this paragraph, the procedures for completing and filing Customs Form 7501 in connection with the entry of merchandise under this chapter shall apply for purposes of this paragraph. For purposes of completing Customs Form 7501 under this paragraph, any reference on the form to the entry date shall be taken to refer to the date of exportation of the good or the date the goods are entered into a duty-deferral program in Canada or Mexico. The Customs Form 7501 required under this paragraph may be transmitted electronically.

(C) *Duty payment*. The duty estimated to be due under paragraph (b) of this section shall be deposited with Customs 60 calendar days after the date of exportation of the good. If a good is entered into a duty-deferral program in Canada or Mexico, the duty estimated to be due under paragraph (b) of this section, but without any waiver or reduction provided for in that paragraph, shall be deposited with Customs 60 calendar days after the date the good is entered into such duty-deferral program. Nothing shall preclude the deposit of such estimated duty at the time of filing the Customs Form 7501 under paragraph (a)(2)(iii)(B) of this section or at any other time within the 60-day period prescribed in this paragraph. However, any interest calculation shall run from the date the duties are required to be deposited.

(3) *Waiver or reduction of duties*—(i) *General*. Except in the case of duties and fees referred to in §§ 181.42(a) through (c) and fees provided for in § 24.23 of this chapter, Customs shall waive or reduce the duties paid or owed under paragraph (a)(2) of this section by the person who is required to file the Customs Form 7501 (see paragraph (a)(2)(iii)(A) of this section) in accordance with paragraph (b) of this section, provided that a claim for waiver or reduction of the duties is filed with Customs within the appropriate 60-day time frame. The claim shall be based on evidence of exportation or entry into a Canadian or Mexican duty-deferral program and satisfactory evidence of duties paid in Canada or Mexico (see § 181.47(c)).

(ii) *Filing of claim and payment of reduced duties*. A claim for a waiver or reduction of duties under paragraph (a)(3)(i) of this section shall be made on Customs Form 7501 which shall set forth, in addition to the information required under paragraph (a)(2)(iii)(B) of this section, a description of the good exported to Canada or Mexico and

the Canadian or Mexican import entry number, date of importation, tariff classification number, rate of duty and amount of duty paid. If a claim for reduction of duties is filed under this paragraph, the reduced duties shall be deposited with Customs when the claim is filed.

(iii) *Drawback on goods entered into a duty-deferral program in Canada or Mexico*. After goods in a duty-deferral program in the United States which have been sent from the United States and entered into a duty-deferral program in Canada or Mexico are then withdrawn from that Canadian or Mexican duty-deferral program either for entry into Canada or Mexico or for export to a non-NAFTA country, the person who filed the Customs Form 7501 (see paragraph (a)(2)(iii)(A) of this section) may file a claim for drawback if the goods are withdrawn within 5 years from the date of the original importation of the good into the United States. If the goods are entered for consumption in Canada or Mexico, drawback will be calculated in accordance with § 181.44 of this part.

(4) *Liquidation of entry*—(i) *If no claim is filed*. If no claim for a waiver or reduction of duties is filed in accordance with paragraph (a)(3) of this section, Customs shall determine the final duties due under paragraph (a)(2)(i) of this section and shall post a bulletin notice of liquidation of the entry filed under this section in accordance with § 159.9 of this chapter. Where no claim was filed in accordance with this section and Customs fails to liquidate, or extend liquidation of, the entry filed under this section within 1 year from the date of the entry, upon the date of expiration of that 1-year period the entry shall be deemed liquidated by operation of law in the amount asserted by the exporter on the Customs Form 7501 filed under paragraph (a)(2)(iii)(A) of this section. A protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter shall be filed within 90 days from the date of posting of the notice of liquidation under this section.

(ii) *If a claim is filed*. If a claim for a waiver or reduction of duties is filed in accordance with paragraph (a)(3) of this section, an extension of liquidation of the entry filed under this section shall take effect for a period not to exceed 3 years from the date the entry was filed. Before the close of the extension period, Customs shall liquidate the entry filed under this section and shall post a bulletin notice of liquidation in accordance with § 159.9 of this chapter. If Customs fails to liquidate the entry filed under this section within 4 years from the date of the entry, upon the date of expiration of that 4-year period the entry shall be deemed liquidated by operation of law in the amount asserted by the exporter on the Customs Form 7501 filed under paragraph (a)(3)(ii) of this section. A protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter shall be filed within 90 days from the date of posting of the notice of liquidation under this section.

(b) *Assessment and waiver or reduction of duty*—(1) *Manipulation in warehouse*. Where a good subject to NAFTA drawback under this subpart is withdrawn from a bonded warehouse (19 U.S.C. 1562) after manipulation for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, duty shall be assessed on the good in its condition and quantity, and at its weight, at the time of such withdrawal from the warehouse and with such additions to, or deductions from, the final appraised value as may be necessary by reason of its change in condition. Such duty shall be paid no later than 60 calendar days after the date of exportation or of entry into the duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

(2) *Bonded manufacturing warehouse*. Where a good is manufactured in a bonded warehouse (19 U.S.C. 1311) with imported materials and is then withdrawn for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, duty shall be assessed on the materials in their condition and quantity, and at

their weight, at the time of their importation into the United States. Such duty shall be paid no later than 60 calendar days after either the date of exportation or of entry into a duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the materials under this section or the total amount of customs duties paid to Canada or Mexico.

*Example.* Company N imports tea into the United States and makes a Class 6 warehouse entry. Company N manufactures sweetened ice tea mix by combining the imported tea with refined cane sugar and other flavorings and packaging it in retail size canisters. Upon withdrawal of the ice tea mix from the warehouse for exportation to Canada, a Customs Form 7501 is filed showing $900 in estimated U.S. duties on the basis of the unmanufactured tea. Upon entry into Canada, the equivalent of US$800 is assessed on the exported ice tea mix. Company N submits to Customs a proper claim under paragraph (a)(3) of this section showing payment of the US$800 equivalent in duties to Canada. Company N will only be required to pay $100 in U.S. duties out of the $900 amount reflected on the Customs Form 7501.

(3) *Bonded smelting or refining warehouse.* For any qualifying imported metal-bearing materials (19 U.S.C. 1312), duty shall be assessed on the imported materials and the charges against the bond canceled no later than 60 calendar days after either the date of exportation of the treated materials to Canada or Mexico or the date of entry of the treated materials into a duty-deferral program of Canada or Mexico, either from the bonded smelting or refining warehouse or from such other customs bonded warehouse after the transfer of the same quantity of material from a bonded smelting or refining warehouse. However, upon filing of a proper claim under paragraph (a)(3) of this section, the duty on the imported materials shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the imported materials under this section or the total amount of customs duties paid to Canada or Mexico.

*Example.* Company Z imports 47 million pounds of electrolytic zinc which is entered into a bonded smelting and refining warehouse (Class 7) for processing. Thereafter, Company Z withdraws the merchandise for exportation to Canada and files a Customs Form 7501 showing $90,000 in estimated U.S. duty on the dutiable quantity of metal contained in the imported metal-bearing materials. Upon entry of the processed zinc into Canada, the equivalent of US$50,000 in duties are assessed. Within 60 days of exportation Company Z files a proper claim under paragraph (a)(3) of this section and Customs liquidates the entry with duty due in the amount of $40,000.

(4) *Foreign trade zone.* For a good that is manufactured or otherwise changed in condition in a foreign trade zone (19 U.S.C. 81c(a)) and then withdrawn from the zone for exportation to Canada or Mexico or for entry into a Canadian or Mexican duty-deferral program, the duty assessed, as calculated under paragraph (b)(4)(i) or (b)(4)(ii) of this section, shall be paid no later than 60 calendar days after either the date of exportation of the good to Canada or Mexico or the date of entry of the good into a duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

(i) *Nonprivileged foreign status.* In the case of a nonprivileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time of its exportation from the zone to Canada or Mexico or its entry into a duty-deferral program of Canada or Mexico.

*Example.* CMG imports $1,000,000 worth of auto parts from Korea and admits them into Foreign-Trade Subzone number 00, claiming nonprivileged foreign status. (If the auto parts had been regularly entered they would have been dutiable at 4 percent, or $40,000.) CMG manufactures subcompact automobiles. Automobiles are dutiable at 2.5 percent ($25,000) if entered for consumption in the United States. CMG withdraws the automobiles from the zone and exports them to Mexico. Upon entry of the automobiles in Mexico, CMG pays the equivalent of US$20,000 in duty. Before the expiration of 60 calendar days from the date of exportation, CMG files a proper claim under paragraph

(a)(3) of this section and pays $5,000 in duty to Customs representing the difference between the $25,000 which would have been paid if the automobiles had been entered for consumption from the zone and the US$20,000 equivalent paid to Mexico.

(ii) *Privileged foreign status.* In the case of a privileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time privileged status is granted in the zone.

*Example.* O&G, Inc. admits Kuwaiti crude petroleum into its zone and requests, one month later, privileged foreign status on the crude before refining the crude into motor gasoline and kerosene. Upon withdrawal of the refined goods from the zone by O&G, Inc. for exportation to Canada, a Customs Form 7501 is filed showing $700 in estimated duties on the imported crude petroleum (rather than on the refined goods which would have been assessed $1,200). D&O is the consignee in Canada and pays the Canadian customs duty assessment of the equivalent of US$1,500 on the goods. O&G, Inc. is entitled to a waiver of the full $700 in duties upon filing of a proper claim under paragraph (a)(3) of this section.

(5) *Temporary importation under bond.* Except in the case of a good imported from Canada or Mexico for repair or alteration, where a good, regardless of its origin, was imported temporarily free of duty for repair, alteration or processing (subheading 9813.00.05, Harmonized Tariff Schedule of the United States) and is subsequently exported to Canada or Mexico, duty shall be assessed on the good on the basis of its condition at the time of its importation into the United States. Such duty shall be paid no later than 60 calendar days after either the date of exportation or the date of entry into a duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

*Example.* Company A imports glassware under subheading 9813.00.05, HTSUS. The glassware is from France and would be dutiable under a regular consumption entry at $6,000. Company A alters the glassware by etching hotel logos on the glassware. Two weeks later, Company A sells the glassware to Company B, a Mexican company, and ships the glassware to Mexico. Company B enters the glassware and is assessed duties in an amount equivalent to US$6,200 and claims NAFTA preferential tariff treatment. Company B provides a copy of the Mexican landing certificate to Company A showing that the US$6,200 equivalent in duties was assessed but not yet paid to Mexico. If Mexico ultimately denies Company B's NAFTA claim and the Mexican duty payment becomes final, Company A, upon submission to Customs of a proper claim under paragraph (a)(3) of this section, is entitled to a waiver of the full $6,000 in U.S. duty.

(c) *Recordkeeping requirements.* If a person intends to claim a waiver or reduction of duty on goods under this section, that person shall maintain records concerning the value of all involved goods or materials at the time of their importation into the United States and concerning the value of the goods at the time of their exportation to Canada or Mexico or entry into a duty-deferral program of Canada or Mexico, and if a person files a claim under this section for a waiver or reduction of duty on goods exported to Canada or Mexico or entered into a Canadian or Mexican duty-deferral program, that person shall maintain evidence of exportation or entry into a Canadian or Mexican duty-deferral program and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the good (see §181.47(c)). Failure to maintain adequate records will result in denial of the claim for waiver or reduction of duty.

(d) *Failure to file proper claim.* If the person identified in paragraph (a)(2)(iii)(A) of this section fails to file a proper claim within the 60-day period specified in this section, that person, or the FTZ operator pursuant to paragraph (a)(2)(iii)(A)(*3*) of this section, will be liable for payment of the full duties assessed under this section and without any waiver or reduction thereof.

(e) *Subsequent claims for preferential tariff treatment.* If a claim for a refund of duties is allowed by the Canadian or Mexican customs administration under Article 502(3) of the NAFTA or under any other circumstance after duties have been waived or reduced under this section, Customs may reliquidate the

entry filed under this section pursuant to 19 U.S.C. 1508(b)(2)(B)(iii) even after liquidation of the entry has become final.

[T.D. 96–14, 61 FR 2911, Jan. 30, 1996; T.D. 96–14, 61 FR 6111, Feb. 16, 1996]

### § 181.54 Verification of claim for drawback, waiver or reduction of duties.

The allowance of a claim for drawback, waiver or reduction of duties submitted under this subpart shall be subject to such verification, including verification with the Canadian or Mexican customs administration of any documentation obtained in Canada or Mexico and submitted in connection with the claim, as Customs may deem necessary.

## Subpart F—Commercial Samples and Goods Returned After Repair or Alteration

### § 181.61 Applicability.

This subpart sets forth the rules which apply for purposes of duty-free entry of commercial samples of negligible value as provided for in Article 306 of the NAFTA and for purposes of the re-entry of goods after repair or alteration in Canada or Mexico as provided for in Article 307 of the NAFTA.

### § 181.62 Commercial samples of negligible value.

(a) *General.* Commercial samples of negligible value imported from Canada or Mexico may qualify for duty-free entry under subheading 9811.00.60, HTSUS. For purposes of this section, ''commercial samples of negligible value'' means commercial samples which have a value, individually or in the aggregate as shipped, of not more than US$1, or the equivalent amount in the currency of Canada or Mexico, or which are so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or for use except as commercial samples.

(b) *Qualification for duty-free entry.* Commercial samples of negligible value imported from Canada or Mexico will qualify for duty-free entry under subheading 9811.00.60, HTSUS, only if:

(1) The samples are imported solely for the purpose of soliciting orders for foreign goods; and

(2) If valued over US$1, the samples are properly marked, torn, perforated or otherwise treated prior to arrival in the United States so that they are unsuitable for sale or for use except as commercial samples.

### § 181.63 [Reserved]

### § 181.64 Goods re-entered after repair or alteration in Canada or Mexico.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free or reduced-duty treatment on goods returned after repair or alteration in Canada or Mexico as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Mexico, whether or not pursuant to a warranty, and goods returned after having been repaired or altered in Canada pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. Goods returned after having been repaired or altered in Canada other than pursuant to a warranty are subject to duty upon the value of the repairs or alterations using the applicable duty rate under the United States-Canada Free-Trade Agreement (see § 10.301 of this chapter), provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, redyeing, cleaning, resterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

*Example.* Glass mugs produced in the United States are exported to Canada for etching and tempering operations, after which they are returned to the United States for sale. The foreign operations exceed the scope of an alteration because they are manufacturing processes which create commercially different products with distinct new characteristics.

(b) *Goods not eligible for duty-free or reduced-duty treatment after repair or alteration.* The duty-free or reduced-duty treatment referred to in paragraph (a)

of this section shall not apply to goods which, in their condition as exported from the United States to Canada or Mexico, are incomplete for their intended use and for which the processing operation performed in Canada or Mexico constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

*Example*. Unflanged metal wheel rims are exported to Canada for a flanging operation to strengthen them so as to conform to U.S. Army specifications for wheel rims; although the goods when exported from the United States are dedicated for use in the making of wheel rims, they cannot be used for that purpose until flanged. The flanging operation does not constitute a repair or alteration because that operation is necessary for the completion of the wheel rims.

(c) *Documentation*—(1) *Declarations required*. Except as otherwise provided in this section, the following declarations shall be filed in connection with the entry of goods which are returned from Canada or Mexico after having been exported for repairs or alterations and which are claimed to be duty free or subject to duty only on the value of the repairs or alterations performed abroad:

(i) A declaration from the person who performed such repairs or alterations, in substantially the following form:

I/We, _____, declare that the goods herein specified are the goods which, in the condition in which they were exported from the United States, were received by me (us) on _____, 19___, from _____ (name and address of owner or exporter in the United States); that they were received by me (us) for the sole purpose of being repaired or altered; that only the repairs or alterations described below were performed by me (us); that such repairs or alterations were (were not) performed pursuant to a warranty; that the full cost or (when no charge is made) value of such repairs or alterations is correctly stated below; and that no substitution whatever has been made to replace any of the goods originally received by me (us) from the owner or exporter thereof mentioned above.

| Marks and numbers | Description of goods and of repairs or alterations | Full cost or (when no charge is made) value of repairs or alterations (see Subchapter II, Chapter 98, HTSUS) | Total value of goods after repairs or alterations |
|---|---|---|---|
| | | | |

_____
Date
Signature

_____
Address

_____
_____
Capacity

(ii) A declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts in substantially the following form:

I, _____, declare that the (above) (attached) declaration by the person who performed the repairs or alterations abroad is true and correct to the best of my knowledge and belief; that the goods _____ were _____ were not (check one) subject to NAFTA drawback; that such goods were exported from the United States for repairs or alterations from _____ (port) on _____, 19___; and that the goods entered in their repaired or altered condition are the same goods that were exported on the above date and that are identified in the (above) (attached) declaration.

_____
Date
Signature _____
Address _____

_____
Capacity

(2) *Additional documentation*. The port director may require such additional documentation as is deemed necessary to prove actual exportation of the goods from the United States for repairs or alterations, such as a foreign customs entry, a foreign customs invoice, a foreign landing certificate, bill of lading, or airway bill.

(3) *Waiver of declarations*. If the port director concerned is satisfied, because of the nature of the goods or production of other evidence, that the goods

are imported under circumstances meeting the requirements of this section, he may waive submission of the declarations provided for in paragraph (c)(1) of this section.

(4) *Deposit of estimated duties.* For goods returned after having been repaired or altered in Canada other than pursuant to a warranty, the port director shall require a deposit of estimated duties based upon the full cost or value of the repairs or alterations. The cost or value of the repairs or alterations performed in Canada other than pursuant to a warranty, which is to be set forth in the invoice and entry papers as the basis for the assessment of duty for such goods, shall be limited to the cost or value of the repairs or alterations actually performed in Canada, which shall include all domestic and foreign articles furnished for the repairs or alterations but shall not include any of the expenses incurred in the United States whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the repairs or alterations in Canada, or otherwise.

## Subpart G—Origin Verifications and Determinations

### § 181.71 Denial of preferential tariff treatment dependent on origin verification and determination.

Except where a Certificate of Origin either is not submitted when requested under § 181.22(b) of this part or is not acceptable and a corrected Certificate is not submitted or accepted as provided in § 181.22(c) of this part and except as otherwise provided in § 181.23 of this part and except in the case of a pattern of conduct provided for in § 181.76(c) of this part, Customs shall deny preferential tariff treatment on an imported good, or shall deny a post-importation claim for a refund filed under subpart D of this part, only after initiation of an origin verification under § 181.72(a) of this part which results in a determination that the imported good does not qualify as an originating good or should not be accorded such treatment for any other reason as specifically provided for elsewhere in this part.

### § 181.72 Verification scope and method.

(a) *General.* Subject to paragraph (e) of this section, Customs may initiate a verification in order to determine whether a good imported into the United States qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA as stated on the Certificate of Origin pertaining to the good. Such a verification:

(1) May also involve a verification of the origin of a material that is used in the production of a good that is the subject of a verification under this section;

(2) May include verification of the applicable rate of duty applied to an originating good in accordance with Annex 302.2 of the NAFTA and may include a determination of whether a good is a qualifying good for purposes of Annex 703.2 of the NAFTA; and

(3) Shall be conducted only by means of one or more of the following:

(i) A verification letter which requests information from a Canadian or Mexican exporter or producer, including a Canadian or Mexican producer of a material, and which identifies the good or material that is the subject of the verification. The verification letter may be on Customs Form 28 or other appropriate format and may be sent:

(A) By certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer; or

(B) By any other method, regardless of whether it produces proof of receipt by the exporter or producer;

(ii) A written questionnaire sent to an exporter or a producer, including a producer of a material, in Canada or Mexico. The questionnaire:

(A) May be sent by certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer; or

(B) May be sent by any other method, regardless of whether it produces proof of receipt by the exporter or producer; and

(C) May be completed by the Canadian or Mexican exporter or producer either in the English language or in the language of the country in which that exporter or producer is located;

(iii) Visits to the premises of an exporter or a producer, including a producer of a material, in Canada or Mexico to review the types of records referred to in § 181.12 of this part and observe the facilities used in the production of the good or material; and

(iv) Any other method which results in information from a Canadian or Mexican exporter or producer, including a Canadian or Mexican producer of a material, that is relevant to the origin determination. The information so obtained may form a basis for a negative determination regarding a good (see § 181.75(b) of this part) only if the information is in writing and is signed by the exporter or producer.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, Customs will apply and accept the Generally Accepted Accounting Principles applicable in the country in which the good is produced or in which the exporter is located.

(c) *Inquiries to importer not precluded.* Nothing in paragraph (a) of this section shall preclude Customs from directing inquiries or requests to a U.S. importer for documents or other information regarding the imported good. If such an inquiry or request involves requesting the importer to obtain and provide written information from the exporter or producer of the good or from the producer of a material that is used in the production of the good, such information shall be requested by the importer and provided to the importer by the exporter or producer only on a voluntary basis, and a failure or refusal on the part of the importer to obtain and provide such information shall not be considered a failure of the exporter or producer to provide the information and shall not constitute a ground for denying preferential tariff treatment on the good.

(d) *Failure to respond to letter or questionnaire*—(1) *Nonresponse to initial letter or questionnaire.* If the exporter or producer, including a producer of a material, fails to respond to a verification letter or questionnaire sent under paragraph (a)(2)(i) or (a)(2)(ii) of this section within 30 calendar days from the date on which the letter or questionnaire was sent, or such longer period as may be specified in the letter or questionnaire, Customs shall send a follow-up verification letter or questionnaire to that exporter or producer. The follow-up letter or questionnaire:

(i) Except where the verification letter or questionnaire only involved the origin of a material used in the production of a good and was sent to the producer of the material, may include the written determination referred to in § 181.75 of this part, provided that the information specified in paragraph (b) of that section is also included; and

(ii) Shall be sent:

(A) 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; or

(B) By any method, if no request under paragraph (d)(1)(ii)(A) of this section has been made by the Canadian or Mexican customs administration.

(2) *Nonresponse to follow-up letter or questionnaire*—(i) *Producer of a material.* If a producer of a material fails to respond to a follow-up verification letter or questionnaire sent under paragraph (d)(1) of this section, Customs may consider the material to be non-originating for purposes of determining whether the good to which that material relates is an originating good.

(ii) *Exporter or producer of a good.* If the exporter or producer of a good fails to respond to a follow-up verification letter or questionnaire sent under paragraph (d)(1) of this section, Customs may consider the good to be non-originating and consequently may deny preferential tariff treatment on the good as follows:

(A) If the follow-up letter or questionnaire included a written determination as provided for in paragraph (d)(1)(i) of this section and the exporter or producer fails to respond to the follow-up letter or questionnaire within 30 calendar days or such longer period as specified therein:

(*1*) From the date on which the follow-up letter or questionnaire and written determination were received by

the exporter or producer, if sent pursuant to paragraph (d)(1)(ii)(A) of this section; or

(*2*) From the date on which the follow-up letter or questionnaire and written determination were either received by the exporter or producer or sent by Customs, if sent in accordance with paragraph (d)(1)(ii)(B) of this section; or

(B) Provided that the procedures set forth in §§ 181.75 and 181.76 of this part are followed, if the follow-up letter or questionnaire does not include a written determination as provided for in paragraph (d)(1)(i) of this section and the exporter or producer fails to respond to the follow-up letter or questionnaire within 30 calendar days or such longer period as specified in the letter or questionnaire:

(*1*) From the date on which the follow-up letter or questionnaire was received by the exporter or producer, if sent pursuant to paragraph (d)(1)(ii)(A) of this section; or

(*2*) From the date on which the follow-up letter or questionnaire was either received by the exporter or producer or sent by Customs, if sent in accordance with paragraph (d)(1)(ii)(B) of this section.

(e) *Calculation of regional value content under net cost method*—(1) *General.* Where a Canadian or Mexican producer of a good elects to calculate the regional value content of a good under the net cost method as set forth in General Note 12, HTSUS, and in the appendix to this part, Customs may not, during the time period over which that net cost is calculated, conduct a verification under § 181.72(a) of this part with respect to the regional value content of that good.

(2) *Cost submission for motor vehicles.* Where, pursuant to General Note 12, HTSUS, and the appendix to this part, a Canadian or Mexican producer of a light duty vehicle or heavy duty vehicle, as defined in the appendix to this part, elects to average its regional value content calculation over its fiscal year, Customs may request, in writing, that the producer provide a cost submission reflecting the actual costs incurred in the production of the category of motor vehicles for which the election was made. Such a written request shall constitute a verification letter under paragraph (a)(2)(i) of this section, and the requested cost submission shall be submitted to Customs within 180 calendar days after the close of the producer's fiscal year or within 60 days from the date on which the request was made, whichever is later.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 02–15, 67 FR 15482, Apr. 2, 2002]

### § 181.73 Notification of verification visit.

(a) *Written notification required.* Prior to conducting a verification visit in Canada or Mexico pursuant to § 181.72(a)(2)(iii) of this part, Customs shall give written notification of the intention to conduct the visit. Such notification shall be delivered:

(1) By certified or registered mail, or by any other method that produces a confirmation of receipt, to the address of the Canadian or Mexican exporter or producer whose premises are to be visited;

(2) To the customs administration of the country in which the visit is to occur; and

(3) If requested by the country in which the visit is to occur, to the embassy of that country located in the United States.

(b) *Contents of notification.* The notification referred to in paragraph (a) of this section shall include:

(1) The identity of the Customs office and officer issuing the notification;

(2) The name of the Canadian or Mexican exporter or producer of the good, or producer of the material, whose premises are to be visited;

(3) The date and place of the proposed verification visit;

(4) The object and scope of the proposed verification visit, including specific reference to the good or material that is the subject of the verification;

(5) The names and titles of the Customs officers performing the proposed verification visit;

(6) The legal authority for the proposed verification visit; and

(7) A request that the Canadian or Mexican exporter or producer of the good, or producer of the material, provide its written consent for the proposed verification visit.

**§ 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

protest under 19 U.S.C. 1514 and part 174 of this chapter:

(A) Within 90 days after notice of liquidation is provided pursuant to part 159 of this chapter; or

(B) In cases where the negative origin determination does not result in a liquidation, within 90 days after the date of issuance of the written determination.

**§ 181.76 Application of origin determinations.**

(a) *General.* Except as otherwise provided in this section, an origin determination may be applied upon issuance of the determination under § 181.75 of this part.

(b) *Negative origin determinations.* In the case of a negative origin determination issued under § 181.75(b) of this part:

(1) The date on which preferential tariff treatment may be denied shall be no earlier than 30 calendar days from the date on which:

(i) Receipt of the written determination by the exporter or producer is confirmed, if a request under § 181.75(b)(1) of this part has been made; or

(ii) The written determination is sent by Customs, if no request under § 181.75(b)(1) of this part has been made; and

(2) Before denying preferential tariff treatment, Customs shall take into account any comments or additional information provided by the exporter or producer during the period established in accordance with paragraph (b)(1) of this section.

(c) *Cases involving a pattern of conduct.* Where multiple origin verifications initiated under § 181.72(a) of this part indicate a pattern of conduct by an exporter or producer involving false or unsupported representations on Certificates of Origin that a good imported into the United States qualifies as an originating good, Customs may deny subsequent claims for preferential tariff treatment on identical goods exported or produced by such person until that person establishes compliance with the rules applicable to originating goods as set forth in General Note 12, HTSUS, and in this part, provided that advance written notice of the intent to deny such claims is given to the importer. For purposes of this paragraph, a ''pattern of conduct'' means repeated instances of false or unsupported representations by an exporter or producer as established by Customs on the basis of not fewer than two origin verifications of two or more importations of the good that result in the issuance of not fewer than two written determinations issued to that exporter or producer pursuant to § 181.75 of this part which conclude, as a finding of fact, that Certificates of Origin completed and signed by that exporter or producer with respect to identical goods contain false or unsupported representations.

(d) *Differing determinations.* Where Customs determines, either as a result of an origin verification initiated under § 181.72(a) of this part or under any other circumstance, that a certain good imported into the United States does not qualify as an originating good based on a tariff classification or a value applied in the United States to one or more materials used in the production of the good, including a material used in the production of another material that is used in the production of the good, which differs from the tariff classification or value applied to the materials by the country from which the good was exported, the Customs determination shall not become effective until Customs provides written notification thereof both to the U.S. importer of the good and to the person who completed and signed the Certificate of Origin upon which the claim for preferential tariff treatment for the good was based.

(e) *Applicability of a determination to prior importations.* Customs shall not apply a determination made under paragraph (d) of this section to an importation made before the effective date of the determination if, prior to notification of the determination, the customs administration of the country from which the good was exported either issued an advance ruling under Article 509 of the NAFTA or any other ruling on the tariff classification or on the value of such materials, or gave consistent treatment to the entry of the materials under the tariff classification or value at issue, on which a person is entitled to rely and on which

that person did in fact rely. For purposes of this paragraph, the person who received notification of the determination shall demonstrate to the satisfaction of Customs, in writing within 30 calendar days of receipt of the notification, that the conditions set forth herein have been met. For purposes of this paragraph:

(1) A ''ruling'' on which a person is entitled to rely in the case of Canada must be issued pursuant to section 43.1(1) of the Customs Act (Advance Rulings) or in accordance with Departmental Memorandum 11–11–1 (National Customs Rulings) and in the case of Mexico must be issued pursuant to Article 34 of the Codigo Fiscal de la Federacion and pursuant to Article 30 of the Ley Aduanera or the applicable provision of Mexican law related to advance rulings under Article 509 of the NAFTA; and

(2) ''Consistent treatment'' means the established application by the Canadian or Mexican customs administration that can be substantiated by the continued acceptance by the customs administration of the tariff classification or value of identical materials on importations of the materials into Canada or Mexico by the same importer over a period of not less than two years immediately prior to the date of signature of the Certificate of Origin for the good that is the subject of the determination referred to in paragraph (d) of this section, provided that with regard to those importations:

(i) The tariff classification or value of the materials was not the subject of a verification, review or appeal by that customs administration on the date of the determination under paragraph (d) of this section; and

(ii) The materials had not been accorded a different tariff classification or value by one or more district, regional or local offices of that customs administration on the date of the determination under paragraph (d) of this section.

(f) *Detrimental reliance.* If Customs proposes to deny preferential tariff treatment to a good pursuant to a determination made under paragraph (d) of this section, Customs shall postpone the application of the determination for a period not exceeding 90 calendar days from the date of issuance of the determination where the U.S. importer of the good, or the person who completed and signed the Certificate of Origin upon which the claim for preferential tariff treatment for the good was based, demonstrates to the satisfaction of Customs that it has relied in good faith to its detriment on the tariff classification or value applied to such materials by the customs administration of the country from which the good was exported.

[T.D 95–68, 60 FR 46364, Sept. 6, 1995; T.D. 95–68, 61 FR 1829, Jan. 24, 1996]

## Subpart H—Penalties

### § 181.81 Applicability to NAFTA transactions.

Except as otherwise provided in § 181.82 of this part, all criminal, civil or administrative penalties which may be imposed on U.S. importers, exporters and producers for violations of the Customs and related laws and regulations shall also apply to U.S. importers, exporters and producers for violations of the laws and regulations relating to the NAFTA.

### § 181.82 Exceptions to application of penalties.

(a) *General.* A U.S. importer who makes a corrected declaration under § 181.21(b) of this part shall not be subject to civil or administrative penalties for having made an incorrect declaration, provided that the corrected declaration was voluntarily made. In addition, civil or administrative penalties provided for under the U.S. Customs laws and regulations shall not be imposed on an exporter or producer in the United States who voluntarily provides written notification pursuant to § 181.11(d) of this part with respect to the making of an incorrect certification.

(b) *''Voluntarily'' defined*—(1) *General.* For purposes of paragraph (a) of this section, the making of a corrected declaration or the providing of written notification of an incorrect certification will be deemed to have been done voluntarily if:

(i) Done before the commencement of a formal investigation;

(ii) Done before any of the events specified in §162.74(i) of this chapter have occurred;

(iii) Done within 30 calendar days after either the U.S. importer with respect to a declaration that an imported good qualified as an originating good, or the U.S. exporter or producer with respect to a certification pertaining to a good exported to Canada or Mexico, had reason to believe that the declaration or certification was not correct;

(iv) Accompanied by a written statement setting forth the information specified in paragraph (b)(3) of this section; and

(v) In the case of a corrected declaration, accompanied or followed by a tender of any actual loss of duties in accordance with paragraph (b)(5) of this section.

(2) *Cases involving fraud.* Notwithstanding paragraph (b)(1) of this section, a person who acted by means of fraud in making an incorrect declaration or certification may not make a voluntary correction thereof. For purposes of this paragraph (b)(2), the term ''fraud'' shall have the meaning set forth in paragraph (B)(3) of appendix B to part 171 of this chapter.

(3) *Written statement.* For purposes of paragraph (a) of this section, each corrected declaration or notification of an incorrect certification shall be accompanied by a written statement which:

(i) Identifies the class or kind of good to which the incorrect declaration or certification relates;

(ii) Identifies each import or export transaction affected by the incorrect declaration or certification with reference to each port of importation or exportation and the approximate date of each importation or exportation. A U.S. producer who provides written notification that certain information in a Certificate of Origin is incorrect and who is unable to identify the specific export transactions under this paragraph shall provide as much information concerning those transactions as the producer, by the exercise of good faith and due diligence, is able to obtain;

(iii) Specifies the nature of the incorrect statements or omissions regarding the declaration or certification; and

(iv) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the declaration or certification, and states that the person will provide any additional information or data which is unknown at the time of making the corrected declaration or certification within 30 calendar days or within any extension of that 30-day period as Customs may permit in order for the person to obtain the information or data.

(4) *Substantial compliance.* For purposes of this section, a person shall be deemed to have voluntarily corrected a declaration or certification even though that person provides corrected information in a manner which does not conform to the requirements of the written statement specified in paragraph (b)(3) of this section, provided that:

(i) Customs is satisfied that the information was provided before the commencement of a formal investigation; and

(ii) The information provided includes, orally or in writing, substantially the same information as that specified in paragraph (b)(3) of this section.

(5) *Tender of actual loss of duties.* A U.S. importer who makes a corrected declaration shall tender any actual loss of duties at the time of making the corrected declaration, or within 30 calendar days thereafter, or within any extension of that 30-day period as Customs may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

(6) *Applicability of prior disclosure provisions.* Where a person fails to meet the requirements of this section because the correction of the declaration or the written notification of an incorrect certification is not considered to be done voluntarily as provided in this section, that person may nevertheless qualify for prior disclosure treatment under 19 U.S.C. 1592(c)(4) and the regulations issued thereunder.

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

## Subpart I—Advance Ruling Procedures

### § 181.91 Applicability.

This subpart sets forth the rules which govern the issuance and application of advance rulings under Article 509 of the NAFTA and the procedures which apply for purposes of review of advance rulings under Article 510 of the NAFTA. Importers in the United States and exporters and producers located in Canada or Mexico may request and obtain an advance ruling on a NAFTA transaction only in accordance with the provisions of this subpart whenever the requested ruling involves a subject matter specified in § 181.92(b)(6) of this part. Accordingly, the provisions of this subpart shall apply in lieu of the administrative ruling provisions contained in subpart A of part 177 of this chapter except where the request for a ruling involves a subject matter not specified in § 181.92(b)(6).

### § 181.92 Definitions and general NAFTA advance ruling practice.

(a) *Definitions.* For purposes of this subpart:

(1) An *advance ruling* is a written statement issued by the Headquarters Office or the National Commodity Specialist Division or by such other office as designated by the Commissioner of Customs that interprets and applies the provisions of NAFTA to a specific set of facts involving any subject matter specified in § 181.92(b)(6) of this part. An ''advance ruling letter'' is an advance ruling issued in response to a written request and set forth in a letter addressed to the person making the request or his designee. A ''published advance ruling'' is an advance ruling which has been published in full text in the Customs Bulletin.

(2) An *authorized agent* is a person expressly authorized by a principal to act on his or her behalf. An advance ruling requested by an attorney or other person acting as an agent must include a statement describing the authority under which the request is made. With the exception of attorneys whose authority to represent is known, any person appearing before Customs as an agent in connection with an advance ruling request may be required to present evidence of his or her authority to represent the principal. The foregoing requirements will not apply to an individual representing his or her full-time employer or to a bona-fide officer, director or other qualified representative of a corporation, association, or organized group.

(3) The term *Headquarters Office*, means the Office of Regulations and Rulings at Headquarters, United States Customs Service, Washington, DC.

(4) An *information letter* is a written statement issued by the Headquarters Office or the National Commodity Specialist Division or by such other office as designated by the Commissioner of Customs that does no more than call attention to a well-established interpretation of principles under the NAFTA, without applying it to a specific set of facts. If Customs believes that general information may be of some benefit to the person making the request, an information letter may be issued in response to a request for an advance ruling when:

(i) The request suggests that general information, rather than an advance ruling, is actually being sought;

(ii) The request is incomplete or otherwise fails to meet the requirements set forth in this subpart; or

(iii) The requested advance ruling cannot be issued for any other reason.

(5) A *NAFTA transaction* is an act or activity to which the NAFTA provisions apply. A ''prospective'' NAFTA transaction is one that is merely contemplated or is currently being undertaken but has not resulted in any arrival or in the filing of any entry or entry summary or other document or in any other act so as to bring the transaction, or any part of it, under the jurisdiction of any Customs office. A ''current'' NAFTA transaction is one which is presently under consideration by a field office of Customs. A ''completed'' NAFTA transaction is one which has been acted upon by a Customs field office and with respect to which that office has issued a determination which is final in nature, but is (or was) subject to appeal, petition, protest or other review as provided in

the applicable Customs laws and regulations. An ''ongoing'' NAFTA transaction is a series of identical, recurring transactions, consisting of current and completed transactions where future transactions are contemplated.

(6) The term *National Commodity Specialist Division* means the National Commodity Specialist Division, United States Customs Service, New York, New York.

(b) *General advance ruling practice.* An advance ruling may be requested under the provisions of this subpart with respect to prospective NAFTA transactions. An advance ruling will be based on the facts and circumstances presented by the requester.

(1) *Prospective NAFTA transactions.* It is in the interest of the sound administration of the NAFTA that persons engaging in any transaction affected by NAFTA fully understand the consequences of that transaction prior to its consummation. For this reason, Customs will give full and careful consideration to written requests from importers in the United States and exporters or producers in Canada or Mexico for advance rulings or information setting forth, with respect to a specifically described transaction, a definitive interpretation of applicable law or other appropriate information.

(2) *Current or ongoing NAFTA transactions.* A question arising in connection with a NAFTA transaction already before a Customs field office by reason of arrival, entry or otherwise will be resolved by that office in accordance with the principles and precedents previously announced by the Headquarters Office. If such a question cannot be resolved on the basis of clearly established rules set forth in the NAFTA or the regulations thereunder, or in applicable Treasury Decisions, rulings, opinions, or court decisions published in the Customs Bulletin, that field office may, if it believes it appropriate, forward the question to the Headquarters Office for consideration.

(3) *Completed NAFTA transactions.* A question arising in connection with an 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. W* here 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 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 bound in writing. The conference will not conclude with the issuance of an advance ruling letter.

(b) *Time, place and number of conferences*. If a request for a conference is granted, the person making the request will be notified of the time and place of the conference. No more than one conference with respect to the matters set forth in an advance ruling request will be scheduled, unless, in the opinion of the Customs personnel by whom the advance ruling request is under consideration, additional conferences are necessary.

(c) *Representation*. A person whose request for a conference has been granted may be accompanied at that conference by counsel or other representatives, or may designate such persons to attend the conference in his or her place.

(d) *Additional information presented at conferences*. It will be the responsibility of the person submitting the request for an advance ruling to provide for inclusion in the Customs file in the matter a written record setting forth any and all additional information, documents, and exhibits introduced during the conference to the extent that person considers such material relevant to the consideration of the advance ruling request. Such information, documents and exhibits shall be given consideration only if received by Customs within 30 calendar days following the conference.

**§ 181.96 Change in status of transaction.**

Each person submitting a request for an advance ruling in connection with a NAFTA transaction must immediately advise Customs in writing of any change in the status of that transaction upon becoming aware of the change. In particular, Customs must be advised when any transaction described in the advance ruling request as prospective becomes current and under the jurisdiction of a Customs field office. In addition, any person engaged in a NAFTA transaction coming under the jurisdiction of a Customs field office who has previously requested a NAFTA advance ruling with respect to that transaction must advise the field office of that fact.

**§ 181.97 Withdrawal of NAFTA advance ruling requests.**

Any request for an advance ruling may be withdrawn by the person submitting it at any time before the issuance of an advance ruling letter or

any other final disposition of the request. All correspondence, documents, and exhibits submitted in connection with the request will be retained in the Customs file and will not be returned. In addition, the Headquarters Office may forward, to Customs field offices which have or may have jurisdiction over the transaction to which the advance ruling request relates, its views in regard to the transaction or the issues involved therein, as well as appropriate information derived from materials in the Customs file.

### § 181.98 Situations in which no NAFTA advance ruling may be issued.

(a) *General*. No advance ruling letter will be issued in response to a request therefor which fails to comply with the provisions of this subpart. No advance ruling letter will be issued in regard to a completed transaction.

(b) *Pending matters*. Where a request for an advance ruling involves an issue that is under review in connection with an origin verification under subpart G of this part or that is the subject of an administrative review procedure provided for in subpart J of this part or in part 174 of this chapter, Customs may decline to issue the requested advance ruling. In addition, no NAFTA advance ruling letter will be issued with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Litigation before any other court will not preclude the issuance of an advance ruling letter, provided neither Customs nor any of its officers or agents is named as a party to the action.

### § 181.99 Issuance of NAFTA advance rulings or other advice.

(a) *NAFTA advance ruling letters*—(1) *General*. Except as otherwise provided in paragraph (a)(2) of this section, Customs will, within 120 calendar days of receipt of a request, including any required information supplemental thereto, issue an advance ruling letter in the English language setting forth the position of Customs and the reasons therefor with respect to a specifically described Customs transaction whenever a request for such an advance ruling is submitted in accordance with the provisions of this subpart and it is in the sound administration of the NAFTA provisions to do so. Otherwise, a request for an advance ruling will be answered by an information letter or, in those situations in which general information is likely to be of little or no value, by a letter stating that no advance ruling can be issued. In the course of evaluating the advance ruling request Customs may solicit supplemental information from the person requesting the advance ruling. The submission of supplemental information will extend the time for response. The time for response will also be extended if it is necessary to obtain information from other government agencies or in the form of a laboratory analysis.

(2) *Submission of NAFTA advance ruling letters to field offices*. Any importer engaging in a NAFTA transaction with respect to which an advance ruling letter has been issued under this subpart either must ensure that a copy of the advance ruling letter is attached to the documents filed with the appropriate Customs office in connection with that transaction or must otherwise indicate with the information filed for that transaction that an advance ruling has been received. Any person receiving an advance ruling stating Customs determination must set forth such determination in the documents or information filed in connection with any subsequent entry of that merchandise; failure to do so may result in a rejection of the entry and the imposition of such penalties as may be appropriate. An advance ruling received after the filing of such documents or information must immediately be brought to the attention of the appropriate Customs field office.

(3) *Disclosure of NAFTA advance ruling letters*. No part of the advance ruling letter, including names, addresses, or information relating to the business transactions of private parties, shall be deemed to constitute privileged or confidential commercial or financial information or trade secrets exempt from disclosure pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552), and part 103 of this chapter, or shall be deemed to be subject to the confidentiality principle set forth in

§ 181.121 of this part, unless, as provided in § 181.93(b)(7) of this part, the information claimed to be exempt from disclosure is clearly identified and a valid basis for nondisclosure is set forth. Before the issuance of the advance ruling letter, the person submitting the advance ruling request will be notified of any decision adverse to his request for nondisclosure and will, upon written request to Customs within 10 working days of the date of notification, be permitted to withdraw the advance ruling request. If in the opinion of Customs an impasse exists on the issue of confidentiality and the person who submitted the advance ruling request does not withdraw the request, Customs will decline to issue the advance ruling. All advance ruling letters issued by Customs will be available, upon written request, for inspection and copying by any person (with any portions determined to be exempt from disclosure deleted).

(4) *Penalties for misrepresented or omitted material facts or for noncompliance.* If Customs determines that an issued advance ruling was based on incorrect information, the person to whom the advance ruling was issued may be subject to appropriate penalties unless that person demonstrates that he used reasonable care and acted in good faith in presenting the facts and circumstances on which the advance ruling was based. In addition, Customs may apply such measures as the circumstances may warrant in a case where a person to whom an advance ruling was issued has failed to act in accordance with the terms and conditions of the advance ruling.

(b) *Other NAFTA advice and guidance.* The Headquarters Office may on its own initiative from time to time issue other external advice and guidance with respect to issues or transactions arising under the NAFTA which come to its attention. Such NAFTA advice and guidance, which represent the official position of Customs and which are likely to be of widespread interest and application, are published in the Customs Bulletin, as described in § 181.101 of this part. Nothing in this subpart shall preclude Customs from issuing advice and guidance to its field offices concerning the application of the NAFTA.

### § 181.100 Effect of NAFTA advance ruling letters; modification and revocation.

(a) *Effect of NAFTA advance ruling letters*—(1) *General.* An advance ruling letter issued by Customs under the provisions of this subpart represents the official position of Customs with respect to the particular transaction or issue described therein and is binding on all Customs personnel in accordance with the provisions of this subpart until modified or revoked. In the absence of a change of practice or other modification or revocation which affects the principle of the advance ruling set forth in the advance ruling letter, that principle may be cited as authority in the disposition of transactions involving the same circumstances. An advance ruling letter is generally effective on the date it is issued or such later date as may be specified in the advance ruling and, commencing on its effective date, may be applied to entries for consumption and warehouse withdrawals for consumption which are unliquidated, or to other transactions with respect to which Customs has not taken final action on that date. See, however, paragraph (b) of this section (ruling letters which modify previous advance ruling letters) and § 181.101 of this part (advance ruling letters published in the Customs Bulletin).

(2) *Application of NAFTA rulings to transactions*—(i) *General.* Each NAFTA ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of an advance ruling letter by a Customs field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the advance ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the advance ruling was based, and if the facts are materially different or a condition has not been satisfied, the treatment specified

in the advance ruling will not be applied to the actual transaction. If, in the opinion of any Customs field office by whom the transaction is under consideration or review, the advance ruling letter should be modified or revoked, the findings and recommendations of that office will be forwarded to the Headquarters Office for consideration, prior to any final disposition with respect to the transaction by that office. If the transaction described in the NAFTA advance ruling letter and the actual transaction are the same, and any and all conditions set forth in the advance ruling letter have been satisfied, the advance ruling will be applied to the transaction.

(ii) *Tariff change rulings.* Each advance ruling letter concerning whether a change in tariff classification has occurred will be applied only with respect to transactions involving either articles which are identical to the sample submitted with the advance ruling request and reflect the same processing or articles which conform to the description set forth in the advance ruling letter.

(iii) *Regional value content rulings.* Each advance ruling letter concerning the application of a regional value content requirement will be applied only with respect to transactions involving the same merchandise and identical facts.

(3) *Reliance on NAFTA advance rulings by others.* An advance ruling letter is subject to modification or revocation without notice to any person other than the person to whom the letter was addressed. Accordingly, no other person may rely on the advance ruling letter or assume that the principles of that advance ruling will be applied in connection with any transaction other than the one described in the letter. However, any person eligible to request an advance ruling under §181.92(b)(5) of this part may request information as to whether a previously-issued advance ruling letter has been modified or revoked by writing the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229, and either enclosing a copy of the advance ruling letter or furnishing other information sufficient to permit the advance ruling letter in question to be identified.

(b) *Modification or revocation of NAFTA advance ruling letters*—(1) *General.* Any NAFTA advance ruling letter may be modified or revoked by Customs Headquarters in any of the following circumstances or for any of the following purposes, provided that written notice of the modification or revocation is given to the person to whom the advance ruling letter was addressed:

(i) If the ruling letter reflects or is based on an error:

(A) Of fact;

(B) In the tariff classification of a good or material that is the subject of the ruling;

(C) In the application of a regional value-content requirement under General Note 12, HTSUS, and under this part;

(D) In the application of the rules for determining whether a good qualifies as a good of Canada or Mexico under Annex 300–B, Annex 302.2 or Chapter Seven of the NAFTA;

(E) In the application of the rules for determining whether a good is a qualifying good under Chapter Seven of the NAFTA; or

(F) In the application of the rules for determining whether a good qualifies for duty-free treatment under §181.64 of this part when the good re-enters the United States after having been exported to Canada or Mexico for repair or alteration;

(ii) If the ruling letter is not in accordance with an interpretation agreed on by the United States, Canada and Mexico regarding Chapter Three or Chapter Four of the NAFTA;

(iii) If there is a change in the material facts or circumstances on which the ruling is based;

(iv) To conform to a modification of Chapter Three, Four, Five or Seven of the NAFTA, or of the Marking Rules, or of the regulations set forth in this part; or

(v) To conform to a judicial decision or change in domestic law.

(2) *Application of modification or revocation of NAFTA advance ruling letters.* The modification or revocation of a NAFTA advance ruling letter will not be applied to entries or warehouse

withdrawals for consumption which were made prior to the effective date of such modification or revocation, except where the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

(3) *Effective dates.* Generally, a NAFTA letter modifying or revoking an earlier advance ruling will be effective on the date it is issued. However, Customs may, upon request or on its own initiative, delay the effective date of such a modification or revocation for a period of up to 90 calendar days from the date of issuance. Such a delay may be granted at the request of the party to whom the ruling letter was issued, provided such party can demonstrate to the satisfaction of Customs that it relied on the earlier advance ruling in good faith and to its detriment. The evidence of such reliance must cover the period from the date of the letter modifying or revoking the advance ruling back to the date of that advance ruling and must list all transactions claimed to be covered by the modified or revoked advance ruling by entry number (or other Customs assigned number), the quantity and value of merchandise covered by each such transaction (where applicable), the ports of entry, and the dates of final action by Customs. Such evidence must also include contracts, purchase orders, or other materials tending to establish that future transactions were arranged based on the earlier advance ruling. The request for delay must specifically identify the prior ruling on which reliance is claimed. All persons requesting a delay will be issued a separate letter setting forth the period, if any, of the delay to be provided. In appropriate circumstances, Customs may decide to make its decision, with respect to a delay, applicable to all persons, irrespective of demonstrated reliance; in this event, a notice announcing the delay will be published in the CUSTOMS BULLETIN and individual ruling letters will not be issued.

### § 181.101 Publication of decisions.

Within 90 days after issuing any precedential decision relating to any NAFTA transaction, Customs shall publish the decision in the CUSTOMS BULLETIN or otherwise make it available for public inspection. Disclosure is governed by 31 CFR part 1, part 103 of this chapter, and § 181.99(a)(3) of this part.

### § 181.102 Administrative and judicial review of advance rulings.

(a) *Administrative review*—(1) *Submission of request for review.* Any person who received an advance ruling issued under this subpart, or an authorized agent of such person, may request administrative review, at Customs Headquarters, of that advance ruling, including any modification or revocation thereof, by letter addressed to the Assistant Commissioner, Office of Regulations and Rulings, U.S. Customs Service, Washington, DC 20229. Such request shall be filed within 30 calendar days after issuance of the advance ruling and shall set forth the following information:

(i) The name and address of the person seeking review and the name and address of his authorized agent if the request is signed by such an agent;

(ii) The Customs identification number or employer identification number in the case of a U.S. importer and authorized agent thereof, the employer number or importer/exporter number assigned by Revenue Canada in the case of a Canadian exporter or producer and authorized agent thereof, and the federal taxpayer registry number (RFC) in the case of a Mexican exporter or producer and authorized agent thereof;

(iii) The number and date of the advance ruling at issue;

(iv) The numbers and dates of any involved entries for consumption or warehouse withdrawals for consumption;

(v) The nature of, and justification for, the objection to the advance ruling set forth distinctly and specifically with respect to each aspect of the advance ruling for which administrative review is sought; and

(vi) Whether an oral discussion of the issues, as provided in § 181.95 of this part, is desired.

(2) *Issuance of review decision.* Customs will normally issue a written decision within 120 days of receipt of the

request for administrative review submitted under this section. However, Customs will, upon a reasonable showing of business necessity, issue a written decision within 60 days of receipt of the request for administrative review. For purposes of this paragraph, the date of receipt of the request for administrative review shall be the date on which all information necessary to process the request, including any information provided after submission of the request in connection with a conference, is filed with Customs.

(b) *Judicial review*. Any person whose claims with regard to a request for administrative review of an advance ruling have been denied in whole or in part under this section may seek judicial review by filing a civil action in the United States Court of International Trade in accordance with 28 U.S.C. 2632 within 180 days after the date of mailing of notice of the denial.

## Subpart J—Review and Appeal of Adverse Marking Decisions

### § 181.111 Applicability.

This subpart sets forth the circumstances and procedures under which exporters and producers of merchandise imported into the United States may obtain information about, and administrative and judicial review of, an adverse marking decision, as provided for in Article 510 of the NAFTA. This subpart does not apply to the review of advance rulings issued under Article 509 of the NAFTA (see subpart I of this part) or to the review of determinations that a good is not an originating good under General Note 12, HTSUS, and the appendix to this part (see part 174 of this chapter).

### § 181.112 Definitions.

For purposes of this subpart, the following words and phrases have the meanings indicated:

(a) *Adverse marking decision* means a decision made by the port director which an exporter or producer of merchandise believes to be contrary to the provisions of Annex 311 of the NAFTA and which may be protested by the importer pursuant to §514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter. Notification of an adverse marking decision is given to an importer in the form of a Customs Form 4647 (Notice to Mark and/or Notice to Redeliver) and/or by assessing marking duties on improperly marked merchandise. Examples of adverse marking decisions include determinations by the port director: that an imported article is not a good of a NAFTA country, as determined under the Marking Rules, and that it therefore cannot be marked ''Canada'' or ''Mexico''; that a good of a NAFTA country is not marked in a manner which is sufficiently permanent; and that a good of a NAFTA country does not qualify for an exception from marking specified in Annex 311 of the NAFTA. Adverse marking decisions do not include: decisions issued in response to requests for advance rulings under subpart I of this part or for internal advice under part 177 of this chapter; decisions on protests under part 174 of this chapter; and determinations that an article does not qualify as an originating good under General Note 12, HTSUS, and the appendix to this part.

(b) An *exporter* of merchandise is an exporter located in Canada or Mexico who must maintain records in that country relating to the transaction to which the adverse marking decision relates. The records must be sufficient to enable Customs to evaluate the merits of the exporter's claim(s) regarding the adverse marking decision.

(c) A *producer* of merchandise is a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles such merchandise in Canada or Mexico.

### § 181.113 Request for basis of adverse marking decision.

(a) *Request; form and filing*. The exporter or producer of the merchandise which is the subject of an adverse marking decision may request a statement concerning the basis for the decision by filing a typewritten request, in English, with the port director who issued the decision. The request should be on letterhead paper in the form of a letter and clearly designated as a ''Request for Basis of Adverse Marking Decision'' and shall be signed by the exporter, producer or his authorized

agent. The provisions of § 174.3 of this chapter shall apply for purposes of signature by a person other than the principal.

(b) *Content.* The Request for Basis of Adverse Marking Decision letter shall set forth the following information:

(1) The name and address of the exporter or producer of the merchandise and the name and address of any authorized agent filing the request on behalf of such principal;

(2) A statement that the inquirer is the exporter or producer of the merchandise that was the subject of the adverse marking decision;

(3) In the case of a Canadian exporter or producer, the employer number assigned by Revenue Canada, Customs and Excise; in the case of a Mexican exporter or producer, the Federal taxpayer registry number (RFC); and the Customs identification number of an authorized agent filing the request on behalf of such principal;

(4) The number and date of each entry involved in the request;

(5) A specific description of the merchandise which is the subject of the adverse marking decision; and

(6) A complete statement of all relevant facts relating to the adverse marking decision and the transaction to which it relates, including the date of the decision.

**§ 181.114 Customs response to request.**

(a) *Time for response.* The port director will issue a written response to the requestor within 30 days of receipt of a request containing the information specified in § 181.113 of this part. If the request is incomplete, such that the transaction in question cannot be identified, the port director will notify the requestor in writing within 30 days of receipt of the request regarding what information is needed.

(b) *Content.* The response by the port director shall include the following:

(1) A statement concerning the basis for the adverse marking decision;

(2) A copy of the relevant Customs Form 4647 (Notice to Mark and/or Notice to Redeliver), if one was issued to the importer and is available. If the basis for the adverse marking decision is indicated on the Customs Form 4647, no statement under paragraph (b)(1) of this section is required;

(3) A statement as to whether the importer has filed a protest regarding the adverse marking decision and, if so, where the protest was filed and the protest number; and

(4) A statement concerning the exporter's or producer's right to either intervene in the importer's protest as provided in § 181.115 of this part or file a petition as provided in § 181.116 of this part.

**§ 181.115 Intervention in importer's protest.**

(a) *Conditional right to intervene.* An exporter or producer of merchandise does not have an independent right to protest an adverse marking decision. However, if an importer protests the adverse marking decision in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter, the exporter or producer of the merchandise which is the subject of the adverse marking decision may intervene in the importer's protest. Such intervention shall not affect any time limits applicable to the protest or delay action on the protest.

(b) *Form and filing of intervention.* In order to intervene in an importer's protest, as provided for in paragraph (a) of this section, the exporter or producer of the merchandise shall file, in triplicate, a typewritten statement of intervention, in English, with the port director with whom the protest was filed. The statement should be on letterhead paper in the form of a letter and should be clearly designated ''NAFTA Exporter or Producer Intervention in Protest''. The statement shall be signed by the exporter, producer or his authorized agent. The provisions of § 174.3 of this chapter shall apply for purposes of signature by a person other than the principal.

(c) *Content.* The NAFTA Exporter or Producer Intervention in Protest letter shall include the following:

(1) The name and address of the exporter or producer of the merchandise and the name and address of any authorized agent filing the request on behalf of such principal;

(2) In the case of a Canadian exporter or producer, the employer number assigned by Revenue Canada, Customs and Excise; in the case of a Mexican exporter or producer, the Federal taxpayer registry number (RFC); and the Customs identification number of an authorized agent filing the request on behalf of such principal;

(3) The number and date of each entry involved in the adverse marking decision;

(4) A specific description of the merchandise which is the subject of the adverse marking decision;

(5) A complete statement of all relevant facts relating to the adverse marking decision and the transaction to which it relates, including the date of the decision;

(6) A detailed statement of position regarding why the exporter or producer believes the adverse marking decision is contrary to the provision of Annex 311 of the NAFTA;

(7) A statement as to whether a Request for Basis of Adverse Marking Decision was filed under § 181.113 of this part, and if so, the date of such Request and of any Customs response thereto issued under § 181.114 of this part. Copies of the Request and the Customs response shall be submitted, if available;

(8) The number assigned to the importer's protest;

(9) A statement that the intervenor is the exporter or producer of the merchandise that was the subject of the adverse marking decision being protested by the importer and, if the intervenor is the exporter, a statement that it maintains sufficient records to enable Customs to evaluate the merits of its claim(s) regarding the adverse marking decision; and

(10) If the intervenor prefers that the principle of confidentiality set forth in § 181.121 of this part be applied to the information submitted under this section, a statement to that effect. If no such statement is included in the letter, the intervention and information submitted in connection therewith shall be subject to the same treatment as that provided in the case of requests by all interested parties for consolidation of protests as set forth in § 174.15(b)(1) of this chapter.

(d) *Effect of Intervention*. The rights of the intervenor under this section are subordinate to the importer's protest rights. Accordingly, intervention by an exporter or producer of merchandise will not affect the procedures under part 174 of this chapter, and the importer's elections concerning accelerated disposition and application for further review of the protest will govern how the protest is handled and how the intervention is considered. If the importer withdraws or settles the protest, the exporter or producer has no right to continue the intervention action.

(e) *Action by port director*. If final administrative action has already been taken with respect to the importer's protest at the time the intervention is filed, the port director shall so advise the exporter or producer and, if the importer has filed a civil action in the Court of International Trade as a result of a denial of the protest, the port director shall advise the exporter or producer of that filing and of the exporter's or producer's right to seek to intervene in such judicial proceeding. If final administrative action has not been taken on the protest, the port director shall forward the intervention letter to the Customs office which has the importer's protest under review for consideration in connection with the protest.

(f) *Final disposition*. The intervenor shall be notified in writing of the final disposition of the protest. If the protest is denied in whole or in part, the intervenor shall be furnished a copy of the notice given to the importer under § 174.29.

### § 181.116 Petition regarding adverse marking decision.

(a) *Right to petition*. If the importer does not protest an adverse marking decision in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter, the exporter or producer of the merchandise which was the subject of the adverse marking decision may file a petition with Customs requesting reconsideration of the decision. The petition may not be filed until after the importer's time to protest the adverse marking decision has expired (see

§ 174.12(e) of this chapter for the time limits for filing protests). If the importer filed a protest upon which final administrative action has been taken, the exporter or producer may file a petition under this section, provided that the exporter or producer was not given notice of the pending protest pursuant to § 181.114 of this part. If the importer filed a protest on which final administrative action has not been taken and notice of the pending protest was not provided to the exporter or producer under § 181.114 of this part, a petition filed under this section shall be treated by the port director as an intervention under § 181.115 of this part.

(b) *Form and filing of petition*. A petition under this section shall be typewritten, in English, and shall be filed, in triplicate, with the port director who issued the adverse marking decision. The petition under this subpart should be on letterhead paper in the form of a letter, clearly designated as a ''Petition for NAFTA Review of Adverse Marking Decision'' and shall be signed by the exporter, producer or his authorized agent. The provisions of § 174.3 of this chapter shall apply for purposes of signature by a person other than the principal.

(c) *Content*. The Petition for NAFTA Review of Adverse Marking Decision letter shall contain all the information specified § 181.115 of this part, except for the protest number. It shall also include a statement that petitioner was not notified by Customs in writing of a pending protest.

(d) *Review of petition*—(1) *Review by port director*. Within 60 days of the date of receipt of the petition, the port director shall determine if the petition is to be granted or denied, in whole or in part. If, after reviewing the petition, the port director agrees with all of the petitioner's claims and determines that the initial adverse marking decision was not correct, a written notice granting the petition shall be issued to the petitioner. A description of the merchandise, a brief summary of the issue(s) and the port director's findings shall be forwarded to the Director, Tariff Classification Appeals Division, Customs Headquarters, for publication in the Customs Bulletin. If, after reviewing the petition, the port director determines that the initial adverse marking decision was correct in its entirety, a written notice shall be issued to the petitioner advising that the matter has been forwarded to the Director, Tariff Classification Appeals Division, Customs Headquarters, for further review and decision. All relevant background information, including available samples, a description of the adverse marking decision and the reasons for the decision, and the port director's recommendation shall be furnished to Headquarters.

(2) *Review by Headquarters*. Within 120 days of the date the petition and background information are received at Customs Headquarters, the Director, Tariff Classification Appeals Division, shall determine if the petition is to be granted or denied, in whole or in part, and the petitioner shall be notified in writing of the determination. If the petition is granted in whole or in part, a description of the merchandise, a brief summary of the issue(s) and the director's findings will be published in the Customs Bulletin.

(3) *Effect of granting the petition*. The decision on the petition, if contrary to the initial adverse marking decision, will be implemented with respect to merchandise entered or withdrawn from warehouse for consumption after 30 days from the date on which the notice of determination is published in the Customs Bulletin.

(e) *Pending litigation*. No decision on a petition will be issued under this section with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Litigation before any other court will not preclude the issuance of a decision on a petition under this section, provided neither Customs nor any of its officers or agents is named as a party to the action.

(f) *Judicial review of denial of petition*. Any person whose petition under this section has been denied, in whole or in part, may contest the denial by filing a civil action in the United States Court of International Trade within 30 days after the date of mailing of the notice of denial.

## Subpart K—Confidentiality of Business Information

### § 181.121 Maintenance of confidentiality.

The port director or other Customs officer who has possession of confidential business information collected pursuant to this part shall, in accordance with part 103 of this chapter, maintain its confidentiality and protect it from any disclosure that could prejudice the competitive position of the persons providing the information.

### § 181.122 Disclosure to government authorities.

Nothing in § 181.121 of this part shall preclude the disclosure of confidential business information to governmental authorities in the United States responsible for the administration and enforcement of determinations of origin and of customs and revenue matters.

## Subpart L—Rules of Origin

### § 181.131 Rules of origin.

(a) The regulations effective October 1, 1995, implementing the rules of origin provisions of General Note 12, HTSUS, and Chapter Four of the NAFTA are contained in the appendix to this part.

(b) If the fiscal year of a producer of goods begins before October 1, 1995, the producer may choose to have the regulations implementing the rules of origin provisions of General Note 12, HTSUS, and Chapter Four of the NAFTA that were in effect prior to October 1, 1995 (see 19 CFR chapter I, 1994 edition, appendix to part 181) continue to apply in regard to all goods produced by that producer for the remainder of that fiscal year.

(c) If a motor vehicle producer's fiscal year that has been chosen by a producer of goods pursuant to section 12(5) of the regulations referred to in paragraph (b) of this section begins before October 1, 1995, the producer of the goods may choose to have those regulations continue to apply in regard to the goods produced by that producer for the remainder of that fiscal year, provided that:

(1) The producer of the goods has made an election under section 12(1) of those regulations or has provided a statement referred to in section 9(6) or 10(8) of those regulations that states the value of non-originating materials determined in accordance with section 12(3) of those regulations; and

(2) The period chosen under section 12(5) of those regulations is the fiscal year of the motor vehicle producer to whom those goods are sold.

### § 181.132 Disassembly.

(a) *Treated as production.* For purposes of implementing the rules of origin provisions of General Note 12, HTSUS, and Chapter Four of the NAFTA, except as provided in paragraph (b) of this section, disassembly is considered to be production, and a component recovered from a good disassembled in the territory of a Party will be considered to be originating as the result of such disassembly provided that the recovered component satisfies all applicable requirements of Annex 401 and this part.

(b) *Exception; new goods.* Disassembly, as provided in paragraph (a) of this section, will not be considered production in the case of components that are recovered from new goods. For purposes of this paragraph, a ''new good'' means a good which is in the same condition as it was when it was manufactured and which meets the commercial standards for new goods in the relevant industry.

[70 FR 37674, June 30, 2005]

APPENDIX TO PART 181—RULES OF ORIGIN REGULATIONS

SECTION 1. CITATION

This appendix may be cited as the *NAFTA Rules of Origin Regulations*.

PART I

SECTION 2. DEFINITIONS AND INTERPRETATION

DEFINITIONS

(1) For purposes of this appendix,

''accessories, spare parts or tools that are delivered with a good and form part of the good's standard accessories, spare parts or tools'' means goods that are delivered with a good, whether or not they are physically affixed to that good, and that are used for the transport, protection, maintenance or cleaning of the good, for instruction in the assembly, repair or use of that good, or as replacements for consumable or interchangeable parts of that good;

''adjusted to an F.O.B. basis'' means, with respect to a good, adjusted by

(a) deducting

(i) the costs of transporting the good after it is shipped from the point of direct shipment,

(ii) the costs of unloading, loading, handling and insurance that are associated with that transportation, and

(iii) the cost of packing materials and containers,

where those costs are included in the transaction value of the good, and

(b) adding

(i) the costs of transporting the good from the place of production to the point of direct shipment,

(ii) the costs of loading, unloading, handling and insurance that are associated with that transportation, and

(iii) the costs of loading the good for shipment at the point of direct shipment,

where those costs are not included in the transaction value of the good;

''Agreement'' means the *North American Free Trade Agreement;*

''applicable change in tariff classification'' means, with respect to a non-originating material used in the production of a good, a change in tariff classification specified in a rule set out in Schedule I for the tariff provision under which the good is classified;

''automotive component'' means a good that is referred to in column I of an item of Schedule V;

''automotive component assembly'' means a good, other than a heavy-duty vehicle, that incorporates an automotive component;

''costs incurred in packing'' means, with respect to a good or material, the value of the packing materials and containers in which the good or material is packed for shipment and the labor costs incurred in packing it for shipment, but does not include the costs of preparing and packaging it for retail sale;

''customs value'' means

(a) in the case of Canada, value for duty as defined in the *Customs Act,* except that for purposes of determining that value the reference in section 55 of that Act to ''in accordance with the regulations made under the *Currency Act*'' shall be read as a reference to ''in accordance with subsection 3(1) of these Regulations'',

(b) in the case of Mexico, the *valor en aduana* as determined in accordance with the *Ley Aduanera,* converted, in the event such value is not expressed in Mexican currency, to Mexican currency at the rate of exchange determined in accordance with subsection 3(1) of these Regulations, and

(c) in the case of the United States, the value of imported merchandise as determined by the Customs Service in accordance with section 402 of the *Tariff Act of 1930,* as amended, converted, in the event such value is not expressed in United States currency, to United States currency at the rate of exchange determined in accordance with subsection 3(1) of these Regulations.

''days'' means calendar days, and includes weekends and holidays;
''direct labor costs'' means costs, including fringe benefits, that are associated with employees who are directly involved in the production of a good;
''direct material costs'' means the value of materials, other than indirect materials and packing materials and containers, that are used in the production of a good;
''direct overhead'' means costs, other than direct material costs and direct labor costs, that are directly associated with the production of a good;
''enterprise'' means any entity constituted or organized under applicable laws, whether or not for profit and whether privately owned or governmentally owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;
''excluded costs'' means sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs;
''fungible goods'' means goods that are interchangeable for commercial purposes and the properties of which are essentially identical;
''fungible materials'' means materials that are interchangeable for commercial purposes and the properties of which are essentially identical;
''Harmonized System'' means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes and Chapter Notes, as set out in

(a) in the case of Canada, the *Customs Tariff*,
(b) in the case of Mexico, the *Tarifa de la Ley del Impuesto General de Importación*, and
(c) in the case of the United States, the *Harmonized Tariff Schedule of the United States;*

''heavy-duty vehicle'' means a motor vehicle provided for in any of heading 8701, tariff items 8702.10.30 and 8702.90.30 (vehicles for the transport of 16 or more persons), subheadings 8704.10, 8704.22, 8704.23, 8704.32 and 8704.90 and heading 8705 and 8706;
''identical goods'' means, with respect to a good, goods that

(a) are the same in all respects as that good, including physical characteristics, quality and reputation but excluding minor differences in appearance,
(b) were produced in the same country as that good, and
(c) were produced
    (i) by the producer of that good, or
    (ii) by another producer, where no goods that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that good;

''identical materials'' means, with respect to a material, materials that

(a) are the same as that material in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance,
(b) were produced in the same country as that material, and
(c) were produced
    (i) by the producer of that material, or
    (ii) by another producer, where no materials that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that material;

''incorporated'' means, with respect to the production of a good, a material that is physically incorporated into that good, and includes a material that is physically incorporated into another material before that material or any subsequently produced material is used in the production of the good;
''indirect material'' means a good used in the production, testing or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, and includes

(a) fuel and energy,
(b) tools, dies and molds,

(c) spare parts and materials used in the maintenance of equipment and buildings,

(d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings,

(e) gloves, glasses, footwear, clothing, safety equipment and supplies,

(f) equipment, devices and supplies used for testing or inspecting the other goods,

(g) catalysts and solvents, and

(h) any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be part of that production;

''interest costs'' means all costs paid or payable by a person to whom credit is, or is to be advanced, for the advancement of credit or the obligation to advance credit;

''intermediate material'' means a self-produced material that is used in the production of a good and is designated as an intermediate material under section 7(4) ;

''light-duty automotive good'' means a light-duty vehicle or a good of a tariff provision listed in Schedule IV that is subject to a regional value-content requirement and is for use as original equipment in the production of a light-duty vehicle;

''light-duty vehicle'' means a motor vehicle provided for in any of tariff items 8702.10.60 and 8702.90.60 (vehicles for the transport of 15 or fewer persons) and subheadings 8703.21 through 8703.90, 8704.21 and 8704.31;

''listed material'' means a good that is referred to in column II of an item of Schedule V;

''location of the producer'' means,

(a) where the warehouse or other receiving station at which a producer receives materials for use by the producer in the production of a good is located within a radius of 75 km (46.60 miles) from the place at which the producer produces the good, the location of that warehouse or other receiving station, and

(b) in any other case, the place at which the producer produces the good in which a material is to be used;

''material'' means a good that is used in the production of another good, and includes a part or ingredient;

''motor vehicle assembler'' means a producer of motor vehicles and any related person with whom, or joint venture in which, the producer participates with respect to the production of motor vehicles;

''month'' means a calendar month;

''NAFTA country'' means a Party to the Agreement;

''national'' means a natural person who is a citizen or permanent resident of a NAFTA country, and includes

(a) with respect to Mexico, a national or citizen according to Articles 30 and 34, respectively, of the Mexican Constitution, and

(b) with respect to the United States, a ''national of the United States'' as defined in the *Immigration and Nationality Act* on the date of entry into force of the Agreement;

''net cost method'' means the method of calculating the regional value content of a good that is set out in section 6(3);

''non-allowable interest costs'' means interest costs incurred by a producer on the producer's debt obligations that are more than 700 basis points above the yield on debt obligations of comparable maturities issued by the federal government of the country in which the producer is located;

''non-originating good'' means a good that does not qualify as originating under this appendix;

''non-originating material'' means a material that does not qualify as originating under this appendix;

''original equipment'' means a material that is incorporated into a motor vehicle before the first transfer of title or consignment of the motor vehicle to a person who is not a motor vehicle assembler, and that is

(a) a good of a tariff provision listed in Schedule IV, or

(b) an automotive component assembly, automotive component, sub-component or listed material;

''originating good'' means a good that qualifies as originating under this appendix;

''originating material'' means a material that qualifies as originating under this appendix;

''other costs,'' with respect to total cost, means all costs that are not product costs or period costs;

''packaging materials and containers'' means materials and containers in which a good is packaged for retail sale;

''packing materials and containers'' means materials and containers that are used to protect a good during transportation, but does not include packaging materials and containers;

''payments'' means, with respect to royalties and sales promotion, marketing and after-sales service costs, the costs expensed on the books of a producer, whether or not an actual payment is made;

''period costs'' means costs, other than product costs, that are expensed in the period in which they are incurred;

''person'' means a natural person or an enterprise;

''person of a NAFTA country'' means a national, or an enterprise constituted or organized under the laws of a NAFTA country;

''point of direct shipment'' means the location from which a producer of a good normally ships that good to the buyer of the good;

''producer'' means a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles a good;

''product costs'' means costs that are associated with the production of a good, and includes the value of materials, direct labor costs and direct overhead;

''production'' means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing or assembling a good;

''related person'' means a person related to another person on the basis that

(a) they are officers or directors of one another's businesses,

(b) they are legally recognized partners in business,

(c) they are employer and employee,

(d) any person directly or indirectly owns, controls or holds 25 percent or more of the outstanding voting stock or shares of each of them,

(e) one of them directly or indirectly controls the other,

(f) both of them are directly or indirectly controlled by a third person, or

(g) they are members of the same family (members of the same family are natural or adopted children, brothers, sisters, parents, grandparents, or spouses);

''reusable scrap or by-product'' means waste and spoilage that is generated by the producer of a good and that is used in the production of a good or sold by that producer;

''right to use,'' for purposes of the definition of royalties, includes the right to sell or distribute a good;

''royalties'' means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as

(a) personnel training, without regard to where performed, and

(b) if performed in the territory of one or more of the NAFTA countries, engineering, tooling, die-setting, software design and similar computer services, or other services;

''sales promotion, marketing and after-sales service costs'' means the following costs related to sales promotion, marketing and after-sales service:

(a) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(b) sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(c) salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing and after-sales service personnel;

(d) recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(e) product liability insurance;

(f) office supplies for sales promotion, marketing and after-sales service of goods, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(g) telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(h) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centers;

(i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and

(j) payments by the producer to other persons for warranty repairs;

''self-produced material'' means a material that is produced by the producer of a good and used in the production of that good;

''shipping and packing costs'' means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

''similar goods'' means, with respect to a good, goods that

(a) although not alike in all respects to that good, have similar characteristics and component materials that enable the goods to perform the same functions and to be commercially interchangeable with that good,

(b) were produced in the same country as that good, and

(c) were produced

(i) by the producer of that good, or

(ii) by another producer, where no goods that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that good;

''similar materials'' means, with respect to a material, materials that

(a) although not alike in all respects to that material, have similar characteristics and component materials that enable the materials to perform the same functions and to be commercially interchangeable with that material,

(b) were produced in the same country as that material, and (c) were produced

(i) by the producer of that material, or

(ii) by another producer, where no materials that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that material;

''subject to a regional value-content requirement'' means, with respect to a good, that the provisions of this appendix that are applied to determine whether the good is an originating good include a regional value-content requirement;

''sub-component'' means a good that comprises a listed material and one or more other materials or listed materials;

''tariff provision'' means a heading, subheading or tariff item;

''territory'' means, with respect to

(a) Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic law, Canada may exercise rights with respect to the seabed and subsoil and their natural resources,

(b) Mexico,

(i) the states of the Federation and the Federal District,

(ii) the islands, including the reefs and keys, in adjacent seas,

(iii) the islands of Guadalupe and Revillagigedo situated in the Pacific Ocean,

(iv) the continental shelf and the submarine shelf of such islands, keys and reefs,

(v) the waters of the territorial seas, in accordance with international law, and its interior maritime waters,

(vi) the space located above the national territory, in accordance with international law, and

(vii) any areas beyond the territorial seas of Mexico within which, in accordance with international law, including the United Nations Convention on the Law of the Sea, and its domestic law, Mexico may exercise rights with respect to the seabed and subsoil and their natural resources, and

(c) the United States,

(i) the customs territory of the United States, which includes the 50 states, the District of Columbia and Puerto Rico,

(ii) the foreign trade zones located in the United States and Puerto Rico, and

(iii) any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

''total cost'' means the total of all product costs, period costs and other costs incurred in the territory of one or more of the NAFTA countries;

''transaction value method'' means the method of calculating the regional value content of a good that is set out in subsection 6(2);

''used'' means used or consumed in the production of a good;

''verification of origin'' means a verification of origin of goods under

(a) in the case of Canada, paragraph 42.1(1)(a) or subsection 42.2(2) of the *Customs Act*,

(b) in the case of Mexico, Article 506 of the Agreement, and

(c) in the case of the United States, section 509 of the *Tariff Act* of 1930, as amended.

INTERPRETATION: ''SIMILAR''

(2) For purposes of the definitions of ''similar goods'' and ''similar materials,'' the quality of the goods or materials, their reputation and the existence of a trademark are among the factors to be considered for purposes of determining whether goods or materials are similar.

INTERPRETATION: TERMS USED TO REFER TO HTSUS; USE OF TERM ''BOOKS''

(3) For purposes of this appendix,

(a) ''chapter,'' unless otherwise indicated, refers to a chapter of the Harmonized System;

(b) ''heading'' refers to any four-digit number, or the first four digits of any number, set out in the column ''Heading/Subheading'' in the Harmonized System;

(c) ''subheading'' refers to any six-digit number, or the first six digits of any number, set out in the column ''Heading/Subheading'' in the Harmonized System;

(d) ''tariff item'' refers to any eight-digit number set out in the column ''Heading/Subheading'' in the Harmonized System;

(e) any reference to a tariff item in Chapter Four of the Agreement or this appendix that includes letters shall be reflected as the appropriate eight-digit number in the Harmonized System as implemented in each NAFTA country; and

(f) ''books'' refers to,

(i) with respect to the books of a person who is located in a NAFTA country,

(A) books and other documents that support the recording of revenues, expenses, costs, assets and liabilities and that are maintained in accordance with Generally Accepted Accounting Principles set out in the publications listed in Schedule XII with respect to the territory of the NAFTA country in which the person is located, and

(B) financial statements, including note disclosures, that are prepared in accordance with Generally Accepted Accounting Principles set out in the publications listed in Schedule XII with respect to the territory of the NAFTA country in which the person is located, and

(ii) with respect to the books of a person who is located outside the territories of the NAFTA countries,

(A) books and other documents that support the recording of revenues, expenses, costs, assets and liabilities and that are maintained in accordance with generally accepted accounting principles applied in that location or, where there are no such principles, in accordance with the International Accounting Standards, and

(B) financial statements, including note disclosures, that are prepared in accordance with generally accepted accounting principles applied in that location or, where there are no such principles, in accordance with the International Accounting Standards.

USE OF EXAMPLES TO ILLUSTRATE THE APPLICATION OF A PROVISION

(4) Where an example, referred to as an ''Example,'' is set out in this appendix, the example is for purposes of illustrating the application of a provision, and where there is any inconsistency between the example and the provision, the provision prevails to the extent of the inconsistency.

REFERENCES TO DOMESTIC LAWS

(5) Except as otherwise provided, references in this appendix to domestic laws of the NAFTA countries apply to those laws as they may be amended or superseded.

CALCULATION OF TOTAL COST

(6) For purposes of sections 5(9), 6(11) and 7(6) and sections 10(1)(a) (i) and (ii),

(a) total cost consists of all product costs, period costs and other costs that are recorded, except as otherwise provided in paragraphs (b) (i) and (ii), on the books of the producer without regard to the location of the persons to whom payments with respect to those costs are made;

(b) in calculating total cost,

(i) the value of materials, other than intermediate materials, indirect materials and packing materials and containers, shall be the value determined in accordance with section 7(1),

(ii) the value of intermediate materials used in the production of the good or material with respect to which total cost is being calculated shall be calculated in accordance with section 7(6),

(iii) the value of indirect materials and the value of packing materials and containers shall be the costs that are recorded on the books of the producer for those materials, and

(iv) product costs, period costs and other costs, other than costs referred to in subparagraphs (i) and (ii), shall be the costs thereof that are recorded on the books of the producer for those costs;

(c) total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(d) gains related to currency conversion that are related to the production of the good shall be deducted from total cost, and losses related to currency conversion that are related to the production of the good shall be included in total cost;

(e) the value of materials with respect to which production is accumulated under section 14 shall be determined in accordance with that section; and

(f) total cost includes the impact of inflation as recorded on the books of the producer, if recorded in accordance with the Generally Accepted Accounting Principles of the producer's country.

(7) For purposes of calculating total cost under sections 5(9) and 7(6) and sections 10(1)(a) (i) and (ii),

(a) where the regional value content of the good is calculated on the basis of the net cost method and the producer has chosen under section 6(15), 11 (1), (3) or (6), 12(5) or 13(4) to calculate the regional value content over a period, the total cost shall be calculated over that period; and

(b) in any other case, the producer may choose that the total cost be calculated over

(i) a month,

(ii) any consecutive three month or six month period that falls within and is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period, or

(iii) the producer's fiscal year.

(8) A choice made under subsection (7) may not be rescinded or modified with respect to the good or material, or the period, with respect to which the choice is made.

(9) Where a producer chooses a one, three or six month period under subsection (7) with respect to a good or material, the producer shall be considered to have chosen under that subsection a period or periods of the same duration for the remainder of the producer's fiscal year with respect to that good or material.

(10) With respect to a good exported to a NAFTA country, a choice to average is considered to have been made

(a) in the case of a choice referred to in section 11 (1), (3) or (6) or 13(4), if the choice is received by the customs administration of that NAFTA country; and

(b) in the case of a choice referred to in section 2(7), 6(15) or 12(1), if the customs administration of that NAFTA country is informed in writing during the course of a verification of the origin of the good that the choice has been made.

SECTION 3. CURRENCY CONVERSION

(1) Where the value of a good or a material is expressed in a currency other than the currency of the country in which the producer of the good is located, that value shall be converted to the currency of the country in which that producer is located on the basis of

(a) in the case of the sale of that good or the purchase of that material, the rate of exchange used by the producer for purposes of recording that sale or purchase, as the case may be; and

(b) in the case of a material that is acquired by the producer other than by a purchase,

(i) where the producer used a rate of exchange for purposes of recording another transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by the *Banco de Mexico* in the *Diario Oficial de la Federacion*, under the title ''*TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana*'', for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer.

(2) Where a producer of a good has a statement referred to in section 9, 10 or 14 that includes information in a currency other than the currency of the country in which that producer is located, the currency shall be converted to the currency of the country in which the producer is located on the basis of

(a) if the material was purchased by the producer in the same currency as the currency in which the information in the statement is provided, the rate of exchange used by the producer for purposes of recording the purchase;

(b) if the material was purchased by the producer in a currency other than the currency in which the information in the statement is provided,

(i) where the producer used a rate of exchange for purposes of recording a transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by the *Banco de Mexico* in the *Diario Oficial de la Federacion*, under the title ''*TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana*'', for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer; and

(c) if the material was acquired by the producer other than by a purchase,

(i) where the producer used a rate of exchange for purposes of recording a transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by the *Banco de Mexico* in the *Diario Oficial de la Federacion*, under the title ''*TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana*'', for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer.

PART II

SECTION 4. ORIGINATING GOODS

IDENTIFICATION OF GOODS WHICH ARE ''WHOLLY OBTAINED OR PRODUCED''

(1) A good originates in the territory of a NAFTA country where the good is

(a) a mineral good extracted in the territory of one or more of the NAFTA countries;

(b) a vegetable or other good harvested in the territory of one or more of the NAFTA countries;

(c) a live animal born and raised in the territory of one or more of the NAFTA countries;

(d) a good obtained from hunting, trapping or fishing in the territory of one or more of the NAFTA countries;

(e) fish, shellfish or other marine life taken from the sea by a vessel registered or recorded with a NAFTA country and flying its flag;

(f) a good produced on board a factory ship from a good referred to in paragraph (e), where the factory ship is registered or recorded with the same NAFTA country as the vessel that took that good and flies that country's flag;

(g) a good taken by a NAFTA country or a person of a NAFTA country from or beneath the seabed outside the territorial waters of that country, where a NAFTA country has the right to exploit that seabed;

(h) a good taken from outer space, where the good is obtained by a NAFTA country or a person of a NAFTA country and is not processed outside the territories of the NAFTA countries;

(i) waste and scrap derived from

(i) production in the territory of one or more of the NAFTA countries, or

(ii) used goods collected in the territory of one or more of the NAFTA countries, where those goods are fit only for the recovery of raw materials; or

(j) a good produced in the territory of one or more of the NAFTA countries exclusively from a good referred to in any of paragraphs (a) through (i), or from the derivatives of such a good, at any stage of production.

GOODS MADE FROM NON-ORIGINATING MATERIALS: CHANGE IN TARIFF CLASSIFICATION REQUIREMENT; REGIONAL VALUE-CONTENT REQUIREMENT

(2) A good originates in the territory of a NAFTA country where

(a) each of the non-originating materials used in the production of the good undergoes the applicable change in tariff classification as a result of production that occurs entirely in the territory of one or more of the NAFTA countries, where the applicable rule in Schedule I for the tariff provision under which the good is classified specifies only a change in tariff classification, and the good satisfies all other applicable requirements of this appendix;

(b) each of the non-originating materials used in the production of the good undergoes the applicable change in tariff classification as a result of production that occurs entirely in the territory of one or more of the NAFTA countries and the good satisfies the applicable regional value-content requirement, where the applicable rule in Schedule I for the tariff provision under which the good is classified specifies both a change in tariff classification and a regional value-content requirement, and the good satisfies all other applicable requirements of this appendix; or

(c) the good satisfies the applicable regional value-content requirement, where the applicable rule in Schedule I for the tariff provision under which the good is classified specifies only a regional value-content requirement, and the good satisfies all other applicable requirements of this appendix.

GOODS MADE EXCLUSIVELY FROM ORIGINATING MATERIALS

(3) A good originates in the territory of a NAFTA country where the good is produced entirely in the territory of one or more of the NAFTA countries exclusively from originating materials.

EXCEPTIONS TO THE CHANGE IN TARIFF CLASSIFICATION REQUIREMENT

(4) A good originates in the territory of a NAFTA country where

(a) except in the case of a good provided for in any of Chapters 61 through 63,

(i) the good is produced entirely in the territory of one or more of the NAFTA countries,

(ii) one or more of the non-originating materials used in the production of the good do not undergo an applicable change in tariff classification because the materials were imported together, whether or not with originating materials, into the territory of a NAFTA country as an unassembled or disassembled good, and were classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System,

(iii) the regional value content of the good, calculated in accordance with section 6, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and

(iv) the good satisfies all other applicable requirements of this appendix, including any applicable, higher regional value-content requirement provided for in section 13 or Schedule I; or

(b) except in the case of a good provided for in any of Chapters 61 through 63,

(i) the good is produced entirely in the territory of one or more of the NAFTA countries,

(ii) one or more of the non-originating materials used in the production of the good do not undergo an applicable change in tariff classification because

(A) those materials are provided for under the Harmonized System as parts of the good, and

(B) the heading for the good provides for both the good and its parts and is not further subdivided into subheadings, or the subheading for the good provides for both the good and its parts,

(iii) the non-originating materials that do not undergo a change in tariff classification in the circumstances described in subparagraph (ii) and the good are not both classified as parts of goods under the heading or subheading referred to in subparagraph (ii)(B),

(iv) each of the non-originating materials that is used in the production of the good and is not referred to in subparagraph (iii) undergoes an applicable change in tariff classification or satisfies any other applicable requirement set out in Schedule I,

(v) the regional value content of the good, calculated in accordance with section 6, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and

(vi) the good satisfies all other applicable requirements of this appendix, including any applicable, higher regional value-content requirement provided for in section 13 or Schedule I.

INTERPRETATION: HEADING OR SUBHEADING WHICH PROVIDES FOR BOTH A GOOD AND PARTS OF THE GOOD

(5) For purposes of subsection (4)(b),

(a) the determination of whether a heading or subheading provides for a good and its parts shall be made on the basis of the nomenclature of the heading or subheading and the relevant Section or Chapter Notes, in accordance with the General Rules for the Interpretation of the Harmonized System; and

(b) where, in accordance with the Harmonized System, a heading includes parts of goods by application of a Section Note or Chapter Note of the Harmonized System and the subheadings under that heading do not include a subheading designated ''Parts'', a subheading designated ''Other'' under that heading shall be considered to cover only the goods and parts of the goods that are themselves classified under that subheading.

(6) For purposes of subsection (2), where Schedule I sets out two or more alternative rules for the tariff provision under which a good is classified, if the good satisfies the requirements of one of those rules, it need not satisfy the requirements of another of the rules in order to qualify as an originating good.

SPECIAL RULE FOR CERTAIN GOODS

(7) A good originates in the territory of a NAFTA country if the good is referred to in Table 308.1.1 of Section B of Annex 308.1 to Chapter Three of the Agreement and is imported from the territory of a NAFTA country at a time when the NAFTA countries' most-favored-nation rate of duty for that good is in accordance with paragraph 1 of Section A of that Annex.

SELF-PRODUCED MATERIAL MAY BE A MATERIAL FOR DETERMINING APPLICABILITY OF RULES OF ORIGIN

(8) For purposes of determining whether non-originating materials undergo an applicable change in tariff classification, a self-produced material may, at the choice of the producer of a good into which the self-produced material is incorporated, be considered as an originating material or non-originating material, as the case may be, used in the production of that good.

(9) The following example is an ''Example'' as referred to in section 2(4).

*Example:* section 4(8), Self-produced Materials as Materials for Purposes of Determining Whether Non-originating Materials Undergo an Applicable Change in Tariff Classification

Producer A, located in a NAFTA country, produces Good A. In the production process, Producer A uses originating Material X and non-originating Material Y to produce Material Z. Material Z is a self-produced material that will be used to produce Good A.

The rule set out in Schedule I for the heading under which Good A is classified specifies a change in tariff classification from any other heading. In this case, both Good A and the non-originating Material Y are of the same heading. However, the self-produced Material Z is of a heading different than that of Good A.

For purposes of determining whether the non-originating materials that are used in the production of Good A undergo the applicable change in tariff classification, Producer A has the option to consider the self-produced Material Z as the material that must undergo a change in tariff classification. As Material Z is of a heading different than that of Good A, Material Z satisfies the applicable change in tariff classification and Good A would qualify as an originating good.

SECTION 5. DE MINIMIS

DE MINIMIS RULE FOR NON-ORIGINATING MATERIALS THAT DO NOT UNDERGO SUBJECT TO AUTHORIZATION, A REQUIRED TARIFF CHANGE

(1) Except as otherwise provided in subsection (4), a good shall be considered to originate in the territory of a NAFTA country where the value of all non-originating materials that are used in the production of the good and that do not undergo an applicable change in tariff classification as a result of production occurring entirely in the territory of one or more of the NAFTA countries is not more than seven percent

(a) of the transaction value of the good determined in accordance with Schedule II with respect to the transaction in which the producer of the good sold the good, adjusted to an F.O.B. basis, or

(b) of the total cost of the good, where there is no transaction value for the good under section 2(1) of Schedule III or the transaction value of the good is unacceptable under section 2(2) of that Schedule,

provided that,

(c) if, under the rule in which the applicable change in tariff classification is specified, the good is also subject to a regional value-content requirement, the value of those non-originating materials shall be taken into account in calculating the regional value content of the good in accordance with the method set out for that good, and

(d) the good satisfies all other applicable requirements of this appendix.

(2) For purposes of subsection (1), where

(a) Schedule I sets out two or more alternative rules for the tariff provision under which the good is classified, and

(b) the good, in accordance with subsection (1), is considered to originate under one of those rules,

the good is not required to satisfy the requirements specified in any alternative rule referred to in paragraph (a).

(3) For purposes of subsection (1), in the case of a good that is provided for in heading 2402, the percentage shall be nine percent instead of seven percent.

EXCEPTIONS

(4) Subsections (1) and (2) do not apply to

(a) a non-originating material provided for in Chapter 4 or tariff items 1901.90.31, 1901.90.41 and 1901.90.81 (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in Chapter 4;

(b) a non-originating material provided for in Chapter 4 or tariff items 1901.90.31, 1901.90.41 and 1901.90.81 (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in any of tariff items 1901.10.10 (infant preparations containing over 10 percent by weight of milk solids), 1901.20.10 (mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale), 1901.90.31, 1901.90.41 and 1901.90.81 (dairy preparations containing over 10 percent by weight of milk solids), heading 2105 and tariff items 2106.90.05, 2106.90.13, 2106.90.41, 2106.90.51 and 2106.90.61 (preparations containing over 10 percent by weight of milk solids), 2202.90.10 and 2202.90.20 (beverages containing milk) and 2309.90.31 (animal feeds containing over 10 percent by weight of milk solids);

(c) a non-originating material provided for in any of heading 0805 and subheadings 2009.11 through 2009.39 that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39 and tariff items 2106.90.48 and 2106.90.52 (concentrated fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins) and 2202.90.30, 2202.90.35 and 2202.90.36 (fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins);

(d) a non-originating material provided for in Chapter 9 that is used in the production of a good provided for in tariff item 2101.11.21 (instant coffee, not flavored);
(e) a non-originating material provided for in Chapter 15 that is used in the production of a good provided for in any of headings 1501 through 1508, 1512, 1514 and 1515;
(f) a non-originating material provided for in heading 1701 that is used in the production of a good provided for in any of headings 1701 through 1703;
(g) a non-originating material provided for in Chapter 17 or heading 1805 that is used in the production of a good provided for in subheading 1806.10;
(h) a non-originating material provided for in any of headings 2203 through 2208 that is used in the production of a good provided for in any of headings 2207 through 2208;
(i) a non-originating material that is used in the production of a good provided for in any of tariff item 7321.11.30 (gas stove or range), subheadings 8415.10 through 8415.83, 8418.10 through 8418.21, 8418.29 through 8418.40, 8421.12, 8422.11, 8450.11 through 8450.20 and 8451.21 through 8451.29, and tariff items 8479.89.55 (trash compactors) and 8516.60.40 (electric stove or range);
(j) a printed circuit assembly that is a non-originating material used in the production of a good, where the applicable change in tariff classification for the good places restrictions on the use of that non-originating material, such as by prohibiting, or limiting the quantity of, that non-originating material;
(k) a non-originating material that is a single juice ingredient provided for in heading 2009 that is used in the production of a good provided for in any of subheading 2009.90 and tariff items 2106.90.18 (concentrated mixtures of fruit or vegetable juice, fortified with minerals or vitamins) and 2202.90.37 (mixtures of fruit or vegetable juices, fortified with minerals or vitamins);
(l) a non-originating material that is used in the production of a good provided for in any of Chapters 1 through 27, unless the non-originating material is of a different subheading than the good for which origin is being determined under this section; or
(m) a non-originating material that is used in the production of a good provided for in any of Chapters 50 through 63.

DE MINIMIS RULE FOR REGIONAL VALUE-CONTENT REQUIREMENT

(5) A good that is subject to a regional value-content requirement shall be considered to originate in the territory of a NAFTA country and shall not be required to satisfy that requirement where
(a) the value of all non-originating materials used in the production of the good is not more than seven percent
(i) of the transaction value of the good determined in accordance with Schedule II with respect to the transaction in which the producer of the good sold the good, adjusted to an F.O.B. basis, or
(ii) of the total cost of the good, where there is no transaction value for the good under section 2(1) of Schedule III or the transaction value of the good is unacceptable under section 2(2) of that Schedule; and
(b) the good satisfies all other applicable requirements of this appendix.

DE MINIMIS RULE FOR TEXTILE GOODS

(6) A good provided for in any of Chapters 50 through 63, that does not originate in the territory of a NAFTA country because certain fibers or yarns that are used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification as a result of production occurring entirely in the territory of one or more of the NAFTA countries, shall be considered to originate in the territory of a NAFTA country if
(a) the total weight of all those fibers or yarns is not more than seven percent of the total weight of that component; and
(b) the good satisfies all other applicable requirements of this appendix.

(7) For purposes of subsection (6),

(a) the component of a good that determines the tariff classification of that good shall be identified in accordance with the first of the following General Rules for the Interpretation of the Harmonized System under which the identification can be determined, namely, Rule 3(b), Rule 3(c) and Rule 4; and

(b) where the component of the good that determines the tariff classification of the good is a blend of two or more yarns or fibers, all yarns and fibers used in the production of the component shall be taken into account in determining the weight of fibers and yarns in that component.

(8) For purposes of subsections (1) and (5), the value of non-originating materials shall be determined in accordance with sections 7(1) through (4).

CALCULATION OF ''TOTAL COST'' FOR DE MINIMIS RULES: CHOICE OF METHODS

(9) For purposes of subsection (1)(b) and subsection (5)(a)(ii), the total cost of a good shall be, at the choice of the producer of the good,

(a) the total cost incurred with respect to all goods produced by the producer that can be reasonably allocated to that good in accordance with Schedule VII; or

(b) the aggregate of each cost that forms part of the total cost incurred with respect to that good that can be reasonably allocated to that good in accordance with Schedule VII.

CALCULATION OF TOTAL COST; APPLICATION OF SCHEDULES IX AND X FOR DETERMINING VALUE OF NON-ORIGINATING MATERIALS

(10) Total cost under subsection (9) consists of the costs referred to in section 2(6), and is calculated in accordance with that subsection and section 2(7).

(11) For purposes of determining the value under subsection (1) of non-originating materials that do not undergo an applicable change in tariff classification, where Schedule X is not being used to determine the value of those non-originating materials,

(a) if the value of those non-originating materials is being determined as a percentage of the transaction value of the good and the producer chooses under section 6(10) that one of the methods set out in Schedule IX be used to determine the value of those non-originating materials for purposes of calculating the regional value content of the good, the value of those non-originating materials shall be determined in accordance with that method;

(b) if

(i) the value of those non-originating materials is being determined as a percentage of the total cost of the good,

(ii) under the rule in which the applicable change in tariff classification is specified, the good is also subject to a regional value-content requirement and subsection (5)(a) does not apply with respect to that good,

(iii) the regional value content of the good is calculated on the basis of the net cost method, and

(iv) the producer chooses under section 6(15), 11(1), (3) or (6), 12(1) or 13(4) that the regional value content of the good be calculated over a period,

the value of those non-originating materials shall be the sum of the values of non-originating materials determined in accordance with that choice, divided by the number of units of the goods with respect to which the choice is made;

(c) if

(i) the value of those non-originating materials is being determined as a percentage of the total cost of the good,

(ii) under the rule in which the applicable change in tariff classification is specified, the good is not also subject to a regional value-content requirement or subsection (5)(a) applies with respect to that good, and

(iii) the producer chooses under section 2(7)(b) that, for purposes of section 5(9), the total cost of the good be calculated over a period,

the value of those non-originating materials shall be the sum of the values of non-originating materials divided by the number of units produced during that period; and

(d) in any other case, the value of those non-originating materials may, at the choice of the producer, be determined in accordance with one of the methods set out in Schedule IX.

(12) For purposes of subsection (5), the value of the non-originating materials used in the production of the good may, at the choice of the producer, be determined in accordance with one of the methods set out in Schedule IX.

EXAMPLES ILLUSTRATING DE MINIMIS RULES

(13) Each of the following examples is an ''Example'' as referred to in section 2(4).

*Example 1:* section 5(1)

Producer A, located in a NAFTA country, uses originating materials and non-originating materials in the production of copper anodes provided for in heading 7402. The rule set out in Schedule I for heading 7402 specifies a change in tariff classification from any other chapter. There is no applicable regional value-content requirement for this heading. Therefore, in order for the copper anode to qualify as an originating good under the rule set out in Schedule I, Producer A may not use in the production of the copper anode any non-originating material provided for in Chapter 74.

All of the materials used in the production of the copper anode are originating materials, with the exception of a small amount of copper scrap provided for in heading 7404, that is in the same chapter as the copper anode. Under section 5(1), if the value of the non-originating copper scrap does not exceed seven percent of the transaction value of the copper anode or the total cost of the copper anode, whichever is applicable, the copper anode would be considered an originating good.

*Example 2:* section 5(2)

Producer A, located in a NAFTA country, uses originating materials and non-originating materials in the production of ceiling fans provided for in subheading 8414.51. There are two alternative rules set out in Schedule I for subheading 8414.51, one of which specifies a change in tariff classification from any other heading. The other rule specifies both a change in tariff classification from the subheading under which parts of the ceiling fans are classified and a regional value-content requirement. Therefore, in order for the ceiling fan to qualify as an originating good under the first of the alternative rules, all of the materials that are classified under the subheading for parts of ceiling fans and used in the production of the completed ceiling fan must be originating materials.

In this case, all of the non-originating materials used in the production of the ceiling fan satisfy the change in tariff classification set out in the rule that specifies a change in tariff classification from any other heading, with the exception of one non-originating material that is classified under the subheading for parts of ceiling fans. Under section 5(1), if the value of the non-originating material that does not satisfy the change in tariff classification specified in the first rule does not exceed seven percent of the transaction value of the ceiling fan or the total cost of the ceiling fan, whichever is applicable, the ceiling fan would be considered an originating good. Therefore, under section 5(2), the ceiling fan would not be required to satisfy the alternative rule that specifies both a change in tariff classification and a regional value-content requirement.

*Example 3:* section 5(2)

Producer A, located in a NAFTA country, uses originating materials and non-originating materials in the production of plastic bags provided for in subheading 3923.29. The rule set out in Schedule I for subheading 3923.29 specifies both a change in tariff classification from any other heading, except from subheadings 3920.20 or 3920.71, under which certain plastic materials are classified, and a regional value-content requirement. Therefore, with respect to that part of the rule that specifies a change in tariff classification, in order for the plastic bag to qualify as an originating good, any plastic materials that are classified under subheading 3920.20 or 3920.71 and that are used in the production of the plastic bag must be originating materials.

In this case, all of the non-originating materials used in the production of the plastic bag satisfy the specified change in tariff classification, with the exception of a small amount of plastic materials classified under subheading 3920.71. Section 5(1) provides that the plastic bag can be considered an originating good if the value of the non-originating plastic materials that do not satisfy the specified change in tariff classification does not exceed seven percent of the transaction value of the plastic bag or the total cost of the plastic bag, whichever is applicable. In this case, the value of those non-originating materials that do not satisfy the specified change in tariff classification does not exceed the seven percent limit.

However, the rule set out in Schedule I for subheading 3923.29 specifies both a change in tariff classification and a regional value-content requirement. Therefore, under section 5(1)(c), in order to be considered an originating good, the plastic bag must also, except as otherwise provided in section 5(5), satisfy the regional value-content requirement specified in that rule. As provided in section 5(1)(c), the value of the non-originating materials that do not satisfy the specified change in tariff classification, together with the value of all other non-originating materials used in the production of the plastic bag, will be taken into account in calculating the regional value content of the plastic bag.

*Example 4:* section 5(5)

Producer A, located in a NAFTA country, primarily uses originating materials in the production of shoes provided for in heading 6405. The rule set out in Schedule I for heading 6405 specifies both a change in tariff classification from any subheading other than subheadings 6401.10 through 6406.10 and a regional value-content requirement.

With the exception of a small amount of materials provided for in Chapter 39, all of the materials used in the production of the shoes are originating materials.

Under section 5(5), if the value of all of the non-originating materials used in the production of the shoes does not exceed seven percent of the transaction value of the shoes or the total cost of the shoes, whichever is applicable, the shoes are not required to satisfy the regional value-content requirement specified in the rule set out in Schedule I in order to be considered originating goods.

*Example 5:* section 5(5)

Producer A, located in a NAFTA country, produces barbers' chairs provided for in subheading 9402.10. The rule set out in Schedule I for goods provided for in heading 9402 specifies a change in tariff classification from any other chapter. All of the materials used in the production of these chairs are originating materials, with the exception of a small quantity of non-originating materials that are classified as parts of barbers' chairs. These parts undergo no change in tariff classification because subheading 9402.10 provides for both barbers' chairs and their parts.

Although Producer A's barbers' chairs do not qualify as originating goods under the rule set out in Schedule I, section 4(4)(b) provides, among other things, that, where there is no change in tariff classification from the non-originating materials to the goods because the subheading under which the goods are classified provides for both the goods and their parts, the goods shall qualify as originating goods if they satisfy a specified regional value-content requirement.

However, under section 5(5), if the value of the non-originating materials does not exceed seven percent of the transaction value of the barbers' chairs or the total cost of the barbers' chairs, whichever is applicable, the barbers' chairs will be considered originating goods and are not required to satisfy the regional value-content requirement set out in section 4(4)(b)(v).

*Example 6:* sections 5 (6) and (7)

Producer A, located in a NAFTA country, produces women's dresses provided for in subheading 6204.41 from fine wool fabric of heading 5112. This fine wool fabric, also produced by Producer A, is the component of the dress that determines its tariff classification under subheading 6204.41.

The rule set out in Schedule I for subheading 6204.41, under which the dress is classified, specifies both a change in tariff classification from any other chapter, except from those headings and chapters under which certain yarns and fabrics, including combed wool yarn and wool fabric, are classified, and a requirement that the good be cut and sewn or otherwise assembled in the territory of one or more of the NAFTA countries.

Therefore, with respect to that part of the rule that specifies a change in tariff classification, in order for the dress to qualify as an originating good, the combed wool yarn and the fine wool fabric made therefrom that are used by Producer A in the production of the dress must be originating materials.

At one point Producer A uses a small quantity of non-originating combed wool yarn in the production of the fine wool fabric. Under section 5(6), if the total weight of the non-originating combed wool yarn does not exceed seven percent of the total weight of all the yarn used in the production of the component of the dress that determines its tariff classification, that is, the wool fabric, the dress would be considered an originating good.

## PART III
## SECTION 6. REGIONAL VALUE CONTENT

(1) Except as otherwise provided in subsection (6), the regional value content of a good shall be calculated, at the choice of the exporter or producer of the good, on the basis of either the transaction value method or the net cost method.

### TRANSACTION VALUE METHOD

(2) The transaction value method for calculating the regional value content of a good is as follows:

$$\mathrm{RVC} = \frac{\mathrm{TV} - \mathrm{VNM}}{\mathrm{TV}} \times 100$$

where

RVC is the regional value content of the good, expressed as a percentage;

TV is the transaction value of the good, determined in accordance with Schedule II with respect to the transaction in which the producer of the good sold the good, adjusted to an F.O.B. basis; and

VNM is the value of non-originating materials used by the producer in the production of the good, determined in accordance with section 7.

NET COST METHOD

(3) The net cost method for calculating the regional value content of a good is as follows:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

where

RVC is the regional value content of the good, expressed as a percentage;

NC is the net cost of the good, calculated in accordance with subsection (11); and

VNM is the value of non-originating materials used by the producer in the production of the good, determined, except as otherwise provided in sections 9 and 10, in accordance with section 7.

VNM DOES NOT INCLUDE VALUE OF NON-ORIGINATING MATERIALS USED IN ORIGINATING MATERIAL

(4) Except as otherwise provided in section 9 and section 10(1)(d), for purposes of calculating the regional value content of a good under subsection (2) or (3), the value of non-originating materials used by a producer in the production of the good shall not include

(a) the value of any non-originating materials used by another producer in the production of originating materials that are subsequently acquired and used by the producer of the good in the production of that good; or

(b) the value of any non-originating materials used by the producer in the production of a self-produced material that is an originating material and is designated as an intermediate material.

(5) For purposes of subsection (4),

(a) in the case of any self-produced material that is not designated as an intermediate material, only the value of any non-originating materials used in the production of the self-produced material shall be included in the value of non-originating materials used in the production of the good; and

(b) where a self-produced material that is designated as an intermediate material and is an originating material is used by the producer of the good with non-originating materials (whether or not those non-originating materials are produced by that producer) in the production of the good, the value of those non-originating materials shall be included in the value of non-originating materials.

NET COST METHOD REQUIRED IN CERTAIN CIRCUMSTANCES

(6) The regional value content of a good shall be calculated only on the basis of the net cost method where

(a) there is no transaction value for the good under section 2(1) of Schedule III;

(b) the transaction value of the good is unacceptable under section 2(2) of Schedule III;

(c) the good is sold by the producer to a related person and the volume, by units of quantity, of sales by that producer of identical goods or similar goods, or any combination thereof, to related persons during the six month period immediately preceding the month in which the goods are sold exceeds 85 percent of the producer's total sales to all persons, whether or not related and regardless of location, after ''the producer's total sales''of identical goods or similar goods, or any combination thereof, during that period;

(d) the good is

(i) a motor vehicle provided for in any of headings 8701 and 8702, subheadings 8703.21 through 8703.90 and headings 8704, 8705 and 8706,

(ii) a good provided for in a tariff provision listed in Schedule IV or an automotive component assembly, automotive component, sub-component or listed material, and is for use in a motor vehicle referred to in subparagraph (i), either as original equipment or as an after-market part,

(iii) a good provided for in any of subheadings 6401.10 through 6406.10, or

(iv) a good provided for in subheading 8469.11;

(e) the exporter or producer chooses to accumulate with respect to the good in accordance with section 14; or

(f) the good is an intermediate material and is subject to a regional value-content requirement.

OPTION TO CHANGE FROM TVM TO NCM FOR CALCULATION OF REGIONAL VALUE CONTENT

(7) If the exporter or producer of a good calculates the regional value content of the good on the basis of the transaction value method and the customs administration of a NAFTA country subsequently notifies that exporter or producer in writing, during the course of a verification of origin, that

(a) the transaction value of the good, as determined by the exporter or producer, is required to be adjusted under section 4 of Schedule II or is unacceptable under section 2(2) of Schedule III, there is no transaction value for the good under section 2(1) of Schedule III or the transaction value method may not be used because of the application of subsection (6)(c), or

(b) the value of any material used in the production of the good, as determined by the exporter or producer, is required to be adjusted under section 5 of Schedule VIII or is unacceptable under section 2(3) of Schedule VIII, or there is no transaction value for the material under section 2(2) of Schedule VIII or the transaction value method may not be used to calculate the regional value content of the material because of the application of subsection (6)(c),

the exporter or producer may choose that the regional value content of the good be calculated on the basis of the net cost method, in which case the calculation must be made within 60 days after the producer receives the notification, or such longer period as that customs administration specifies.

CHANGE FROM NCM TO TVM NOT PERMITTED

(8) If the exporter or producer of a good chooses that the regional value content of the good be calculated on the basis of the net cost method and the customs administration of a NAFTA country subsequently notifies that exporter or producer in writing, during the course of a verification of origin, that the good does not satisfy the applicable regional value-content requirement, the exporter or producer of the good may not recalculate the regional value content on the basis of the transaction value method.

(9) Nothing in subsection (7) shall be construed as preventing any review and appeal under Article 510 of the Agreement, as implemented in each NAFTA country, of an adjustment to or a rejection of

(a) the transaction value of the good; or

(b) the value of any material used in the production of the good.

APPLICATION OF SCHEDULE IX FOR DETERMINING VALUE OF ''IDENTICAL'' NON-ORIGINATING MATERIALS UNDER TVM

(10) For purposes of the transaction value method, where non-originating materials that are the same as one another in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance, are used in the production of a good, the value of those non-originating materials may, at the choice of the producer of the good, be determined in accordance with one of the methods set out in Schedule IX.

OPTIONS FOR CALCULATING THE NET COST OF A GOOD

(11) For purposes of subsection (3), the net cost of a good may be calculated, at the choice of the producer of the good, by

(a) calculating the total cost incurred with respect to all goods produced by that producer, subtracting any excluded costs that are included in that total cost, and reasonably allocating, in accordance with Schedule VII, the remainder to the good;

(b) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating, in accordance with Schedule VII, that total cost to the good, and subtracting any excluded costs that are included in the amount allocated to that good; or

(c) reasonably allocating, in accordance with Schedule VII, each cost that forms part of the total cost incurred with respect to the good so that the aggregate of those costs does not include any excluded costs.

CALCULATION OF TOTAL COST

(12) Total cost under subsection (11) consists of the costs referred to in section 2(6), and is calculated in accordance with that subsection.

CALCULATION OF NET COST; EXCLUDED COSTS

(13) For purposes of calculating net cost under subsection (11),

(a) excluded costs shall be the excluded costs that are recorded on the books of the producer of the good;

(b) excluded costs that are included in the value of a material that is used in the production of the good shall not be subtracted from or otherwise excluded from the total cost; and

(c) excluded costs do not include any amount paid for research and development services performed in the territory of a NAFTA country.

NON-ALLOWABLE INTEREST; DETERMINATION UNDER SCHEDULE XI

(14) For purposes of calculating non-allowable interest costs, the determination of whether interest costs incurred by a producer are more than 700 basis points above the yield on debt obligations of comparable maturities issued by the federal government of the country in which the producer is located shall be made in accordance with Schedule XI.

USE OF ''AVERAGING'' OVER A PERIOD TO CALCULATE RVC UNDER NCM; PERIOD CANNOT BE CHANGED

(15) For purposes of the net cost method, the regional value content of the good, other than a good with respect to which a choice to average may be made under section 11(1), (3) or (6), 12(1) or 13(4), may be calculated, where the producer chooses to do so, by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the good with respect to the good and identical goods or similar goods, or any combination thereof, produced in a single plant by the producer over

(i) a month,

(ii) any consecutive three month or six month period that falls within and is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period, or

(iii) the producer's fiscal year; and

(b) using the sums referred to in paragraph (a) as the net cost and the value of non-originating materials, respectively.

(16) The calculation made under subsection (15) shall apply with respect to all units of the good produced during the period chosen by the producer under subsection (15)(a).

(17) A choice made under subsection (15) may not be rescinded or modified with respect to the goods or the period with respect to which the choice is made.

CHOICE OF AVERAGING PERIOD CANNOT BE CHANGED FOR REMAINDER OF FISCAL YEAR

(18) Where a producer chooses a one, three or six month period under subsection (15) with respect to goods, the producer shall be considered to have chosen under that subsection a period or periods of the same duration for the remainder of the producer's fiscal year with respect to those goods.

CHOICE OF NET COST METHOD CANNOT BE CHANGED FOR REMAINDER OF THE FISCAL YEAR

(19) Where the net cost method is required to be used or has been chosen and a choice has been made under subsection (15), the regional value content of the good shall be calculated on the basis of the net cost method over the period chosen under that subsection and for the remainder of the producer's fiscal year.

OBLIGATION TO PERFORM SELF-ANALYSIS AND GIVE NOTIFICATION OF CHANGED CIRCUMSTANCE IF RVC CALCULATED ON BASIS OF ESTIMATED COSTS

(20) Except as otherwise provided in sections 11(10), 12(11) and 13(10), where the producer of a good has calculated the regional value content of the good under the net cost method on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the period chosen in subsection (15)(a), the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the good and, if the good does not satisfy the regional value-content requirement on the basis of the actual costs during that period, immediately inform any person to whom the producer has provided a Certificate of Origin for the good, or a written statement that the good is an originating good, that the good is a non-originating good.

OPTION TO TREAT ANY MATERIAL AS NON-ORIGINATING

(21) For purposes of calculating the regional value content of a good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material.

EXAMPLES OF CALCULATION OF RVC UNDER TVM AND NCM

(22) Each of the following examples is an ''Example'' as referred to in section 2(4).

*Example 1:* example of point of direct shipment (with respect to adjusted to an F.O.B. basis)

A producer has only one factory, at which the producer manufactures finished office chairs. Because the factory is located close to transportation facilities, all units of the finished good are stored in a factory warehouse 200 meters from the end of the production line. Goods are shipped worldwide from this warehouse. The point of direct shipment is the warehouse.

*Example 2:* examples of point of direct shipment (with respect to adjusted to an F.O.B. basis)

A producer has six factories, all located within the territory of one of the NAFTA countries, at which the producer produces garden tools of various types. These tools are shipped worldwide, and orders usually consist of bulk orders of various types of tools. Because different tools are manufactured at different factories, the producer decided to consolidate storage and shipping facilities and ships all finished products to a large warehouse located near the seaport, from which all orders are shipped. The distance from the factories to the warehouse varies from 3 km to 130 km. The point of direct shipment for each of the goods is the warehouse.

*Example 3:* examples of point of direct shipment (with respect to adjusted to an F.O.B. basis)

A producer has only one factory, located near the center of one of the NAFTA countries, at which the producer manufactures finished office chairs. The office chairs are shipped from that factory to three warehouses leased by the producer, one on the west coast, one near the factory and one on the east coast. The office chairs are shipped to buyers from these warehouses, the shipping location depending on the shipping distance from the buyer. Buyers closest to the west coast warehouse are normally supplied by the west coast warehouse, buyers closest to the east coast are normally supplied by the warehouse located on the east coast and buyers closest to the warehouse near the factory are normally supplied by that warehouse. In this case, the point of direct shipment is the location of the warehouse from which the office chairs are normally shipped to customers in the location in which the buyer is located.

*Example 4:* section 6(3), net cost method

A producer located in NAFTA country A sells Good A that is subject to a regional value-content requirement to a buyer located in NAFTA country B. The producer of Good A chooses that the regional value content of that good be calculated using the net cost method. All applicable requirements of this appendix, other than the regional value-content requirement, have been met. The applicable regional value-content requirement is 50 percent.

In order to calculate the regional value-content of Good A, the producer first calculates the net cost of Good A. Under section 6(11)(a), the net cost is the total cost of Good A (the aggregate of the product costs, period costs and other costs) per unit, minus the excluded costs (the aggregate of the sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs) per unit. The producer uses the following figures to calculate the net cost:

| | |
|---|---|
| Product costs: | |
| Value of originating materials | $30.00 |
| Value of non-originating materials | 40.00 |
| Other product costs | 20.00 |
| Period costs | 10.00 |
| Other costs | 0.00 |
| Total cost of Good A, per unit | $100.00 |
| Excluded costs: | |
| Sales promotion, marketing and after-sales service cost | $5.00 |
| Royalties | 2.50 |
| Shipping and packing costs | 3.00 |
| Non-allowable interest costs | 1.50 |
| Total excluded costs | $12.00 |

The net cost is the total cost of Good A, per unit, minus the excluded costs.

| | |
|---|---|
| Total cost of Good A, per unit: | $100.00 |
| Excluded costs | −12.00 |
| Net cost of Good A, per unit | $88.00 |

The value for net cost ($88) and the value of non-originating materials ($40) are needed in order to calculate the regional value content. The producer calculates the regional value content of Good A under the net cost method in the following manner:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{88 - 40}{88} \times 100$$

$$= 54.5\%$$

Therefore, under the net cost method, Good A qualifies as an originating good, with a regional value-content of 54.5 percent.

*Example 5:* section 6(6)(c), net cost method required for certain sales to related persons

On January 15, 1994, a producer located in NAFTA country A sells 1,000 units of Good A to a related person, located in NAFTA country B. During the six month period beginning on July 1, 1993 and ending on December 31, 1993, the producer sold 90,000 units of identical goods and similar goods to related persons from various countries, including that buyer. The producer's total sales of those identical goods and similar goods to all persons from all countries during that six month period were 100,000 units.

The total quantity of identical goods and similar goods sold by the producer to related persons during that six month period was 90 percent of the producer's total sales of those identical goods and similar goods to all persons. Under section 6(6)(c), the producer must use the net cost method to calculate the regional value content of Good A sold in January 1994, because the 85 percent limit was exceeded.

*Example 6:* section 6(11)(a)

A producer in a NAFTA country produces Good A and Good B during the producer's fiscal year.

The producer uses the following figures, which are recorded on the producer's books and represent all of the costs incurred with respect to both Good A and Good B, to calculate the net cost of those goods:

| | |
|---|---|
| Product costs: | |
| Value of originating materials | $2,000 |
| Value of non-originating materials | 1,000 |
| Other product costs | 2,400 |
| Period costs: (including $1,200 in excluded costs) | 3,200 |
| Other costs | 400 |
| Total cost of Good A and Good B | $9,000 |
| The net cost is the total cost of Good A and Good B, minus the excluded costs incurred with respect to those goods. | |
| Total cost of Good A and Good B | $9,000 |
| Excluded costs | – 1,200 |
| Net cost of Good A and Good B | $7,800 |

The net cost must then be reasonably allocated, in accordance with Schedule VII, to Good A and Good B.

*Example 7:* section 6(11)(b)

A producer located in a NAFTA country produces Good A and Good B during the producer's fiscal year. In order to calculate the regional value content of Good A and Good B, the producer uses the following figures that are recorded on the producer's books and incurred with respect to those goods:

| | |
|---|---|
| Product costs: | |
| Value of originating materials | $2,000 |

| | |
|---|---|
| Value of non-originating materials | 1,000 |
| Other product costs | 2,400 |
| Period costs: (including $1,200 in excluded costs) | 3,200 |
| Other costs | 400 |
| Total cost of Good A and Good B | $9,000 |

Under section 6(11)(b), the total cost of Good A and Good B is then reasonably allocated, in accordance with Schedule VII, to those goods. The costs are allocated in the following manner:

| | Allocated to Good A | Allocated to Good B |
|---|---|---|
| Total cost ($9,000 for both Good A and Good B) | $5,220 | $3,780 |

The excluded costs ($1,200) that are included in total cost allocated to Good A and Good B, in accordance with Schedule VII, are subtracted from that amount.

| | | Excluded Cost Allocated to Good A | Excluded Cost Allocated to Good B |
|---|---|---|---|
| Total excluded costs: | | | |
| Sales promotion, marketing and after-sale service costs | 500 | 290 | 210 |
| Royalties | 200 | 116 | 84 |
| Shipping and packing costs | 500 | 290 | 210 |
| Net cost (total cost minus excluded costs) | ..... | $4,524 | $3,276 |

The net cost of Good A is thus $4,524, and the net cost of Good B is $3,276.

*Example 8:* section 6(11)(c)

A Producer located in a NAFTA country produces Good C and Good D. The following costs are recorded on the producer's books for the months of January, February and March, and each cost that forms part of the total cost are reasonably allocated, in accordance with Schedule VII, to Good C and Good D.

| | Total cost: Good C and Good D (in thousands of dollars) | Allocated to Good C (in thousands of dollars) | Allocated to Good D (in thousands of dollars) |
|---|---|---|---|
| Product costs: | | | |
| Value of originating materials | 100 | 0 | 100 |
| Value of non-originating materials | 900 | 800 | 100 |
| Other product costs | 500 | 300 | 200 |
| Period costs (including $420 in excluded costs) | 5,679 | 3,036 | 2,643 |
| Minus Excluded Costs | 420 | 300 | 120 |
| Other costs | 0 | 0 | 0 |
| Total cost (aggregate of product costs, period costs and other costs) | 6,759 | 3,836 | 2,923 |

*Example 9:* section 6(12)

Producer A, located in a NAFTA country, produces Good A that is subject to a regional value-content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method. Producer A buys Material X from Producer B, located in a NAFTA country. Material X is a non-originating material and is used in the production of Good A. Producer A provides Producer B, at no charge, with tools to be used in the production of Material X. The cost of the tools that is recorded on the books of Producer A has been expensed in the current year. Pursuant to section 5(1)(b)(ii) of Schedule VIII, the value of the tools is included in the value of Material X. Therefore, the cost of the tools that is recorded on the books of Producer A and that has been expensed in the current year cannot be included as a separate cost in the net cost of Good A because it has already been included in the value of Material X.

*Example 10:* section 6(12)

Producer A, located in a NAFTA country, produces Good A that is subject to a regional value-content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method and averages the calculation over the producer's fiscal year under section 6(15). Producer A determines that during that fiscal year Producer A incurred a gain on foreign currency conversion of $10,000 and a loss on foreign currency conversion of $8,000, resulting in a net gain of $2,000. Producer A also determines that $7,000 of the gain on foreign currency conversion and $6,000 of the loss on foreign currency conversion is related to the purchase of non-originating materials used in the production of Good A, and $3,000 of the gain on foreign currency conversion and $2,000 of the loss on foreign currency conversion is not related to the production of Good A. The producer determines that the total cost of Good A is $45,000 before deducting the $1,000 net gain on foreign currency conversion related to the production of Good A. The total cost of Good A is therefore $44,000. That $1,000 net gain is not included in the value of non-originating materials under section 7(1).

*Example 11:* section 6(12)

Given the same facts as in example 10, except that Producer A determines that $6,000 of the gain on foreign currency conversion and $7,000 of the loss on foreign currency conversion is related to the purchase of non-originating materials used in the production of Good A. The total cost of Good A is $45,000, which includes the $1,000 net loss on foreign currency conversion related to the production of Good A. That $1,000 net loss is not included in the value of non-originating materials under section 7(1).

## PART IV

## SECTION 7. MATERIALS

### VALUATION OF MATERIALS USED IN THE PRODUCTION OF A GOOD OTHER THAN CERTAIN AUTOMOTIVE GOODS

(1) Except as otherwise provided for non-originating materials used in the production of a good referred to in section 9(1) or 10(1), and except in the case of indirect materials, intermediate materials and packing materials and containers, for purposes of calculating the regional value content of a good and for purposes of sections 5(1) and (5), the value of a material that is used in the production of the good shall be

(a) except as otherwise provided in subsection (2), where the material is imported by the producer of the good into the territory of the NAFTA country in which the good is produced, the customs value of the material with respect to that importation, or

(b) where the material is acquired by the producer of the good from another person located in the territory of the NAFTA country in which the good is produced

(i) the transaction value, determined in accordance with section 2(1) of Schedule VIII, with respect to the transaction in which the producer acquired the material, or

(ii) the value determined in accordance with sections 6 through 11 of Schedule VIII, where, with respect to the transaction in which the producer acquired the material, there is no transaction value under section 2(2) of that Schedule or the transaction value is unacceptable under section 2(3) of that Schedule,

and shall include the following costs if they are not included under paragraph (a) or (b):

(c) the costs of freight, insurance and packing and all other costs incurred in transporting the material to the location of the producer,

(d) duties and taxes paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(e) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the material in the territory of one or more of the NAFTA countries, and

(f) the cost of waste and spoilage resulting from the use of the material in the production of the good, minus the value of any reusable scrap or by-product.

VALUATION OF MATERIAL IF CUSTOMS VALUE IS NOT IN ACCORDANCE WITH SCHEDULE VIII

(2) For purposes of subsection (1)(a), where the customs value of the material referred to in that paragraph was not determined in a manner consistent with Schedule VIII, the value of the material shall be determined in accordance with Schedule VIII with respect to the importation of that material and, where the costs referred to in subsections (1)(c) through (f) are not included in that value, those costs be added to that value.

COSTS RECORDED ON BOOKS

(3) For purposes of subsection (1), the costs referred to in subsections (1)(c) through (f) shall be the costs referred to in those paragraphs that are recorded on the books of the producer of the good.

DESIGNATION OF SELF-PRODUCED MATERIAL AS AN INTERMEDIATE MATERIAL; LIMITATION ON DESIGNATIONS; DESIGNATION IS OPTIONAL

(4) Except for purposes of determining the value of non-originating materials used in the production of a light-duty automotive good and except in the case of an automotive component assembly, automotive component or sub-component for use as original equipment in the production of a heavy-duty vehicle, for purposes of calculating the regional value content of a good the producer of the good may designate as an intermediate material any self-produced material that is used in the production of the good, provided that where an intermediate material is subject to a regional value-content requirement, no other self-produced material that is subject to a regional value-content requirement and is incorporated into that intermediate material is also designated by the producer as an intermediate material.

(5) For purposes of subsection (4),

(a) in order to qualify as an originating material, a self-produced material that is designated as an intermediate material must qualify as an originating material under these Regulations;

(b) the designation of a self-produced material as an intermediate material shall be made solely at the choice of the producer of that self-produced material; and

(c) except as otherwise provided in section 14(4), the proviso set out in subsection (4) does not apply with respect to an intermediate material used by another producer in the production of a material that is subsequently acquired and used in the production of a good by the producer referred to in subsection (4).

VALUATION OF AN INTERMEDIATE MATERIAL

(6) The value of an intermediate material shall be, at the choice of the producer of the good,

(a) the total cost incurred with respect to all goods produced by the producer that can be reasonably allocated to that intermediate material in accordance with Schedule VII; or

(b) the aggregate of each cost that forms part of the total cost incurred with respect to that intermediate material that can be reasonably allocated to that intermediate material in accordance with Schedule VII.

CALCULATION OF TOTAL COST

(7) Total cost under subsection (6) consists of the costs referred to in section 2(6), and is calculated in accordance with that section and section 2(7).

RESCISSION OF A DESIGNATION DURING COURSE OF VERIFICATION; OPTION TO DESIGNATE ANOTHER INTERMEDIATE MATERIAL

(8) Where a producer of a good designates a self-produced material as an intermediate material under subsection (4) and the customs administration of a NAFTA country into which the good is imported determines during a verification of origin of the good that the intermediate material is a non-originating material and notifies the producer of this in writing before the written determination of whether the good qualifies as an originating good, the producer may rescind the designation, and the regional value content of the good shall be calculated as though the self-produced material were not so designated.

(9) A producer of a good who rescinds a designation under subsection (8)

(a) shall retain any rights of review and appeal under Article 510 of the Agreement, as implemented in each NAFTA country, with respect to the determination of the origin of the intermediate material as though the producer did not rescind the designation; and

(b) may, not later than 30 days after the customs administration referred to in subsection (8) notifies the producer in writing that the self-produced material referred to in paragraph (a) is a non-originating material, designate as an intermediate material another self-produced material that is incorporated into the good, subject to the proviso set out in subsection (4).

(10) Where a producer of a good designates another self-produced material as an intermediate material under subsection (9)(b) and the customs administration referred to in subsection (8) determines during the verification of origin of the good that that self-produced material is a non-originating material,

(a) the producer may rescind the designation, and the regional value content of the good shall be calculated as though the self-produced material were not so designated;

(b) the producer shall retain any rights of review and appeal under Article 510 of the Agreement, as implemented in each NAFTA country, with respect to the determination of the origin of the intermediate material as though the producer did not rescind the designation; and

(c) the producer may not designate another self-produced material that is incorporated into the good as an intermediate material.

INDIRECT MATERIALS; DEEMED ORIGINATING; VALUE AS RECORDED ON BOOKS OF PRODUCER

(11) For purposes of determining whether a good is an originating good, an indirect material that is used in the production of the good

(a) shall be considered to be an originating material, regardless of where that indirect material is produced; and

(b) if the good is subject to a regional value-content requirement, for purposes of calculating the net cost under the net cost method, the value of the indirect material shall be the costs of that material that are recorded on the books of the producer of the good.

PACKAGING MATERIALS AND CONTAINERS; ORIGIN DISREGARDED FOR TARIFF CHANGE RULES

(12) Packaging materials and containers, if classified under the Harmonized System with the good that is packaged therein, shall be disregarded for purposes of

(a) determining whether all of the non-originating materials used in the production of the good undergo an applicable change in tariff classification; and

(b) determining under section 5(1) the value of non-originating materials that do not undergo an applicable change in tariff classification.

ACTUAL ORIGINATING STATUS CONSIDERED FOR RVC REQUIREMENT; VALUATION OF PACKAGING

(13) Where packaging materials and containers are classified under the Harmonized System with the good that is packaged therein and that good is subject to a regional value-content requirement, the value of those packaging materials and containers shall be taken into account as originating materials or non-originating materials, as the case may be, for purposes of calculating the regional value content of the good.

(14) For purposes of subsection (13), where packaging materials and containers are self-produced materials, the producer may choose to designate those materials as intermediate materials under subsection (4).

PACKING MATERIALS AND CONTAINERS; DISREGARDED FOR TARIFF CHANGE RULE AND FOR RVC REQUIREMENT; VALUE AS RECORDED ON BOOKS

(15) For purposes of determining whether a good is an originating good, packing materials and containers in which the good is packed

(a) shall be disregarded for purposes of determining whether

(i) the non-originating materials used in the production of the good undergo an applicable change in tariff classification, and

(ii) the good satisfies a regional value-content requirement; and

(b) if the good is subject to a regional value-content requirement, the value of the packing materials and containers shall be the costs thereof that are recorded on the books of the producer of the good.

FUNGIBLE MATERIALS; FUNGIBLE COMMINGLED GOODS; INVENTORY MANAGEMENT METHODS FOR DETERMINING WHETHER ORIGINATING

(16) Subject to subsection (16.1), for purposes of determining whether a good is an originating good,

(a) where originating materials and non-originating materials that are fungible materials

(i) are withdrawn from an inventory in one location and used in the production of the good, or

(ii) are withdrawn from inventories in more than one location in the territory of one or more of the NAFTA countries and used in the production of the good at the same production facility,

the determination of whether the materials are originating materials may be made on the basis of any of the applicable inventory management methods set out in Schedule X; and

(b) where originating goods and non-originating goods that are fungible goods are physically combined or mixed in inventory and prior to exportation do not undergo production or any other operation in the territory of the NAFTA country in which they were physically combined or mixed in inventory, other than unloading, reloading or any other operation necessary to preserve the goods in good condition or to transport the goods for exportation to the territory of another NAFTA country, the determination of whether the good is an originating good may be made on the basis of any of the applicable inventory management methods set out in Schedule X.

(16.1) Where fungible materials referred to in subsection (16)(a) and fungible goods referred to in subsection (16)(b) are withdrawn from the same inventory, the inventory management method used for the materials must be the same as the inventory management method used for goods, and where the averaging method is used, the respective averaging periods for fungible materials and fungible goods are to be used.

(16.2) A choice of inventory management methods under subsection (16) shall be considered to have been made when the customs administration of the NAFTA country into which the good is imported is informed in writing of the choice during the course of a verification of the origin of the good.

ACCESSORIES, SPARE PARTS AND TOOLS; DEEMED ORIGINATING FOR TARIFF CHANGE RULE; ACTUAL ORIGIN APPLICABLE FOR RVC REQUIREMENT

(17) Accessories, spare parts or tools that are delivered with a good and form part of the good's standard accessories, spare parts or tools are originating materials if the good is an originating good, and shall be disregarded for purposes of determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification or determining under section 5(1) the value of non-originating materials that do not undergo an applicable change in tariff classification, provided that

(a) the accessories, spare parts or tools are not invoiced separately from the good; and

(b) the quantities and value of the accessories, spare parts or tools are customary for the good, within the industry that produces the good.

(18) Where a good is subject to a regional value-content requirement, the value of accessories, spare parts and tools that are delivered with that good and form part of the good's standard accessories, spare parts or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

(19) For purposes of subsection (18), where accessories, spare parts and tools are self-produced materials, the producer may choose to designate those materials as intermediate materials under subsection (4).

EXAMPLES ILLUSTRATING THE PROVISIONS ON MATERIALS

(20) Each of the following examples is an ''Example'' as referred to in section 2(4).

*Example 1:* section 7(2), Customs Value not Determined in a Manner Consistent with Schedule VIII

Producer A, located in NAFTA country A, imports material A into NAFTA country A. Producer A purchased material A from a middleman located in country B. The middleman purchased the material from a manufacturer located in country B. Under the laws in NAFTA country A that implement the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade,* the customs value of material A was based on the price actually paid or payable by the middleman to the manufacturer. Producer A uses material A to produce Good C, and exports Good C to NAFTA country D. Good C is subject to a regional value-content requirement.

Under section 4(1) of Schedule VIII, the price actually paid or payable is the total payment made or to be made by the producer to or for the benefit of the seller of the material. Section 1 of that Schedule defines producer and seller for purposes of the Schedule. A producer is the person who uses the material in the production of a good that is subject to a regional value-content requirement. A seller is the person who sells the material being valued to the producer.

The customs value of material A was not determined in a manner consistent with Schedule VIII because it was based on the price actually paid or payable by the middleman to the manufacturer, rather than on the price actually paid or payable by Producer A to the middleman. Thus, section 7(2) applies and material A is valued in accordance with Schedule VIII.

*Example 2:* section 7(5), Value of Intermediate Materials

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement under section 4(2)(b). The producer also produces Material A, which is used in the production of Good B. Both originating materials and non-originating materials are used in the production of Material A. Material A is subject to a change in tariff classification requirement under section 4(2)(a). The costs to produce Material A are the following:

| | |
|---|---|
| Product costs: | |
| Value of originating materials | $1.00 |
| Value of non-originating materials | 7.50 |
| Other product costs | 1.50 |
| Period costs (including $0.30 in royalties) | 0.50 |
| Other costs | 0.10 |
| Total cost of Material A | $10.60 |

The producer designates Material A as an intermediate material and determines that, because all of the non-originating materials that are used in the production of Material A undergo an applicable change in tariff classification set out in Schedule I, Material A would, under paragraph 4(2)(a) qualify as an originating material. The cost of the non-originating materials used in the production of Material A is therefore not included in the value of non-originating materials that are used in the production of Good B for the purpose of determining the regional value content of Good B. Because Material A has been designated as an intermediate material, the total cost of Material A, which is $10.60, is treated as the cost of originating materials for the purpose of calculating the regional value content of Good B. The total cost of Good B is determined in accordance with the following figures:

| | |
|---|---|
| Product costs: | |
| Value of originating materials | |
| —intermediate materials | $10.60 |
| —other materials | 3.00 |
| Value of non-originating materials | 5.50 |
| Other product costs | 6.50 |
| Period costs | 2.50 |
| Other costs | 0.10 |
| Total cost of Good B | $28.20 |

*Example 3:* section 7(5), Effects of the Designation of Self-produced Materials on Net Cost

The ability to designate intermediate materials helps to put the vertically integrated producer who is self-producing materials that are used in the production of a good on par with a producer who is purchasing materials and valuing those materials in accordance with subsection 7(1). The following situations demonstrate how this is achieved:

*Situation 1*

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement of 50 percent under the net cost method. Good B satisfies all other applicable requirements of these Regulations. The producer purchases Material A, which is used in the production of Good B, from a supplier located in a NAFTA country. The value of Material A determined in accordance with subsection 7(1) is $11.00. Material A is an originating material. All other materials used in the production of Good B are non-originating materials. The net cost of Good B is determined as follows:

| | |
|---|---|
| Product costs: | |
| Value of originating materials (Material A) | $11.00 |
| Value of non-originating materials | 5.50 |
| Other product costs | 6.50 |
| Period costs: (including $0.20 in excluded costs) | 0.50 |
| Other costs | 0.10 |
| Total cost of Good B | $23.60 |
| Excluded costs: (included in period costs) | −0.20 |
| Net cost of Good B | $23.40 |

The regional value content of Good B is calculated as follows:

$$\mathrm{RVC} = \frac{\mathrm{NC} - \mathrm{VNM}}{\mathrm{NC}} \times 100$$

$$= \frac{\$23.40 - \$5.50}{\$23.40} \times 100$$

$$= 76.5\%$$

The regional value content of Good B is 76.5 percent, and Good B, therefore, qualifies as an originating good.

*Situation 2*

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement of 50 percent under the net cost method. Good B satisfies all other applicable requirements of these Regulations. The producer self-produces Material A which is used in the production of Good B. The costs to produce Material A are the following:

| | |
|---|---|
| Product costs: | |
| Value of originating materials | $1.00 |
| Value of non-originating materials | 7.50 |
| Other product costs | 1.50 |
| Period costs: (including $0.20 in excluded costs) | 0.50 |
| Other costs | 0.10 |
| Total cost of Material A | $10.60 |

Additional costs to produce Good B are the following:

| | |
|---|---|
| Product costs: | |
| Value of originating materials | $0.00 |
| Value of non-originating materials | 5.50 |
| Other product costs | 6.50 |
| Period costs: (including $0.20 in excluded costs) | 0.50 |
| Other costs | 0.10 |
| Total additional costs | $12.60 |

The producer does not designate Material A as an intermediate material under subsection 7(4). The net cost of Good B is calculated as follows:

| | Costs of Material A (not designated as an intermediate material) | Additional Costs to Produce Good B | Total |
|---|---|---|---|
| Product costs: | | | |
| Value of originating materials | $1.00 | $0.00 | $1.00 |
| Value of non-originating materials | 7.50 | 5.50 | 13.00 |
| Other product costs | 1.50 | 6.50 | 8.00 |
| Period costs (including $0.20 in excluded costs) | 0.50 | 0.50 | 1.00 |
| Other costs | 0.10 | 0.10 | 0.20 |
| Total cost of Good B | $10.60 | $12.60 | $23.20 |
| Excluded costs (in period costs) | 0.20 | 0.20 | −0.40 |
| Net cost of Good B (total cost minus excluded costs) | | | $22.80 |

The regional value content of Good B is calculated as follows:

$$\mathrm{RVC} = \frac{\mathrm{NC} - \mathrm{VNM}}{\mathrm{NC}} \times 100$$

$$= \frac{\$22.80 - \$13.00}{\$22.80} \times 100$$

$$= 42.9\%$$

The regional value content of Good B is 42.9 percent, and Good B, therefore, does not qualify as an originating good.

*Situation 3*

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement of 50 percent under the net cost method. Good B satisfies all other applicable requirements of these Regulations. The producer self-produces Material A, which is used in the production of Good B. The costs to produce Material A are the following:

| | |
|---|---|
| Product costs: | |
| Value of originating materials | $1.00 |
| Value of non-originating materials | 7.50 |
| Other product costs | 1.50 |
| Period costs: (including $0.20 in excluded costs) | 0.50 |
| Other costs | 0.10 |
| Total cost of Material A | $10.60 |

Additional costs to produce Good B are the following:

| | |
|---|---|
| Product costs: | |
| Value of originating materials | $0.00 |
| Value of non-originating materials | 5.50 |
| Other product costs | 6.50 |
| Period costs: (including $0.20 in excluded costs) | 0.50 |
| Other costs | 0.10 |
| Total additional costs | $12.60 |

The producer designates Material A as an intermediate material under subsection 7(4). Material A qualifies as an originating material under paragraph 4(2)(a). Therefore, the value of non-originating materials used in the production of Material A is not included in the value of non-originating materials for the purposes of calculating the regional value content of Good B. The net cost of Good B is calculated as follows:

| | Costs of Material A (designated as an intermediate material) | Additional Costs to Produce Good B | Total |
|---|---|---|---|
| Product costs: | | | |
| Value of originating materials | $10.60 | $0.00 | $10.60 |
| Value of non-originating materials | ..... | 5.50 | 5.50 |
| Other product costs | ..... | 6.50 | 6.50 |
| Period costs (including $0.20 in excluded costs) | ..... | 0.50 | 0.50 |
| Other costs | ..... | 0.10 | 0.10 |
| Total cost of Good B | $10.60 | $12.60 | $23.20 |
| Excluded costs (in period costs) | ..... | .20 | −0.20 |
| Net cost of Good B (total cost minus excluded costs) | ..... | ..... | $23.00 |

The regional value content of Good B is calculated as follows:

$$\mathrm{RVC} = \frac{\mathrm{NC} - \mathrm{VNM}}{\mathrm{NC}} \times 100$$

$$= \frac{\$23.00 - \$5.50}{\$23.00} \times 100$$

$$= 76.1\%$$

The regional value content of Good B is 76.1 percent, and Good B, therefore, qualifies as an originating good.

*Example 4:* Originating Materials Acquired from a Producer Who Produced Them Using Intermediate Materials

Producer A, located in NAFTA country A, produces switches. In order for the switches to qualify as originating goods, Producer A designates subassemblies of the switches as intermediate materials. The subassemblies are subject to a regional value-content requirement. They satisfy that requirement, and qualify as originating materials. The switches are also subject to a regional value-content requirement, and, with the subassemblies designated as intermediate materials, are determined to have a regional value content of 65 percent.

Producer A sells the switches to Producer B, located in NAFTA country B, who uses them to produce switch assemblies that are used in the production of Good B. The switch assemblies are subject to a regional value-content requirement. Producers A and B are not accumulating their production within the meaning of section 14. Producer B is therefore able, under section 7(4), to designate the switch assemblies as intermediate materials.

If Producers A and B were accumulating their production within the meaning of section 14, Producer B would be unable to designate the switch assemblies as intermediate materials, because the production of both producers would be considered to be the production of one producer.

*Example 5:* Single Producer and Successive Designations of Materials Subject to a Regional Value-Content Requirement as Intermediate Materials

Producer A, located in NAFTA country, produces Material X and uses Material X in the production of Good B. Material X qualifies as an originating material because it satisfies the applicable regional value-content requirement. Producer A designates Material A as an intermediate material.

Producer A uses Material X in the production of Material Y, which is also used in the production of Good B. Material Y is also subject to a regional value-content requirement. Under the proviso set out in section 7(4), Producer A cannot designate Material Y as an intermediate material, even if Material Y satisfies the applicable regional value-content requirement, because Material X was already designated by Producer A as an intermediate material.

*Example 6:* Single Producer and Multiple Designations of Materials as Intermediate Materials

Producer X, who is located in NAFTA country X, uses non-originating materials in the production of self-produced materials A, B, and C. None of the self-produced materials are used in the production of any of the other self-produced materials.

Producer X uses the self-produced materials in the production of Good O, which is exported to NAFTA country Y. Materials A, B and C qualify as originating materials because they satisfy the applicable regional value-content requirements.

Because none of the self-produced materials are used in the production of any of the other self-produced materials, then even though each self-produced material is subject to a regional value-content requirement, Producer X may, under section 7(4), designate all of the self-produced materials as intermediate materials. The proviso set out in section 7(4) only applies where self-produced materials are used in the production of other self-produced materials and both are subject to a regional value-content requirement.

*Example 7:* section 7(17)

The following are examples of accessories, spare parts or tools that are delivered with a good and form part of the good's standard accessories, spare parts or tools:

(a) consumables that must be replaced at regular intervals, such as dust collectors for an air-conditioning system,

(b) a carrying case for equipment,

(c) a dust cover for a machine,

(d) an operational manual for a vehicle,

(e) brackets to attach equipment to a wall,

(f) a bicycle tool kit or a car jack,

(g) a set of wrenches to change the bit on a chuck,

(h) a brush or other tool to clean out a machine, and

(i) electrical cords and power bars for use with electronic goods.

*Example 8:* Value of Indirect Materials that are Assists

Producer A, located in a NAFTA country, produces Good A that is subject to a regional value-content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method. Producer A buys Material X from Producer B, located in a NAFTA country, and uses it in the production of Good A. Producer A provides to Producer B, at no charge, tools to be used in the production of Material X. The tools have a value of $100 which is expensed in the current year by Producer A.

Material X is subject to a regional value-content requirement which Producer B chooses to calculate using the net cost method. For purposes of determining the value of non-originating materials in order to calculate the regional value content of Material X, the tools are considered to be an originating material because they are an indirect material. However, pursuant to section 7(11) they have a value of nil because the cost of the tools with respect to Material X is not recorded on the books of Producer B.

It is determined that Material X is a non-originating material. The cost of the tools that is recorded on the books of producer A is expensed in the current year. Pursuant to section 5 of Schedule VIII, the value of the tools (see section 5(1)(b)(ii) of Schedule VIII) must be included in the value of Material X by Producer A when calculating the regional value content of Good A. The cost of the tools, although recorded on the books of producer A, cannot be included as a separate cost in the net cost of Good A because it is already included in the value of Material X. The entire cost of Material X, which includes the cost of the tools, is included in the value of non-originating materials for purposes of the regional value content of Good A.

## PART V
## AUTOMOTIVE GOODS
### SECTION 8. DEFINITIONS AND INTERPRETATION

For purposes of this part,

''after-market parts'' means goods that are not for use as original equipment in the production of light-duty vehicles or heavy-duty vehicles and that are

(a) goods provided for in a tariff provision listed in Schedule IV, or

(b) automotive component assemblies, automotive components, sub-components or listed materials;

''class of motor vehicles'' means any one of the following categories of motor vehicles:

(a) motor vehicles provided for in any of subheading 8701.20, tariff items 8702.10.30 and 8702.90.30 (vehicles for the transport of 16 or more persons), subheadings 8704.10, 8704.22, 8704.23, 8704.32 and 8704.90 and headings 8705 and 8706,

(b) motor vehicles provided for in any of subheadings 8701.10 and 8701.30 through 8701.90,

(c) motor vehicles provided for in any of tariff items 8702.10.60 and 8702.90.60 (vehicles for the transport of 15 or fewer persons) and subheadings 8704.21 and 8704.31, and

(d) motor vehicles provided for in any of subheadings 8703.21 through 8703.90;

''complete motor vehicle assembly process'' means the production of a motor vehicle from separate constituent parts, which parts include the following:

(a) a structural frame or unibody,

(b) body panels,

(c) an engine, a transmission and a drive train,

(d) brake components,

(e) steering and suspension components,

(f) seating and internal trim,

(g) bumpers and external trim,

(h) wheels, and

(i) electrical and lighting components;

''first prototype'' means the first motor vehicle that

(a) is produced using tooling and processes intended for the production of motor vehicles to be offered for sale, and

(b) follows the complete motor vehicle assembly process in a manner not specifically designed for testing purposes;

''floor pan of a motor vehicle'' means a component, comprising a single part or two or more parts joined together, with or without additional stiffening members, that forms the base of a motor vehicle, beginning at the firewall or bulkhead of the motor vehicle and ending

(a) where there is a luggage floor panel in the motor vehicle, at the place where that luggage floor panel begins, and

(b) where there is no luggage floor panel in the motor vehicle, at the place where the passenger compartment of the motor vehicle ends;

''heavy-duty automotive good'' means a heavy-duty vehicle or a heavy-duty component;

''heavy-duty component'' means an automotive component or automotive component assembly that is for use as original equipment in the production of a heavy-duty vehicle;

''marque'' means a trade name used by a marketing division of a motor vehicle assembler that is separate from any other marketing division of that motor vehicle assembler;

''model line'' means a group of motor vehicles having the same platform or model name;

''model name'' means the word, group of words, letter, number or similar designation assigned to a motor vehicle by a marketing division of a motor vehicle assembler

(a) to differentiate the motor vehicle from other motor vehicles that use the same platform design,

(b) to associate the motor vehicle with other motor vehicles that use different platform designs, or

(c) to denote a platform design;

''new building'' means a new construction to house a complete motor vehicle assembly process, where that construction includes the pouring or construction of a new foundation and floor, the erection of a new frame and roof, and the installation of new plumbing and electrical and other utilities;

''plant'' means a building, or buildings in close proximity but not necessarily contiguous, machinery, apparatus and fixtures that are under the control of a producer and are used in the production of any of the following:

(a) light-duty vehicles and heavy-duty vehicles,

(b) goods of a tariff provision listed in Schedule IV, and

(c) automotive component assemblies, automotive components, sub-components and listed materials;

''platform'' means the primary load-bearing structural assembly of a motor vehicle that determines the basic size of the motor vehicle, and is the structural base that supports the driveline and links the suspension components of the motor vehicle for various types of frames, such as the body-on-frame or space-frame, and monocoques;

''received in the territory of a NAFTA country'' means, with respect to section 9(2), the location at which a traced material arrives in the territory of a NAFTA country and is documented for any customs purpose, which, in the case of a traced material imported into

(a) Canada,

(i) where the traced material is imported on a vessel, as defined in section 2 of the *Reporting of Imported Goods Regulations*, is the location at which the traced material is last unloaded from the vessel and reported, under section 12 of the *Customs Act*, to a customs office, including reported for transportation under bond by a conveyance other than that vessel, and

(ii) in any other case, is the location at which the traced material is reported, under section 12 of the *Customs Act*, to a customs office, including reported for transportation under bond,

(b) Mexico,

(i) where the traced material is imported on a vessel, the location at which the traced material is last unloaded from the vessel and reported for any customs purpose, and

(ii) in any other case, the location at which the traced material is reported for any customs purpose, and

(c) the United States, is the location at which the traced material is entered for any customs purpose, including entered for consumption, entered for warehouse or entered for transportation under bond, or admitted into a foreign trade zone;

''refit'' means a closure of a plant for a period of at least three consecutive months that is for purposes of plant conversion or retooling;

''size category'', with respect to a light-duty vehicle, means that the total of the interior volume for passengers and the interior volume for luggage is

(a) 85 cubic feet (2.38 $m^3$) or less,

(b) more than 85 cubic feet (2.38 $m^3$) but less than 100 cubic feet (2.80 $m^3$),

(c) 100 cubic feet (2.80 $m^3$) or more but not more than 110 cubic feet (3.08 $m^3$),

(d) more than 110 cubic feet (3.08 $m^3$) but less than 120 cubic feet (3.36 $m^3$), or

(e) 120 cubic feet (3.36 $m^3$) or more;

''traced material'' means a material, produced outside the territories of the NAFTA countries, that is imported from outside the territories of the NAFTA countries and is, when imported, of a tariff provision listed in Schedule IV;

''underbody'' means the floor pan of a motor vehicle.

## SECTION 9. LIGHT-DUTY AUTOMOTIVE GOODS

### VNM DETERMINED BY TRACING OF CERTAIN NON-ORIGINATING MATERIALS

(1) For purposes of calculating the regional value content of a light-duty automotive good under the net cost method, the value of non-originating materials used by the producer in the production of the good shall be the sum of the values of the non-originating materials that are traced materials and are incorporated into the good.

### VALUATION OF TRACED MATERIALS FOR VNM IN THE RVC

(2) Except as otherwise provided in subsections (3) and (6) through (8), the value of each of the traced materials that is incorporated into a good shall be

(a) where the producer imports the traced material from outside the territories of the NAFTA countries and has or takes title to it at the time of importation, the sum of

(i) the customs value of the traced material,

(ii) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the first place at which it was received in the territory of a NAFTA country, and

(iii) where not included in that customs value, the costs referred to in subsection (4);

(b) where the producer imports the traced material from outside the territories of the NAFTA countries and does not have or take title to it at the time of importation, the sum of

(i) the customs value of the traced material,

(ii) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the place at which it was when the producer takes title in the territory of a NAFTA country, and

(iii) where not included in that customs value, the costs referred to in subsection (4);

(c) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and that person has or takes title to the material at the time of importation, if the producer has a statement that

(i) is signed by the person from whom the producer acquired the traced material, whether in the form in which it was imported into the territory of a NAFTA country or incorporated into another material, and

(ii) states

(A) the customs value of the traced material,

(B) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the first place at which it was received in the territory of a NAFTA country, and

(C) where not included in that customs value, the costs referred to in subsection (4),

the sum of the customs value of the traced material, the freight, insurance, packing and other costs referred to in subparagraph (ii)(B) and the costs referred to in subparagraph (ii)(C);

(d) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and that person does not have or take title to the material at the time of importation, if the producer has a statement that

(i) is signed by the person from whom the producer acquired the traced material, whether in the form in which it was imported into the territory of a NAFTA country or incorporated into another material, and

(ii) states

(A) the customs value of the traced material,

(B) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the place at which it was located when the first person in the territory of a NAFTA country takes title, and

(C) where not included in that customs value, the costs referred to in subsection (4),

the sum of the customs value of the traced material, the freight, insurance, packing and other costs referred to in subparagraph (ii)(B) and the costs referred to in subparagraph (ii)(C);

(e) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer acquires the traced material or a material that incorporates the traced material from a person in the territory of a NAFTA country who has title to it, if the producer has a statement that

(i) is signed by the person from whom the producer acquired the traced material or the material that incorporates it, and

(ii) states the value of the traced material or a material that incorporates the traced material, determined in accordance with subsection (5), with respect to a transaction that occurs after the customs value of the traced material was determined,

the value of the traced material or the material that incorporates the traced material, determined in accordance with subsection (5), with respect to the transaction referred to in that statement;

(f) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries, and the producer acquires a material that incorporates that traced material and the acquired material was produced in the territory of a NAFTA country and is subject to a regional value-content requirement, if the producer has a statement that

(i) is signed by the person from whom the producer acquired that material, and

(ii) states that the acquired material is an originating material and states the regional value content of the material,

an amount equal to $VM \times (1 - RVC)$

where

VM is the value of the acquired material, determined in accordance with subsection (5), with respect to the transaction in which the producer acquired that material, and

RVC is the regional value content of the acquired material, expressed as a decimal;

(g) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries, and the producer acquires a material that incorporates that traced material and the acquired material was produced in the territory of a NAFTA country and is subject to a regional value-content requirement, if the producer has a statement that

(i) is signed by the person from whom the producer acquired that material, and

(ii) states that the acquired material is an originating material but does not state any value with respect to the traced material,

an amount equal to $VM \times (1 - RVCR)$

where

VM is the value of the acquired material, determined in accordance with subsection (5), with respect to the transaction in which the producer acquired that material, and

RVCR is the regional value-content requirement for the acquired material, expressed as a decimal;

(h) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer acquires a material that

(i) incorporates that traced material,

(ii) was produced in the territory of a NAFTA country, and

(iii) with respect to which an amount was determined in accordance with paragraph (f) or (g),

if the producer of the good has a statement signed by the person from whom the producer acquired that material that states that amount, the amount as determined in accordance with paragraph (f) or (g), as the case may be; and

(i) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer does not have a statement described in any of paragraphs (c) through (h), the value of the traced material or any material that incorporates it, determined in accordance with subsection (5) with respect to the transaction in which the producer acquires the traced material or any material that incorporates it.

VALUE OF TRACED MATERIAL IF CUSTOMS VALUE IS NOT IN ACCORDANCE WITH SCHEDULE VIII

(3) For purposes of subsections (2) (a) through (d), where the customs value of the traced material referred to in those paragraphs was not determined in a manner consistent with Schedule VIII, the value of the material shall be the sum of

(a) the value of the material determined in accordance with Schedule VIII with respect to the transaction in which the person who imported the material from outside the territories of the NAFTA countries acquired it; and

(b) where not included in that value, the costs referred to in subsections (2)(a) (ii) and (iii), subsections (2)(b) (ii) and (iii), subsections (2)(c)(ii) (B) and (C) or subsections (2)(d)(ii) (B) and (C), as the case may be.

ADDITIONAL COSTS INCLUDED IN TRACED VALUE IF NOT ALREADY INCLUDED IN CUSTOMS VALUE

(4) The costs referred to in subsections (2) (a) through (d) and subsection (3) are the following:

(a) duties and taxes paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable; and

(b) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the material in the territory of one or more of the NAFTA countries.

VALUE OF TRACED MATERIAL DETERMINED UNDER SCHEDULE VIII IF VALUE IS NOT CUSTOMS VALUE

(5) For purposes of subsections (2) (e) through (g) and (i) and subsections (6) and (7), the value of a material

(a) shall be the transaction value of the material, determined in accordance with section 2(1) of Schedule VIII with respect to the transaction referred to in that paragraph or subsection, or

(b) shall be determined in accordance with sections 6 through 11 of Schedule VIII, where, with respect to the transaction referred to in that paragraph or subsection, there is no transaction value for the material under section 2(2) of that Schedule, or the transaction value of the material is unacceptable under section 2(3) of that Schedule,

and, where not included under paragraph (a) or (b), shall include taxes, other than duties paid on an importation of a material from a NAFTA country, paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than taxes that are waived, refunded, refundable or otherwise recoverable, including credit against tax paid or payable.

(6) Where it is determined, during the course of a verification of origin of a light-duty automotive good with respect to which the producer of that good has a statement referred to in subsection (2) (f) or (g), that the acquired material referred to in that statement is not an originating material, the value of the acquired material shall, for purposes of subsection (2), be determined in accordance with subsection (5) with respect to the transaction in which that producer acquired it.

EFFECT ON VALUE OF TRACED MATERIAL IF VALUE ON A STATEMENT CANNOT BE VERIFIED

(7) Where any person who has information with respect to a statement referred to in any of subsections (2)(c) through (h) does not allow a customs administration to verify that information during a verification of origin, the value of the material with respect to which that person did not allow the customs administration to verify the information may be determined by that customs administration in accordance with subsection (5) with respect to the transaction in which that person sells, or otherwise transfers to another person, that material or a material that incorporates that material.

USE OF VALUE OF VNM AS DETERMINED UNDER SECTION 12(3) FOR TRACED MATERIAL INCORPORATED INTO ANOTHER MATERIAL

(8) Where a traced material is incorporated into a material produced in the territory of a NAFTA country and that material is incorporated into a light-duty automotive good, the statement referred to in subsection (2)(c), (d) or (e) may state the value of non-originating materials, determined in accordance with section 12(3), with respect to the material that incorporates the traced material.

INTERPRETATIONS AND CLARIFICATIONS FOR PROVISIONS APPLICABLE TO TRACING RULES FOR LIGHT-DUTY AUTOMOTIVE GOODS

(9) For purposes of this section,

(a) where a producer, in accordance with section 7(4), designates as an intermediate material any self-produced material used in the production of a light-duty automotive good,

(i) the designation applies solely to the calculation of the net cost of that good, and

(ii) the value of a traced material that is incorporated into that good shall be determined as though the designation had not been made;

(b) the value of a material not listed in Schedule IV, when imported from outside the territories of the NAFTA countries,

(i) shall not be included in the value of non-originating materials that are used in the production of a light-duty automotive good, and

(ii) shall be included in calculating the net cost of a light-duty automotive good that incorporates that material;

(c) except as otherwise provided in section 12(10), this section does not apply with respect to after-market parts;

(d) the costs referred to in subsections (2)(a)(ii) and (b)(ii), subsections (2)(c)(ii)(B) and (d)(ii)(B) and subsections (4) and (5) shall be the costs referred to in those paragraphs that are recorded on the books of the producer of the light-duty automotive good;

(e) for purposes of calculating the regional value content of a light-duty automotive good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material, and the value of that material shall be determined in accordance with subsection (5) with respect to the transaction in which the producer acquired it; and

(f) any information set out in a statement referred to in subsection (2) that concerns the value of materials or costs shall be in the same currency as the currency of the country in which the person who provided the statement is located.

EXAMPLES OF APPLICATION OF TRACING FOR LIGHT-DUTY AUTOMOTIVE GOODS

(10) Each of the following examples is an ''Example'' as referred to in section 2(4).

*Example 1:*

Nuts and bolts provided for in heading 7318 are imported from outside the territories of the NAFTA countries and are used in the territory of a NAFTA country in the production of a light-duty automotive good referred to in section 9(1). Heading 7318 is not listed in Schedule IV so the nuts and bolts are not traced materials.

Because the nuts and bolts are not traced materials the value, under section 9(1), of the nuts and bolts is not included in the value of non-originating materials used in the light-duty automotive good even though the nuts and bolts are imported from outside the territories of the NAFTA countries.

The value, under section 9(9)(b), of the nuts and bolts is included in the net cost of the light-duty automotive good for the purposes of calculating, under section 9(1), regional value content of the motor vehicle.

*Example 2:*

A rear view mirror provided for in subheading 7009.10 is imported from outside the territories of the NAFTA countries and is used in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle.

Subheading 7009.10 is listed in Schedule IV. The rear view mirror is a traced material. For purposes of calculating, under section 9(1), regional value content of the light-duty vehicle, the value of the mirror is included in the value of non-originating materials in accordance with sections 9(2) through (9).

*Example 3:*

Glass provided for in heading 7005 is imported from outside the territories of the NAFTA countries and is used in the territory of NAFTA country A in the production of a rear view mirror. The rear view mirror is a non-originating good because it fails to satisfy the applicable change in tariff classification.

That rear view mirror is exported to NAFTA country B where it is used as original equipment in the production of a light-duty vehicle. Even though the rear view mirror is a non-originating material and is provided for in a tariff item listed in Schedule IV, it is not a traced material because it was not imported from outside the territories of the NAFTA countries.

For purposes of calculating, under section 9(1), the regional value content of a light-duty vehicle in which the rear view mirror is incorporated, the value of the rear view mirror, under section 9(1), is not included in the value of non-originating materials used in the production of the light-duty vehicle.

Even though the glass provided for in heading 7005 that was used in the production of the rear view mirror and incorporated into the light-duty vehicle was imported from outside the territories of the NAFTA countries, the glass is not a traced material because heading 7005 is not listed in Schedule IV. For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle that incorporates the glass, the value of the glass is not included in the value of non-originating materials used in the production of the light-duty vehicle. The value of the rear view mirror would be included in the net cost of the light-duty vehicle, but the value of the imported glass would not be separately included in the value of non-originating materials of the light-duty vehicle.

*Example 4:*

An electric motor provided for in subheading 8501.10 is imported from outside the territories of the NAFTA countries and is used in the territory of a NAFTA country in the production of a seat frame provided for in subheading 9401.90. The seat frame, with the electric motor attached, is sold to a producer of seats provided for in subheading 9401.20. The seat producer sells the seat to a producer of light-duty vehicles. The seat is to be used as original equipment in the production of that light-duty vehicle.

Subheadings 8501.10 and 9401.20 are listed in Schedule IV; subheading 9401.90 is not. The electric motor is a traced material; the seat is not a traced material because it was not imported from outside the territories of the NAFTA countries.

The seat is a light-duty automotive good referred to in section 9(1). For purposes of calculating, under section 9(1), the regional value content of the seat, the value of traced materials incorporated into it is included in the value of non-originating materials used in the production of the seat. The value of the electric motor is included in that value. (However, the value of the motor would not be included separately in the net cost of the seat because the value of the motor is included as part of the cost of the seat frame.)

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle, the value of the electric motor is included in the value of non-originating materials used in the production of the light-duty vehicle, even if the seat is an originating material.

*Example 5:*

Cast blocks, cast heads and connecting rod assemblies provided for in heading 8409 are imported from outside the territories of the NAFTA countries by an engine producer, who has title to them at the time of importation, and are used by the producer in the territory of NAFTA country A in the production of an engine provided for in heading 8407. After the regional value content of the engine is calculated, the engine is an originating good. It is not a traced material because it was not imported from outside the territories of the NAFTA countries. The engine is exported to NAFTA country B, to be used as original equipment by a producer of light-duty vehicles.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle that incorporates the engine, because heading 8409 is listed in Schedule IV and because the cast blocks, cast heads and connecting rod assemblies were imported into the territory of a NAFTA country and are incorporated into the light-duty vehicle, the value of those materials, which are traced materials, is included in the value of non-originating materials used in the production of the light-duty vehicle, even though the engine is an originating material.

The producer of the light-duty vehicle did not import the traced materials. However, because that producer has a statement referred to in section 9(2)(c) and that statement states the value of non-originating materials of the traced materials in accordance with section 12(2), the producer of the light-duty vehicle may, in accordance with section 9(8), use that value as the value of non-originating materials of the light-duty vehicle with respect to that engine.

*Example 6:*

Aluminum ingots provided for in subheading 7601.10 and piston assemblies provided for in heading 8409 are imported from outside the territories of the NAFTA countries by an engine producer and are used by that producer in the territory of NAFTA country A in the production of an engine provided for in heading 8407. The aluminum ingots are used by the producer to produce an engine block; the piston assembly is then incorporated into the engine block and the producer designates, in accordance with section 7(4), a short block provided for in heading 8409 as an intermediate material. The intermediate material qualifies as an originating material. The engine that incorporates the short block is exported to NAFTA country B and used as original equipment in the production of a light-duty vehicle. The piston assemblies provided for in heading 8409 are traced materials; neither the engine nor the short block are traced materials because they were not imported from outside the territories of the NAFTA countries.

For purposes of calculating, under section 9(1), the regional value content of the engine, the value of the piston assemblies is included, under section 9(9)(a)(ii), in the value of non-originating materials, even if the intermediate material is an originating material. However, the value of the aluminum ingots is not included in the value of non-originating materials because subheading 7601.10 is not listed in Schedule IV. The value of the aluminum ingots does not need to be included separately in the net cost of the engine because that value is included in the value of the intermediate material, and the total cost of the intermediate material is included in the net cost of the engine.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle that incorporates the engine (and the piston assemblies), the value of the piston assemblies incorporated into that light-duty vehicle is included in the value of non-originating materials of the light-duty vehicle.

*Example 7:*

An engine provided for in heading 8407 is imported from outside the territories of the NAFTA countries. The producer of the engine, located in the country from which the engine is imported, used in the production of the engine a piston assembly provided for in heading 8409 that was produced in a NAFTA country and is an originating good. The engine is used in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle. The engine is a traced material.

For purposes of calculating, under section 9(1), the regional value content of a light-duty vehicle that incorporates that engine, the value of the engine is included in the value of non-originating materials of that light-duty vehicle. The value of the piston assembly, which was, before its exportation to outside the territories of the NAFTA countries, an originating good, shall not be deducted from the value of non-originating materials used in the production of the light-duty vehicle. Under section 18 (transshipment), the piston assembly is no longer considered to be an originating good because it was used in the production of a good outside the territories of the NAFTA countries.

*Example 8:*

A wholesaler, located in City A in the territory of a NAFTA country, imports from outside the territories of the NAFTA countries rubber hoses provided for in heading 4009, which is listed in Schedule IV. The wholesaler takes title to the goods at the wholesaler's place of business in City A. The customs value of the imported goods is $500. All freight, taxes and duties associated with the good to the wholesaler's place of business total $100; the cost of the freight, included in that $100, from the place where it was received in the territory of a NAFTA country to the location of the wholesaler's place of business in City A is $25. The wholesaler sells the rubber hoses for $650 to a producer of light-duty vehicles who uses the goods in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle. The light-duty vehicle producer pays $50 to have the goods shipped from the location of the wholesaler's place of business in City A to the location at which the light-duty vehicle is produced.

The rubber hoses are traced materials and they are incorporated into a light-duty automotive good. For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle,

(1) if the wholesaler takes title to the goods before the first place at which they were received in the territory of a NAFTA country, then the value of non-originating materials, where the light-duty vehicle producer has a statement referred to in section 9(2)(c), would not include the cost of freight from the place where they were received in the territory of a NAFTA country to the location of the wholesaler's place of business: in this situation, the value of non-originating materials would be $575;

(2) if the producer has a statement referred to in section 9(2)(d) that states the customs value of the traced material and, where not included in that price, the cost of taxes, duties, fees and transporting the goods to the place where title is taken, the light-duty vehicle producer may use those values as the value of non-originating materials with respect to the goods: in this situation, the value of non-originating materials would be $600; or

(3) if the wholesaler is unwilling to provide the light-duty vehicle producer with such a statement, the value of non-originating materials with respect to the traced materials will be the value of the materials with respect to the transaction in which the producer acquired them, as provided for in section 9(2)(i), in this instance $650; the costs of transporting the goods from the location of the wholesaler's place of business to the location of the producer will be included in the net cost of the goods, but not in the value of non-originating materials.

*Example 9:*

A wholesaler, located in City A in the territory of a NAFTA country, imports from outside the territories of the NAFTA countries rubber hose provided for in heading 4009, which is listed in Schedule IV. The wholesaler sells the good to a producer located in the territory of the NAFTA country who uses the hose to produce a power steering hose assembly, also provided for in heading 4009. The power steering hose assembly is then sold to a producer of light-duty vehicles who uses that good in the production of a light-duty vehicle. The rubber hose is a traced material; the power steering hose assembly is not a traced material because it was not imported from outside the territories of the NAFTA countries.

The wholesaler who imported the rubber hose from outside the territories of the NAFTA countries has title to it at the time of importation. The customs value of the good is $3, including freight and insurance and all other costs incurred in transporting the good to the first place at which it was received in the territory of the NAFTA country. Duties and fees and all other costs referred to in section 9(4), paid by the wholesaler with respect to the good, total an additional $1. The wholesaler sells the good to the producer of the power steering hose assemblies for $5, not including freight to the location of that producer. The power steering hose producer pays $2 to have the good delivered to the location of production. The value of the power steering hose assembly sold to the light-duty vehicle producer is $10, including freight for delivery of the goods to the location of the light-duty vehicle producer.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle:

(1) if the motor vehicle producer has a statement referred to in section 9(2)(c) from the producer of the power steering hose assembly that states the customs value of the imported rubber hose incorporated in the power steering hose assembly, and the value of the duties, fees and other costs referred to in section 9(4), the producer may use those values as the value of non-originating materials with respect to that traced good: in this situation, that value would be the customs value of $3 and the cost of duties and fees of $1, provided that the wholesaler has provided the producer of the power steering hose assembly with the information regarding the customs value of the imported good and the other costs;

(2) if the light-duty vehicle producer has a statement from the producer of the power steering hose assembly that states the value of the imported hose, with respect to the transaction in which the power steering hose assembly producer acquires the imported hose from the wholesaler, the light-duty vehicle producer may include that value as the value of non-originating materials, in accordance with section 9(2)(e): in this situation, that value is $5; and the $2 cost of transporting the good from the location of the wholesaler to the location of the producer, because that cost is separately identified, would not be included in the value of non-originating materials of the light-duty vehicle;

(3) if the light-duty vehicle producer has a statement referred to in section 9(2)(f) signed by the producer of the power steering hose assembly, the light-duty vehicle producer may use the formula set out in section 9(2)(f) to calculate the value of non-originating materials with respect to that acquired material: in this situation, assuming the regional value content is 55 per cent, the value of non-originating materials would be $4.50; and because the cost of transportation from the location of the producer of the power steering hose assembly to the location of the light-duty vehicle producer is included in the purchase price and not separately identified, it may not be deducted from the purchase price, because the formula referred to in section 9(2)(f) does not allow for the deduction of transportation costs that would otherwise not be non-originating;

(4) if the light-duty vehicle producer has a statement referred to in section 9(2)(g) signed by the producer of the power steering hose assembly, the light-duty vehicle producer may use the formula set out in section 9(2)(g) to calculate the value of non-originating materials with respect to that acquired material: in this situation, assuming the regional value-content requirement is 50 per cent, the value of non-originating materials would be $5; and because the cost of transportation from the location of the producer of the power steering hose assembly to the location of the light-duty vehicle producer is included in the purchase price and not separately identified, it may not be deducted from the purchase price, because the formula referred to in section 9(2)(g) does not allow for the deduction of transportation costs that would otherwise not be non-originating; or

(5) if the light-duty vehicle producer does not have a statement referred to in any of sections 9(2)(c) through (h) from the producer of the power steering hose assembly, the light-duty vehicle producer includes in the value of non-originating materials of the vehicles the value, determined in accordance with section 9(2)(i), of the power steering hose assembly: in this situation, that amount would be $10, the cost to the producer of acquiring that material.

*Example 10:*

A producer of light-duty vehicles located in City C in the territory of a NAFTA country imports from outside the territories of the NAFTA countries rubber hose provided for in heading 4009, which is listed in Schedule IV, and uses that good as original equipment in the production of a light-duty vehicle.

The rubber hose arrives at City A in the NAFTA country, but the producer of the light-duty vehicle does not have title to the good; it is transported under bond to City B, and on its arrival in City B, the producer of the light-duty vehicle takes title to it and the good is received in the territory of a NAFTA country. The good is then transported to the location of the light-duty vehicle producer in City C.

The customs value of the imported good is $4, the transportation and other costs referred to in subparagraph 9(2)(b)(ii) to City A are $3 and to City B are $2, and the cost of duties, taxes and other fees referred to in section 9(4) is $1. The cost of transporting the good from City B to the location of the producer in City C is $1. The rubber hose is traced material.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle, the value, under section 9(2)(b), of non-originating materials of that vehicle is the customs value of the traced material and, where not included in that value, the cost of taxes, duties, fees and the cost of transporting the traced material to the place where title is taken. In this situation, the value of non-originating materials would be the customs value of the traced material, $4, the cost of duties taxes and other fees, $1, the cost of transporting the material to City A, $3, and the cost of transporting that material from City A to City B, $2, for a total of $10. The $1 cost of transporting the good from City B to the location of the producer in City C would not be included in the value of non-originating materials of the light-duty vehicle because a person of a NAFTA country has taken title to the traced material.

*Example 11:*

A radiator provided for in subheading 8708.91 is imported from outside the territories of the NAFTA countries by a producer of light-duty vehicles and is used in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle.

The radiator is transported by ship from outside the territories of the NAFTA countries and arrives in the territory of the NAFTA country at City A. The radiator is not, however, unloaded at City A and although the radiator is physically present in the territory of the NAFTA country, it has not been received in the territory of a NAFTA country.

The ship sails in territorial waters from City A to City B and the radiator is unloaded there. The light-duty vehicle producer files, from City C in the same country, the entry for the radiator; the radiator enters the territory of the NAFTA country at City B.

Subheading 8708.91 is listed in Schedule IV. The radiator is a traced material.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle, the value of the radiator is included in the value of non-originating materials of the light-duty vehicle. The costs of any freight, insurance, packing and other costs incurred in transporting the radiator to City B are included in the value of non-originating materials of the light-duty vehicle, including the cost of transporting the radiator from City A to City B. The costs of any freight, insurance, packing and other costs that were incurred in transporting the radiator from City B to the location of the producer are not included in the value of non-originating materials of the light-duty vehicle.

*Example 12:*

Producer X, located in NAFTA country A, produces a car seat of subheading No. 9401.20 that is used in the production of a light-duty vehicle. The only non-originating material used in the production of the car seat is an electric motor of subheading No. 8501.20 that was imported by Producer X from outside the territories of the NAFTA countries. The electric motor is a material of a tariff provision listed in Schedule IV and thus is a traced material.

Producer X sells the car seat as original equipment to Producer Y, a light-duty vehicle producer, located in NAFTA country B. The car seat is an originating good because the non-originating material in the car seat (the electric motor) undergoes the applicable change in tariff classification set out in a rule that specifies only a change in tariff classification. Consequently, Producer X does not choose to calculate the regional value content of the car seat in accordance with section 12(1).

For purposes of determining, under section 9(1), the value of non-originating materials used in the production of the light-duty vehicle that incorporates the car seat, the value of the electric motor is included even though the car seat qualifies as an originating material.

Producer X provides Producer Y with a statement described in section 9(2)(c), with the value of non-originating material used in the production of the car seat determined in accordance with section 12(3), as is permitted by section 9(8). Producer Y uses that value as the value of non-originating materials used in the production of the light-duty vehicle with respect to the car seat.

*Example 13:*

This example has the same facts as in Example 12, except that the car seat does not qualify as an originating good under the rule that specifies only a change in tariff classification. Instead, it qualifies as an originating good under a rule that specifies a regional value-content requirement and a change in tariff classification. For purposes of that rule, Producer X chose to calculate the regional value content of the car seat in accordance with section 12(1) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(a).

For purposes of the statement described in section 9(2)(c), Producer X determined, as is permitted under section 9(8), the value of non-originating material used in the production of the car seat in accordance with section 12(3) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(e).

SECTION 10. HEAVY-DUTY AUTOMOTIVE GOODS

DETERMINING VNM FOR THE CALCULATION OF THE RVC FOR HEAVY-DUTY AUTOMOTIVE GOODS

(1) Except as otherwise provided in subsections (3) through (8) and section 12(10)(a), for purposes of calculating the regional value content of a heavy-duty automotive good under the net cost method, the value of non-originating materials used by the producer of the good in the production of the good shall be the sum of

(a) for each listed material that is a non-originating material, is a self-produced material and is used by the producer in the production of the good, at the choice of the producer, either

(i) the total cost incurred with respect to all goods produced by the producer that can be reasonably allocated to that listed material in accordance with Schedule VII,

(ii) the aggregate of each cost that forms part of the total cost incurred with respect to that listed material that can be reasonably allocated to that listed material in accordance with Schedule VII, or

(iii) the sum of

(A) the customs value of each non-originating material imported by the producer and used in the production of the listed material, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), and

(B) the value of each non-originating material that is not imported by the producer of the listed material and is used in the production of the listed material, determined in accordance with subsection (2) with respect to the transaction in which the producer of the listed material acquired it;

(b) for each listed material that is a non-originating material, is produced in the territory of a NAFTA country and is acquired and used by the producer in the production of the good, at the choice of the producer, either

(i) the value of that non-originating listed material, determined in accordance with subsection (2), with respect to the transaction in which the producer acquired the listed material, or

(ii) where the producer of the good has a statement described in clause (A) or (B) with respect to each material that is a non-originating material used in the production of that listed material, the sum of

(A) the customs value of each non-originating material imported by the producer of the listed material and used in the production of that listed material, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), if the producer of the good has a statement signed by the producer of the listed material that states the customs value of that non-originating material and the costs referred to in subsections (2)(c) through (f) that the producer of the listed material incurred with respect to the non-originating material, and

(B) the value of each non-originating material that is not imported by the producer of the listed material, and is acquired and used in the production of the listed material, determined in accordance with subsection (2) with respect to the transaction in which the producer of the listed material acquired that non-originating material, if the producer of the good has a statement signed by the producer of the listed material that states the value of the acquired material, determined in accordance with subsection (2) with respect to the transaction in which the producer of the listed material acquired the non-originating material;

(c) for each listed material, automotive component assembly, automotive component or sub-component that is imported from outside the territories of the NAFTA countries, and is used by the producer in the production of the good,

(i) where it is imported by the producer, the customs value of that non-originating listed material, automotive component assembly, automotive component or sub-component, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), and

(ii) where it is not imported by the producer, the value of that non-originating listed material, automotive component assembly, automotive component or sub-component, determined in accordance with subsection (2) with respect to the transaction in which the producer acquired it;

(d) for each automotive component assembly, automotive component or sub-component that is an originating material and is acquired and used by the producer in the production of the good, at the choice of the producer,

(i) the sum of

(A) the value of each non-originating listed material used in the production of the originating material, determined under paragraphs (a) and (b),

(B) the value of each non-originating material incorporated into the originating material, determined under paragraph (c),

(C) the value of each non-originating listed material used in the production of a material referred to in paragraph (e) that is used in the production of the originating material, determined under paragraphs (a) and (b), and

(D) where the value of a non-originating listed material referred to in clause (C), and used in the production of a non-originating automotive component assembly, automotive component or sub-component that is used in the production of the originating material, is not included under clause (C), the value of that automotive component assembly, automotive component or sub-component, determined under paragraph (e)(ii),

if the producer has a statement, signed by the person from whom the originating material was acquired, that states the sum of the values, as determined by the producer of the originating material under paragraphs (a), (b), (c) and (e) of each non-originating material referred to in any of clauses (A) through (D) that is incorporated into that originating material;

(ii) an amount equal to the number resulting from applying the following formula:

$$VM \times (1 - RVC)$$

where

VM is the value of the acquired material, determined in accordance with subsection (2), with respect to the transaction in which the producer of the good acquired that material, and

RVC is the regional value content of the acquired material, expressed as a decimal,

if the material is subject to a regional value-content requirement and the producer has a statement, signed by the person from whom the producer acquired that material, that states that the acquired material is an originating material and states the regional value content of the material,

(iii) an amount equal to the number resulting from applying the following formula:

$$VM \times (1 - RVCR)$$

where

VM is the value of the acquired material, determined in accordance with subsection (2), with respect to the transaction in which the producer of the good acquired that material, and

RVCR is the regional value-content requirement for the acquired material, expressed as a decimal,

if the material is subject to a regional value-content requirement and the producer has a statement, signed by the person from whom the producer acquired that material, that states that the acquired material is an originating material but does not state the value of non-originating materials with respect to that acquired material; or

(iv) the value of that automotive component assembly, automotive component or sub-component determined in accordance with subsection (2) with respect to the transaction in which the producer acquired the material;

(e) for each automotive component assembly, automotive component or sub-component that is a non-originating material produced in the territory of a NAFTA country and that is acquired by the producer and used by the producer in the production of the good, at the choice of the producer, either

(i) the sum of the values of the non-originating materials incorporated into that non-originating material that is acquired by the producer, determined under paragraphs (a), (b), (c), (d) and (f), if the producer has a statement, signed by the person from whom the non-originating material was acquired, that states the sum of the values of the non-originating materials incorporated into that non-originating material, determined by the producer of the non-originating material in accordance with paragraphs (a), (b), (c), (d) and (f), or

(ii) the value of that non-originating automotive component assembly, automotive component or sub-component, determined in accordance with subsection (2) with respect to the transaction in which the producer acquired the material; and

(f) for each non-originating material that is not referred to in paragraph (a), (b), (c) or (e) and that is used by the producer in the production of the good,

(i) where it is imported by the producer, the customs value of that non-originating material, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), and

(ii) where it is not imported by the producer, the value of that non-originating material, determined in accordance with subsection (2) with respect to the transaction in which the producer acquired the material.

APPLICATION OF SCHEDULE VIII TO DETERMINE VNM; ADDITIONAL COSTS TO BE INCLUDED

(2) For purposes of subsection (1)(a)(ii)(B), subsection (1)(b)(i), subsection (1)(b)(ii)(B), subsections (1)(c)(ii), (1)(d)(ii) through (iv), (1)(e)(ii) and subsection (1)(f)(ii), the value of a material

(a) shall be the transaction value of the material, determined in accordance with section 2(1) of Schedule VIII with respect to the transaction referred to in that clause, subparagraph or paragraph, or

(b) where, with respect to the transaction referred to in that clause, subparagraph, or paragraph, there is no transaction value for the material under section 2(2) of Schedule VIII or the transaction value of the material is unacceptable under section 2(3) of that Schedule, shall be determined in accordance with sections 6 through 11 of that Schedule,

and shall include the following costs where they are not included under paragraph (a) or (b):

(c) the costs of freight, insurance and packing, and all other costs incurred in transporting the material to the location of the producer,

(d) duties and taxes paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(e) customs brokerage fees, including the cost of in-house customs brokerage and customs clearance services, incurred with respect to the material in the territory of one or more of the NAFTA countries, and

(f) the cost of waste and spoilage resulting from the use of the material in the production of the good, minus the value of any reusable scrap or by-product.

VALUE OF IMPORTED MATERIAL IF CUSTOMS VALUE IS NOT IN ACCORDANCE WITH SCHEDULE VIII

(3) For purposes of subsections (1)(a)(ii)(A) and (b)(ii)(A) and subsections (1)(c)(i) and (f)(i), where the customs value of an imported material referred to in those clauses or paragraphs was not determined in a manner consistent with Schedule VIII, the value of the material shall be determined in accordance with Schedule VIII with respect to the importation for which that customs value was determined and, where the costs referred to in sections (2)(c) through (f) are not included in that value, those costs shall be added to the value of the material.

OPTION TO USE SECTION 9 TRACING RULES IN CERTAIN CIRCUMSTANCES

(4) For purposes of calculating the regional value content of a heavy-duty component, where

(a) a heavy-duty component is produced in the same plant as an automotive component assembly or automotive component that is of the same heading or subheading as that heavy-duty component and is for use as original equipment in a light-duty vehicle, and

(b) it is not reasonable for the producer to know which of the production will constitute a heavy-duty component for use in a heavy-duty vehicle,

the value of the non-originating materials used in the production of the heavy-duty component in that plant may, at the choice of the producer, be determined in the manner set out in section 9.

(5) For purposes of calculating the regional value content of a heavy-duty vehicle, where a producer of such a vehicle acquires, for use by that producer in the production of the vehicle, a heavy-duty component with respect to which the value of non-originating materials has been determined in accordance with subsection (4), the value of the non-originating materials used by the producer with respect to that heavy-duty component is the value of non-originating materials determined under that subsection.

VNM MAY BE REDETERMINED FOR CERTAIN ACQUIRED MATERIALS

(6) Where it is determined, during the course of a verification of origin of a heavy-duty automotive good with respect to which the producer of that good has a statement referred to in subsection (1)(d)(ii) or (iii) that the acquired material referred to in that statement is not an originating material, the value of the acquired material shall, for purposes of subsection (1), be determined in accordance with subsection (2) with respect to the transaction in which that producer acquired it.

EFFECT ON VALUE OF TRACED MATERIAL IF VALUE ON A STATEMENT CANNOT BE VERIFIED

(7) Where any person who has information with respect to a statement referred to in subsection (1)(b)(ii), (d)(i) or (e)(i) does not allow a customs administration to verify that information during a verification of origin, the value of any material with respect to which that person did not allow the customs administration to verify the information may be determined by that customs administration in accordance with subsection (2) with respect to the transaction in which that person sells, or otherwise transfers to another person, that material or a material that incorporates that material.

USE OF VALUE OF VNM AS DETERMINED UNDER SECTION 12(3) FOR TRACED MATERIAL INCORPORATED INTO ANOTHER MATERIAL

(8) Where a heavy-duty component, sub-component or listed material is incorporated into a material produced in the territory of a NAFTA country and that material is incorporated into a heavy-duty automotive good, the statement referred to in subsection (1)(b)(ii), (d)(i) or (e)(i) may state the value of non-originating materials, determined in accordance with section 12(3), with respect to the material that incorporates the heavy-duty component, sub-component or listed material.

INTERPRETATIONS AND CLARIFICATIONS FOR PROVISIONS APPLICABLE TO RULES FOR DETERMINING VNM FOR HEAVY-DUTY AUTOMOTIVE GOODS

(9) For purposes of this section,

(a) for purposes of calculating the regional value content of a heavy-duty automotive good, sub-component or listed material, a producer of such a good may, in accordance with section 7(4), designate as an intermediate material any self-produced material, other than a heavy-duty component or sub-component, that is used in the production of that good;

(b) except as otherwise provided in section 12(10), this section does not apply with respect to after-market parts;

(c) this section does not apply to a sub-component for purposes of calculating its regional value content before it is incorporated into a heavy-duty automotive good;

(d) for purposes of calculating the regional value content of a heavy-duty automotive good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material, and the value of that material shall be determined in accordance with subsection (2) with respect to the transaction in which the producer acquired it;

(e) any information set out in a statement referred to in subsections (1)(b)(ii), (d)(i) through (iii) or (e)(i) that concerns the value of materials or costs shall be in the same currency as the currency of the country in which the person who provided the statement is located; and

(f) total cost under subsections (1)(a)(i) and (ii) consists of the costs referred to section 2(6), and is calculated in accordance with that section and section 2(7).

EXAMPLES OF APPLICATION OF RULES FOR DETERMINING VNM FOR HEAVY-DUTY AUTOMOTIVE GOODS

(10) Each of the following examples is an ''Example'' as referred to in section 2(4).

*Example 1:* A listed material is imported from outside the territories of the NAFTA countries

A cast head, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of an engine that will be used as original equipment in the production of a heavy-duty vehicle. No other non-originating materials are used in the production of the engine. The cast head is a listed material; the engine is an automotive component.

*Situation 1:* Use of the listed material in an automotive component

For purposes of calculating the regional value content of the engine, the value of listed materials imported from outside the territories of the NAFTA countries is included in the value of non-originating materials used in the production of the engine. Because the cast head was produced outside the territories of the NAFTA countries, its value, under section 10(1)(c), is included in the value of non-originating materials used in the production of the engine.

*Situation 2:* Use of an originating automotive component incorporating the listed material

The engine is an originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the cast head), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(d) with respect to that engine. The producer may choose to include in the value of non-originating materials of the heavy-duty vehicle

(a) the value, determined under section 10(1)(d)(i), of the non-originating materials that are incorporated into the engine, which is the value, determined under sections 10(1) (a) through (c) and paragraph (e)(ii), of the non-originating materials;

(b) the value, determined under section 10(1)(d)(ii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value content, expressed as a decimal, of the engine;

(c) the value, determined under section 10(1)(d)(iii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value-content requirement, expressed as a decimal, for the engine; or

(d) the value, determined under section 10(1)(d)(iv), of the engine.

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(d)(i), from the person from whom the engine was acquired. In this situation, the value, determined under section 10(1)(c), of the cast head, is included in the value of non-originating materials of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the second option if that producer has a statement, referred to in section 10(1)(d)(ii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the cast head will be included in the amount determined under section 10(1)(d)(ii) and is, consequently, included in the value of non-originating materials used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the third option if that producer has a statement, referred to in section 10(1)(d)(iii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the cast head will be included in the amount determined under section 10(1)(d)(iii) and is, consequently, included in the value of non-originating materials used in the production of the heavy-duty vehicle.

*Situation 3:* Use of a non-originating automotive component incorporating the listed material

The engine is a non-originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the cast head), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(e) with respect to that engine. The producer of the heavy-duty vehicle may choose to include in the value of non-originating materials either

(a) the value, as determined under section 10(1)(e)(i), of the non-originating materials that are incorporated into the engine, which is the value of the non-originating materials as determined under sections 10(1)(a) through (d) and (f), or

(b) the value of the engine, determined under section 10(1)(e)(ii).

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(e)(i), from the person from whom the engine was acquired. In this situation, the value of the cast head, as determined under section 10(1)(c), is included in the value of non-originating materials used in the production of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

*Example 2:* A material is imported from outside the territories of the NAFTA countries

A rocker arm assembly, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of an engine that will be used as original equipment in the production of a heavy-duty vehicle. No other non-originating materials are used in the production of the engine. The rocker arm assembly is neither a listed material nor a sub-component; the engine is an automotive component.

*Situation 1:* Use of the material in an automotive component

For purposes of calculating the regional value content of the engine, the value of non-originating materials that are not listed materials is included in the value of non-originating materials used in the production of the engine. Because the rocker arm assembly was produced outside the territories of the NAFTA countries, it is a non-originating material and its value, under section 10(1)(f), is included in the value of non-originating materials used in the production of the engine.

*Situation 2:* Use of an originating automotive component incorporating the material

The engine is an originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the rocker arm assembly), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(d) with respect to that engine. The producer may choose to include in the value of non-originating materials of the heavy-duty vehicle

(a) the value, determined under section 10(1)(d)(i), of the non-originating materials that are incorporated into the engine, which is the value, determined under sections 10(1) (a) through (c) and paragraph (e)(ii), of the non-originating materials;

(b) the value, determined under section 10(1)(d)(ii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value content, expressed as a decimal, of the engine;

(c) the value, determined under section 10(1)(d)(iii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value-content requirement, expressed as a decimal, for the engine; or

(d) the value, determined under section 10(1)(d)(iv), of the engine.

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(d)(i), from the person from whom the engine was acquired. In this situation, the value of the rocker arm assembly, as determined under section 10(1)(f), is not included in the value of non-originating materials of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the second option if that producer has a statement, referred to in section 10(1)(d)(ii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the rocker arm assembly will be included in the amount determined under section 10(1)(d)(ii) and will, consequently, be included in the value of non-originating materials used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the third option if that producer has a statement, referred to in section 10(1)(d)(iii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the rocker arm assembly will be included in the amount determined under section 10(1)(d)(iii) and will, consequently, be included in the value of non-originating materials used in the production of the heavy-duty vehicle.

*Situation 3:* Use of a non-originating automotive component incorporating the material

The engine is a non-originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the rocker arm assembly), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(e) with respect to that engine. The producer of the heavy-duty vehicle may choose to include in the value of non-originating materials either

(a) the value, as determined under section 10(1)(e)(i), of the non-originating materials that are incorporated into the engine, which is the value of the non-originating materials as determined under sections 10(1) (a) through (d) and (f), or

(b) the value of the engine, determined under section 10(1)(e)(ii).

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(e)(i), from the person from whom the engine was acquired. In this situation, the value of the rocker arm assembly, as determined under section 10(1)(f), is included in the value of non-originating materials used in the production of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

*Situation 4:* Use of the material in a self-produced automotive component

If the engine is a self-produced material rather than an acquired material, the heavy-duty vehicle producer is using the rocker arm assembly in the production of the heavy-duty vehicle rather than in the production of the engine, because, under section 7(4), the engine cannot be designated as an intermediate material. For purposes of calculating the regional value content of the heavy-duty vehicle, the value, under section 10(1)(f), of the rocker arm assembly is included in the value of non-originating materials used in the production of the heavy-duty vehicle.

*Example 3:* An automotive component is imported from outside the territories of the NAFTA countries

A transmission, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country as original equipment in the production of a heavy-duty vehicle. The transmission is an automotive component.

*Situation:* Use of the automotive component

For purposes of calculating the regional value content of the heavy-duty vehicle in which the transmission is used, the value of the transmission is included in the value of the non-originating materials under section 10(1)(c), regardless of whether the producer imported the transmission or acquired it from someone else in the territory of a NAFTA country.

*Example 4:* An automotive component is imported from outside the territories of the NAFTA countries

A transmission, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and combined with an engine to produce an engine-transmission assembly that will be used as original equipment in the production of a heavy-duty vehicle. The transmission is an automotive component; the engine-transmission assembly is an automotive component assembly.

*Situation:* Use of the automotive component assembly

The automotive component assembly is acquired by a producer who uses it in the production of a heavy-duty vehicle. If the automotive component assembly that incorporates the imported transmission is an originating material, the value of non-originating materials used in the production of the automotive component assembly is determined, at the choice of the producer, under any of section 10(1)(d) (i), (ii), (iii) and (iv). (See example 1 for more detailed explanations of these provisions.) If the automotive component assembly that incorporates the imported transmission is a non-originating material, the value of non-originating materials used in the production of the automotive component assembly is determined, at the choice of the producer, under section 10(1)(e) (i) or (ii). (See example 1 for more detailed explanations of these provisions.)

Regardless of whether the automotive component assembly is an originating material or a non-originating material, the value of the automotive component that was imported from outside the territories of the NAFTA countries is included in the value of non-originating materials used in the production of the heavy-duty vehicle. The transmission is a non-originating material, and, for purposes of calculating the regional value content of an automotive component assembly or heavy-duty vehicle that incorporates that transmission, the value of the transmission is included in the value of non-originating materials used in the production of the automotive component assembly or heavy-duty vehicle that incorporates it.

*Example 5:* A material is imported from outside the territories of the NAFTA countries

An aluminum ingot, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of cast block that will be used in an engine that will be used as original equipment in the production of a heavy-duty vehicle. The aluminum ingot is not a listed material; the cast block is a listed material; the engine is an automotive component.

*Situation 1:* Use of the material in an intermediate material that is a listed material

The engine producer designates the cast block as an intermediate material under section 7(4). For purposes of determining the origin of that cast block, because the aluminum ingot is classified under a different heading than the cast block, the cast block satisfies the applicable change in tariff classification and is an originating material.

*Situation 2:* Use of the listed material incorporating the material

For purposes of calculating the regional value content of the engine that incorporates that cast block (and thus incorporates the aluminum ingot), the value of non-originating materials is determined under section 10(1). Because none of sections 10(1) (a) through (f) require that a listed material that is an originating material be included in the value of non-originating materials used in the production of a good, the value of the cast block is not included in the value of non-originating materials used in the production of the engine or in the value of non-originating materials used in the production of an automotive component assembly or heavy-duty vehicle that incorporates the engine.

Because section 10(1)(d) does not refer to a listed material that is an originating material, the value of the non-originating aluminum ingot used in the production of the originating cast block is not included in the value of non-originating materials used in the production of any good or material that incorporates the originating cast block.

*Example 6:* A non-originating listed material is used to produce a sub-component that is used to produce another sub-component

A crankshaft, produced in the territory of NAFTA country A from a forging imported from outside the territories of the NAFTA countries, is a non-originating material. The crankshaft is sold to another producer, located in the same country, who uses it to produce an originating block assembly. That block assembly is sold to another producer, also located in the same country, who uses it to produce a finished block. The finished block is sold to a producer of engines, who is located in NAFTA country B, for use in the production of a heavy-duty vehicle. The crankshaft is a listed material; the block assembly is a sub-component, as is the finished block.

*Situation 1:* Calculating the regional value content of the finished block

A sub-component is not a heavy-duty automotive good. As referred to in section 10(9)(c), for purposes of calculating the regional value content of the sub-component before it is incorporated into a heavy-duty automotive good, such as when the sub-component is exported from the territory of one NAFTA country to the territory of another NAFTA country, the value of non-originating materials of the sub-component includes only the value of non-originating materials used in the production of that sub-component. Because the block assembly is an originating material, its value is not included in the value of non-originating materials of the finished block, nor is the value of the non-originating crankshaft included in the value of non-originating materials used in the production of the finished block because the crankshaft was used in the production of the block assembly and was not used in the production of the finished block.

*Situation 2:* Calculating the regional value content of the component that incorporates the finished block

For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates a sub-component, the value of non-originating materials used in the production of the sub-component is determined under section 10(1)(d) or (e) with respect to that sub-component. In this situation, the value, under section 10(1)(b), of the non-originating crankshaft is included in the value of non-originating materials used in the production of the engine. (See examples 1 and 2 for more detailed explanations of sections 10(1) (d) and (e).)

*Example 7:* A non-listed material is imported from outside the territories of the NAFTA countries and is used in the production of another non-listed material

A bumper part, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and is used in the production of a bumper. The bumper is used in the territory of a NAFTA country as original equipment in the production of a heavy-duty vehicle. Neither a bumper part nor a bumper is a listed material, sub-component, automotive component or automotive component assembly.

*Situation 1:* The non-listed material is an originating material

The bumper is an originating material. For purposes of calculating the regional value content of the heavy-duty vehicle, neither the value of the imported bumper part nor the value of the bumper is included in the value of the non-originating materials.

*Situation 2:* The non-listed material is a non-originating material

The bumper is a non-originating material. For purposes of calculating the regional value content of the heavy-duty vehicle, the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(f) with respect to the bumper. In this situation, the value of the bumper is included in the value of non-originating materials of the heavy-duty vehicle. Because a bumper is not a listed material, the producer of the heavy-duty vehicle does not have the option, under section 10(1)(b)(ii), to include only the value of the imported bumper part in the value of non-originating materials used in the production of the heavy-duty vehicle.

*Example 8:*

*Situation:* Transhipment of a listed material

A producer, located in the territory of a NAFTA country, produces, in that country, a cast head that is an originating good. The producer exports the cast head to outside the territories of the NAFTA territories, where valves, springs, valve lifters, a camshaft and gears are added to it to create a cast head assembly. An engine producer, located in the territory of a NAFTA country, imports the cast head assembly into that country and uses it in the production of an engine that will be used as original equipment in the production of a heavy-duty vehicle. A cast head is a listed material; a cast head assembly is a sub-component.

For purposes of calculating the regional value content of the engine, the value of the imported cast head assembly is included in the value of non-originating materials under section 10(1)(c). The value of the cast head cannot be deducted from the value determined under section 10(1)(c). Although the cast head was once an originating good, under section 18 when further production was performed with respect to the cast head outside the territories of the NAFTA countries, it was no longer an originating good.

*Example 9:* A material is imported from outside the territories of the NAFTA countries and a heavy-duty vehicle producer self-produces a non-originating listed material

A material, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of a water pump that will be used as original equipment by the same producer in the production of a heavy-duty vehicle. Although the producer, under section 7(4), designates the water pump as an intermediate material it is a non-originating material because it fails to satisfy the regional value-content requirement. A water pump is a listed material.

For purposes of calculating the regional value content of the heavy-duty vehicle, the value of non-originating materials includes, at the choice of the producer, either the total cost, determined under section 10(1)(a)(i), of the water pump or the value, determined under section 10(1)(a)(iii)(A), of the material imported from outside the territories of the NAFTA countries.

*Example 10:* A material is acquired and used to produce a non-originating listed material

A material, produced outside the territories of the NAFTA countries, is acquired in the territory of a NAFTA country and is used in that country in the production of a water pump that will be used as original equipment in the production of a heavy-duty vehicle. The producer of the water pump and the producer of the heavy-duty vehicle are separate, unrelated producers, located in the same country. A water pump is a listed material. The producer of the water pump chose to calculate the regional value content of the water pump in accordance with section 12(1) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(b). The water pump is a non-originating material because it fails to satisfy the regional value-content requirement.

For purposes of calculating the regional value content of the heavy-duty vehicle, the value of non-originating materials includes, at the choice of the producer, either the value, determined under section 10(1)(b)(i), of the water pump or, if the producer has a statement referred to in section 10(1)(b)(ii)(B), the value, determined under that section, of the material imported from outside the territories of the NAFTA countries.

The producer has a statement referred to in section 10(1)(b)(ii)(B) and chooses to use the value of non-originating material determined under that section. The statement states, as is permitted under section 10(8), the value of non-originating material used in the production of the water pump in accordance with section 12(3) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(e).

SECTION 11. MOTOR VEHICLE AVERAGING

NC AND VNM FOR MOTOR VEHICLES MAY BE AVERAGED OVER PRODUCER'S FISCAL YEAR

(1) For purposes of calculating the regional value content of light-duty vehicles or heavy-duty vehicles, the producer of those motor vehicles may choose that

(a) the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer be calculated over the producer's fiscal year with respect to the motor vehicles that are in any one of the categories set out in subsection (5) that is chosen by the producer; and

(b) the sums referred to in paragraph (a) be used in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

INFORMATION REQUIRED WHEN PRODUCER CHOOSES TO AVERAGE FOR MOTOR VEHICLES

(2) A choice made under subsection (1) shall

(a) state the category chosen by the producer, and

(i) where the category referred to in subsection (5)(a) is chosen, state the model line, model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced,

(ii) where the category referred to in subsection (5)(b) is chosen, state the model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced, and

(iii) where the category referred to in subsection (5)(c) is chosen, state the model line, model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the locations of the plants at which the motor vehicles are produced;

(b) state the basis of the calculation described in subsection (9);

(c) state the producer's name and address;

(d) state the period with respect to which the choice is made, including the starting and ending dates;

(e) state the estimated regional value content of motor vehicles in the category on the basis stated under paragraph (b);

(f) be dated and signed by an authorized officer of the producer; and

(g) be filed with the customs administration of each NAFTA country to which vehicles in that category are to be exported during the period covered by the choice, at least 10 days before the first day of the producer's fiscal year, or such shorter period as that customs administration may accept.

AVERAGING PERIOD

(3) Where the fiscal year of a producer begins after the date of the entry into force of the Agreement but before one year after that date, the producer may choose that the calculation of regional value content referred to in subsection (1) or (6) be made under that subsection over the period beginning on the date of the entry into force of the Agreement and ending at the end of that fiscal year, in which case the choice shall be filed with the customs administration of each NAFTA country to which vehicles are to be exported during the period covered by the choice not later than 10 days after the entry into force of the Agreement, or such longer period as that customs administration may accept.

(4) Where the fiscal year of a producer begins on the date of the entry into force of the Agreement, the producer may make the choice referred to in subsection (1) not later than 10 days after the entry into force of the Agreement, or such longer period as the customs administration referred to in subsection (2)(g) may accept.

CATEGORIES OF MOTOR VEHICLES FOR AVERAGING

(5) The categories referred to in subsection (1) are the following:

(a) the same model line of motor vehicles in the same class of motor vehicles produced in the same plant in the territory of a NAFTA country;

(b) the same class of motor vehicles produced in the same plant in the territory of a NAFTA country; and

(c) the same model line of motor vehicles produced in the territory of a NAFTA country.

(6) Where applicable, a producer may choose that the calculation of the regional value content of motor vehicles referred to in Schedule VI be made in accordance with that schedule.

TIMELY FILING OF CHOICE TO AVERAGE

(7) Subject to section 5(4) of Schedule VI, the choice referred to in subsection (6) shall be filed with the customs administration of the NAFTA country to which vehicles referred to in that schedule are to be exported, at least 10 days before the first day of the producer's fiscal year with respect to which that choice is to apply or such shorter period as the customs administration may accept.

CHOICE TO AVERAGE CANNOT BE RESCINDED

(8) A choice filed for the period referred to in subsection (1) or (3) may not be

(a) rescinded; or

(b) modified with respect to the category or basis of calculation.

AVERAGED NET COST AND VNM INCLUDED IN CALCULATION OF RVC ON THE BASIS OF PRODUCER'S OPTION TO INCLUDE ALL VEHICLES OF CATEGORY OR ONLY CERTAIN EXPORTED VEHICLES OF CATEGORY

(9) For purposes of this section, where a producer files a choice under subsection (1), (3) or (4), including a choice referred to in section 13(9), the net cost incurred and the values of non-originating materials used by the producer, with respect to

(a) all motor vehicles that fall within the category chosen by the producer and that are produced during the fiscal year or, in the case of a choice filed under subsection (3), during the period with respect to which the choice is made, or

(b) those motor vehicles to be exported to the territory of one or more of the NAFTA countries that fall within the category chosen by the producer and that are produced during the fiscal year or, in the case of a choice filed under subsection (3), during the period with respect to which the choice is made,

shall be included in the calculation of the regional value content under any of the categories set out in subsection (5).

YEAR-END ANALYSIS REQUIRED IF AVERAGING BASED ON ESTIMATED COSTS; OBLIGATION TO NOTIFY OF CHANGE IN STATUS

(10) Where the producer of a motor vehicle has calculated the regional value content of the motor vehicle on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the producer's fiscal year, the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the motor vehicle, and, if the motor vehicle does not satisfy the regional value content requirement on the basis of the actual costs, immediately inform any person to whom the producer has provided a Certificate of Origin for the motor vehicle, or a written statement that the motor vehicle is an originating good, that the motor vehicle is a non-originating good.

(11) The following example is an ''Example'' as referred to in section 2(4).

*Example:*

A motor vehicle producer located in NAFTA country A produces vehicles that fall within a category set out in section 11(5) that is chosen by the producer. The motor vehicles are to be sold in NAFTA countries A, B and C, as well as in country D, which is not a NAFTA country. Under section 11(1), the motor vehicle producer may choose that the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer be calculated over the producer's fiscal year. The producer may state in the choice the basis of the calculation as described in section 11(9)(a), in which case the calculation would be on the basis of all the motor vehicles produced regardless of where they are destined. Alternatively, the producer may state in the choice the basis of the calculation as described in section 11(9)(b). In this case, the producer would also need to state that the calculation is on the basis of

(a) the motor vehicles produced that are for export to NAFTA countries B and C;

(b) the motor vehicles produced that are for export to only NAFTA country B; or

(c) the motor vehicles produced that are for export to only NAFTA country C.

The calculation would be on the basis as described in the choice.

SECTION 12. AUTOMOTIVE PARTS AVERAGING

NC AND VNM FOR AUTOMOTIVE PARTS MAY BE AVERAGED TO DETERMINE RVC OF PARTS

(1) The regional value content of any or all goods that are of the same tariff provision listed in Schedule IV, or an automotive component assembly, an automotive component, a sub-component or a listed material, produced in the same plant, may, where the producer of those goods chooses to do so, be calculated by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the goods over the period set out in subsection (5) that is chosen by the producer with respect to any or all of those goods in any one of the categories set out in subsection (4) that is chosen by the producer; and

(b) using the sums referred to in paragraph (a) in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

(2) The calculation of the regional value content made under subsection (1) shall apply with respect to each unit of the goods in the category set out in subsection (4) that is chosen by the producer and produced during the period chosen by the producer under subsection (5).

VNM FOR EACH UNIT IN A CATEGORY OF GOODS FOR WHICH AVERAGING USED

(3) The value of non-originating materials of each unit of the goods

(a) in the category set out in subsection (4) chosen by the producer, and

(b) produced during the period chosen by the producer under subsection (5),

shall be the sum of the values of non-originating materials referred to in subsection (1)(a) divided by the number of units of the goods in that category and produced during that period.

CATEGORIES OF AUTOMOTIVE PARTS FOR AVERAGING

(4) The categories referred to in subsection (1)(a) are the following:

(a) original equipment for use in the production of light- duty vehicles;

(b) original equipment for use in the production of heavy-duty vehicles;

(c) after-market parts;

(d) any combination of goods referred to in paragraphs (a) through (c);

(e) goods that are in a category set out in any of paragraphs (a) through (d) and are sold to one or more motor vehicle producers; and

(f) goods that are in a category set out in any of paragraphs (a) through (e) and are exported to the territory of one or more of the NAFTA countries.

PERIODS FOR AVERAGING RVC FOR AUTOMOTIVE PARTS

(5) The period referred to in subsection (1)(a) is,

(a) with respect to goods referred to in subsection (4)(a), (b) or (d), or subsection 4(e) or (f) where the goods in that category are in a category referred to in subsection 4(a) or (b), any month, any consecutive three month period that is evenly divisible into the number of months of the producer's fiscal year, or of the fiscal year of the motor vehicle producer to whom those goods are sold, remaining at the beginning of that period, or the fiscal year of that motor vehicle producer to whom those goods are sold; and

(b) with respect to goods referred to in subsection (4)(c), or subsection (4)(e) or (f) where the goods in that category are in a category referred to in subsection (4)(c), any month, any consecutive three month period that is evenly divisible into the number of months of the producer's fiscal year, or of the fiscal year of the motor vehicle producer to whom those goods are sold, remaining at the beginning of that period, or the fiscal year of that producer or of that motor vehicle producer to whom those goods are sold.

CHOICE TO AVERAGE MAY NOT BE RESCINDED

(6) A choice made under subsection (1) may not be rescinded or modified with respect to the goods or the period with respect to which the choice is made.

(7) Where a producer of goods chooses a one or three month period under subsection (5) with respect to the goods referred to in subsection (5)(a), that producer shall be considered to have chosen under that subsection a period or periods of the same duration for

(a) the remainder of the fiscal year of the motor vehicle producer to whom those goods are sold, where the producer chooses under subsection (9)(a) the fiscal year of that motor vehicle producer; and

(b) the remainder of the fiscal year of the producer of those goods, where the producer does not choose under subsection (9)(a) the fiscal year of the motor vehicle producer to whom the goods are sold.

(8) Where a producer of goods chooses a one or three month period under subsection (5) with respect to the goods referred to in subsection (5)(b), that producer shall be considered to have chosen under that subsection a period or periods of the same duration for the remainder of, at the choice of the producer, the producer's fiscal year or the fiscal year of the motor vehicle producer to whom those goods are sold.

(9) Where a producer of goods chooses a one or three month period under subsection (5) with respect to the goods, the producer may,

(a) with respect to goods referred to in subsection (5)(a), at the end of the fiscal year of the motor vehicle producer to whom those goods are sold, choose the fiscal year of that motor vehicle producer; and

(b) with respect to goods referred to in subsection (5)(b), at the end of the producer's fiscal year or the fiscal year of the motor vehicle producer to whom those goods are sold, as the case may be, choose the producer's fiscal year or the fiscal year of that motor vehicle producer.

APPLICABLE METHOD FOR AVERAGING VNM UNDER DIFFERENT CATEGORIES

(10) Where a producer chooses that the regional value content of goods be calculated in accordance with subsection (1) and the goods are in any of the categories set out in subsections (4) (d) through (f), the value of non-originating materials

(a) shall be determined in the manner set out in section 9, where any of those goods are light-duty automotive goods;

(b) shall be determined in the manner set out in section 10, where any of those goods are heavy-duty automotive goods but none of the goods are light-duty automotive goods; and

(c) shall be determined in the manner set out in section 7, where none of those goods are light-duty automotive goods or heavy-duty automotive goods.

YEAR-END ANALYSIS REQUIRED IF AVERAGING BASED ON ESTIMATED COSTS; OBLIGATION TO NOTIFY OF CHANGE IN STATUS

(11) Where the producer of a good has calculated the regional value content of the good on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the period chosen under subsection (1), the producer shall conduct an analysis, at the end of the producer's fiscal year following the end of that period, of the actual costs incurred over the period with respect to the production of the good and, if the good does not satisfy the regional value content requirement on the basis of the actual costs during that period, immediately inform any person to whom the producer has provided a Certificate of Origin for the good, or a written statement that the good is an originating good, that the good is a non-originating good.

SECTION 13. SPECIAL REGIONAL VALUE-CONTENT REQUIREMENTS

CHANGES IN REGIONAL VALUE CONTENT LEVEL FOR AUTOMOTIVE GOODS

(1) Notwithstanding the regional value-content requirement set out in Schedule I, and except as otherwise provided in subsection (2), the regional value-content requirement for a good referred to in paragraph (a) or (b) is as follows:

(a) for the fiscal year of a producer that begins on the day closest to January 1, 1998 and for the three following fiscal years of that producer, not less than 56 percent, and for the fiscal year of a producer that begins on the day closest to January 1, 2002 and thereafter, not less than 62.5 percent, in the case of

(i) a light-duty vehicle, and

(ii) a good provided for in any of headings 8407 and 8408 and subheading 8708.40, that is for use in a light-duty vehicle; and

(b) for the fiscal year of a producer that begins on the day closest to January 1, 1998 and for the three following fiscal years of that producer, not less than 55 percent, and for the fiscal year of a producer that begins on the day closest to January 1, 2002 and thereafter, not less than 60 percent, in the case of

(i) a heavy-duty vehicle,

(ii) a good provided for in any of headings 8407 and 8408 and subheading 8708.40 that is for use in a heavy-duty vehicle, and

(iii) except in the case of a good referred to in paragraph (a)(ii) or provided for in any of subheadings 8482.10 through 8482.80, 8483.20 and 8483.30, a good of a tariff provision listed in Schedule IV that is subject to a regional value-content requirement and is for use in a light-duty vehicle or a heavy-duty vehicle.

REGIONAL VALUE CONTENT LEVEL FOR MOTOR VEHICLES PRODUCED IN A NEW PLANT OR IN A REFIT PLANT

(2) Notwithstanding the regional value-content requirement set out in Schedule I, the regional value-content requirement for a light-duty vehicle or a heavy-duty vehicle that is produced in a plant is as follows:

(a) not less than 50 percent for five years after the date on which the first prototype of the motor vehicle is produced in the plant by a motor vehicle assembler, if

(i) the motor vehicle is of a class, marque or, except in the case of a heavy-duty vehicle, size category and type of underbody, that was not previously produced by the motor vehicle assembler in the territory of any of the NAFTA countries,

(ii) the plant consists of, or includes, a new building in which the motor vehicle is assembled, and

(iii) the value of machinery that was never previously used for production, and that is used in the new building or buildings for the purposes of the complete motor vehicle assembly process with respect to that motor vehicle, is at least 90 percent of the value of all machinery used for purposes of that process; and

(b) not less than 50 percent for two years after the date on which the first prototype of the motor vehicle is produced in the plant by a motor vehicle assembler following a refit of that plant, if the motor vehicle is of a class, marque or, except in the case of a heavy-duty vehicle, size category and type of underbody, that was not assembled by the motor vehicle assembler in the plant before the refit.

VALUE OF MACHINERY IN A NEW PLANT

(3) For purposes of subsection (2)(a)(iii), the value of machinery shall be

(a) where the machinery was acquired by the producer of the motor vehicle from another person, the cost of that machinery that is recorded on the books of the producer;

(b) where the machinery was used previously by the producer of the motor vehicle in the production of another good, the cost of the machinery that is recorded on the books of the producer minus accumulated depreciation of that machinery that is recorded on those books; and

(c) where the machinery was produced by the producer of the good, the total cost incurred with respect to that machinery, calculated on the basis of the costs that are recorded on the books of the producer.

AVERAGING PERIOD FOR CALCULATION OF RVC FOR VEHICLES OF NEW PLANT OR REFIT PLANT

(4) For purposes of calculating the regional value content of a motor vehicle referred to in subsection (2) that is in any one of the categories set out in subsection (7) that is chosen by the producer, the producer may file with the customs administration of the NAFTA country into the territory of which vehicles in that category are to be imported a choice to calculate the regional value content of such vehicles by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer with respect to all of such motor vehicles in the category chosen over

(i) the period beginning on the day on which the first prototype of the motor vehicle is produced and ending on the last day of the producer's first fiscal year that begins on or after the beginning of the period,

(ii) a fiscal year of the producer that starts after the period referred to in subparagraph (i) and ends on or before the end of the period referred to in subsection (2)(a) or (b), or

(iii) the period beginning on the first day of the producer's fiscal year that begins before the end of the period referred to in subsection (2)(a) or (b) and ending at the end of that period; and

(b) using the sums referred to in paragraph (a) in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

INFORMATION REQUIRED ON DOCUMENT FILED WHEN CHOOSING TO AVERAGE; TIMELY FILING;

(5) A choice made under subsection (4) shall

(a) state the category chosen by the producer and

(i) where the category referred to in subsection (7)(a) is chosen, the model name, model line, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced, and

(ii) where the category referred to in subsection (7)(b) is chosen, state the model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the plant location at which the motor vehicles are produced;

(b) state the basis of the calculation described in subsection (8);

(c) state the producer's name and address;

(d) state the period with respect to which the choice is made, including the starting and ending dates;

(e) state the estimated regional value content of motor vehicles in the category on the basis stated under paragraph (b);

(f) state whether the choice is with respect to a motor vehicle referred to in subsection (2)(a) or (b);

(g) be dated and signed by an authorized officer of the producer; and

(h) be filed with the customs administration of each NAFTA country to which vehicles in that category are to be exported during the period covered by the choice, at least 10 days before the first day of the producer's fiscal year, or such shorter period as that customs administration may accept.

NO RESCISSION OR MODIFICATION PERMITTED

(6) A choice filed for the period referred to in subsection (4) may not be

(a) rescinded; or

(b) modified with respect to the category or basis of calculation.

CATEGORIES OF MOTOR VEHICLES FOR AVERAGING

(7) The categories referred to in subsection (4) are the following:

(a) the same model line of motor vehicles in the same class of motor vehicles produced in the same plant in the territory of a NAFTA country; and

(b) the same class of motor vehicles produced in the same plant in the territory of a NAFTA country.

(8) For purposes of subsection (4), the net cost incurred and the values of non-originating materials used by the producer, with respect to

(a) all motor vehicles that fall within the category chosen by the producer and that are produced during the period with respect to which the choice is made, or

(b) those motor vehicles to be exported to the territory of one or more of the NAFTA countries that fall within the category chosen by the producer and that are produced during the period with respect to which the choice is made,

shall be included in the calculation of the regional value content under any of the categories set out in subsection (7).

PERIOD FOR AVERAGING RVC OF MOTOR VEHICLES OF NEW OR REFIT PLANT

(9) Where the period referred to in subsection (4) ends on a day other than the last day of the producer's fiscal year, the producer may, for purposes of section 11, make the choice referred to in that section with respect to

(a) the period beginning on the day following the end of that period and ending on the last day of that fiscal year; or

(b) the period beginning on the day following the end of that period and ending on the last day of the following full fiscal year.

YEAR-END ANALYSIS REQUIRED IF AVERAGING BASED ON ESTIMATED COSTS; OBLIGATION TO NOTIFY OF CHANGE IN STATUS

(10) Where the producer of a motor vehicle has calculated the regional value content of the motor vehicle on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the producer's fiscal year, the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the motor vehicle, and, if the motor vehicle does not satisfy the regional value-content requirement on the basis of the actual costs, immediately inform any person to whom the producer has provided a Certificate of Origin for the motor vehicle, or a written statement that the motor vehicle is an originating good, that the motor vehicle is a non-originating good.

PART VI
GENERAL PROVISIONS
SECTION 14. ACCUMULATION

OPTION TO DETERMINE ORIGIN OF GOOD BY ACCUMULATING THE PRODUCTION OF A MATERIAL WITH PRODUCTION OF THE GOOD IN WHICH THE MATERIAL IS USED

(1) Subject to subsections (2) and (4), for purposes of determining whether a good is an originating good, an exporter or producer of a good may choose to accumulate the production, by one or more producers in the territory of one or more of the NAFTA countries, of materials that are incorporated into that good so that the production of the materials shall be considered to have been performed by that exporter or producer.

STATEMENT REQUIRED; INFORMATION AS TO NET COST AND VALUE OF NON-ORIGINATING MATERIALS FROM PRODUCTION OF MATERIAL IF ACCUMULATING FOR REGIONAL VALUE CONTENT REQUIREMENT

(2) Where a good is subject to a regional value-content requirement and an exporter or producer of the good has a statement signed by a producer of a material that is used in the production of the good that

(a) states the net cost incurred and the value of non-originating materials used by the producer of the material in the production of that material,

(i) the net cost incurred by the producer of the good with respect to the material shall be the net cost incurred by the producer of the material plus, where not included in the net cost incurred by the producer of the material, the costs referred to in sections 7(1)(c) through (e), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the value of non-originating materials used by the producer of the material; or

(b) states any amount, other than an amount that includes any of the value of non-originating materials, that is part of the net cost incurred by the producer of the material in the production of that material,

(i) the net cost incurred by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), minus the amount stated in the statement.

AVERAGING OF COSTS FROM ACCUMULATED PRODUCTION

(3) Where a good is subject to a regional value-content requirement and an exporter or producer of the good does not have a statement described in subsection (2) but has a statement signed by a producer of a material that is used in the production of the good that

(a) states the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the material in the production of that material and identical materials or similar materials, or any combination thereof, produced in a single plant by the producer of the material over a month or any consecutive three, six or twelve month period that falls within the fiscal year of the producer of the good, divided by the number of units of materials with respect to which the statement is made,

(i) the net cost incurred by the producer of the good with respect to the material shall be the sum of the net costs incurred by the producer of the material with respect to that material and the identical materials or similar materials, divided by the number of units of materials with respect to which the statement is made, plus, where not included in the net costs incurred by the producer of the material, the costs referred to in sections 7(1) (c) through (e), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the sum of the values of non-originating materials used by the producer of the material with respect to that material and the identical materials or similar materials divided by the number of units of materials with respect to which the statement is made; or

(b) states any amount, other than an amount that includes any of the values of non-originating materials, that is part of the sum of the net costs incurred by the producer of the material in the production of that material and identical materials or similar materials, or any combination thereof, produced in a single plant by the producer of the material over a month or any consecutive three, six or twelve month period that falls within the fiscal year of the producer of the good, divided by the number of units of materials with respect to which the statement is made,

(i) the net cost incurred by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), minus the amount stated in the statement.

ACCUMULATED PRODUCTION CONSIDERED TO BE PRODUCTION OF A SINGLE PRODUCER

(4) For purposes of section 7(4), where a producer of the good chooses to accumulate the production of materials under subsection (1), that production shall be considered to be the production of the producer of the good.

(5) For purposes of this section,

(a) in order to accumulate the production of a material,

(i) where the good is subject to a regional value-content requirement, the producer of the good must have a statement described in subsection (2) or (3) that is signed by the producer of the material, and

(ii) where an applicable change in tariff classification is applied to determine whether the good is an originating good, the producer of the good must have a statement signed by the producer of the material that states the tariff classification of all non-originating materials used by that producer in the production of that material and that the production of the material took place entirely in the territory of one or more of the NAFTA countries;

(b) a producer of a good who chooses to accumulate is not required to accumulate the production of all materials that are incorporated into the good; and

(c) any information set out in a statement referred to in subsection (2) or (3) that concerns the value of materials or costs shall be in the same currency as the currency of the country in which the person who provided the statement is located.

EXAMPLES OF ACCUMULATION OF PRODUCTION

(6) Each of the following examples is an ''Example'' as referred to in section 2(4).

*Example 1:* section 14(1)

Producer A, located in NAFTA country A, imports unfinished bearing rings provided for in subheading 8482.99 into NAFTA country A from a non-NAFTA territory. Producer A further processes the unfinished bearing rings into finished bearing rings, which are of the same subheading. The finished bearing rings of Producer A do not satisfy an applicable change in tariff classification and therefore do not qualify as originating goods. The net cost of the finished bearing rings (per unit) is calculated as follows:

| | |
|---|---|
| Product costs: | |
| Value of originating materials | $0.15 |

| | |
|---|---|
| Value of non-originating materials | 0.75 |
| Other product costs | 0.35 |
| Period costs: (including $0.05 in excluded costs) | 0.15 |
| Other costs | 0.05 |
| Total cost of the finished bearing rings, per unit | $1.45 |
| Excluded costs: (included in period costs) | 0.05 |
| Net cost of the finished bearing rings, per unit | $1.40 |

Producer A sells the finished bearing rings to Producer B who is located in NAFTA country A for $1.50 each. Producer B further processes them into bearings, and intends to export the bearings to NAFTA country B. Although the bearings satisfy the applicable change in tariff classification, the bearings are subject to a regional value-content requirement.

*Situation A:*

Producer B does not choose to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. The net cost of the bearings (per unit) is calculated as follows:

| | |
|---|---|
| Product costs: | |
| Value of originating materials | $0.45 |
| Value of non-originating materials (value, per unit, of the bearing rings purchased from Producer A) | 1.50 |
| Other product costs | 0.75 |
| Period costs: (including $0.05 in excluded costs) | 0.15 |
| Other costs | 0.05 |
| Total cost of the bearings, per unit | $2.90 |
| Excluded costs: (included in period costs) | 0.05 |
| Net cost of the bearings, per unit | $2.85 |

Under the net cost method, the regional value content of the bearings is

$$\mathrm{RVC} = \frac{\mathrm{NC} - \mathrm{VNM}}{\mathrm{NC}} \times 100$$

$$= \frac{\$2.85 - \$1.50}{\$2.85} \times 100$$

$$= 47.4\%$$

Therefore, the bearings are non-originating goods.

*Situation B:*

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides a statement described in section 14(2)(a) to Producer B. The net cost of the bearings (per unit) is calculated as follows:

| | |
|---|---|
| Product costs: | |
| Value of originating materials ($0.45+$0.15) | $0.60 |
| Value of non-originating materials (value, per unit, of the unfinished bearing rings imported by Producer A) | 0.75 |
| Other product costs ($0.75+$0.35) | 1.10 |
| Period costs: (($0.15+$0.15), including $0.10 in excluded costs) | 0.30 |

| | |
|---|---|
| Other costs: ($0.05+$0.05) | 0.10 |
| Total cost of the bearings, per unit | $2.85 |
| Excluded costs: (included in period costs) | 0.10 |
| Net cost of the bearings, per unit | $2.75 |

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.75 - \$0.75}{\$2.75} \times 100$$

$$= 72.7\%$$

Therefore, the bearings are originating goods.

*Situation C:*

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides to Producer B a statement described in section 14(2)(b) that specifies an amount equal to the net cost minus the value of non-originating materials used to produce the finished bearing rings ($1.40 − $0.75 = $0.65). The net cost of the bearings (per unit) is calculated as follows:

| | |
|---|---|
| Product costs: | |
| Value of originating materials ($0.45+$0.65) | $1.10 |
| Value of non-originating materials ($1.50 − $0.65) | 0.85 |
| Other product costs | 0.75 |
| Period costs: (including $0.05 in excluded costs) | 0.15 |
| Other costs | 0.05 |
| Total cost of the bearings, per unit | $2.90 |
| Excluded costs: (included in period costs) | 0.05 |
| Net cost of the bearings, per unit | $2.85 |

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.85 - \$0.85}{\$2.85} \times 100$$

$$= 70.2\%$$

Therefore, the bearings are originating goods.

*Situation D:*

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides to Producer B a statement described in section 14(2)(b) that specifies an amount equal to the value of other product costs used in the production of the finished bearing rings ($0.35). The net cost of the bearings (per unit) is calculated as follows:

| | |
|---|---|
| Product costs: | |
| Value of originating materials | $0.45 |
| Value of non-originating materials ($1.50 – $0.35) | 1.15 |
| Other product costs ($0.75 + $0.35) | 1.10 |
| Period costs: (including $0.05 in excluded costs) | 0.15 |
| Other costs | 0.05 |
| Total cost of the bearings, per unit | $2.90 |
| Excluded costs: (included in period costs) | 0.05 |
| Net cost of the bearings, per unit | $2.85 |

Under the net cost method, the regional value content of the bearings is

$$\mathrm{RVC} = \frac{\mathrm{NC} - \mathrm{VNM}}{\mathrm{NC}} \times 100$$

$$= \frac{\$2.85 - \$1.15}{\$2.85} \times 100$$

$$= 59.7\%$$

Therefore, the bearings are originating goods.

*Example 2:* section 14(1)

Producer A, located in NAFTA country A, imports non-originating cotton, carded or combed, provided for in heading 5203 for use in the production of cotton yarn provided for in heading 5205. Because the change from cotton, carded or combed, to cotton yarn is a change within the same chapter, the cotton does not satisfy the applicable change in tariff classification for heading 5205, which is a change from any other chapter, with certain exceptions. Therefore, the cotton yarn that Producer A produces from non-originating cotton is a non-originating good.

Producer A then sells the non-originating cotton yarn to Producer B, also located in NAFTA country A, who uses the cotton yarn in the production of woven fabric of cotton provided for in heading 5208. The change from non-originating cotton yarn to woven fabric of cotton is insufficient to satisfy the applicable change in tariff classification for heading 5208, which is a change from any heading outside headings 5208 through 5212, except from certain headings, under which various yarns, including cotton yarn provided for in heading 5205, are classified. Therefore, the woven fabric of cotton that Producer B produces from non-originating cotton yarn produced by Producer A is a non-originating good.

However, under section 14(1), if Producer B chooses to accumulate the production of Producer A, the production of Producer A would be considered to have been performed by Producer B. The rule for heading 5208, under which the cotton fabric is classified, does not exclude a change from heading 5203, under which carded or combed cotton is classified. Therefore, under section 15(1), the change from carded or combed cotton provided for in heading 5203 to the woven fabric of cotton provided for in heading 5208 would satisfy the applicable change of tariff classification for heading 5208. The woven fabric of cotton would be considered as an originating good.

Producer B, in order to choose to accumulate Producer A's production, must have a statement described in section 14(4)(a)(ii).

SECTION 15. INABILITY TO PROVIDE SUFFICIENT INFORMATION

SUPPLIER OF MATERIAL UNABLE TO PROVIDE INFORMATION; BEYOND CONTROL OF SUPPLIER; PROCEDURE TO BE FOLLOWED BY CUSTOMS

(1) Where, during a verification of origin of a good, the person from whom a producer of the good acquired a material used in the production of that good is unable to provide the customs administration that is conducting the verification with sufficient information to substantiate that the material is an originating material or that the value of the material declared for purpose of calculating the regional value content of the good is accurate, and the inability of that person to provide the information is due to reasons beyond the control of that person, the customs administration shall, before making a determination as to the origin or value of the material, consider, where relevant, the following:

(a) whether the customs administration of the NAFTA country into the territory of which the good was imported issued an advance ruling under Article 509 of the Agreement, as implemented in each NAFTA country, with respect to that material that concluded that the material is an originating material or that the value of the material declared for purposes of calculating the regional value content of the good is accurate;

(b) whether an independent auditor has confirmed the accuracy of

(i) any signed statement referred to in this appendix with respect to the material,

(ii) the information that was used by the person from whom the producer acquired the material to substantiate whether the material is an originating material, or

(iii) the information submitted by the producer of the material with an application for an advance ruling where, on the basis of that information, the customs administration concluded that the material is an originating material or that the value declared for the purpose of calculating the regional value content of the good is accurate;

(c) whether the customs administration has, before the start of the origin verification of the good, conducted a verification of origin of identical materials or similar materials produced by the producer of the material and determined that

(i) the identical materials or similar materials are originating materials, or

(ii) any signed statement referred to in this appendix with respect to those identical materials or similar materials is accurate;

(d) whether the producer of the good has exercised due diligence to ensure that any signed statement that is referred to in this appendix with respect to the material and that was provided by the person from whom the producer acquired the material is accurate;

(e) where the customs administration has access only to partial records of the person from whom the producer acquired the material, whether the records provide sufficient evidence to substantiate that the material is an originating material or that the value of the material declared for purposes of calculating the regional value content of the good is accurate;

(f) whether the customs administration can obtain, subject to Article 507 of the Agreement, as implemented in each NAFTA country, by means other than those referred to in paragraphs (a) through (e), relevant information regarding the determination of the origin or value of the material from the customs administration of the NAFTA country in the territory of which the person from whom the producer acquired the material was located; and

(g) whether the producer of the good, the person from whom the producer acquired the material or a representative of that person or producer agrees to bear the expenses incurred in providing the customs administration with the assistance that it may require for determining the origin or value of the material.

''REASONS BEYOND CONTROL'' OF SUPPLIER

(2) For purposes of subsection (1), ''reasons beyond the control'' of the person from whom the producer of the good acquired the material includes

(a) the bankruptcy of the person from whom the producer acquired the material or any other financial distress situation or business reorganization that resulted in that person or a related person having lost control of the records containing the information that substantiate that the material is an originating material or the value of the material declared for the purpose of calculating the regional value content of the good;

(b) any other reason that results in partial or complete loss of records of that producer that the producer could not reasonably have been expected to foresee, including loss of records due to fire, flooding or other natural cause.

EXPORTER OR PRODUCER OF GOOD UNABLE TO PROVIDE INFORMATION; REASONS BEYOND CONTROL OF EXPORTER OR PRODUCER; PROCEDURE TO BE FOLLOWED BY CUSTOMS

(3) Where, during a verification of origin of a good, the exporter or producer of the good is unable to provide the customs administration conducting the verification with sufficient information to substantiate that the good is an originating good, and the inability of that person to provide the information is due to reasons beyond the control of that person, the customs administration shall, before making a determination as to the origin of the good, consider, where relevant, the following:

(a) whether the customs administration of the NAFTA country into the territory of which the good was imported issued an advance ruling under Article 509 of the Agreement, as implemented in each NAFTA country, with respect to that good that concluded that the good is an originating good;

(b) whether an independent auditor has confirmed the accuracy of an origin statement with respect to the good;

(c) whether the customs administration has, before the start of the origin verification of the good, conducted a verification of origin of identical goods or similar goods produced by the producer of the good and determined that the identical goods or similar goods are originating goods;

(d) whether the exporter or producer of the good has exercised due diligence to ensure that the information provided to substantiate that the good is an originating good is sufficient; and

(e) where the customs administration has access only to partial records of the exporter or producer of the good, whether the records provide sufficient evidence to substantiate that the good is an originating good;

(f) whether the customs administration can obtain, subject to Article 507 of the Agreement, as implemented in each NAFTA country, by means other than those referred to in paragraphs (a) through (e), relevant information regarding the determination of the origin of the good from the customs administration of the NAFTA country in the territory of which the exporter or producer of the good was located; and

(g) whether the exporter or producer of the good or a representative of that person agrees to bear the expenses incurred in providing the customs administration with the assistance that it may require for determining the origin or value of the good.

''REASONS BEYOND CONTROL''

(4) For purposes of subsection (3), ''reasons beyond the control'' of the exporter or producer of the good includes

(a) the bankruptcy of the exporter or producer or any other financial distress situation or business reorganization that resulted in that person or a related person having lost control of the records containing the information that substantiate that the good is an originating good;

(b) any other reason that results in partial or complete loss of records of that exporter or producer that that person could not reasonably have been expected to foresee, including loss of records due to fire, flooding or other natural cause.

SECTION 16. TRANSSHIPMENT

EFFECT OF SUBSEQUENT PROCESSING OUTSIDE THE TERRITORY OF A NAFTA COUNTRY; LOSS OF ORIGINATING GOOD STATUS

(1) A good is not an originating good by reason of having undergone production that occurs entirely in the territory of one or more of the NAFTA countries that would enable the good to qualify as an originating good if subsequent to that production

(a) the good is withdrawn from customs control outside the territories of the NAFTA countries; or

(b) the good undergoes further production or any other operation outside the territories of the NAFTA countries, other than unloading, reloading or any other operation necessary to preserve the good in good condition, such as inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulphur dioxide or other aqueous solutions, replacing damaged packing materials and containers and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a NAFTA country.

TRANSSHIPPED GOOD CONSIDERED ENTIRELY NON-ORIGINATING

(2) A good that is a non-originating good by application of subsection (1) is considered to be entirely non-originating for purposes of this appendix.

EXCEPTIONS FOR CERTAIN GOODS

(3) Subsection (1) does not apply with respect to a good provided for in any of subheadings 8541.10 through 8541.60 and 8542.10 through 8542.70 where any further production or other operation that that good undergoes outside the territories of the NAFTA countries does not result in a change in the tariff classification of the good to a subheading outside subheadings 8541.10 through 8542.90.

SECTION 17. NON-QUALIFYING OPERATIONS

MERE DILUTION; PRODUCTION OR PRICING PRACTICE TO CIRCUMVENT THE PROVISIONS OF THIS APPENDIX

17. A good is not an originating good merely by reason of

(a) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

(b) any production or pricing practice with respect to which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent this appendix.

SCHEDULE I

Schedule I shall be the text of Annex 401 to the Agreement as implemented in General Note 12 of the HTSUS.

SCHEDULE II
VALUE OF GOODS

SECTION 1. DEFINITIONS.

For purposes of this Schedule, unless otherwise stated:

''buyer'' refers to a person who purchases a good from the producer;

''buying commissions'' means fees paid by a buyer to that buyer's agent for the agent's services in representing the buyer in the purchase of a good;

''producer'' refers to the producer of the good being valued.

SECTION 2.

For purposes of Article 402(2) of the Agreement, as implemented by section 6(2) of this appendix, the transaction value of a good shall be the price actually paid or payable for the good, determined in accordance with section 3 and adjusted in accordance with section 4.

SECTION 3.

(1) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the producer. The payment need not necessarily take the form of a transfer of money; it may be made by letters of credit or negotiable instruments. The payment may be made directly or indirectly to the producer. For an illustration of this, the settlement by the buyer, whether in whole or in part, of a debt owed by the producer is an indirect payment.

(2) Activities undertaken by the buyer on the buyer's own account, other than those for which an adjustment is provided in section 4, shall not be considered to be an indirect payment, even though the activities might be regarded as being for the benefit of the producer. For an illustration of this, the buyer, by agreement with the producer, undertakes activities relating to the marketing of the good. The costs of such activities shall not be added to the price actually paid or payable.

(3) The transaction value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable:

(a) charges for construction, erection, assembly, maintenance or technical assistance related to the good undertaken after the good has been sold to the buyer; or

(b) duties and taxes paid in the country in which the buyer is located with respect to the good.

(4) The flow of dividends or other payments from the buyer to the producer that do not relate to the purchase of the good are not part of the transaction value.

SECTION 4.

(1) In determining the transaction value of a good, the following shall be added to the price actually paid or payable:

(a) to the extent that they are incurred by the buyer, or by a related person on behalf of the buyer, with respect to the good being valued and are not included in the price actually paid or payable

(i) commissions and brokerage fees, except buying commissions,

(ii) the costs of transporting the good to the producer's point of direct shipment and the costs of loading, unloading, handling and insurance that are associated with that transportation, and

(iii) where the packaging materials and containers in which the good is packaged for retail sale are classified with the good under the Harmonized System, the value of the packaging materials and containers;

(b) the value, reasonably allocated in accordance with subsection (12), of the following elements where they are supplied directly or indirectly to the producer by the buyer, free of charge or at reduced cost for use in connection with the production and sale of the good, to the extent that the value is not included in the price actually paid or payable:

(i) a material, other than an indirect material, used in the production of the good,

(ii) tools, dies, molds and similar indirect materials used in the production of the good,

(iii) an indirect material, other than those referred to in subparagraph (ii) or in paragraphs (c), (e) or (f) of the definition ''indirect material'' set out in Article 415 of the Agreement, as implemented by section 2(1) of this appendix, used in the production of the good, and

(iv) engineering, development, artwork, design work, and plans and sketches necessary for the production of the good, regardless of where performed;

(c) the royalties related to the good, other than charges with respect to the right to reproduce the good in the territory of one or more of the NAFTA countries, that the buyer must pay directly or indirectly as a condition of sale of the good, to the extent that such royalties are not included in the price actually paid or payable; and

(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the good that accrues directly or indirectly to the producer.

(2) The additions referred to in subsection (1) shall be made to the price actually paid or payable under this section only on the basis of objective and quantifiable data.

(3) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection (1), the transaction value cannot be determined under section 2.

(4) No additions shall be made to the price actually paid or payable for the purpose of determining the transaction value except as provided in this section.

(5) The amounts to be added under subsections (1)(a) (i) and (ii) shall be

(a) those amounts that are recorded on the books of the buyer, or

(b) where those amounts are costs incurred by a related person on behalf of the buyer and are not recorded on the books of the buyer, those amounts that are recorded on the books of that related person.

(6) The value of the packaging materials and containers referred to in subsection (1)(a)(iii) and the value of the elements referred to in subsection (1)(b)(i) shall be

(a) where the packaging materials and containers or the elements are imported from outside the territory of the NAFTA country in which the producer is located, the customs value of the packaging materials and containers or the elements,

(b) where the buyer, or a related person on behalf of the buyer, purchases the packaging materials and containers or the elements from an unrelated person in the territory of the NAFTA country in which the producer is located, the price actually paid or payable for the packaging materials and containers or the elements,

(c) where the buyer, or a related person on behalf of the buyer, acquires the packaging materials and containers or the elements from an unrelated person in the territory of the NAFTA country in which the producer is located other than through a purchase, the value of the consideration related to the acquisition of the packaging materials and containers or the elements, based on the cost of the consideration that is recorded on the books of the buyer or the related person, or

(d) where the packaging materials and containers or the elements are produced by the buyer, or by a related person, in the territory of the NAFTA country in which the producer is located, the total cost of the packaging materials and containers or the elements, determined in accordance with subsection (7),

and shall include the following costs that are recorded on the books of the buyer or the related person supplying the packaging materials and containers or the elements on behalf of the buyer, to the extent that such costs are not included under paragraphs (a) through (d):

(e) the costs of freight, insurance, packing, and all other costs incurred in transporting the packaging materials and containers or the elements to the location of the producer,

(f) duties and taxes paid or payable with respect to the packaging materials and containers or the elements, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(g) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the packaging materials and containers or the elements, and

(h) the cost of waste and spoilage resulting from the use of the packaging materials and containers or the elements in the production of the good, less the value of renewable scrap or by-product.

(7) For purposes of subsection (6)(d), the total cost of the packaging materials and containers referred to in subsection (1)(a)(iii) or the elements referred to in subsection (1)(b)(i) shall be

(a) where the packaging materials and containers or the elements are produced by the buyer, at the choice of the buyer,

(i) the total cost incurred with respect to all goods produced by the buyer, calculated on the basis of the costs that are recorded on the books of the buyer, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by the buyer that forms part of the total cost incurred with respect to the packaging materials and containers or the elements, calculated on the basis of the costs that are recorded on the books of the buyer, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII; and

(b) where the packaging materials and containers or the elements are produced by a person who is related to the buyer, at the choice of the buyer,

(i) the total cost incurred with respect to all goods produced by that related person, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by that related person that forms part of the total cost incurred with respect to the packaging materials and containers or the elements, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII.

(8) Except as provided in subsections (10) and (11), the value of the elements referred to in subsections (1)(b)(ii) through (iv) shall be

(a) the cost of those elements that is recorded on the books of the buyer, or

(b) where such elements are provided by another person on behalf of the buyer and the cost is not recorded on the books of the buyer, the cost of those elements that is recorded on the books of that other person.

(9) Where the elements referred to in subsections (1)(b)(ii) through (iv) were previously used by or on behalf of the buyer, the value of the elements shall be adjusted downward to reflect that use.

(10) Where the elements referred to in subsections (1)(b)(ii) and (iii) were leased by the buyer or a person related to the buyer, the value of the elements shall be the cost of the lease as recorded on the books of the buyer or that related person.

(11) No addition shall be made to the price actually paid or payable for the elements referred to in subsection (1)(b)(iv) that are available in the public domain, other than the cost of obtaining copies of them.

(12) The producer shall choose the method of allocating to the good the value of the elements referred to in subsections (1)(b)(ii) through (iv), provided that the value is reasonably allocated to the good in a manner appropriate to the circumstances. The methods the producer may choose to allocate the value include allocating the value over the number of units produced up to the time of the first shipment or allocating the value over the entire anticipated production where contracts or firm commitments exist for that production. For an illustration of this, a buyer provides the producer with a mold to be used in the production of the good and contracts with the producer to buy 10,000 units of that good. By the time the first shipment of 1,000 units arrives, the producer has already produced 4,000 units. In these circumstances, the producer may choose to allocate the value of the mold over 4,000 units or 10,000 units but shall not choose to allocate the value of the elements to the first shipment of 1,000 units. The producer may choose to allocate the entire value of the elements to a single shipment of a good only where that single shipment comprises all of the units of the good acquired by the buyer under the contract or commitment for that number of units of the good between the producer and the buyer.

(13) The addition for the royalties referred to in subsection (1)(c) shall be the payment for the royalties that is recorded on the books of the buyer, or where the payment for the royalties is recorded on the books of another person, the payment for the royalties that is recorded on the books of that other person.

(14) The value of the proceeds referred to in subsection (1)(d) shall be the amount that is recorded for such proceeds on the books of the buyer or the producer.

## SCHEDULE III
## UNACCEPTABLE TRANSACTION VALUE

SECTION 1. DEFINITIONS.

For purposes of this Schedule, unless otherwise stated

''buyer'' refers to a person who purchases a good from the producer;

''customs administration'' refers to the customs administration of the NAFTA country into whose territory the good being valued is imported;

''producer'' refers to the producer of the good being valued.

SECTION 2.

(1) There is no transaction value for a good where the good is not the subject of a sale.

(2) The transaction value of a good is unacceptable where

(a) there are restrictions on the disposition or use of the good by the buyer, other than restrictions that

(i) are imposed or required by law or by the public authorities in the territory of the NAFTA country in which the buyer is located,

(ii) limit the geographical area in which the good may be resold, or

(iii) do not substantially affect the value of the good;

(b) the sale or price actually paid or payable is subject to a condition or consideration for which a value cannot be determined with respect to the good;

(c) part of the proceeds of any subsequent resale, disposal or use of the good by the buyer will accrue directly or indirectly to the producer, and an appropriate addition to the price actually paid or payable cannot be made in accordance with section 4(1)(d) of Schedule II; or

(d) except as provided in section 3, the producer and the buyer are related persons and the relationship between them influenced the price actually paid or payable for the good.

(3) The conditions or considerations referred to in subsection (2)(b) include the following circumstances:

(a) the producer establishes the price actually paid or payable for the good on condition that the buyer will also buy other goods in specified quantities;

(b) the price actually paid or payable for the good is dependent on the price or prices at which the buyer sells other goods to the producer of the good; and

(c) the price actually paid or payable is established on the basis of a form of payment extraneous to the good, such as where the good is a semi-finished good that has been provided by the producer to the buyer on condition that the producer will receive a specified quantity of the finished good from the buyer.

(4) For purposes of subsection (2)(b), conditions or considerations relating to the production or marketing of the good shall not render the transaction value unacceptable, such as where the buyer undertakes on the buyer's own account, even though by agreement with the producer, activities relating to the marketing of the good.

(5) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under section 4(1) of Schedule II, the transaction value cannot be determined under the provisions of section 2 of that Schedule. For an illustration of this, a royalty is paid on the basis of the price actually paid or payable in a sale of a liter of a particular good that was purchased by the kilogram and made up into a solution. If the royalty is based partially on the purchased good and partially on other factors that have nothing to do with that good, such as when the purchased good is mixed with other ingredients and is no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the producer and the buyer, it would be inappropriate to add the royalty and the transaction value of the good could not be determined. However, if the amount of the royalty is based only on the purchased good and can be readily quantified, an addition to the price actually paid or payable can be made and the transaction value can be determined.

SECTION 3.

(1) In determining whether the transaction value is unacceptable under section 2(2)(d), the fact that the producer and the buyer are related persons shall not in itself be grounds for the customs administration to render the transaction value unacceptable. In such cases, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship between the producer and the buyer did not influence the price actually paid or payable. Where the customs administration has reasonable grounds for considering that the relationship between the producer and the buyer influenced the price, the customs administration shall communicate the grounds to the producer, and that producer shall be given a reasonable opportunity to respond to the grounds communicated by the customs administration. If that producer so requests, the customs administration shall communicate in writing the grounds on which it considers that the relationship between the producer and the buyer influenced the price actually paid or payable.

(2) Subsection (1) provides that, where the producer and the buyer are related persons, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the value provided that the relationship between the producer and the buyer did not influence the price actually paid or payable. It is not intended under subsection (1) that there should be an examination of the circumstances in all cases where the producer and the buyer are related persons. Such an examination will only be required where the customs administration has doubts that the price actually paid or payable is acceptable because of the relationship between the producer and the buyer. Where the customs administration does not have doubts that the price actually paid or payable is acceptable, it shall accept that price without requesting further information. For an illustration of this, the customs administration may have previously examined the relationship between the producer and the buyer, or it may already have detailed information concerning the relationship between the producer and the buyer, and may already be satisfied from that examination or information that the relationship between them did not influence the price actually paid or payable.

(3) In applying subsection (1), where the producer and the buyer are related persons and the customs administration has doubts that the transaction value is acceptable without further inquiry, the customs administration shall give the producer an opportunity to supply such further information as may be necessary to enable it to examine the circumstances surrounding the sale. In such a case, the customs administration shall examine the relevant aspects of the sale, including the way in which the producer and the buyer organize their commercial relations and the way in which the price actually paid or payable for the good being valued was arrived at, in order to determine whether the relationship between the producer and the buyer influenced that price actually paid or payable. Where it can be shown that the producer and the buyer buy from and sell to each other as if they were not related persons, the price actually paid or payable shall be considered as not having been influenced by the relationship between them. For an illustration of this, if the price actually paid or payable for the good had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way in which the producer settles prices for sales to unrelated buyers, the price actually paid or payable shall be considered as not having been influenced by the relationship between the buyer and the producer. As another illustration, where it is shown that the price actually paid or payable for the good is adequate to ensure recovery of the total cost of producing the good plus a profit that is representative of the producer's overall profit realized over a representative period of time, such as on an annual basis, in sales of goods of the same class or kind, the price actually paid or payable shall be considered as not having been influenced by the relationship between the producer and the buyer.

(4) In a sale between a producer and a buyer who are related persons, the transaction value shall be accepted and determined in accordance with section 2 of Schedule II wherever the producer demonstrates that the transaction value of the good in that sale closely approximates a test value referred to in subsection (5).

(5) The value to be used as a test value shall be the transaction value of identical goods or similar goods sold at or about the same time as the good being valued is sold to an unrelated buyer who is located in the territory of the NAFTA country in which the buyer is located.

(6) In applying a test value referred to in subsection (4), due account shall be taken of demonstrated differences in commercial levels, quantity levels, the value of the elements specified in section 4(1)(b) of Schedule II and the costs incurred by the producer in sales to unrelated buyers that are not incurred by the producer in sales to a related person.

(7) The application of the test value referred to in subsection (4) shall be used at the initiative of the producer and shall be used only for comparison purposes to determine whether the transaction value of the good is acceptable. The test value shall not be used as the transaction value of that good.

(8) Subsection (4) provides an opportunity for the producer to demonstrate that the transaction value closely approximates a test value previously accepted by the customs administration, and is therefore acceptable under subsections (1) and (4). Where the application of a test value under subsection (4) demonstrates that the transaction value of the good being valued is acceptable, the customs administration shall not examine the question of influence in regard to the relationship between the producer and the buyer under subsection (1). Where the customs administration already has sufficient information available, without further inquiries, that the transaction value closely approximates a test value referred to in subsection (4), the producer is not required to apply a test value to demonstrate that the transaction value is acceptable under that subsection.

(9) A number of factors must be taken into consideration for the purpose of determining whether the transaction value of the identical goods or similar goods closely approximates the transaction value of the good being valued. These factors include the nature of the good, the nature of the industry itself, the season in which the good is sold, and whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply an acceptable standardized difference such as a fixed amount or fixed percentage difference in each case. For an illustration of this, a small difference in value in a case involving one type of good could be unacceptable, while a large difference in a case involving another type of good might be acceptable for the purposes of determining whether the transaction value closely approximates a test value set out in subsection (4).

SCHEDULE IV
LIST OF TARIFF PROVISIONS FOR THE PURPOSES OF SECTION 9 OF THE APPENDIX

4009
4010.31 through 4010.34 and 4010.39.10 through 4010.39.20
4011
4016.93.10
4016.99.30 and 4016.99.55
7007.11 and 7007.21
7009.10
8301.20
8407.31
8407.32
8407.33
8407.34.05, 8407.34.15 and 8407.34.25
8407.34.35, 8407.34.45 and 8407.34.55
8408.20
8409
8413.30
8414.59.30
8414.80.05
8415.20
8421.39.40
8481.20, 8481.30 and 8481.80
8482.10 through 8482.80
8483.10 through 8483.40
8483.50
8501.10
8501.20
8501.31
8501.32.45
8507.20.40, 8507.30.40, 8507.40.40 and 8507.80.40
8511.30
8511.40
8511.50
8512.20
8512.40
8519.93
8527.21
8527.29
8536.50
8536.90
8537.10.60
8539.10
8539.21
8544.30

8706
8707
8708.10.30
8708.21
8708.29.20
8708.29.10
8708.29.15
8708.39
8708.40
8708.50
8708.60
8708.70.05, 8708.70.25 and 8708.70.45
8708.80
8708.91
8708.92
8708.93.15 and 8708.93.60
8708.94
8708.99.03, 8708.99.27 and 8708.99.55
8708.99.06, 8708.99.31 and 8708.99.58
8708.99.09, 8708.99.34 and 8708.99.61
8708.99.12, 8708.99.37 and 8708.99.64
8708.99.15, 8708.99.40 and 8708.99.67
8708.99.18, 8708.99.43 and 8708.99.70
8708.99.21, 8708.99.46 and 8708.99.73
8708.99.24, 8708.99.49 and 8708.99.80
9031.80
9032.89
9401.20

## SCHEDULE V
## LIST OF AUTOMOTIVE COMPONENTS AND MATERIALS FOR THE PURPOSES OF SECTION 10 OF THE APPENDIX

| Item | Column I automotive components | Column II listed materials |
|---|---|---|
| 1. | Engines provided for in heading 8407 or 8408. | Cast blocks, cast heads, fuel nozzles, fuel injector pumps, glow plugs, turbochargers, superchargers, electronic engine controls, intake manifolds, exhaust manifolds, intake valves, exhaust valves, crankshafts, camshafts, alternators, starters, air cleaner assemblies, pistons, connecting rods and assemblies made therefrom, rotor assemblies for rotary engines, flywheels (for manual transmissions), flexplates (for automatic transmissions), oil pans, oil pumps, pressure regulators, water pumps, crankshaft gears, camshaft gears, radiator assemblies, charge-air coolers. |
| 2. | Gear boxes (transmissions) provided for in subheading 8708.40. | (a) For manual transmissions: transmission cases and clutch housings; clutches; internal shifting mechanisms; gear sets, synchronizers and shafts; and<br>(b) For torque convertor type transmissions: transmission cases and convertor housings; torque convertor assemblies; gear sets and clutches; electronic transmission controls. |

## SCHEDULE VI
## REGIONAL VALUE-CONTENT CALCULATION FOR CAMI

SECTION 1. DEFINITIONS.

In this Schedule,

''closed'' means, with respect to a plant, a closure

(a) for purposes of re-tooling for a change in model line, or

(b) as a result of any event or circumstance (other than the imposition of antidumping duties or countervailing duties, or an interruption of operations resulting from a labor strike, lock-out, labor dispute, picketing or boycott of or by employees of CAMI Automotive, Inc. or General Motors of Canada Limited) that CAMI Automotive, Inc. or General Motors of Canada Limited could not reasonably have been expected to avert by corrective action or by exercise of due care and diligence, including a shortage of materials, failure of utilities, or inability to obtain or a delay in obtaining raw materials, parts, fuel or utilities;

''GM'' means General Motors of Canada Limited, General Motors Corporation, General Motors de Mexico, S.A. de C.V., and any subsidiary directly or indirectly owned by any of them, or by any combination thereof;

''producer'' means CAMI Automotive, Inc.

SECTION 2.

For purposes of section 11 of this appendix, for purposes of determining the regional value content, in a fiscal year, of a motor vehicle of a class of motor vehicles or a model line produced by the producer in the territory of Canada and imported into the territory of the United States, the producer may choose to calculate the regional value content by

(a) calculating

(i) the sum of

(A) the net cost incurred by the producer, during that fiscal year, in the production in the territory of Canada of motor vehicles of a category referred to in section 3 that is chosen by the producer, and

(B) the net cost incurred by General Motors of Canada Limited, during the fiscal year that corresponds most closely to the producer's fiscal year, in the production in the territory of Canada of a corresponding class of motor vehicles or model line, and

(ii) the sum of

(A) the value, determined in accordance with section 9 of this appendix for light-duty vehicles and section 10 of this appendix for heavy-duty vehicles, of the non-originating materials that are used by the producer, during that fiscal year, in the production in the territory of Canada of motor vehicles of a category referred to in section 2.1 that is chosen by the producer, and

(B) the value, determined in accordance with section 9 of this appendix for light-duty vehicles and section 10 of this appendix for heavy-duty vehicles, of the non-originating materials that are used by General Motors of Canada Limited, during the fiscal year that corresponds most closely to the producer's fiscal year, in the production in the territory of Canada of a corresponding class of motor vehicles or model line, and

(b) using the sums referred to in paragraphs (a)(i) and (ii) as the net cost and the value of non-originating materials, respectively, in the calculation referred to in section 6(3) of this appendix,

provided that

(c) at the beginning of the producer's fiscal year, General Motors of Canada Limited owns 50 percent or more of the voting common stock of the producer, and

(d) GM acquires 75 percent or more by unit of quantity of the class of motor vehicles or model line, as the case may be, that the producer produced in the territory of Canada in the producer's fiscal year for sale in the territory of one or more of the NAFTA countries.

SECTION 3.

The categories referred to in clauses 2(a)(i)(A) and (ii)(A) are the following:

(a) the class of motor vehicles that the producer produced in the territory of Canada in the producer's fiscal year for sale in the territory of one or more of the NAFTA countries; and

(b) the model line that the producer produced in the territory of Canada in the producer's fiscal year for sale in the territory of one or more of the NAFTA countries.

SECTION 4.

Where GM does not satisfy the requirement set out in section 2(d), the producer may choose that the regional value content be calculated in accordance with section 2 only for those motor vehicles that are acquired by GM for distribution under the GEO marque or another GM marque.

SECTION 5.

(1) The producer may choose that the calculation referred to in section 2 be made over a period of two fiscal years where

(a) any plant operated by the producer or by General Motors of Canada Limited is closed for more than two consecutive months; and

(b) the motor vehicles of a category referred to in section 3, with respect to which the producer chooses that the regional value content be calculated in accordance with section 2, are produced in that plant.

(2) Subject to subsection (3), the period of two fiscal years referred to in subsection (1) corresponds to the fiscal year in which the plant is closed and, at the choice of the producer, the preceding or the subsequent fiscal year.

(3) Where the plant is closed for a period that spans two fiscal years, the calculation referred to in section 2 may be made only over those two fiscal years.

(4) Where the producer has chosen that the regional value content be calculated over two fiscal years under this section, the choice referred to in section 11(6) of this appendix shall be filed not later than 10 days after the end of the period during which the plant is closed, or at such later time as the customs administration may accept.

SECTION 6.

For purposes of this Schedule, a motor vehicle producer shall be deemed to be GM where, as a result of an amalgamation, reorganization, division or similar transaction, that motor vehicle producer

(a) acquires all or substantially all of the assets used by GM, and

(b) directly or indirectly controls, or is controlled by, GM, or both that motor vehicle producer and GM are controlled by the same person.

## SCHEDULE VII
## REASONABLE ALLOCATION OF COSTS

SECTION 1. DEFINITIONS.

For purposes of this Schedule,

''costs'' means any costs that are included in total cost and that need to be allocated pursuant to sections 5(9), 6(11) and 7(6) and sections 10(1)(a)(i) and (ii) of these Regulations, section 4(7) of Schedule II and sections 5(7) and 10(2) of Schedule VIII;

''discontinued operations'', in the case of a producer located in a NAFTA country, has the meaning set out in that NAFTA country's Generally Accepted Accounting Principles;

''indirect overhead'' means period costs and other costs;

''internal management purpose'' means any purpose relating to tax reporting, financial reporting, financial planning, decision-making, pricing, cost recovery, cost control management or performance measurement; and

''overhead'' means costs, other than direct material costs and direct labor costs.

SECTION 2. Interpretation.

(1) In this Schedule, reference to ''producer'' shall, for purposes of section 4(7) of Schedule II, be read as a reference to ''buyer''.

(2) In this Schedule, reference to ''good'' shall,

(a) for purposes of section 6(14) of this appendix, be read as a reference to ''identical goods or similar goods, or any combination thereof'';

(b) for purposes of section 7(6) of this appendix, be read as a reference to ''intermediate material'';

(c) for purposes of section 11 of this appendix, be read as a reference to ''category of vehicles that is chosen pursuant to section 11(1) of this appendix'';

(d) for purposes of section 12 of this appendix, be read as a reference to ''category of goods chosen pursuant to section 12(1) of this appendix'';

(e) for purposes of section 13(4) of this appendix, be read as a reference to ''category of vehicles chosen pursuant to section 13(4) of this appendix'';

(f) for purposes of section 4(7) of Schedule II, be read as a reference to ''packaging materials and containers or the elements''; and

(g) for purposes of section 5(7) of Schedule VIII, be read as a reference to ''elements''.

METHODS TO REASONABLY ALLOCATE COSTS

SECTION 3.

(1) Where a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good direct material costs, or part thereof, and that method reasonably reflects the direct material used in the production of the good based on the criterion of benefit, cause or ability to bear, that method shall be used to reasonably allocate the costs to the good.

(2) Where a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good direct labor costs, or part thereof, and that method reasonably reflects the direct labor used in the production of the good based on the criterion of benefit, cause or ability to bear, that method shall be used to reasonably allocate the costs to the good.

(3) Where a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good overhead, or part thereof, and that method is based on the criterion of benefit, cause or ability to bear, that method shall be used to reasonably allocate the costs to the good.

SECTION 4.

Where costs are not reasonably allocated to a good under section 3, those costs are reasonably allocated to the good if they are allocated,

(a) with respect to direct material costs, on the basis of any method that reasonably reflects the direct material used in the production of the good based on the criterion of benefit, cause or ability to bear;

(b) with respect to direct labor costs, on the basis of any method that reasonably reflects the direct labor used in the production of the good based on the criterion of benefit, cause or ability to bear; and

(c) with respect to overhead, on the basis of any of the following methods:

(i) the method set out in Addendum A, Addendum B or Addendum C,

(ii) a method based on a combination of the methods set out in Addenda A and B or Addenda A and C, and

(iii) a cost allocation method based on the criterion of benefit, cause or ability to bear.

SECTION 4.1.

Nothwithstanding section 3 and 7, where a producer allocates, for an internal management purpose, costs to a good that is not produced in the period in which the costs are expensed on the books of the producer (such as costs with respect to research and development, and obsolete materials), those costs shall be considered reasonably allocated if

(a) for purposes of section 6(11), they are allocated to a good that is produced in the period in which the costs are expensed, and

(b) the good produced in that period is within a group or range of goods, including identical goods or similar goods, that is produced by the same industry or industry sector as the goods to which the costs are expensed.

SECTION 5.

Any cost allocation method referred to in section 3, 4 or 4.1 that is used by a producer for the purposes of this appendix shall be used throughout the producer's fiscal year.

COSTS NOT REASONABLY ALLOCATED

SECTION 6.

The allocation to a good of any of the following is considered not to be reasonably allocated to the good:

(a) costs of a service provided by a producer of a good to another person where the service is not related to the good;

(b) gains or losses resulting from the disposition of a discontinued operation, except gains or losses related to the production of the good;

(c) cumulative effects of accounting changes reported in accordance with a specific requirement of the applicable Generally Accepted Accounting Principles; and''.

(d) gains or losses resulting from the sale of a capital asset of the producer.

SECTION 7.

Any costs allocated under section 3 on the basis of a cost allocation method that is used for an internal management purpose that is solely for the purpose of qualifying a good as an originating good are considered not to be reasonably allocated.

ADDENDUM A
COST RATIO METHOD

*Calculation of Cost Ratio*

For the overhead to be allocated, the producer may choose one or more allocation bases that reflect a relationship between the overhead and the good based on the criterion of benefit, cause or ability to bear.

With respect to each allocation base that is chosen by the producer for allocating overhead, a cost ratio is calculated for each good produced by the producer in accordance with the following formula:

$$CR = \frac{AB}{TAB}$$

where

CR is the cost ratio with respect to the good;

AB is the allocation base for the good; and

TAB is the total allocation base for all the goods produced by the producer.

*Allocation to a Good of Costs Included in Overhead*

The costs with respect to which an allocation base is chosen are allocated to a good in accordance with the following formula:

$$CAG = CA \times CR$$

where

CAG is the costs allocated to the good;

CA is the costs to be allocated; and

CR is the cost ratio with respect to the good.

*Excluded Costs*

Under section 6(11)(b) of this appendix, where excluded costs are included in costs to be allocated to a good, the cost ratio used to allocate that cost to the good is used to determine the amount of excluded costs to be subtracted from the costs allocated to the good.

*Allocation Bases for Costs*

The following is a non-exhaustive list of allocation bases that may be used by the producer to calculate cost ratios:

Direct Labor Hours
Direct Labor Costs
Units Produced
Machine-hours
Sales Dollars or Pesos
Floor Space

*''Examples''*

The following examples illustrate the application of the cost ratio method to costs included in overhead.

*Example 1:* Direct Labor Hours

A producer who produces Good A and Good B may allocate overhead on the basis of direct labor hours spent to produce Good A and Good B. A total of 8,000 direct labor hours have been spent to produce Good A and Good B: 5,000 hours with respect to Good A and 3,000 hours with respect to Good B. The amount of overhead to be allocated is $6,000,000.

*Calculation of the Ratios:*

Good A: 5,000 hours/8,000 hours = .625

Good B: 3,000 hours/8,000 hours = .375

*Allocation of overhead to Good A and Good B:*

Good A: $6,000,000 × .625 = $3,750,000

Good B: $6,000,000 × .375 = $2,250,000

*Example 2:* Direct Labor Costs

A producer who produces Good A and Good B may allocate overhead on the basis of direct labor costs incurred in the production of Good A and Good B. The total direct labor costs incurred in the production of Good A and Good B is $60,000: $50,000 with respect to Good A and $10,000 with respect to Good B. The amount of overhead to be allocated is $6,000,000.

*Calculation of the Ratios:*

Good A: $50,000/$60,000 = .833

Good B: $10,000/$60,000 = .167

*Allocation of Overhead to Good A and Good B:*

Good A: $6,000,000 × .833 = $4,998,000

Good B: $6,000,000 × .167 = $1,002,000

*Example 3:* Units Produced

A producer of Good A and Good B may allocate overhead on the basis of units produced. The total units of Good A and Good B produced is 150,000: 100,000 units of Good A and 50,000 units of Good B. The amount of overhead to be allocated is $6,000,000.

*Calculation of the Ratios:*

Good A: 100,000 units/150,000 units = .667

Good B: 50,000 units/150,000 units = .333

*Allocation of Overhead to Good A and Good B:*

Good A: $6,000,000 × .667 = $4,002,000

Good B: $6,000,000 × .333 = $1,998,000

*Example 4:* Machine-hours

A producer who produces Good A and Good B may allocate machine-related overhead on the basis of machine-hours utilized in the production of Good A and Good B. The total machine-hours utilized for the production of Good A and Good B is 3,000 hours: 1,200 hours with respect to Good A and 1,800 hours with respect to Good B. The amount of machine-related overhead to be allocated is $6,000,000.

*Calculation of the Ratios:*

Good A: 1,200 machine-hours/3,000 machine-hours = .40

Good B: 1,800 machine-hours/3,000 machine-hours = .60

*Allocation of Machine-Related Overhead to Good A and Good B:*

Good A: $6,000,000 × .40 = $2,400,000

Good B: $6,000,000 × .60 = $3,600,000

*Example 5:* Sales Dollars or Pesos

A producer who produces Good A and Good B may allocate overhead on the basis of sales dollars. The producer sold 2,000 units of Good A at $4,000 and 200 units of Good B at $3,000. The amount of overhead to be allocated is $6,000,000.

*Total Sales Dollars for Good A and Good B:*

Good A: $4,000 × 2,000 = $8,000,000

Good B: $3,000 × 200 = $600,000

Total Sales Dollars: $8,000,000 + $600,000 = $8,600,000

*Calculation of the Ratios:*

Good A: $8,000,000/$8,600,000 = .93

Good B: $600,000/$8,600,000 = .07

*Allocation of Overhead to Good A and Good B:*

Good A: $6,000,000 × .93 = $5,580,000

Good B: $6,000,000 × .07 = $420,000

*Example 6:* Floor Space

A producer who produces Good A and Good B may allocate overhead relating to utilities (heat, water and electricity) on the basis of floor space used in the production and storage of Good A and Good B. The total floor space used in the production and storage of Good A and Good B is 100,000 square feet: 40,000 square feet with respect to Good A and 60,000 square feet with respect to Good B. The amount of overhead to be allocated is $6,000,000.

*Calculation of the Ratios:*

Good A: 40,000 square feet/100,000 square feet = .40

Good B: 60,000 square feet/100,000 square feet = .60

*Allocation of Overhead (Utilities) to Good A and Good B:*

Good A: $6,000,000 × .40 = $2,400,000

Good B: $6,000,000 × .60 = $3,600,000

## ADDENDUM B
## DIRECT LABOR AND DIRECT MATERIAL RATIO METHOD

*Calculation of Direct Labor and Direct Material Ratio*

For each good produced by the producer, a direct labor and direct material ratio is calculated in accordance with the following formula:

$$\text{DLDMR} = \frac{\text{DLC} + \text{DMC}}{\text{TDLC} + \text{TDMC}}$$

where

DLDMR is the direct labor and direct material ratio for the good;

DLC is the direct labor costs of the good;

DMC is the direct material costs of the good;

TDLC is the total direct labor costs of all goods produced by the producer; and

TDMC is the total direct material costs of all goods produced by the producer.

*Allocation of Overhead to a Good*

Overhead is allocated to a good in accordance with the following formula:

$$OAG = O \times DLDMR$$

where

OAG is the overhead allocated to the good;

O is the overhead to be allocated; and

DLDMR is the direct labor and direct material ratio for the good.

*Excluded Costs*

Under section 6(11)(b) of this appendix, where excluded costs are included in overhead to be allocated to a good, the direct labor and direct material ratio used to allocate overhead to the good is used to determine the amount of excluded costs to be subtracted from the overhead allocated to the good.

''EXAMPLES''

*Example 1:*

The following example illustrates the application of the direct labor and direct material ratio method used by a producer of a good to allocate overhead where the producer chooses to calculate the net cost of the good in accordance with section 6(11)(a) of this appendix.

A producer produces Good A and Good B. Overhead (O) minus excluded costs (EC) is $30 and the other relevant costs are set out in the following table:

| | Good A | Good B | Total |
|---|---|---|---|
| Direct labor costs (DLC) | $5 | $5 | $10 |
| Direct material costs (DMC) | 10 | 5 | 15 |
| Totals | $15 | $10 | $25 |

*Overhead Allocated to Good A*

OAG (Good A) = O ($30) × DLDMR ($15/$25)

OAG (Good A) = $18.00

*Overhead Allocated to Good B*

OAG (Good B) = O ($30) × DLDMR ($10/$25)

OAG (Good B) = $12.00

*Example 2:*

The following example illustrates the application of the direct labor and direct material ratio method used by a producer of a good to allocate overhead where the producer chooses to calculate the net cost of the good in accordance with section 6(11)(b) of this appendix and where excluded costs are included in overhead.

A producer produces Good A and Good B. Overhead (O) is $50 (including excluded costs (EC) of $20). The other relevant costs are set out in the table of Example 1.

*Overhead Allocated to Good A*

OAG (Good A) = [O ($50) × DLDMR ($15/$25)] − [EC ($20) × DLDMR ($15/$25)]

OAG (Good A) = $18.00

*Overhead Allocated to Good B*

OAG (Good B) = [O ($50) × DLDMR ($10/$25)] − [EC ($20) × DLDMR ($10/$25)]

OAG (Good B) = $12.00

## ADDENDUM C
## DIRECT COST RATIO METHOD

*Direct Overhead*

Direct overhead is allocated to a good on the basis of a method based on the criterion of benefit, cause or ability to bear.

*Indirect Overhead*

Indirect overhead is allocated on the basis of a direct cost ratio.

*Calculation of Direct Cost Ratio*

For each good produced by the producer, a direct cost ratio is calculated in accordance with the following formula:

$$DCR = \frac{DLC + DMC + DO}{TDLC + TDMC + TDO}$$

where

DCR is the direct cost ratio for the good;
DLC is the direct labor costs of the good;
DMC is the direct material costs of the good;
DO is the direct overhead of the good;
TDLC is the total direct labor costs of all goods produced by the producer;
TDMC is the total direct material costs of all goods produced by the producer; and
TDO is the total direct overhead of all goods produced by the producer;

*Allocation of Indirect Overhead to a Good*

Indirect overhead is allocated to a good in accordance with the following formula:

$$IOAG = IO \times DCR$$

where

IOAG is the indirect overhead allocated to the good;
IO is the indirect overhead of all goods produced by the producer; and
DCR is the direct cost ratio of the good.

*Excluded Costs*

Under section 6(11)(b) of this appendix, where excluded costs are included in

(a) direct overhead to be allocated to a good, those excluded costs are subtracted from the direct overhead allocated to the good; and

(b) indirect overhead to be allocated to a good, the direct cost ratio used to allocate indirect overhead to the good is used to determine the amount of excluded costs to be subtracted from the indirect overhead allocated to the good.

''EXAMPLES''

*Example 1:*

The following example illustrates the application of the direct cost ratio method used by a producer of a good to allocate indirect overhead where the producer chooses to calculate the net cost of the good in accordance with section 6(11)(a) of this appendix.

A producer produces Good A and Good B. Indirect overhead (IO) minus excluded costs (EC) is $30. The other relevant costs are set out in the following table:

| | Good A | Good B | Total |
|---|---|---|---|
| Direct labor costs (DLC) | $5 | $5 | $10 |
| Direct material costs (DMC) | 10 | 5 | 15 |
| Direct overhead (DO) | 8 | 2 | 10 |
| Totals | $23 | $12 | $35 |

*Indirect Overhead Allocated to Good A*

IOAG (Good A) = IO ($30) × DCR ($23/$35)
IOAG (Good A) = $19.71

*Indirect Overhead Allocated to Good B*

IOAG (Good B) = IO ($30) × DCR ($12/$35)
IOAG (Good B) = $10.29

*Example 2:*

The following example illustrates the application of the direct cost ratio method used by a producer of a good to allocate indirect overhead where the producer has chosen to calculate the net cost of the good in accordance with section 6(11)(b) of this appendix and where excluded costs are included in indirect overhead.

A producer produces Good A and Good B. The indirect overhead (IO) is $50 (including excluded costs (EC) of $20). The other relevant costs are set out in the table to Example 1.

*Indirect Overhead Allocated to Good A*

IOAG (Good A) = [IO ($50) × DCR ($23/$35)] − [EC ($20) × DCR ($23/$35)]

IOAG (Good A) = $19.72

*Indirect Overhead Allocated to Good B*

IOAG (Good B) = [IO ($50) × DCR ($12/$35)] − [EC ($20) × DCR ($12/$35)]

IOAG (Good B) = $10.28

## SCHEDULE VIII
## VALUE OF MATERIALS

SECTION 1. DEFINITIONS.

(1) For purposes of this Schedule, unless otherwise stated,

''buying commissions'' means fees paid by a producer to that producer's agent for the agent's services in representing the producer in the purchase of a material;

''customs administration'' refers to the customs administration of the NAFTA country into whose territory the good, in the production of which the material being valued is used, is imported;

''materials of the same class or kind'' means, with respect to materials being valued, materials that are within a group or range of materials that

(a) is produced by a particular industry or industry sector, and

(b) includes identical materials or similar materials;

''producer'' refers to

(a) in the case of section 10(1)(b)(i) of these Regulations, the producer of the listed material, and

(b) in any other case, the producer who used the material in the production of a good that is subject to a regional value-content requirement;

''seller'' refers to a person who sells the material being valued to the producer.

INTERPRETATION

(2) Where it is to be determined under section 9(3) of these Regulations whether the customs value of a material was determined in a manner consistent with this Schedule for purposes of section 9(2) (c) or (d) of these Regulations, a reference in this Schedule to ''producer'' shall be read as a reference to ''person other than the producer who imports the traced material from outside the territories of the NAFTA countries.

SECTION 2.

(1) Except as provided under subsections (2) and (3), the transaction value of a material under Article 402(9)(a) of the Agreement, as implemented by section 7(1)(b) and sections 9(5) and 10(2) of this appendix, shall be the price actually paid or payable for the material determined in accordance with section 4 and adjusted in accordance with section 5.

(2) There is no transaction value for a material where the material is not the subject of a sale.

(3) The transaction value of a material is unacceptable where

(a) there are restrictions on the disposition or use of the material by the producer, other than restrictions that

(i) are imposed or required by law or by the public authorities in the territory of the NAFTA country in which the producer of the good or the seller of the material is located,

(ii) limit the geographical area in which the material may be used, or

(iii) do not substantially affect the value of the material;

(b) the sale or price actually paid or payable is subject to a condition or consideration for which a value cannot be determined with respect to the material;

(c) part of the proceeds of any subsequent disposal or use of the material by the producer will accrue directly or indirectly to the seller, and an appropriate addition to the price actually paid or payable cannot be made in accordance with section 5(1)(d); and

(d) except as provided in section 3, the producer and the seller are related persons and the relationship between them influenced the price actually paid or payable for the material.

(4) The conditions or considerations referred to in subsection (3)(b) include the following circumstances:

(a) the seller establishes the price actually paid or payable for the material on condition that the producer will also buy other materials or goods in specified quantities;

(b) the price actually paid or payable for the material is dependent on the price or prices at which the producer sells other materials or goods to the seller of the material; and

(c) the price actually paid or payable is established on the basis of a form of payment extraneous to the material, such as where the material is a semi-finished material that has been provided by the seller to the producer on condition that the seller will receive a specified quantity of the finished material from the producer.

(5) For purposes of subsection (3)(b), conditions or considerations relating to the use of the material shall not render the transaction value unacceptable, such as where the producer undertakes on the producer's own account, even though by agreement with the seller, activities relating to the warranty of the material used in the production of a good.

(6) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under section 5(1), the transaction value cannot be determined under the provisions of section 2(1). For an illustration of this, a royalty is paid on the basis of the price actually paid or payable in a sale of a liter of a particular good that is produced by using a material that was purchased by the kilogram and made up into a solution. If the royalty is based partially on the purchased material and partially on other factors that have nothing to do with that material, such as when the purchased material is mixed with other ingredients and is no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the seller and the producer, it would be inappropriate to add the royalty and the transaction value of the material could not be determined. However, if the amount of the royalty is based only on the purchased material and can be readily quantified, an addition to the price actually paid or payable can be made and the transaction value can be determined.

SECTION 3.

(1) In determining whether the transaction value is unacceptable under section 2(3)(d), the fact that the seller and the producer are related persons shall not in itself be grounds for the customs administration to render the transaction value unacceptable. In such cases, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship between the seller and the producer did not influence the price actually paid or payable. Where the customs administration has reasonable grounds for considering that the relationship between the seller and the producer influenced the price, the customs administration shall communicate the grounds to the producer, and that producer shall be given a reasonable opportunity to respond to the grounds communicated by the customs administration. If that producer so requests, the customs administration shall communicate in writing the grounds on which it considers that the relationship between the seller and the producer influenced the price actually paid or payable.

(2) Subsection (1) provides that, where the seller and the producer are related persons, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the value provided that the relationship between the seller and the producer did not influence the price actually paid or payable. It is not intended under subsection (1) that there should be an examination of the circumstances in all cases where the seller and the producer are related persons. Such an examination will only be required where the customs administration has doubts that the price actually paid or payable is acceptable because of the relationship between the seller and the producer. Where the customs administration does not have doubts that the price actually paid or payable is acceptable, it shall accept that price without requesting further information. For an illustration of this, the customs administration may have previously examined the relationship between the seller and the producer, or it may already have detailed information concerning the relationship between the seller and the producer, and may already be satisfied from that examination or information that the relationship between them did not influence the price actually paid or payable.

(3) In applying subsection (1), where the seller and the producer are related persons and the customs administration has doubts that the transaction value is acceptable without further inquiry, the customs administration shall give the producer an opportunity to supply such further information as may be necessary to enable it to examine the circumstances surrounding the sale. In such a case, the customs administration shall examine the relevant aspects of the sale, including the way in which the seller and the producer organize their commercial relations and the way in which the price actually paid or payable by that producer for the material being valued was arrived at, in order to determine whether the relationship between the seller and the producer influenced that price actually paid or payable. Where it can be shown that the seller and the producer buy from and sell to each other as if they were not related persons, the price actually paid or payable shall be considered as not having been influenced by the relationship between them. For an illustration of this, if the price actually paid or payable for the material had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way in which the seller settles prices for sales to unrelated buyers, the price actually paid or payable shall be considered as not having been influenced by the relationship between the producer and the seller. For another illustration of this, where it is shown that the price actually paid or payable for the material is adequate to ensure recovery of the total cost of producing the material plus a profit that is representative of the seller's overall profit realized over a representative period of time, such as on an annual basis, in sales of materials of the same class or kind, the price actually paid or payable shall be considered as not having been influenced by the relationship between the seller and the producer.

(4) In a sale between a seller and a producer who are related persons, the transaction value shall be accepted and determined in accordance with section 2(1), wherever the seller or the producer demonstrates that the transaction value of the material in that sale closely approximates one of the following test values that occurs at or about the same time as the sale and is chosen by the seller or the producer:

(a) the transaction value in sales to unrelated buyers of identical materials or similar materials, as determined in accordance with section 2(1);

(b) the value of identical materials or similar materials, as determined in accordance with section 9; or

(c) the value of identical materials or similar materials, as determined in accordance with section 10.

(5) In applying a test value referred to in subsection (4), due account shall be taken of demonstrated differences in commercial levels, quantity levels, the value of the elements specified in section 5(1)(b) and the costs incurred by the seller in sales to unrelated buyers that are not incurred by the seller in sales by the seller to a related person.

(6) The application of a test value referred to in subsection (4) shall be used at the initiative of the seller, or at the initiative of the producer with the consent of the seller, and shall be used only for comparison purposes to determine whether the transaction value of the material is acceptable. The test value shall not be used as the transaction value of that material.

(7) Subsection (4) provides an opportunity for the seller or the producer to demonstrate that the transaction value closely approximates a test value previously accepted by the customs administration of the NAFTA country in which the producer is located, and is therefore acceptable under subsection (1). Where the application of a test value under subsection (4) demonstrates that the transaction value of the material being valued is acceptable, the customs administration shall not examine the question of influence in regard to the relationship between the seller and the producer under subsection (1). Where the customs administration already has sufficient information available, without further inquiries, that the transaction value closely approximates one of the test values determined under subsection (4), the seller or the producer is not required to apply a test value to demonstrate that the transaction value is acceptable under that subsection.

(8) A number of factors must be taken into consideration for the purpose of determining whether the transaction value of the identical materials or similar materials closely approximates the transaction value of the material being valued. These factors include the nature of the material, the nature of the industry itself, the season in which the material is sold, and whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply an acceptable standardized difference such as a fixed amount or fixed percentage difference in each case. For an illustration of this, a small difference in value in a case involving one type of material could be unacceptable, while a large difference in a case involving another type of material might be acceptable for the purposes of determining whether the transaction value closely approximates a test value set out in subsection (4).

SECTION 4.

(1) The price actually paid or payable is the total payment made or to be made by the producer to or for the benefit of the seller of the material. The payment need not necessarily take the form of a transfer of money: it may be made by letters of credit or negotiable instruments. Payment may be made directly or indirectly to the seller. For an illustration of this, the settlement by the producer, whether in whole or in part, of a debt owed by the seller, is an indirect payment.

(2) Activities undertaken by the producer on the producer's own account, other than those for which an adjustment is provided in section 5, shall not be considered to be an indirect payment, even though the activities might be regarded as being for the benefit of the seller.

(3) The transaction value shall not include charges for construction, erection, assembly, maintenance or technical assistance related to the use of the material by the producer, provided that they are distinguished from the price actually paid or payable.

(4) The flow of dividends or other payments from the producer to the seller that do not relate to the purchase of the material are not part of the transaction value.

SECTION 5.

(1) In determining the transaction value of the material, the following shall be added to the price actually paid or payable:

(a) to the extent that they are incurred by the producer with respect to the material being valued and are not included in the price actually paid or payable,

(i) commissions and brokerage fees, except buying commissions, and

(ii) the costs of containers which, for customs purposes, are classified with the material under the Harmonized System;

(b) the value, reasonably allocated in accordance with subsection (12), of the following elements where they are supplied directly or indirectly to the seller by the producer free of charge or at reduced cost for use in connection with the production and sale of the material, to the extent that the value is not included in the price actually paid or payable:

(i) a material, other than an indirect material, used in the production of the material being valued,

(ii) tools, dies, molds and similar indirect materials used in the production of the material being valued,

(iii) an indirect material, other than those referred to in subparagraph (ii) or in paragraphs (c), (e) or (f) of the definition ''indirect material'' set out in Article 415 of the Agreement, as implemented by section 2(1) of this appendix, used in the production of the material being valued, and

(iv) engineering, development, artwork, design work, and plans and sketches performed outside the territory of the NAFTA country in which the producer is located that are necessary for the production of the material being valued;

(c) the royalties related to the material, other than charges with respect to the right to reproduce the material in the territory of the NAFTA country in which the producer is located that the producer must pay directly or indirectly as a condition of sale of the material, to the extent that such royalties are not included in the price actually paid or payable; and

(d) the value of any part of the proceeds of any subsequent disposal or use of the material that accrues directly or indirectly to the seller.

(2) The additions referred to in subsection (1) shall be made to the price actually paid or payable under this section only on the basis of objective and quantifiable data.

(3) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection (1), the transaction value cannot be determined under section 2(1).

(4) No additions shall be made to the price actually paid or payable for the purpose of determining the transaction value except as provided in this section.

(5) The amounts to be added under subsection (1)(a) shall be those amounts that are recorded on the books of the producer.

(6) The value of the elements referred to in subsection (1)(b)(i) shall be

(a) where the elements are imported from outside the territory of the NAFTA country in which the seller is located, the customs value of the elements,

(b) where the producer, or a related person on behalf of the producer, purchases the elements from an unrelated person in the territory of the NAFTA country in which the seller is located, the price actually paid or payable for the elements,

(c) where the producer, or a related person on behalf of the producer, acquires the elements from an unrelated person in the territory of the NAFTA country in which the seller is located other than through a purchase, the value of the consideration related to the acquisition of the elements, based on the cost of the consideration that is recorded on the books of the producer or the related person, or

(d) where the elements are produced by the producer, or by a related person, in the territory of the NAFTA country in which the seller is located, the total cost of the elements, determined in accordance with subsection (7),

and shall include the following costs, that are recorded on the books of the producer or the related person supplying the elements on behalf of the producer, to the extent that such costs are not included under paragraph (a) through (d):

(e) the costs of freight, insurance, packing, and all other costs incurred in transporting the elements to the location of the seller,

(f) duties and taxes paid or payable with respect to the elements, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(g) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the elements, and

(h) the cost of waste and spoilage resulting from the use of the elements in the production of the material, minus the value of reusable scrap or by-product.

(7) For the purposes of subsection (6)(d), the total cost of the elements referred to in subsection (1)(b)(i) shall be

(a) where the elements are produced by the producer, at the choice of the producer,

(i) the total cost incurred with respect to all goods produced by the producer, calculated on the basis of the costs that are recorded on the books of the producer, that can be reasonably allocated to the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by the producer that forms part of the total cost incurred with respect to the elements, calculated on the basis of the costs that are recorded on the books of the producer, that can be reasonably allocated to the elements in accordance with Schedule VII; and

(b) where the elements are produced by a person who is related to the producer, at the choice of the producer,

(i) the total cost incurred with respect to all goods produced by that related person, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by that related person that forms part of the total cost incurred with respect to the elements, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the elements in accordance with Schedule VII.

(8) Except as provided in subsections (10) and (11), the value of the elements referred to in subsections (1)(b)(ii) through (iv) shall be

(a) the cost of those elements that is recorded on the books of the producer; or

(b) where such elements are provided by another person on behalf of the producer and the cost is not recorded on the books of the producer, the cost of those elements that is recorded on the books of that other person.

(9) Where the elements referred to in subsections (1)(b)(ii) through (iv) were previously used by or on behalf of the producer, the value of the elements shall be adjusted downward to reflect that use.

(10) Where the elements referred to in subsections (1)(b)(ii) and (iii) were leased by the producer or a person related to the producer, the value of the elements shall be the cost of the lease that is recorded on the books of the producer or that related person.

(11) No addition shall be made to the price actually paid or payable for the elements referred to in subsection (1)(b)(iv) that are available in the public domain, other than the cost of obtaining copies of them.

(12) The producer shall choose the method of allocating to the material the value of the elements referred to in subsections (1)(b)(ii) through (iv), provided that the value is reasonably allocated to the material in a manner appropriate to the circumstances. The methods the producer may choose to allocate the value include allocating the value over the number of units produced up to the time of the first shipment or allocating the value over the entire anticipated production where contracts or firm commitments exist for that production. For an illustration of this, a producer provides the seller with a mold to be used in the production of the material and contracts with the seller to buy 10,000 units of that material. By the time the first shipment of 1,000 units arrives, the seller has already produced 4,000 units. In these circumstances, the producer may choose to allocate the value of the mold over 4,000 units or 10,000 units but shall not choose to allocate the value of the elements to the first shipment of 1,000 units. The producer may choose to allocate the entire value of the elements to a single shipment of material only where that single shipment comprises all of the units of the material acquired by the producer under the contract or commitment for that number of units of the material between the seller and the producer.

(13) The addition for the royalties referred to in subsection (1)(c) shall be the payment for the royalties that is recorded on the books of the producer, or where the payment for the royalties is recorded on the books of another person, the payment for the royalties that is recorded on the books of that other person.

(14) The value of the proceeds referred to in subsection (1)(d) shall be the amount that is recorded for such proceeds on the books of the producer or the seller.

SECTION 6.

(1) If there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of part IV of this appendix, shall be the transaction value of identical materials sold, at or about the same time as the material being valued was shipped to the producer, to a buyer located in the same country as the producer.

(2) In applying this section, the transaction value of identical materials in a sale at the same commercial level and in substantially the same quantity of materials as the material being valued shall be used to determine the value of the material. Where no such sale is found, the transaction value of identical materials sold at a different commercial level or in different quantities, adjusted to take into account the differences attributable to the commercial level or quantity, shall be used, provided that such adjustments can be made on the basis of evidence that clearly establishes that the adjustment is reasonable and accurate, whether the adjustment leads to an increase or a decrease in the value.

(3) A condition for adjustment under subsection (2) because of different commercial levels or different quantities is that such adjustment be made only on the basis of evidence that clearly establishes that an adjustment is reasonable and accurate. For an illustration of this, a bona fide price list contains prices for different quantities. If the material being valued consists of a shipment of 10 units and the only identical materials for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's bona fide price list and using the price applicable to a sale of 10 units. This does not require that sales had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under this section is not appropriate.

(4) If more than one transaction value of identical materials is found, the lowest such value shall be used to determine the value of the material under this section.

SECTION 7.

(1) If there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), and the value of the material cannot be determined under section 6, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of part IV of this appendix, shall be the transaction value of similar materials sold, at or about the same time as the material being valued was shipped to the producer, to a buyer located in the same country as the producer.

(2) In applying this section, the transaction value of similar materials in a sale at the same commercial level and in substantially the same quantity of materials as the material being valued shall be used to determine the value of the material. Where no such sale is found, the transaction value of similar materials sold at a different commercial level or in different quantities, adjusted to take into account the differences attributable to the commercial level or quantity, shall be used, provided that such adjustments can be made on the basis of evidence that clearly establishes that the adjustment is reasonable and accurate, whether the adjustment leads to an increase or a decrease in the value.

(3) A condition for adjustment under subsection (2) because of different commercial levels or different quantities is that such adjustment be made only on the basis of evidence that clearly establishes that an adjustment is reasonable and accurate. For an illustration of this, a bona fide price list contains prices for different quantities. If the material being valued consists of a shipment of 10 units and the only similar materials for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's bona fide price list and using the price applicable to a sale of 10 units. This does not require that sales had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under this section is not appropriate.

(4) If more than one transaction value of similar materials is found, the lowest such value shall be used to determine the value of the material under this section.

SECTION 8.

If there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), and the value of the material cannot be determined under section 6 or 7, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of part IV of this appendix, shall be determined under section 9 or, when the value cannot be determined under that section, under section 10 except that, at the request of the producer, the order of application of sections 9 and 10 shall be reversed.

SECTION 9.

(1) Under this section, if identical materials or similar materials are sold in the territory of the NAFTA country in which the producer is located, in the same condition as the material was in when received by the producer, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of part IV of this appendix, shall be based on the unit price at which those identical materials or similar materials are sold, in the greatest aggregate quantity by the producer or, where the producer does not sell those identical materials or similar materials, by a person at the same trade level as the producer, at or about the same time as the material being valued is received by the producer, to persons located in that territory who are not related to the seller, subject to deductions for the following:

(a) either the amount of commissions usually earned or the amount generally reflected for profit and general expenses, in connection with sales, in the territory of that NAFTA country, of materials of the same class or kind as the material being valued; and

(b) taxes, if included in the unit price, payable in the territory of that NAFTA country, which are either waived, refunded or recoverable by way of credit against taxes actually paid or payable.

(2) If neither identical materials nor similar materials are sold at or about the same time the material being valued is received by the producer, the value shall, subject to the deductions provided for under subsection (1), be based on the unit price at which identical materials or similar materials are sold in the territory of the NAFTA country in which the producer is located, in the same condition as the material was in when received by the producer, at the earliest date within 90 days after the date the material being valued was received by the producer.

(3) The expression ''unit price at which those identical materials or similar materials are sold, in the greatest aggregate quantity'' in subsection (1) means the price at which the greatest number of units is sold in sales between unrelated persons. For an illustration of this, materials are sold from a price list which grants favorable unit prices for purchases made in larger quantities.

| Sale quantity | Unit price | Number of sales | Total quantity sold at each price |
|---|---|---|---|
| 1–10 units | 100 | 10 sales of 5 units | 65 |
| | | 5 sales of 3 units | |
| 11–25 units | 95 | 5 sales of 11 units | 55 |
| | | 1 sale of 20 units | |
| Over 25 units | 90 | 1 sale of 30 units | 80 |
| | | 1 sale of 50 units | |

The greatest number of units sold at a particular price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

As another illustration of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this illustration, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

(4) Any sale to a person who supplies, directly or indirectly, free of charge or at reduced cost for use in connection with the production of the material, any of the elements specified in section 5(1)(b), shall not be taken into account in establishing the unit price for the purposes of this section.

(5) The amount generally reflected for profit and general expenses referred to in subsection (1)(a) shall be taken as a whole. The figure for the purposes of deducting an amount for profit and general expenses shall be determined on the basis of information supplied by or on behalf of the producer unless the figures provided by the producer are inconsistent with those usually reflected in sales, in the country in which the producer is located, of materials of the same class or kind as the material being valued. Where the figures provided by the producer are inconsistent with those figures, the amount for profit and general expenses shall be based on relevant information other than that supplied by or on behalf of the producer.

(6) For the purposes of this section, general expenses are the direct and indirect costs of marketing the material in question.

(7) In determining either the commissions usually earned or the amount generally reflected for profit and general expenses under this section, the question as to whether certain materials are materials of the same class or kind as the material being valued shall be determined on a case-by-case basis with reference to the circumstances involved. Sales in the country in which the producer is located of the narrowest group or range of materials of the same class or kind as the material being valued, for which the necessary information can be provided, shall be examined. For the purposes of this section, ''materials of the same class or kind'' includes materials imported from the same country as the material being valued as well as materials imported from other countries or acquired within the territory of the NAFTA country in which the producer is located.

(8) For the purposes of subsection (2), the earliest date shall be the date by which sales of identical materials or similar materials are made, in sufficient quantity to establish the unit price, to other persons in the territory of the NAFTA country in which the producer is located.

SECTION 10.

(1) Under this section, the value of a material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of part IV of this appendix, shall be the sum of

(a) the cost or value of the materials used in the production of the material being valued, as determined on the basis of the costs that are recorded on the books of the producer of the material,

(b) the cost of producing the material being valued, as determined on the basis of the costs that are recorded on the books of the producer of the material, and

(c) an amount for profit and general expenses equal to that usually reflected in sales

(i) where the material being valued is imported by the producer into the territory of the NAFTA country in which the producer is located, to persons located in the territory of the NAFTA country in which the producer is located by producers of materials of the same class or kind as the material being valued who are located in the country in which the material is produced, and

(ii) where the material being valued is acquired by the producer from another person located in the territory of the NAFTA country in which the producer is located, to persons located in the territory of the NAFTA country in which the producer is located by producers of materials of the same class or kind as the material being valued who are located in the country in which the producer is located,

(d) the value of elements referred to in section 5(1)(b)(i), determined in accordance with section 5(6), and

(e) the value of elements referred to in sections 5(1)(b)(ii) through (iv), determined in accordance with section 5(8) and reasonably allocated to the material in accordance with section 5(12).

(2) For purposes of subsections (1)(a) and (b), where the costs recorded on the books of the producer of the material relate to the production of other goods and materials as well as to the production of the material being valued, the costs referred to in subsections (1)(a) and (b) with respect to the material being valued shall be those costs recorded on the books of the producer of the material that can be reasonably allocated to that material in accordance with Schedule VII.

(3) The amount for profit and general expenses referred to in subsection (1)(c) shall be determined on the basis of information supplied by or on behalf of the producer of the material being valued unless the profit and general expenses figures that are supplied with that information are inconsistent with those usually reflected in sales by producers of materials of the same class or kind as the material being valued who are located in the country in which the material is produced or the producer is located, as the case may be. The information supplied shall be prepared in a manner consistent with generally accepted accounting principles of the country in which the material being valued is produced. Where the material is produced in the territory of a NAFTA country, the information shall be prepared in accordance with the Generally Accepted Accounting Principles set out in the authorities listed for that NAFTA country in Schedule XII.

(4) For purposes of subsection (1)(c) and subsection (3), general expenses means the direct and indirect costs of producing and selling the material that are not included under subsections (1)(a) and (b).

(5) For purposes of subsection (3), the amount for profit and general expenses shall be taken as a whole. Where, in the information supplied by or on behalf of the producer of a material, the profit figure is low and the general expenses figure is high, the profit and general expense figures taken together may nevertheless be consistent with those usually reflected in sales of materials of the same class or kind as the material being valued. Where the producer of a material can demonstrate that it is taking a nil or low profit on its sales of the material because of particular commercial circumstances, its actual profit and general expense figures shall be taken into account, provided that the producer of the material has valid commercial reasons to justify them and its pricing policy reflects usual pricing policies in the branch of industry concerned. For an illustration of this, such a situation might occur where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where the producers sell the material to complement a range of materials and goods being produced in the country in which the material is sold and accept a low profit to maintain competitiveness. A further illustration is where a material was being launched and the producer accepted a nil or low profit to offset high general expenses associated with the launch.

(6) Where the figures for the profit and general expenses supplied by or on behalf of the producer of the material are not consistent with those usually reflected in sales of materials of the same class or kind as the material being valued that are made by other producers in the country in which that material is sold, the amount for profit and general expenses may be based on relevant information other than that supplied by or on behalf of the producer of the material.

(7) Where a customs administration uses information other than that supplied by or on behalf of the producer of the material for the purposes of determining the value of a material under this section, the customs administration shall communicate to the producer, if that producer so requests, the source of such information, the data used and the calculations based upon such data, subject to the provisions on confidentiality under Article 507 of the Agreement, as implemented in each NAFTA country.

(8) Whether certain materials are of the same class or kind as the material being valued shall be determined on a case-by-case basis with reference to the circumstances involved. For purposes of determining the amount for profit and general expenses usually reflected under the provisions of this section, sales of the narrowest group or range of materials of the same class or kind, which includes the material being valued, for which the necessary information can be provided, shall be examined. For the purposes of this section, the materials of the same class or kind must be from the same country as the material being valued.

SECTION 11.

(1) Where there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), and the value of the materials cannot be determined under sections 6 through 10, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of part IV of this appendix, shall be determined under this section using reasonable means consistent with the principles and general provisions of this Schedule and on the basis of data available in the country in which the producer is located.

(2) The value of the material determined under this section shall not be determined on the basis of

(a) a valuation system which provides for the acceptance of the higher of two alternative values;

(b) a cost of production other than the value determined in accordance with section 10;

(c) minimum values;

(d) arbitrary or fictitious values;

(e) where the material is produced in the territory of the NAFTA country in which the producer is located, the price of the material for export from that territory; or

(f) where the material is imported, the price of the material for export to a country other than to the territory of the NAFTA country in which the producer is located.

(3) To the greatest extent possible, the value of the material determined under this section shall be based on the methods of valuation set out in sections 2 through 10, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of this section. For an illustration of this, under section 6, the requirement that the identical materials should be sold at or about the same time as the time the material being valued is shipped to the producer could be flexibly interpreted. Similarly, identical materials produced in a country other than the country in which the material is produced could be the basis for determining the value of the material, or the value of identical materials already determined under section 9 could be used. For another illustration, under section 7, the requirement that the similar materials should be sold at or about the same time as the material being valued are shipped to the producer could be flexibly interpreted. Likewise, similar materials produced in a country other than the country in which the material is produced could be the basis for determining the value of the material, or the value of similar materials already determined under the provisions of section 9 could be used. For a further illustration, under section 9, the ninety days requirement could be administered flexibly.

## SCHEDULE IX

## METHODS FOR DETERMINING THE VALUE OF NON-ORIGINATING MATERIALS THAT ARE IDENTICAL MATERIALS AND THAT ARE USED IN THE PRODUCTION OF A GOOD

### DEFINITIONS AND INTERPRETATION

SECTION 1. DEFINITIONS.

For purposes of this Schedule,

''FIFO method'' means the method by which the value of non-originating materials first received in materials inventory, determined in accordance with section 7 of this appendix, is considered to be the value of non-originating materials used in the production of the good first shipped to the buyer of the good;

''identical materials'' means, with respect to a material, materials that are the same as that material in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance;

''LIFO method'' means the method by which the value of non-originating materials last received in materials inventory, determined in accordance with section 7 of this appendix, is considered to be the value of non-originating materials used in the production of the good first shipped to the buyer of the good;

''materials inventory'' means, with respect to a single plant of the producer of a good, an inventory of non-originating materials that are identical materials and that are used in the production of the good; and

''rolling average method'' means the method by which the value of non-originating materials used in the production of a good that is shipped to the buyer of the good is based on the average value, calculated in accordance with section 4, of the non-originating materials in materials inventory.

### GENERAL

SECTION 2.

For purposes of sections 5(11) and (12) and 6(10) of this appendix, the following are the methods for determining the value of non-originating materials that are identical materials and are used in the production of a good:

(a) FIFO method;

(b) LIFO method; and

(c) rolling average method.

SECTION 3.

(1) Where a producer of a good chooses, with respect to non-originating materials that are identical materials, any of the methods referred to in section 2, the producer may not use another of those methods with respect to any other non-originating materials that are identical materials and that are used in the production of that good or in the production of any other good.

(2) Where a producer of a good produces the good in more than one plant, the method chosen by the producer shall be used with respect to all plants of the producer in which the good is produced.

(3) The method chosen by the producer to determine the value of non-originating materials may be chosen at any time during the producer's fiscal year and may not be changed during that fiscal year.

AVERAGE VALUE FOR ROLLING AVERAGE METHOD

SECTION 4.

(1) The average value of non-originating materials that are identical materials and that are used in the production of a good that is shipped to the buyer of the good is calculated by dividing

(a) the total value of non-originating materials that are identical materials in materials inventory prior to the shipment of the good, determined in accordance with section 7 of this appendix,

by

(b) the total units of those non-originating materials in materials inventory prior to the shipment of the good.

(2) The average value calculated under subsection (1) is applied to the remaining units of non-originating materials in materials inventory.

ADDENDUM

''EXAMPLES'' ILLUSTRATING THE APPLICATION OF THE METHODS FOR DETERMINING THE VALUE OF NON-ORIGINATING MATERIALS THAT ARE IDENTICAL MATERIALS AND THAT ARE USED IN THE PRODUCTION OF A GOOD

The following ''examples'' are based on the figures set out in the table below and on the following assumptions:

(a) Materials A are non-originating materials that are identical materials that are used in the production of Good A;

(b) one unit of Materials A is used to produce one unit of Good A;

(c) all other materials used in the production of Good A are originating materials; and

(d) Good A is produced in a single plant.

| Date (M/D/Y) | Materials inventory (Receipts of materials A) | | Sales (Shipments of good A) |
|---|---|---|---|
| | Quantity (units) | Unit cost* | Quantity (units) |
| 01/01/94 | 200 | $1.05 | |
| 01/03/94 | 1,000 | 1.00 | |
| 01/05/94 | 1,000 | 1.10 | |
| 01/08/94 | | | 500 |
| 01/09/94 | | | 500 |
| 01/10/94 | 1,000 | 1.05 | |
| 01/14/94 | | | 1,500 |
| 01/16/94 | 2,000 | 1.10 | |
| 01/18/94 | | | 1,500 |

*Unit cost is determined in accordance with section 7 of this appendix.

*Example 1:* FIFO method

By applying the FIFO method:

(1) the 200 units of Materials A received on 01/01/94 and valued at $1.05 per unit and 300 units of the 1,000 units of Material A received on 01/03/94 and valued at $1.00 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/08/94; therefore, the value of the non-originating materials used in the production of those goods is considered to be $510 [(200 unit × $1.05) + ($300 units × $1.00)];

(2) 500 units of the remaining 700 units of Materials A received on 01/03/94 and valued at $1.00 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/09/94; therefore, the value of the non-originating materials used in the production of those goods is considered to be $500 (500 units × $1.00);

(3) the remaining 200 units of the 1,000 of Materials A received on 01/03/94 and valued at $1.00 per unit, the 1,000 units of Materials A received on 01/05/94 and valued at $1.10 per unit, and 300 units of the 1,000 Materials A received on 01/10/94 and valued at $1.05 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/14/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,615 [(200 units × $1.00) + (1,000 units × $1.10) + (300 units × $1.05)]; and

(4) the remaining 700 units of the 1,000 units of Materials A received on 01/10/94 and valued at $1.05 per unit and 800 units of the 2,000 units of Materials A received on 01/16/94 and valued at $1.10 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/18/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,615 [(700 × $1.05) + (800 × $1.10)].

*Example 2:* LIFO method

By applying the LIFO method:

(1) 500 units of the 1,000 units of Materials A received on 01/05/94 and valued at $1.10 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/08/94; therefore, the value of the non-originating materials used in the production of those goods is considered to be $550 (500 units × $1.10);

(2) the remaining 500 units of the 1,000 units of Materials A received on 01/05/94 and valued at $1.10 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/09/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $550 (500 units × $1.10);

(3) the 1,000 units of Materials A received on 01/10/94 and valued at $1.05 per unit and 500 units of the 1,000 units of Material A received on 01/03/94 and valued at $1.00 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/14/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,550 [(1,000 units × $1.05) + (500 units × $1.00)]; and

(4) 1,500 units of the 2,000 units of Materials A received on 01/16/94 and valued at $1.10 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/18/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,650 (1,500 units × $1.10).

*Example 3:* Rolling average method

The following table identifies the average value of non-originating Materials A as determined under the rolling average method. For purposes of this example, a new average value of non-originating Materials A is calculated after each receipt.

| Materials inventory | | | | |
|---|---|---|---|---|
| | Date (M/D/Y) | Quantity (units) | Unit cost* | Total value |
| Beginning Inventory | 1/1/94 | 200 | $1.05 | $210 |
| Receipt | 1/3/94 | 1,000 | 1.00 | 1,000 |
| AVERAGE VALUE | | 1,200 | 1.008 | 1,210 |

| Materials inventory | | | | |
|---|---|---|---|---|
| | Date (M/D/Y) | Quantity (units) | Unit cost* | Total value |
| Receipt | 1/5/94 | 1,000 | 1.10 | 1,100 |
| AVERAGE VALUE | | 2,200 | 1.05 | 2,310 |
| Shipment | 1/8/94 | 500 | 1.05 | 525 |
| AVERAGE VALUE | | 1,700 | 1.05 | 1,785 |
| Shipment | 1/9/94 | 500 | 1.05 | 525 |
| AVERAGE VALUE | | 1,200 | 1.05 | 1,260 |
| Receipt | 1/16/94 | 2,000 | 1.10 | 2,200 |
| AVERAGE VALUE | | 3,200 | 1.08 | 3,460 |

* Unit cost is determined in accordance with section 7 of this appendix.

By applying the rolling average method:

(1) the value of non-originating materials used in the production of the 500 units of Good A shipped on 01/08/94 is considered to be $525 (500 units × $1.05); and

(2) the value of non-originating materials used in the production of the 500 units of Good A shipped on 01/09/94 is considered to be $525 (500 units × $1.05).

## SCHEDULE X
## INVENTORY MANAGEMENT METHODS

### PART I
### FUNGIBLE MATERIALS

#### DEFINITIONS AND INTERPRETATION

SECTION 1. DEFINITIONS.

For purposes of this part,

''average method'' means the method by which the origin of fungible materials withdrawn from materials inventory is based on the ratio, calculated under section 5, of originating materials and non-originating materials in materials inventory;

''FIFO method'' means the method by which the origin of fungible materials first received in materials inventory is considered to be the origin of fungible materials first withdrawn from materials inventory;

''LIFO method'' means the method by which the origin of fungible materials last received in materials inventory is considered to be the origin of fungible materials first withdrawn from materials inventory;

''materials inventory'' means,

(a) with respect to a producer of a good, an inventory of fungible materials that are used in the production of the good, and

(b) with respect to a person from whom the producer of the good acquired those fungible materials, an inventory from which fungible materials are sold or otherwise transferred to the producer of the good;

''opening inventory'' means the materials inventory at the time an inventory management method is chosen;

''origin identifier'' means any mark that identifies fungible materials as originating materials or non-originating materials.

#### GENERAL

SECTION 2.

The inventory management methods for determining whether fungible materials referred to in section 7(16)(a) of this appendix are originating materials are the following:

(a) specific identification method;

(b) FIFO method;

(c) LIFO method; and

(d) average method.

SECTION 3.

A producer of a good, or a person from whom the producer acquired the fungible materials that are used in the production of the good, may choose only one of the inventory management methods referred to in section 2, and, if the averaging method is chosen, only one averaging period in each fiscal year of that producer or person for the materials inventory.

SPECIFIC IDENTIFICATION METHOD

SECTION 4.

(1) Except as otherwise provided under subsection (2), where the producer or person referred to in section 3 chooses the specific identification method, the producer or person shall physically segregate, in materials inventory, originating materials that are fungible materials from non-originating materials that are fungible materials.

(2) Where originating materials or non-originating materials that are fungible materials are marked with an origin identifier, the producer or person need not physically segregate those materials under subsection (1) if the origin identifier remains visible throughout the production of the good.

AVERAGE METHOD

SECTION 5.

Where the producer or person referred to in section 3 chooses the average method, the origin of fungible materials withdrawn from materials inventory is determined on the basis of the ratio of originating materials and non-originating materials in materials inventory that is calculated under sections 6 through 8.

SECTION 6.

(1) Except as otherwise provided in sections 7 and 8, the ratio is calculated with respect to a month or three-month period, at the choice of the producer or person, by dividing

(a) the sum of

(i) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating materials or non-originating materials that are fungible materials and that were received in materials inventory during that preceding one-month or three-month period,

by

(b) the sum of

(i) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating materials and non-originating materials that are fungible materials and that were received in materials inventory during that preceding one-month or three-month period.

(2) The ratio calculated with respect to a preceding month or three-month period under subsection (1) is applied to the fungible materials remaining in materials inventory at the end of the preceding month or three-month period.

SECTION 7.

(1) Where the good is subject to a regional value-content requirement and the regional value content is calculated under the net cost method and the producer or person chooses to average over a period under sections 6(15), 11(1), (3) or (6), 12(1) or 13(4) of this appendix, the ratio is calculated with respect to that period by dividing

(a) the sum of

(i) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory at the beginning of the period, and

(ii) the total units of originating materials or non-originating materials that are fungible materials and that were received in materials inventory during that period,

by

(b) the sum of

(i) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory at the beginning of the period, and

(ii) the total units of originating materials and non-originating materials that are fungible materials and that were received in materials inventory during that period.

(2) The ratio calculated with respect to a period under subsection (1) is applied to the fungible materials remaining in materials inventory at the end of the period.

SECTION 8.

(1) Where the good is subject to a regional value-content requirement and the regional value content of that good is calculated under the transaction value method or the net cost method, the ratio is calculated with respect to each shipment of the good by dividing

(a) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory prior to the shipment,

by

(b) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory prior to the shipment.

(2) The ratio calculated with respect to a shipment of a good under subsection (1) is applied to the fungible materials remaining in materials inventory after the shipment.

MANNER OF DEALING WITH OPENING INVENTORY

SECTION 9.

(1) Except as otherwise provided under subsections (2) and (3), where the producer or person referred to in section 3 has fungible materials in opening inventory, the origin of those fungible materials is determined by

(a) identifying, in the books of the producer or person, the latest receipts of fungible materials that add up to the amount of fungible materials in opening inventory;

(b) determining the origin of the fungible materials that make up those receipts; and

(c) considering the origin of those fungible materials to be the origin of the fungible materials in opening inventory.

(2) Where the producer or person chooses the specific identification method and has, in opening inventory, originating materials or non-originating materials that are fungible materials and that are marked with an origin identifier, the origin of those fungible materials is determined on the basis of the origin identifier.

(3) The producer or person may consider all fungible materials in opening inventory to be non-originating materials.

## PART II
## FUNGIBLE GOODS

DEFINITIONS AND INTERPRETATION

SECTION 10. DEFINITIONS.

For purposes of this part,

''average method'' means the method by which the origin of fungible goods withdrawn from finished goods inventory is based on the ratio, calculated under section 12, of originating goods and non-originating goods in finished goods inventory;

''FIFO method'' means the method by which the origin of fungible goods first received in finished goods inventory is considered to be the origin of fungible goods first withdrawn from finished goods inventory;

''finished goods inventory'' means an inventory from which fungible goods are sold or otherwise transferred to another person;
''LIFO method'' means the method by which the origin of fungible goods last received in finished goods inventory is considered to be the origin of fungible goods first withdrawn from finished goods inventory;
''opening inventory'' means the finished goods inventory at the time an inventory management method is chosen; and
''origin identifier'' means any mark that identifies fungible goods as originating goods or non-originating goods.

GENERAL

SECTION 11.

The inventory management methods for determining whether fungible goods referred to in section 7(16)(b) of this appendix are originating goods are the following:

(a) specific identification method;
(b) FIFO method;
(c) LIFO method; and
(d) average method.

SECTION 12.

An exporter of a good, or a person from whom the exporter acquired the fungible good, may choose only one of the inventory management methods referred to in section 11, including only one averaging period in the case of the average method, in each fiscal year of that exporter or person for each finished goods inventory of the exporter or person.

SPECIFIC IDENTIFICATION METHOD

SECTION 13.

(1) Except as provided under subsection (2), where the exporter or person referred to in section 12 chooses the specific identification method, the exporter or person shall physically segregate, in finished goods inventory, originating goods that are fungible goods from non-originating goods that are fungible goods.
(2) Where originating goods or non-originating goods that are fungible goods are marked with an origin identifier, the exporter or person need not physically segregate those goods under subsection (1) if the origin identifier is visible on the fungible goods.

AVERAGE METHOD

SECTION 14.

(1) Where the exporter or person referred to in section 12 chooses the average method, the origin of each shipment of fungible goods withdrawn from finished goods inventory during a month or three-month period, at the choice of the exporter or person, is determined on the basis of the ratio of originating goods and non-originating goods in finished goods inventory for the preceding one-month or three-month period that is calculated by dividing

(a) the sum of
(i) the total units of originating goods or non-originating goods that are fungible goods and that were in finished goods inventory at the beginning of the preceding one-month or three-month period, and
(ii) the total units of originating goods or non-originating goods that are fungible goods and that were received in finished goods inventory during that preceding one-month or three-month period,

by

(b) the sum of
(i) the total units of originating goods and non-originating goods that are fungible goods and that were in finished goods inventory at the beginning of the preceding one-month or three-month period, and
(ii) the total units of originating goods and non-originating goods that are fungible goods and that were received in finished goods inventory during that preceding one-month or three-month period.

(2) The calculation with respect to a preceding month or three-month period under subsection (1) is applied to the fungible goods remaining in finished goods inventory at the end of the preceding month or three-month period.

MANNER OF DEALING WITH OPENING INVENTORY

SECTION 15.

(1) Except as otherwise provided under subsections (2) and (3), where the exporter or person referred to in section 12 has fungible goods in opening inventory, the origin of those fungible goods is determined by

(a) identifying, in the books of the exporter or person, the latest receipts of fungible goods that add up to the amount of fungible goods in opening inventory;

(b) determining the origin of the fungible goods that make up those receipts; and

(c) considering the origin of those fungible goods to be the origin of the fungible goods in opening inventory.

(2) Where the exporter or person chooses the specific identification method and has, in opening inventory, originating goods or non-originating goods that are fungible goods and that are marked with an origin identifier, the origin of those fungible goods is determined on the basis of the origin identifier.

(3) The exporter or person may consider all fungible goods in opening inventory to be non-originating goods.

ADDENDUM A

''EXAMPLES'' ILLUSTRATING THE APPLICATION OF THE INVENTORY MANAGEMENT METHODS TO DETERMINE THE ORIGIN OF FUNGIBLE MATERIALS

The following ''examples'' are based on the figures set out in the table below and on the following assumptions:

(a) originating Material A and non-originating Material A that are fungible materials are used in the production of Good A;

(b) one unit of Material A is used to produce one unit of Good A;

(c) Material A is only used in the production of Good A;

(d) all other materials used in the production of Good A are originating materials; and

(e) the producer of Good A exports all shipments of Good A to the territory of a NAFTA country.

| Date (M/D/Y) | Materials inventory (Receipts of material A) | | | Sales (Shipments of good A) |
|---|---|---|---|---|
| | Quantity (units) | Unit cost * | Total value | Quantity (units) |
| 12/18/93 | 100 (O [1]) | $1.00 | $100 | |
| 12/27/93 | 100 (N [2]) | 1.10 | 110 | |
| 01/01/94 | 200 (OI [3]) | | | |
| 01/01/94 | 1,000 (O) | 1.00 | 1,000 | |
| 01/05/94 | 1,000 (N) | 1.10 | 1,100 | |
| 01/10/94 | | | | 100 |
| 01/10/94 | 1,000 (O) | 1.05 | 1,050 | |
| 01/15/94 | | | | 700 |
| 01/16/94 | 2,000 (N) | 1.10 | 2,200 | |
| 01/20/94 | | | | 1,000 |
| 01/23/94 | | | | 900 |

* Unit cost is determined in accordance with section 7 of this appendix.
[1] ''O'' denotes originating materials.
[2] ''N'' denotes non-originating materials.
[3] ''OI'' denotes opening inventory.

*Example 1:* FIFO method

Good A is subject to a regional value-content requirement. Producer A is using the transaction value method to determine the regional value content of Good A.

By applying the FIFO method:

(1) the 100 units of originating Material A in opening inventory that were received in materials inventory on 12/18/93 are considered to have been used in the production of the 100 units of Good A shipped on 01/10/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $0;

(2) the 100 units of non-originating Material A in opening inventory that were received in materials inventory on 12/27/93 and 600 units of the 1,000 units of originating Material A that were received in materials inventory on 01/01/94 are considered to have been used in the production of the 700 units of Good A shipped on 01/15/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $110 (100 units × $1.10);

(3) the remaining 400 units of the 1,000 units of originating Material A that were received in materials inventory on 01/01/94 and 600 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/94 are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $660 (600 units × $1.10); and

(4) the remaining 400 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/94 and 500 units of the 1,000 units of originating Material A that were received in materials inventory on 01/10/94 are considered to have been used in the production of the 900 units of Good A shipped on 01/23/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $440 (400 units × $1.10).

*Example 2:* LIFO method

Good A is subject to a change in tariff classification requirement and the non-originating Material A used in the production of Good A does not undergo the applicable change in tariff classification. Therefore, where originating Material A is used in the production of Good A, Good A is an originating good and, where non-originating Material A is used in the production of Good A, Good A is a non-originating good.

By applying the LIFO method:

(1) 100 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/94 are considered to have been used in the production of the 100 units of Good A shipped on 01/10/94;

(2) 700 units of the 1,000 units of originating Material A that were received in materials inventory on 01/10/94 are considered to have been used in the production of the 700 units of Good A shipped on 01/15/94;

(3) 1,000 units of the 2,000 units of non-originating Material A that were received in materials inventory on 01/16/94 are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/94; and

(4) 900 units of the remaining 1,000 units of non-originating Material A that were received in materials inventory on 01/16/94 are considered to have been used in the production of the 900 units of Good A shipped on 01/23/94.

*Example 3:* Average method

Good A is subject to an applicable regional value-content requirement. Producer A is using the transaction value method to determine the regional value content of Good A. Producer A determines the average value of non-originating Material A and the ratio of originating Material A to total value of originating Material A and non-originating Material A in the following table.

| | Date (M/D/Y) | Materials inventory | | | | | | Sales (Shipments of good A) |
|---|---|---|---|---|---|---|---|---|
| | | (Receipts of material A) | | | (Non-originating material) | | | |
| | | Quantity (units) | Total value | Unit cost * | Quantity (units) | Total value | Ratio | Quantity (units) |
| Receipt | 12/18/93 | 100 (O[1]) | $100 | $1.00 | | | | |
| Receipt | 12/27/93 | *100 (N[2])* | *110* | *1.10* | *100* | *$110.00* | | |

| | Date (M/D/Y) | Materials inventory | | | | | | Sales (Shipments of good A) |
|---|---|---|---|---|---|---|---|---|
| | | (Receipts of material A) | | | (Non-originating material) | | | |
| | | Quantity (units) | Total value | Unit cost * | Quantity (units) | Total value | Ratio | Quantity (units) |
| NEW AVERAGE INV. VALUE. | ..... | 200 (OI [3]) | 210 | 1.05 | 100 | 105.00 | 0.50 | |
| Receipt | 01/01/94 | *1,000 (O)* | *1,000* | *1.00* | | | | |
| NEW AVERAGE INV. VALUE. | ..... | 1,200 | 1,210 | 1.01 | 100 | 101.00 | 0.08 | |
| Receipt | 01/05/94 | *1,000 (N)* | *1,100* | *1.10* | *1,000* | *1,100.00* | | |
| NEW AVERAGE INV. VALUE. | ..... | 2,200 | 2,310 | 1.05 | 1,100 | 1,155.00 | 0.50 | |
| Shipment | 01/10/94 | (100) | (105) | 1.05 | (50) | (52.50) | ..... | 100 |
| Receipt | 01/10/94 | *1,000 (O)* | *1,050* | *1.05* | | | | |
| NEW AVERAGE INV. VALUE. | ..... | 3,100 | 3,255 | 1.05 | 1,050 | 1,102.50 | 0.34 | |
| Shipment | 01/15/94 | (700) | (735) | 1.05 | (238) | (249.90) | ..... | 700 |
| Receipt | 01/16/94 | *2,000 (N)* | *2,200* | *1.10* | *2,000* | *2,000.00* | | |
| NEW AVERAGE INV. VALUE. | ..... | 4,400 | 4,720 | 1.07 | 2,816 | 3,013.20 | 0.64 | |
| Shipment | 01/20/94 | (1,000) | (1,070) | 1.07 | (640) | (648.80) | ..... | 1,000 |
| Shipment | 01/23/94 | (*900*) | (*963*) | *1.07* | (*576*) | (*616.32*) | ..... | 900 |
| NEW AVERAGE INV. VALUE. | ..... | 2,500 | 2,687 | 1.07 | 1,596 | 1,707.24 | 0.64 | |

* Unit cost is determined in accordance with section 7 of this appendix.
[1] "O" denotes originating materials.
[2] "N" denotes non-originating materials.
[3] "OI" denotes opening inventory.

By applying the average method:

(1) before the shipment of the 100 units of Material A on 01/10/94, the ratio of units of originating Material A to total units of Material A in materials inventory was .50 (1,100 units/2,200 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was .50 (1,100 units/2,200 units); based on those ratios, 50 units (100 units × .50) of originating Material A and 50 units (100 units × .50) of non-originating Material A are considered to have been used in the production of the 100 units of Good A shipped on 01/10/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $52.50 [100 units × $1.05 (average unit value) × .50]; the ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,050 units (2,100 units × .50) are considered to be originating materials and 1,050 units (2,100 units × .50) are considered to be non-originating materials;

(2) before the shipment of the 700 units of Good A on 01/15/94, the ratio of units of originating Material A to total units of Material A in materials inventory was 66% (2,050 units/3,100 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 34% (1,050 units/3,100 units); based on those ratios, 462 units (700 units × .66) of originating Material A and 238 units (700 units × .34) of non-originating Material A are considered to have been used in the production of the 700 units of Good A shipped on 01/15/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $249.90 [700 units × $1.05 (average unit value) × 34%]; the ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,584 units (2,400 units × .66) are considered to be originating materials and 816 units (2,400 units × .34) are considered to be non-originating materials;

(3) before the shipment of the 1,000 units of Material A on 01/20/94, the ratio of units of originating Material A to total units of Material A in materials inventory was 36% (1,584 units/4,400 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 64% (2,816 units/4,400 units); based on those ratios, 360 units (1,000 units × .36) of originating Material A and 640 units (1,000 units × .64) of non-originating Material A are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $684.80 [1,000 units × $1.07 (average unit value) × 64%]; those ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,224 units (3,400 units × .36) are considered to be originating materials and 2,176 units (3,400 units × .64) are considered to be non-originating materials;

(4) before the shipment of the 900 units of Good A on 01/23/94, the ratio of units of originating Material A to total units of Material A in materials inventory was 36% (1,224 units/3,400 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 64% (2,176 units/3,400 units; based on those ratios, 324 units (900 units × .36) of originating Material A and 576 units (900 units × .64) of non-originating Material A are considered to have been used in the production of the 900 units of Good A shipped on 01/23/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $616.32 [900 units × $1.07 (average unit value) × 64%]; those ratios are applied to the units of Material A remaining in materials inventory after the shipment: 900 units (2,500 units × .36) are considered to be originating materials and 1,600 units (2,500 units × .64) are considered to be non-originating materials.

*Example 4:* Average method

Good A is subject to an applicable regional value-content requirement. Producer A is using the net cost method and is averaging over a period of one month under section 6(15)(a) of this appendix to determine the regional value content of Good A.

By applying the average method:

the ratio of units of originating Material A to total units of Material A in materials inventory for January 1994 is 40.4% (2,100 units/5,200 units);

based on that ratio, 1,091 units (2,700 units × .404) of originating Material A and 1,609 units (2,700 units-1,091 units) of non-originating Material A are considered to have been used in the production of the 2,700 units of Good A shipped in January 1994; therefore, the value of non-originating materials used in the production of those goods is considered to be $0.64 per unit [$5,560 (total value of Material A in materials inventory)/ $5,200 (units of Material A in materials inventory) = $1.07 (average unit value) × (1-.404)] or $1,728 ($0.64 × 2,700 units); and

that ratio is applied to the units of Material A remaining in materials inventory on January 31, 1994: 1,010 units (2,500 units × .404) are considered to be originating materials and 1,490 units (2,500 units-1,010 units) are considered to be non-originating materials.

## ADDENDUM B
## ''EXAMPLES'' ILLUSTRATING THE APPLICATION OF THE INVENTORY MANAGEMENT METHODS TO DETERMINE THE ORIGIN OF FUNGIBLE GOODS

The following ''examples'' are based on the figures set out in the table below and on the assumption that Exporter A acquires originating Good A and non-originating Good A that are fungible goods and physically combines or mixes Good A before exporting those goods to the buyer of those goods.

| Date (M/D/Y) | Finished goods inventory (receipts of good A) | Sales (shipments of good A) |
|---|---|---|
| | Quantity (units) | Quantity (units) |
| 12/18/93 | 100 (O [1]) | |
| 12/27/93 | 100 (N [2]) | |
| 01/01/94 | 200 (OI [3]) | |
| 01/01/94 | 1,000 (O) | |
| 01/05/94 | 1,000 (N) | |
| 01/10/94 | | 100 |
| 01/15/94 | 1,000 (O) | |
| 01/16/94 | | 700 |
| 01/20/94 | 2,000 (N) | |
| 01/20/94 | | 1,000 |
| 01/23/94 | | 900 |

[1] "O" denotes originating goods.
[2] "N" denotes non-originating goods.
[3] "OI" denotes opening inventory.

*Example 1:* FIFO method

By applying the FIFO method:

(1) the 100 units of originating Good A in opening inventory that were received in finished goods inventory on 12/18/93 are considered to be the 100 units of Good A shipped on 01/10/94;

(2) the 100 units of non-originating Good A in opening inventory that were received in finished goods inventory on 12/27/93 and 600 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/01/94 are considered to be the 700 units of Good A shipped on 01/15/94;

(3) the remaining 400 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/01/94 and 600 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/94 are considered to be the 1,000 units of Good A shipped on 01/20/94; and

(4) the remaining 400 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/94 and 500 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/10/94 are considered to be the 900 units of Good A shipped on 01/23/94.

*Example 2:* LIFO method

By applying the LIFO method:

(1) 100 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/94 are considered to be the 100 units of Good A shipped on 01/10/94;

(2) 700 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/10/94 are considered to be the 700 units of Good A shipped on 01/15/94;

(3) 1,000 units of the 2,000 units of non-originating Good A that were received in finished goods inventory on 01/16/94 are considered to be the 1,000 units of Good A shipped on 01/20/94; and

(4) 900 units of the remaining 1,000 units of non-originating Good A that were received in finished goods inventory on 01/16/94 are considered to be the 900 units of Good A shipped on 01/23/94.

*Example 3:* Average method

Exporter A chooses to determine the origin of Good A on a monthly basis. Exporter A exported 3,000 units of Good A during the month of February 1994. The origin of the units of Good A exported during that month is determined on the basis of the preceding month, that is January 1994.

By applying the average method:

the ratio of originating goods to all goods in finished goods inventory for the month of January 1994 is 40.4% (2,100 units/5,200 units);

based on that ratio, 1,212 units (3,000 units × .404) of Good A shipped in February 1994 are considered to be originating goods and 1,788 units (3,000 units − 1,212 units) of Good A are considered to be non-originating goods; and

that ratio is applied to the units of Good A remaining in finished goods inventory on January 31, 1994: 1,010 units (2,500 units × .404) are considered to be originating goods and 1,490 units (2,500 units − 1,010 units) are considered to be non-originating goods.

## SCHEDULE XI
## METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS

### DEFINITIONS AND INTERPRETATION

SECTION 1. DEFINITIONS.

For purposes of this Schedule,

''fixed-rate contract'' means a loan contract, installment purchase contract or other financing agreement in which the interest rate remains constant throughout the life of the contract or agreement;

''linear interpolation'' means, with respect to the yield on federal government debt obligations, the application of the following mathematical formula:

$$A+[((B-A)\times(E-D))/(C-D)]$$

where

A is the yield on federal government debt obligations that are nearest in maturity but of shorter maturity than the weighted average principal maturity of the payment schedule under the fixed-rate contract or variable-rate contract to which they are being compared,

B is the yield on federal government debt obligations that are nearest in maturity but of greater maturity than the weighted average principal maturity of that payment schedule,

C is the maturity of federal government debt obligations that are nearest in maturity but of greater maturity than the weighted average principal maturity of that payment schedule,

D is the maturity of federal government debt obligations that are nearest in maturity but of shorter maturity than the weighted average principal maturity of that payment schedule, and

E is the weighted average principal maturity of that payment schedule;

''payment schedule'' means the schedule of payments, whether on a weekly, bi-weekly, monthly, yearly or other basis, of principal and interest, or any combination thereof, made by a producer to a lender in accordance with the terms of a fixed-rate contract or variable-rate contract;

''variable-rate contract'' means a loan contract, installment purchase contract or other financing agreement in which the interest rate is adjusted at intervals during the life of the contract or agreement in accordance with its terms;

''weighted average principal maturity'' means, with respect to fixed-rate contracts and variable-rate contracts, the number of years, or portion thereof, that is equal to the number obtained by

(a) dividing the sum of the weighted principal payments,

(i) in the case of a fixed-rate contract, by the original amount of the loan, and

(ii) in the case of a variable-rate contract, by the principal balance at the beginning of the interest rate period for which the weighted principal payments were calculated, and

(b) rounding the amount determined under paragraph (a) to the nearest single decimal place and, where that amount is the midpoint between two such numbers, to the greater of those two numbers;

''weighted principal payment'' means,

(a) with respect to fixed-rate contracts, the amount determined by multiplying each principal payment under the contract by the number of years, or portion thereof, between the date the producer entered into the contract and the date of that principal payment, and

(b) with respect to variable-rate contracts

(i) the amount determined by multiplying each principal payment made during the current interest rate period by the number of years, or portion thereof, between the beginning of that interest rate period and the date of that payment, and

(ii) the amount equal to the outstanding principal owing, but not necessarily due, at the end of the current interest rate period, multiplied by the number of years, or portion thereof, between the beginning and the end of that interest rate period;

''yield on federal government debt obligations'' means

(a) in the case of a producer located in Canada, the yield for federal government debt obligations set out in the Bank of Canada's *Weekly Financial Statistics*

(i) where the interest rate is adjusted at intervals of less than one year, under the title ''Treasury Bills'', and

(ii) in any other case, under the title ''Selected Government of Canada benchmark bond yields'',

for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract,

(b) in the case of a producer located in Mexico, the yield for federal government debt obligations set out in *La Seccion de Indicadores Monetarios, Financieros, y de Finanzas Publicas, de los Indicadores Economicos*, published by the Banco de Mexico under the title *''Certificados de la Tesoreria de la Federacion''* for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract, and

(c) in the case of a producer located in the United States, the yield for federal government debt obligations set out in the Federal Reserve statistical release (H.15) *Selected Interest Rates*

(i) where the interest rate is adjusted at intervals of less than one year, under the title ''U.S. government securities, Treasury bills, Secondary market'', and

(ii) in any other case, under the title ''U.S. Government Securities, Treasury constant maturities'',

for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract.

GENERAL

SECTION 2.

For purposes of calculating non-allowable interest costs

(a) with respect to a fixed-rate contract, the interest rate under that contract shall be compared with the yield on federal government debt obligations that have maturities of the same length as the weighted average principal maturity of the payment schedule under the contract (that yield determined by linear interpolation, where necessary);

(b) with respect to a variable-rate contract

(i) in which the interest rate is adjusted at intervals of less than or equal to one year, the interest rate under that contract shall be compared with the yield on federal government debt obligations that have maturities closest in length to the interest rate adjustment period of the contract, and

(ii) in which the interest rate is adjusted at intervals of greater than one year, the interest rate under the contract shall be compared with the yield on federal government debt obligations that have maturities of the same length as the weighted average principal maturity of the payment schedule under the contract (that yield determined by linear interpolation, where necessary); and

(c) with respect to a fixed-rate or variable-rate contract in which the weighted average principal maturity of the payment schedule under the contract is greater than the maturities offered on federal government debt obligations, the interest rate under the contract shall be compared to the yield on federal government debt obligations that have maturities closest in length to the weighted average principal maturity of the payment schedule under the contract.

ADDENDUM

''EXAMPLE'' ILLUSTRATING THE APPLICATION OF THE METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS IN THE CASE OF A FIXED-RATE CONTRACT

The following example is based on the figures set out in the table below and on the following assumptions:

(a) a producer in a NAFTA country borrows $1,000,000 from a person of the same NAFTA country under a fixed-rate contract;

(b) under the terms of the contract, the loan is payable in 10 years with interest paid at the rate of 6 percent per year on the declining principal balance;

(c) the payment schedule calculated by the lender based on the terms of the contract requires the producer to make annual payments of principal and interest of $135,867.36 over the life of the contract;

(d) there are no federal government debt obligations that have maturities equal to the 6-year weighted average principal maturity of the contract; and

(e) the federal government debt obligations that are nearest in maturity to the weighted average principal maturity of the contract are of 5- and 7-year maturities, and the yields on them are 4.7 percent and 5.0 percent, respectively.

| Years of loan | Principal balance [1] | Interest payment [2] | Principal payment [3] | Payment schedule | Weighted principal payment [4] |
|---|---|---|---|---|---|
| 1 | $924,132.04 | $60,000.00 | $75,867.96 | $135,867.96 | $75,867.96 |
| 2 | 843,712.00 | 55,447.92 | 80,420.04 | 135,867.96 | 160,840.08 |
| 3 | 758,466.76 | 50,622.72 | 85,245.24 | 135,867.96 | 255,735.72 |
| 4 | 668,106.81 | 45,508.01 | 90,359.95 | 135,867.96 | 361,439.82 |
| 5 | 572,325.26 | 40,086.41 | 95,781.55 | 135,867.96 | 478,907.76 |
| 6 | 470,796.81 | 34,339.52 | 101,528.44 | 135,867.96 | 609,170.67 |
| 7 | 363,176.66 | 28,247.81 | 107,620.15 | 135,867.96 | 753,341.06 |
| 8 | 249,099.30 | 21,790.60 | 114,077.36 | 135,867.96 | 912,618.88 |
| 9 | 128,177.30 | 14,945.96 | 120,922.00 | 135,867.96 | 1,088,298.02 |
| 10 | (0.00) | 7,690.66 | 128,177.32 | 135,867.96 | 1,281,773.22 |
| | | | | | $5,977,993.19 |

[1] The principal balance represents the loan balance at the end of each full year the loan is in effect and is calculated by subtracting the current year's principal payment from the prior year's ending loan balance.

[2] Interest payments are calculated by multiplying the prior year's ending loan balance by the contract interest rate of 6 percent.

[3] Principal payments are calculated by subtracting the current year's interest payments from the annual payment schedule amount.

[4] The weighted principal payment is determined by, for each year of the loan, multiplying that year's principal payment by the number of years the loan had been in effect at the end of that year.

[5] The weighted average principal maturity of the contract is calculated by dividing the sum of the weighted principal payments by the original loan amount and rounding the amount determined to the nearest decimal place.

Weighted Average Principal Maturity

$5,977,993.19/$1,000,000=5.977993 or 6 years [5]

By applying the above method:

(1) the weighted average principal maturity of the payment schedule under the 6 percent contract is 6 years;

(2) the yields on the closest maturities for comparable federal government debt obligations of 5 years and 7 years are 4.7 percent and 5.0 percent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the contract is 4.85 percent. This number is calculated as follows:

$$4.7+[((5.0-4.7)\times(6-5))/(7-5)]$$

=4.7+0.15

=4.85%; and

(3) the producer's contract interest rate of 6 percent is within 700 basis points of the 4.85 percent yield on the comparable federal government debt obligation; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition ''non-allowable interest costs.''

''EXAMPLE'' ILLUSTRATING THE APPLICATION OF THE METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS IN THE CASE OF A VARIABLE-RATE CONTRACT

The following example is based on the figures set out in the tables below and on the following assumptions:

(a) a producer in a NAFTA country borrows $1,000,000 from a person of the same NAFTA country under a variable-rate contract;

(b) under the terms of the contract, the loan is payable in 10 years with interest paid at the rate of 6 percent per year for the first two years and 8 percent per year for the next two years on the principal balance, with rates adjusted each two years after that;

(c) the payment schedule calculated by the lender based on the terms of the contract requires the producer to make annual payments of principal and interest of $135,867.96 for the first two years of the loan, and of $146,818.34 for the next two years of the loan;

(d) there are no federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the first two years of the contract;

(e) there are no federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the third and fourth years of the contract; and

(f) the federal government debt obligations that are nearest in maturity to the weighted average principal maturity of the contract are 1- and 2-year maturities, and the yields on them are 3.0 percent and 3.5 percent respectively.

| Beginning of year | Principal balance | Interest rate (%) | Interest payment | Principal payment | Payment schedule | Weighted principal payment |
|---|---|---|---|---|---|---|
| 1 | $1,000,000.00 | 6.00 | $60,000.00 | $75,867.96 | $135,867.96 | $75,867.96 |
| 2 | 924,132.04 | 6.00 | 55,447.92 | 80,420.04 | 135,867.96 | 1,848,264.08 |
| | | | | | | $1,924,132.04 |

Weighted Average Principal Maturity

$1,924,132.04/$1,000,000=1.92413204 or 1.9 years

By applying the above method:

(1) the weighted average principal maturity of the payment schedule of the first two years of the contract is 1.9 years;

(2) the yield on the closest maturities of federal government debt obligations of 1 year and 2 years are 3.0 and 3.5 percent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the payment schedule of the first two years of the contract is 3.45 percent. This amount is calculated as follows:

$3.0+[((3.5-3.0)\times(1.9-1.0))/(2.0-1.0)]$

=3.0+0.45

=3.45%; and

(3) the producer's contract rate of 6 percent for the first two years of the loan is within 700 basis points of the 3.45 percent yield on federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the payment schedule of the first two years of the producer's loan contract; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition ''non-allowable interest costs''.

| Beginning of year | Principal balance | Interest rate (%) | Interest payment | Principal payment | Payment schedule | Weighted principal payment |
|---|---|---|---|---|---|---|
| 1 | $1,000,000.00 | 6.00 | $60,000.00 | $75,867.96 | $135,867.96 | |
| 2 | 924,132.04 | 6.00 | 55,447.92 | 80,420.04 | 135,867.96 | |
| 3 | 843,712.01 | 8.00 | 67,496.96 | 79,321.38 | 146,818.34 | $79,321.38 |
| 4 | 764,390.62 | 8.00 | 61,151.25 | 85,667.09 | 146,818.34 | 1,528,781.24 |
| | | | | | | $1,608,102.62 |

Weighted Average Principal Maturity

$1,608,102.62/$843,712.01=1.905985 or 1.9 years

By applying the above method:

(1) the weighted average principal maturity of the payment schedule under the first two years of the contract is 1.9 years;

(2) the federal government debt obligations that are nearest in maturities to the weighted average principal maturity of the contract are 1- and 2-year maturities, and the yields on them are 3.0 and 3.5 percent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the payment schedule of the first two years of the contract is 3.45 percent. This amount is calculated as follows:

$3.0+[((3.5-3.0)\times(1.9-1.0))/(2.0-1.0)]$
$=3.0+0.45$
$=3.45\%$

(3) the producer's contract interest rate, for the third and fourth years of the loan, of 8 percent is within 700 basis points of the 3.45 percent yield on federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the payment schedule under the third and fourth years of the producer's loan contract; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition ''non-allowable interest costs''.

## SCHEDULE XII
## GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

SECTION 1.

Generally Accepted Accounting Principles means the recognized consensus or substantial authoritative support in the territory of a NAFTA country with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices and procedures.

SECTION 2.

For purposes of Generally Accepted Accounting Principles, the recognized consensus or authoritative support are referred to or set out in the following publications:

(a) with respect to the territory of Canada, *The Canadian Institute of Chartered Accountants Handbook*, as updated from time to time;

(b) with respect to the territory of Mexico, *Los Principios de Contabilidad Generalmente Aceptados*, issued by the *Instituto Mexicano de Contadores Públicos A.C. (IMCP)*, including the *boletines complementarios*, as updated from time to time; and

(c) with respect to the territory of the United States,

(i) the following publications of the American Institute of Certified Public Accountants (AICPA), as updated from time to time:

(A) AICPA Professional Standards,

(B) Committee on Accounting Procedure Accounting Research Bulletins,

(C) Accounting Principles Board Opinions and Statements,

(D) APB Accounting and Auditing Guides,

(E) AICPA Statements of Position, and

(F) AICPA Issues Papers and Practice Bulletins,

(ii) the following publications of the Financial Accounting Standards Board (FASB), as updated from time to time:

(A) FASB Accounting Standards and Interpretations,

(B) FASB Technical Bulletins, and

(C) FASB Concepts Statements.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 02–15, 67 FR 15482, Apr. 2, 2002; 67 FR 19810, Apr. 23, 2002]

# PART 191—DRAWBACK

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APPENDIX A TO PART 191—GENERAL MANUFACTURING DRAWBACK RULINGS
APPENDIX B TO PART 191—SAMPLE FORMATS FOR APPLICATIONS FOR SPECIFIC MANUFACTURING DRAWBACK RULINGS

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624;
§ 191.84 also issued under 19 U.S.C. 1514;
§§ 191.111, 191.112 also issued under 19 U.S.C. 1309;
§§ 191.151(a)(1), 191.153, 191.157, 191.159 also issued under 19 U.S.C. 1557;
§§ 191.182–191.186 also issued under 19 U.S.C. 81c;
§§ 191.191–191.195 also issued under 19 U.S.C. 1593a.

SOURCE: T.D. 98–16, 63 FR 11006, Mar. 5, 1998, unless otherwise noted.

### § 191.0 Scope.

This part sets forth general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims. Additional drawback provisions relating to the North American Free Trade Agreement (NAFTA) are contained in subpart E of part 181 of this chapter. Those provisions relating to the United States-Chile Free Trade Agreement are contained in subpart H of part 10 of this chapter.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by CBP Dec. 05–07, 70 FR 10884, Mar. 7, 2005]

### § 191.0a Claims filed under NAFTA.

Claims for drawback filed under the provisions of part 181 of this chapter shall be filed separately from claims filed under the provisions of this part.

## Subpart A—General Provisions

### § 191.1 Authority of the Commissioner of Customs.

Pursuant to Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241), as amended, the Commissioner of Customs, with the approval of the Secretary of the Treasury, shall prescribe rules and regulations regarding drawback.

### § 191.2 Definitions.

For the purposes of this part:

(a) *Abstract*. *Abstract* means the summary of the actual production records of the manufacturer.

(b) *Act*. *Act*, unless indicated otherwise, means the Tariff Act of 1930, as amended.

(c) *Certificate of delivery*. *Certificate of delivery* (see § 191.10 of this part) means Customs Form 7552, Delivery Certificate for Purposes of Drawback, summarizing information contained in original documents, establishing:

(1) The transfer from one party (transferor) to another (transferee) of:

(i) Imported merchandise;

(ii) Substituted merchandise under 19 U.S.C. 1313(j)(2);

(iii) A qualified article under 19 U.S.C. 1313(p)(2)(A)(ii) from the manufacturer or producer to the exporter or under 1313(p)(2)(A)(iv) from the importer to the exporter; or

(iv) Drawback product;

(2) The identity of such merchandise or article as being that to which a potential right to drawback exists; and

(3) The assignment of drawback rights for the merchandise or article transferred from the transferor to the transferee.

(d) *Certificate of manufacture and delivery*. *Certificate of manufacture and delivery* (see § 191.24 of this part) means Customs Form 7552, Delivery Certificate for Purposes of Drawback, summarizing information contained in original documents, establishing:

(1) The transfer of an article manufactured or processed under 19 U.S.C. 1313(a) or 1313(b) from one party (transferor) to another (transferee);

(2) The identity of such article as being that to which a potential right to drawback exists; and

(3) The assignment of drawback rights for the article transferred from the transferor to the transferee.

(e) *Commercially interchangeable merchandise*. *Commercially interchangeable merchandise* means merchandise which may be substituted under the substitution unused merchandise drawback law, § 313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2)) (see § 191.32(b)(2) and (c) of this part), or under the provision for the substitution of finished petroleum derivatives, § 313(p), as amended (19 U.S.C. 1313(p)).

(f) *Designated merchandise. Designated merchandise* means either eligible imported duty-paid merchandise or drawback products selected by the drawback claimant as the basis for a drawback claim under 19 U.S.C. 1313(b) or (j)(2), as applicable, or qualified articles selected by the claimant as the basis for drawback under 19 U.S.C. 1313(p).

(g) *Destruction. Destruction* means the complete destruction of articles or merchandise to the extent that they have no commercial value.

(h) *Direct identification drawback. Direct identification drawback* means drawback authorized either under § 313(a) of the Act, as amended (19 U.S.C. 1313(a)), on imported merchandise used to manufacture or produce an article which is either exported or destroyed, or under § 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), on imported merchandise exported, or destroyed under Customs supervision, without having been used in the United States (see also §§ 313(c), (e), (f), (g), (h), and (q)). Merchandise or articles may be identified for purposes of direct identification drawback by use of the accounting methods provided for in § 191.14 of this subpart.

(i) *Drawback. Drawback* means the refund or remission, in whole or in part, of a customs duty, fee or internal revenue tax which was imposed on imported merchandise under Federal law because of its importation, and the refund of internal revenue taxes paid on domestic alcohol as prescribed in 19 U.S.C. 1313(d) (see also § 191.3 of this subpart).

(j) *Drawback claim. Drawback claim* means the drawback entry and related documents required by regulation which together constitute the request for drawback payment.

(k) *Drawback entry. Drawback entry* means the document containing a description of, and other required information concerning, the exported or destroyed article on which drawback is claimed. Drawback entries are filed on Customs Form 7551.

(l) *Drawback product.* A *drawback product* means a finished or partially finished product manufactured in the United States under the procedures in this part for manufacturing drawback. A drawback product may be exported, or destroyed under Customs supervision with a claim for drawback, or it may be used in the further manufacture of other drawback products by manufacturers or producers operating under the procedures in this part for manufacturing drawback, in which case drawback would be claimed upon exportation or destruction of the ultimate product. Products manufactured or produced from substituted merchandise (imported or domestic) also become ''drawback products'' when applicable substitution provisions of the Act are met. For purposes of § 313(b) of the Act, as amended (19 U.S.C. 1313(b)), drawback products may be designated as the basis for drawback or deemed to be substituted merchandise (see § 1313(b)). For a drawback product to be designated as the basis for drawback, the product must be associated with a certificate of manufacture and delivery (see § 191.24 of this part).

(m) *Exportation; exporter*—(1) *Exportation. Exportation* means the severance of goods from the mass of goods belonging to this country, with the intention of uniting them with the mass of goods belonging to some foreign country. An exportation may be deemed to have occurred when goods subject to drawback are admitted into a foreign trade zone in zone-restricted status, or are laden upon qualifying aircraft or vessels as aircraft or vessel supplies in accordance with § 309(b) of the Act, as amended (19 U.S.C. 1309(b)) (see §§ 10.59 through 10.65 of this chapter).

(2) *Exporter. Exporter* means that person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the items out of the United States. In the case of ''deemed exportations'' (see paragraph (m)(1) of this section), the exporter means that person who, as the principal party in interest in the transaction deemed to be an exportation, has the power and responsibility for determining and controlling the transaction (in the case of aircraft or vessel supplies under 19 U.S.C. 1309(b), the party who has the power and responsibility for lading the vessel supplies on the qualifying aircraft or vessel).

(n) *Filing*. *Filing* means the delivery to Customs of any document or documentation, as provided for in this part, and includes electronic delivery of any such document or documentation.

(o) *Fungible merchandise or articles*. *Fungible merchandise or articles* means merchandise or articles which for commercial purposes are identical and interchangeable in all situations.

(p) *General manufacturing drawback ruling*. A *general manufacturing drawback ruling* means a description of a manufacturing or production operation for drawback and the regulatory requirements and interpretations applicable to that operation (see §191.7 of this subpart).

(q) *Manufacture or production*. *Manufacture or production* means:

(1) A process, including, but not limited to, an assembly, by which merchandise is made into a new and different article having a distinctive ''name, character or use''; or

(2) A process, including, but not limited to, an assembly, by which merchandise is made fit for a particular use even though it does not meet the requirements of paragraph (q)(1) of this section.

(r) *Multiple products*. *Multiple products* mean two or more products produced concurrently by a manufacture or production operation or operations.

(s) *Possession*. *Possession*, for purposes of substitution unused merchandise drawback (19 U.S.C. 1313(j)(2)), means physical or operational control of the merchandise, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback.

(t) *Records*. *Records* include, but are not limited to, statements, declarations, documents and electronically generated or machine readable data which pertain to the filing of a drawback claim or to the information contained in the records required by Chapter 4 of Title 19, United States Code, in connection with the filing of a drawback claim and which are normally kept in the ordinary course of business (see 19 U.S.C. 1508).

(u) *Relative value*. *Relative value* means, except for purposes of §191.51(b), the value of a product divided by the total value of all products which are necessarily manufactured or produced concurrently in the same operation. Relative value is based on the market value, or other value approved by Customs, of each such product determined as of the time it is first separated in the manufacturing or production process. Market value is generally measured by the selling price, not including any packaging, transportation, or other identifiable costs, which accrue after the product itself is processed. Drawback law requires the apportionment of drawback to each such product based on its relative value at the time of separation.

(v) *Schedule*. A *schedule* means a document filed by a drawback claimant, under §313(a) or (b), as amended (19 U.S.C. 1313(a) or (b)), showing the quantity of imported or substituted merchandise used in or appearing in each article exported or destroyed for drawback.

(w) *Specific manufacturing drawback ruling*. A *specific manufacturing drawback ruling* means a letter of approval issued by Customs Headquarters in response to an application, by a manufacturer or producer for a ruling on a specific manufacturing or production operation for drawback, as described in the format used. Synopses of approved specific manufacturing drawback rulings are published in the Customs Bulletin with each synopsis being published under an identifying Treasury Decision. Specific manufacturing drawback rulings are subject to the provisions in part 177 of this chapter.

(x) *Substituted merchandise or articles*. *Substituted merchandise or articles* means merchandise or articles that may be substituted under 19 U.S.C. 1313(b), 1313(j)(2), or 1313(p) as follows:

(1) Under §1313(b), substituted merchandise must be of the same kind and quality as the imported designated merchandise or drawback product, that is, the imported designated merchandise or drawback products and the substituted merchandise must be capable of being used interchangeably in the manufacture or production of the exported or destroyed articles with no substantial change in the manufacturing or production process;

(2) Under § 1313(j)(2), substituted merchandise must be commercially interchangeable with the imported designated merchandise; and

(3) Under § 1313(p), a substituted article must be of the same kind and quality as the qualified article for which it is substituted, that is, the articles must be commercially interchangeable or described in the same 8-digit HTSUS tariff classification.

(y) *Verification*. *Verification* means the examination of any and all records, maintained by the claimant, or any party involved in the drawback process, which are required by the appropriate Customs officer to render a meaningful recommendation concerning the drawback claimant's conformity to the law and regulations and the determination of supportability, correctness, and validity of the specific claim or groups of claims being verified.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998, as amended by T.D. 01–18, 66 FR 9649, Feb. 9, 2001]

### § 191.3 Duties and fees subject or not subject to drawback.

(a) Duties and fees subject to drawback include:

(1) All ordinary Customs duties, including:

(i) Duties paid on an entry, or withdrawal from warehouse, for consumption for which liquidation has become final;

(ii) Estimated duties paid on an entry, or withdrawal from warehouse, for consumption, for which liquidation has not become final, subject to the conditions and requirements of § 191.81(b) of this subpart; and

(iii) Tenders of duties after liquidation of the entry, or withdrawal from warehouse, for consumption for which the duties are paid, subject to the conditions and requirements of § 191.81(c) of this part, including:

(A) Voluntary tenders (for purposes of this section, a ''voluntary tender'' is a payment of duties on imported merchandise in excess of duties included in the liquidation of the entry, or withdrawal from warehouse, for consumption, provided that the liquidation has become final and that the other conditions of this section and § 191.81 of this part are met);

(B) Tenders of duties in connection with notices of prior disclosure under 19 U.S.C. 1592(c)(4); and

(C) Duties restored under 19 U.S.C. 1592(d).

(2) Marking duties assessed under § 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c));

(3) Internal revenue taxes which attach upon importation (see § 101.1 of this chapter); and

(4) Merchandise processing fees (see § 24.23 of this chapter) for unused merchandise drawback pursuant to 19 U.S.C. 1313(j), and drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv).

(b) Duties and fees not subject to drawback include:

(1) Harbor maintenance fee (see § 24.24 of this chapter);

(2) Merchandise processing fees (*see* § 24.23 of this chapter), except where unused merchandise drawback pursuant to 19 U.S.C. 1313(j) or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv) is claimed; and

(3) Antidumping and countervailing duties on merchandise entered, or withdrawn from warehouse, for consumption on or after August 23, 1988.

(c) No drawback shall be allowed when the identified merchandise, the designated imported merchandise, or the substituted other merchandise (when applicable), consists of an agricultural product which is duty-paid at the over-quota rate of duty established under a tariff-rate quota, except that:

(1) Agricultural products as described in this paragraph are eligible for drawback under 19 U.S.C. 1313(j)(1); and

(2) Tobacco otherwise meeting the description of agricultural products in this paragraph is eligible for drawback under 19 U.S.C. 1313(j)(1) or 19 U.S.C. 1313(a).

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 27489, May 19, 1998, as amended by T.D. 01–18, 66 FR 9649, Feb. 9, 2001; CBP Dec. 04–33, 69 FR 60083, Oct. 7, 2004]

### § 191.4 Merchandise in which a U.S. Government interest exists.

(a) *Restricted meaning of Government.* A U.S. Government instrumentality operating with nonappropriated funds is considered a Government entity within the meaning of this section.

(b) *Allowance of drawback.* If the merchandise is sold to the U.S. Government, drawback shall be available only to the:

(1) Department, branch, agency, or instrumentality of the U.S. Government which purchased it; or

(2) Supplier, or any of the parties specified in § 191.82 of this part, provided the claim is supported by documentation signed by a proper officer of the department, branch, agency, or instrumentality concerned certifying that the right to drawback was reserved by the supplier or other parties with the knowledge and consent of the department, branch, agency, or instrumentality.

(c) *Bond.* No bond shall be required when a United States Government entity claims drawback.

### § 191.5 Guantanamo Bay, insular possessions, trust territories.

Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes and, accordingly, drawback may be permitted on articles shipped there. Under 19 U.S.C. 1313, drawback of Customs duty is not allowed on articles shipped to Puerto Rico, the U.S. Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

### § 191.6 Authority to sign drawback documents.

(a) Documents listed in paragraph (b) of this section shall be signed only by one of the following:

(1) The president, a vice-president, secretary, treasurer, or any other employee legally authorized to bind the corporation;

(2) A full partner of a partnership;

(3) The owner of a sole proprietorship;

(4) Any employee of the business entity with a power of attorney;

(5) An individual acting on his or her own behalf; or

(6) A licensed Customs broker with a power of attorney.

(b) The following documents require execution in accordance with paragraph (a) of this section:

(1) Drawback entries;

(2) Certificates of delivery;

(3) Certificates of manufacture and delivery;

(4) Notices of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback;

(5) Certifications of exporters on bills of lading or evidence of exportation (see §§ 191.28 and 191.82 of this part); and

(6) Abstracts, schedules and extracts from monthly abstracts if not included as part of a drawback claim.

(c) The following documents (see also part 177 of this chapter) may be executed by one of the persons described in paragraph (a) of this section or by any other individual legally authorized to bind the person (or entity) for whom the document is executed:

(1) A letter of notification of intent to operate under a general manufacturing drawback ruling under § 191.7 of this part;

(2) An application for a specific manufacturing drawback ruling under § 191.8 of this part;

(3) A request for a nonbinding predetermination of commercial interchangeability under § 191.32(c) of this part;

(4) An application for waiver of prior notice under § 191.91 of this part;

(5) An application for approval of accelerated payment of drawback under § 191.92 of this part; and

(6) An application for certification in the Drawback Compliance Program under § 191.193 of this part.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998; 63 FR 27489, May 19, 1998]

### § 191.7 General manufacturing drawback ruling.

(a) *Purpose; eligibility.* General manufacturing drawback rulings are designed to simplify drawback for certain common manufacturing operations but do not preclude or limit the use of applications for specific manufacturing

drawback rulings (see § 191.8). A manufacturer or producer engaged in an operation that falls within a published general manufacturing drawback ruling may submit a letter of notification of intent to operate under that general ruling. Where a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to submit the letter of notification, and cannot operate under a letter of notification submitted by the parent corporation.

(b) *Procedures*—(1) *Publication*. General manufacturing drawback rulings are contained in appendix A to this part. As deemed necessary by Customs, new general manufacturing drawback rulings will be issued as Treasury Decisions and added to the appendix thereafter.

(2) *Submission*—(i) *Where filed*. Letters of notification of intent to operate under a general manufacturing drawback ruling shall be submitted to any drawback office where drawback entries will be filed and liquidated, provided that the general manufacturing drawback ruling will be followed without variation. If there is any variation in the general manufacturing drawback ruling, the manufacturer or producer shall apply for a specific manufacturing drawback ruling under § 191.8 of this subpart.

(ii) *Copies*. Letters of notification of intent shall be submitted in duplicate unless claims are to be filed at more than one drawback office, in which case one additional copy of the letter of notification shall be filed for each additional office. Upon issuance of a letter of acknowledgment (paragraph (c)(1) of this section), the drawback office with which the letter of notification is submitted shall forward the additional copy to such additional office(s), with a copy of the letter of acknowledgment.

(3) *Information required*. Each manufacturer or producer submitting a letter of notification of intent to operate under a general manufacturing drawback ruling under this section must provide the following specific detailed information:

(i) Name and address of manufacturer or producer (if the manufacturer or producer is a separately-incorporated subsidiary of a corporation, the subsidiary corporation must submit a letter of notification in its own name);

(ii) In the case of a business entity, the names of the persons listed in § 191.6(a)(1) through (6) who will sign drawback documents;

(iii) Locations of the factories which will operate under the letter of notification;

(iv) Identity (by T.D. number and title) of the general manufacturing drawback ruling under which the manufacturer or producer will operate;

(v) Description of the merchandise and articles, unless specifically described in the general manufacturing drawback ruling;

(vi) Description of the manufacturing or production process, unless specifically described in the general manufacturing drawback ruling;

(vii) Basis of claim used for calculating drawback; and

(viii) IRS (Internal Revenue Service) number (with suffix) of the manufacturer or producer.

(c) *Review and action by Customs*. The drawback office to which the letter of notification of intent to operate under a general manufacturing drawback ruling was submitted shall review the letter of notification of intent.

(1) *Acknowledgment*. The drawback office shall promptly issue a letter of acknowledgment, acknowledging receipt of the letter of intent and authorizing the person to operate under the identified general manufacturing drawback ruling, subject to the requirements and conditions of that general manufacturing drawback ruling and the law and regulations, to the person who submitted the letter of notification if:

(i) The letter of notification is complete (*i.e.*, containing the information required in paragraph (b)(3) of this section);

(ii) The general manufacturing drawback ruling identified by the manufacturer or producer is applicable to the manufacturing or production process;

(iii) The general manufacturing drawback ruling identified by the manufacturer or producer is followed without variation; and

(iv) The described manufacturing or production process is a manufacture or

production under § 191.2(q) of this subpart.

(2) *Computer-generated number.* With the letter of acknowledgment the drawback office shall include the unique computer-generated number assigned to the acknowledgment of the letter of notification of intent to operate. This number must be stated when the person files manufacturing drawback claims with Customs under the general manufacturing drawback ruling.

(3) *Non-conforming letters of notification of intent.* If the letter of notification of intent to operate does not meet the requirements of paragraph (c)(1) of this section in any respect, the drawback office shall promptly and in writing specifically advise the person of this fact and why this is so. A letter of notification of intent to operate which is not acknowledged may be resubmitted to the drawback office with which it was initially submitted with modifications and/or explanations addressing the reasons given for non-acknowledgment, or the matter may be referred (by letter from the manufacturer or producer) to Customs Headquarters (Attention: Duty and Refund Determination Branch, Office of Regulations and Rulings).

(d) *Duration.* Acknowledged letters of notification under this section shall remain in effect under the same terms as provided for in § 191.8(h) for specific manufacturing drawback rulings.

### § 191.8 Specific manufacturing drawback ruling.

(a) *Applicant.* Unless operating under a general manufacturing drawback ruling (see § 191.7), each manufacturer or producer of articles intended to be claimed for drawback shall apply for a specific manufacturing drawback ruling. Where a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to apply for a specific manufacturing drawback ruling, and cannot operate under any specific manufacturing drawback ruling approved in favor of the parent corporation.

(b) *Sample application.* Sample formats for applications for specific manufacturing drawback rulings are contained in appendix B to this part.

(c) *Content of application.* The application of each manufacturer or producer shall include the following information as applicable:

(1) Name and address of the applicant;

(2) Internal Revenue Service (IRS) number (with suffix) of the applicant;

(3) Description of the type of business in which engaged;

(4) Description of the manufacturing or production process, which shows how the designated and substituted merchandise are used to make the article that is to be exported or destroyed;

(5) In the case of a business entity, the names of persons listed in § 191.6(a)(1) through (6) who will sign drawback documents;

(6) Description of the imported merchandise including specifications;

(7) Description of the exported article;

(8) Basis of claim for calculating manufacturing drawback;

(9) Summary of the records kept to support claims for drawback; and

(10) Identity and address of the recordkeeper if other than the claimant.

(d) *Submission.* An application for a specific manufacturing drawback ruling shall be submitted, in triplicate, to Customs Headquarters (Attention: Duty and Refund Determination Branch, Office of Regulations and Rulings). If drawback claims are to be filed under the ruling at more than one drawback office, one additional copy of the application shall be filed with Customs Headquarters for each additional office.

(e) *Review and action by Customs.* Customs Headquarters shall review the application for a specific manufacturing drawback ruling.

(1) *Approval.* If consistent with the drawback law and regulations, Customs Headquarters shall issue a letter of approval to the applicant and shall forward 1 copy of the application for the specific manufacturing drawback ruling to the appropriate drawback office(s) with a copy of the letter of approval. Synopses of approved specific manufacturing drawback rulings shall be published in the weekly Customs

Bulletin with each synopsis being published under an identifying Treasury Decision (T.D.). Each specific manufacturing drawback ruling shall be assigned a unique computer-generated manufacturing number which shall be included in the letter of approval to the applicant from Customs Headquarters, shall appear in the published synopsis, and must be used when filing manufacturing drawback claims with Customs.

(2) *Disapproval.* If not consistent with the drawback law and regulations, Customs Headquarters shall promptly and in writing inform the applicant that the application cannot be approved and shall specifically advise the applicant why this is so. A disapproved application may be resubmitted with modifications and/or explanations addressing the reasons given for disapproval, or the disapproval may be appealed to Customs Headquarters (Attention: Director, Commercial Rulings Division).

(f) *Schedules and supplemental schedules.* When an application for a specific manufacturing drawback ruling states that drawback is to be based upon a schedule filed by the manufacturer or producer, the schedule will be reviewed by Customs Headquarters. The application may include a request for authorization for the filing of supplemental schedules with the drawback office where claims are filed.

(g) *Procedure to modify a specific manufacturing drawback ruling*—(1) *Supplemental application.* Except as provided for limited modifications in paragraph (g)(2) of this section, a manufacturer or producer desiring to modify an existing specific manufacturing drawback ruling shall submit a supplemental application for such a ruling to Customs Headquarters (Attention: Duty and Refund Determination Branch, Office of Regulations and Rulings). Such a supplemental application may, at the discretion of the manufacturer or producer, be in the form of the original application, or it may identify the specific manufacturing drawback ruling to be modified (by T.D. number and unique computer-generated number) and include only those paragraphs of the application to be modified, with a statement that all other paragraphs are unchanged and are incorporated by reference in the supplemental application.

(2) *Limited modifications.* (i) A supplemental application for a specific manufacturing drawback ruling shall be submitted to the drawback office(s) where claims are filed if the modifications are limited to:

(A) The location of a factory, or the addition of one or more factories where the methods followed and records maintained are the same as those at another factory operating under the existing specific manufacturing drawback ruling of the manufacturer or producer;

(B) The succession of a sole proprietorship, partnership or corporation to the operations of a manufacturer or producer;

(C) A change in name of the manufacturer or producer;

(D) A change in the persons who will sign drawback documents in the case of a business entity;

(E) A change in the basis of claim used for calculating drawback;

(F) A change in the decision to use or not to use an agent under § 191.9 of this chapter, or a change in the identity of an agent under that section;

(G) A change in the drawback office where claims will be filed under the ruling (see paragraph (g)(2)(iii) of this section); or

(H) Any combination of the foregoing changes.

(ii) A limited modification, as provided for in this paragraph, shall contain only the modifications to be made, in addition to identifying the specific manufacturing drawback ruling and being signed by an authorized person. To effect a limited modification, the manufacturer or producer shall file with the drawback office(s) where claims are filed (with a copy to Customs Headquarters, Attention, Duty and Refund Determination Branch, Office of Regulations and Rulings) a letter stating the modifications to be made. The drawback office shall promptly acknowledge, in writing, acceptance of the limited modifications, with a copy to Customs Headquarters, Attention, Duty and Refund Determination Branch, Office of Regulations and Rulings.

(iii) To effect a change in the drawback office where claims will be filed, the manufacturer or producer shall file with the new drawback office where claims will be filed, a written application to file claims at that office, with a copy of the application and approval letter under which claims are currently filed. The manufacturer or producer shall provide a copy of the written application to file claims at the new drawback office to the drawback office where claims are currently filed.

(h) *Duration*. Subject to 19 U.S.C. 1625 and part 177 of this chapter, a specific manufacturing drawback ruling under this section shall remain in effect indefinitely unless:

(1) No drawback claim or certificate of manufacture and delivery is filed under the ruling for a period of 5 years and notice of termination is published in the Customs Bulletin; or

(2) The manufacturer or producer to whom approval of the ruling was issued files a request to terminate the ruling, in writing, with Customs Headquarters.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998]

### § 191.9 Agency.

(a) *General*. An owner of the identified merchandise, the designated imported merchandise and/or the substituted other merchandise that is used to produce the exported articles may employ another person to do part, or all, of the manufacture or production under 19 U.S.C. 1313(a) or (b) and § 191.2(q) of this subpart. For purposes of this section, such owner is the principal and such other person is the agent. Under 19 U.S.C. 1313(b), the principal shall be treated as the manufacturer or producer of merchandise used in manufacture or production by the agent. The principal must be able to establish by its manufacturing records, the manufacturing records of its agent(s), or the manufacturing records of both (or all) parties, compliance with all requirements of this part (see, in particular, § 191.26 of this part).

(b) *Requirements*—(1) *Contract*. The manufacturer must establish that it is the principal in a contract between it and its agent who actually does the work on either the designated or substituted merchandise, or both, for the principal. The contract must include:

(i) Terms of compensation to show that the relationship is an agency rather than a sale;

(ii) How transfers of merchandise and articles will be recorded by the principal and its agent;

(iii) The work to be performed on the merchandise by the agent for the principal;

(iv) The degree of control that is to be exercised by the principal over the agent's performance of work;

(v) The party who is to bear the risk of loss on the merchandise while it is in the agent's custody; and

(vi) The period that the contract is in effect.

(2) *Ownership of the merchandise by the principal*. The records of the principal and/or the agent must establish that the principal had legal and equitable title to the merchandise before receipt by the agent. The right of the agent to assert a lien on the merchandise for work performed does not derogate the principal's ownership interest under this section.

(3) *Sales prohibited*. The relationship between the principal and agent must not be that of a seller and buyer. If the parties' records show that, with respect to the merchandise that is the subject of the principal-agent contract, the merchandise is sold to the agent by the principal, or the articles manufactured by the agent are sold to the principal by the agent, those records are inadequate to establish existence of a principal-agency relationship under this section.

(c) *Specific manufacturing drawback rulings; general manufacturing drawback rulings*—(1) *Owner*. An owner who intends to operate under the principal-agent procedures of this section must state that intent in any letter of notification of intent to operate under a general manufacturing drawback ruling filed under § 191.7 of this subpart or in any application for a specific manufacturing drawback ruling filed under § 191.8 of this subpart.

(2) *Agent*. Each agent operating under this section must have filed a letter of notification of intent to operate under a general manufacturing drawback ruling (see § 191.7), for an agent, covering

the articles manufactured or produced, or have obtained a specific manufacturing drawback ruling (see § 191.8), as appropriate.

(d) *Certificate; Drawback entry; Certificate of manufacture and delivery*—(1) *Contents of certificate; when filing not required*. Principals and agents operating under this section are not required to file a certificate of delivery (for the merchandise transferred from the principal to the agent) or a certificate of manufacture and delivery (for the articles transferred from the agent to the principal). The principal for whom processing is conducted under this section shall file, with any drawback claim or certificate of manufacture and delivery based on an article manufactured or produced under the principal-agent procedures in this section, a certificate, subject to the recordkeeping requirements of §§ 191.15 of this subpart and 191.26 of this part, certifying that upon request by Customs it can establish the following:

(i) Quantity, kind and quality of merchandise transferred from the principal to the agent;

(ii) Date of transfer of the merchandise from the principal to the agent;

(iii) Date of manufacturing or production operations performed by the agent;

(iv) Total quantity and description of merchandise appearing in or used in manufacturing or production operations performed by the agent;

(v) Total quantity and description of articles produced in manufacturing or production operations performed by the agent;

(vi) Quantity, kind and quality of articles transferred from the agent to the principal; and

(vii) Date of transfer of the articles from the agent to the principal.

(2) *Blanket certificate*. The certificate required under paragraph (d)(1) of this section may be a blanket certificate for a particular kind and quality of merchandise for a stated period.

### § 191.10 Certificate of delivery.

(a) *Purpose; when required*. A party who: imports and pays duty on imported merchandise; receives imported merchandise; in the case of 19 U.S.C. 1313(j)(2), receives imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise; or receives an article manufactured or produced under 19 U.S.C. 1313(a) and/or (b): may transfer such merchandise or manufactured article to another party. The party shall record this transfer by preparing and issuing in favor of such other party a certificate of delivery, certified by the importer or other party through whose possession the merchandise or manufactured article passed (see paragraph (c) of this section). A certificate of delivery issued with respect to the delivered merchandise or article:

(1) Documents the transfer of that merchandise or article;

(2) Identifies such merchandise or article as being that to which a potential right to drawback exists; and

(3) Assigns such right to the transferee (see § 191.82 of this part).

(b) *Required information*. The certificate of delivery must include the following information:

(1) The party to whom the merchandise or articles are delivered;

(2) Date of delivery;

(3) Import entry number;

(4) Quantity delivered;

(5) Total duty paid on, or attributable to, the delivered merchandise;

(6) Date certificate was issued;

(7) Date of importation;

(8) Port where import entry filed;

(9) Person from whom received;

(10) Description of the merchandise delivered;

(11) The HTSUS number with a minimum of 6 digits, for the designated imported merchandise (such HTSUS number shall be from the entry summary and other entry documentation for the merchandise unless the issuer of the certificate of delivery received the merchandise under another certificate of delivery, or a certificate of manufacture and delivery, in which case such HTSUS number shall be from the other certificate); and

(12) If the merchandise transferred is substituted for the designated imported merchandise under 19 U.S.C. 1313(j)(2), the HTSUS or Schedule B commodity number, with a minimum of 6 digits.

(c) *Intermediate transfer*—(1) *Imported merchandise*. If the imported merchandise was not delivered directly from the importer to the manufacturer, or from the importer to the exporter (or destroyer), each intermediate transfer of the imported merchandise shall be documented by means of a certificate of delivery issued in favor of the receiving party, and certified by the person through whose possession the merchandise passed.

(2) *Manufactured article*. If the article manufactured or produced under 19 U.S.C. 1313 (a) or (b) is not delivered directly from the manufacturer to the exporter (or destroyer), each transfer after the transfer from the manufacturer (which shall be documented by means of a certificate of manufacture and delivery) shall be documented by means of a certificate of delivery, issued in favor of the receiving party, and certified by the person through whose possession the article passed.

(d) *Retention period; supporting records*. Records supporting the information required on the certificate(s) of delivery, as listed in paragraph (b) of this section, must be retained by the issuing party for 3 years from the date of payment of the related claim or longer period if required by law (see 19 U.S.C. 1508(c)(3)).

(e) *Retention; submission to Customs*. The certificate of delivery shall be retained by the party to whom the merchandise or article covered by the certificate was delivered. Customs may request the certificate from the claimant for the drawback claim based upon the certificate (see §§ 191.51, 191.52). If the certificate is requested by Customs, but is not provided by the claimant, the part of the drawback claim dependent on that certificate will be denied.

(f) *Warehouse transfer and withdrawals*. The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No certificate of delivery is required covering prior transfers of merchandise while in a bonded warehouse.

### § 191.11 Tradeoff.

(a) *Exchanged merchandise*. To comply with §§ 191.21 and 191.22 of this part, the use of domestic merchandise taken in exchange for imported merchandise of the same kind and quality (as defined in § 191.2(x)(1) of this part for purposes of 19 U.S.C. 1313(b)) shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the transfer of the imported merchandise. This provision shall be known as tradeoff and is authorized by § 313(k) of the Act, as amended (19 U.S.C. 1313(k)).

(b) *Requirements*. Tradeoff must occur between two separate legal entities but it is not necessary that the entity exchanging the imported merchandise be the importer thereof. In addition, tradeoff must consist of an exchange of same kind and quality merchandise and nothing else (the exchange may be of different quantities of same kind and quality merchandise, but may not involve the payment or receipt of cash payments or other than same kind and quality merchandise). If the quantities of merchandise exchanged are different, the lesser quantity shall be the quantity available for drawback. If the quantity of domestic merchandise received is greater than the quantity of imported merchandise exchanged, the merchandise identified for drawback shall be the portion of the domestic merchandise equal to the quantity of imported merchandise which is first received.

(c) *Application*. Each would-be user of tradeoff, except those operating under an approved specific manufacturing drawback ruling covering substitution, must apply to the Duty and Refund Determination Branch, Office of Regulations and Rulings, Customs Headquarters, for a determination of whether the imported and domestic merchandise are of the same kind and quality. For those users manufacturing under substitution drawback, this request should be contained in the application for a specific manufacturing drawback ruling (§ 191.8). For those users manufacturing under a general manufacturing drawback ruling (§ 191.7), the request should be made by a separate letter.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998]

### § 191.12 Claim filed under incorrect provision.

A drawback claim filed pursuant to any provision of § 313 of the Act, as amended (19 U.S.C. 1313) may be deemed filed pursuant to any other provision thereof should the drawback office determine that drawback is not allowable under the provision as originally filed, but that it is allowable under such other provision. To be allowable under such other provision, the claim must meet each of the requirements of such provision. The claimant may raise alternative provisions prior to liquidation or by protest.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998]

### § 191.13 Packaging materials.

(a) *Imported packaging material.* Drawback of duties is provided in § 313(q)(1) of the Act, as amended (19 U.S.C. 1313(q)(1)), on imported packaging material when used to package or repackage merchandise or articles exported or destroyed pursuant to § 313(a), (b), (c), or (j) of the Act, as amended (19 U.S.C. 1313(a), (b), (c), or (j)). Drawback is payable on the packaging material pursuant to the particular drawback provision to which the packaged goods themselves are subject. The drawback will be based on the duty, tax or fee paid on the importation of the packaging material. The packaging material must be separately identified on the claim, and all other information and documents required for the particular drawback provision under which the claim is made shall be provided for the packaging material.

(b) *Packaging material manufactured in United States from imported materials.* Drawback of duties is provided in § 313(q)(2) of the Act, as amended (19 U.S.C. 1313(q)(2)), on packaging material that is manufactured or produced in the United States from imported materials and used to package or repackage articles that are exported or destroyed under § 313(a) or (b) of the Act, as amended (19 U.S.C. 1313(a) or (b)). Drawback is payable on the packaging material under the particular manufacturing drawback provision to which the packaged articles themselves are subject, either 19 U.S.C. 1313(a) or (b), as applicable. The drawback will be based on the duty, tax, or fee that is paid on the imported merchandise used to manufacture or produce the packaging material. The packaging material and the imported merchandise used in its manufacture or production must be separately identified on the claim, and all other information and documents required for the particular drawback provision under which the claim is made must be provided for the packaging material as well as the imported merchandise used in its manufacture or production, for purposes of determining the applicable drawback payable.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by T.D. 02–16, 67 FR 16637, Apr. 8, 2002]

### § 191.14 Identification of merchandise or articles by accounting method.

(a) *General.* This section provides for the identification of merchandise or articles for drawback purposes by the use of accounting methods. This section applies to identification of merchandise or articles in inventory or storage, as well as identification of merchandise used in manufacture or production (see § 191.2(h) of this subpart). This section is not applicable to situations in which the drawback law authorizes substitution (substitution is allowed in specified situations under 19 U.S.C. 1313(b), 1313(j)(2), 1313(k), and 1313(p); this section does apply to situations in these subsections in which substitution is not allowed, as well as to the subsections of the drawback law under which no substitution is allowed). When substitution is authorized, merchandise or articles may be substituted without reference to this section, under the criteria and conditions specifically authorized in the statutory and regulatory provisions providing for the substitution.

(b) *Conditions and criteria for identification by accounting method.* Manufacturers, producers, claimants, or other appropriate persons may identify for drawback purposes lots of merchandise or articles under this section, subject to each of the following conditions and criteria:

(1) The lots of merchandise or articles to be so identified must be fungible (see § 191.2(o) of this part);

(2) The person using the identification method must be able to establish that inventory records (for example, material control records), prepared and used in the ordinary course of business, account for the lots of merchandise or articles to be identified as being received into and withdrawn from the same inventory. Even if merchandise or articles are received or withdrawn at different geographical locations, if such inventory records treat receipts or withdrawals as being from the same inventory, those inventory records may be used to identify the merchandise or articles under this section, subject to the conditions of this section. If any such inventory records (that is, inventory records prepared and used in the ordinary course of business) treat receipts and withdrawals as being from different inventories, those inventory records must be used and receipts into or withdrawals from the different inventories may not be accounted for together. If units of merchandise or articles can be specifically identified (for example, by serial number), the merchandise or articles must be specifically identified and may not be identified by accounting method, unless it is established that inventory records, prepared and used in the ordinary course of business, treat the merchandise or articles to be identified as being received into and withdrawn from the same inventory (subject to the above conditions);

(3) Unless otherwise provided in this section or specifically approved by Customs (by a binding ruling under part 177 of this chapter), all receipts (or inputs) into and all withdrawals from the inventory must be recorded in the accounting record;

(4) The records which support any identification method under this section are subject to verification by Customs (see § 191.61 of this part). If Customs requests such verification, the person using the identification method must be able to demonstrate how, under generally accepted accounting procedures, the records which support the identification method used account for all merchandise or articles in, and all receipts into and withdrawals from, the inventory, and the drawback per unit for each receipt and withdrawal; and

(5) Any accounting method which is used by a person for drawback purposes under this section must be used without variation with other methods for a period of at least one year, unless approval is given by Customs for a shorter period.

(c) *Approved accounting methods.* The following accounting methods are approved for use in the identification of merchandise or articles for drawback purposes under this section.

(1) *First-in, first-out (FIFO)*—(i) *General.* The FIFO method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the first merchandise or articles received into the inventory. Under this method, withdrawals are from the oldest (first-in) merchandise or articles in the inventory at the time of withdrawal.

(ii) *Example.* If the beginning inventory is zero, 100 units with $1 drawback attributable per unit are received in inventory on the 2nd of the month, 50 units with no drawback attributable per unit are received into inventory on the 5th of the month, 75 units are withdrawn for domestic (non-export) shipment on the 10th of the month, 75 units with $2 drawback attributable per unit are received in inventory on the 15th of the month, 100 units are withdrawn for export on the 20th of the month, and no other receipts or withdrawals occurred in the month, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of $75 (25 units from the receipt on the 2nd with $1 drawback attributable per unit, 50 units from the receipt on the 5th with no drawback attributable per unit, and 25 units from the receipt on the 15th with $2 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units ($1 drawback/unit) results in a balance of that amount; the receipt of 50 units ($0 drawback/unit) on the 5th results in a balance of 150 units (100 with $1 drawback/unit and 50 with $0

drawback/unit); the withdrawal on the 10th of 75 units ($1 drawback/unit) results in a balance of 75 units (25 with $1 drawback/unit and 50 with $0 drawback/unit); the receipt of 75 units ($2 drawback/unit) on the 15th results in a balance of 150 units (25 with $1 drawback/unit, 50 with $0 drawback/unit, and 75 with $2 drawback/unit); the withdrawal on the 20th of 100 units (25 with $1 drawback/unit, 50 with $0 drawback/unit, and 25 with $2 drawback unit) results in a balance of 50 units (all 50 with $2 drawback/unit).

(2) *Last-in, first out (LIFO)*—(i) *General*. The LIFO method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the last merchandise or articles received into the inventory. Under this method, withdrawals are from the newest (last-in) merchandise or articles in the inventory at the time of withdrawal.

(ii) *Example*. In the example in paragraph (c)(1)(ii) of this section, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of $175 (75 units from the receipt on the 15th with $2 drawback attributable per unit and 25 units from the receipt on the 2nd with $1 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units ($1 drawback/unit) results in a balance of that amount; the receipt of 50 units ($0 drawback/unit) on the 5th results in a balance of 150 units (100 with $1 drawback/unit and 50 with $0 drawback/unit); the withdrawal on the 10th of 75 units (50 with $0 drawback/unit and 25 with $1 drawback/unit) results in a balance of 75 units (all with $1 drawback/unit); the receipt of 75 units ($2 drawback/unit) on the 15th results in a balance of 150 units (75 with $1 drawback/unit and 75 with $2 drawback/unit); the withdrawal on the 20th of 100 units (75 with $2 drawback/unit and 25 with $1 drawback/unit) results in a balance of 50 units (all 50 with $1 drawback/unit).

(3) *Low-to-high*—(i) *General*. The low-to-high method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the lowest drawback amount per unit of the merchandise or articles in inventory. Merchandise or articles with no drawback attributable to them (for example, domestic merchandise or duty-free merchandise) must be accounted for and are treated as having the lowest drawback attributable to them. Under this method, withdrawals are from the merchandise or articles with the least amount of drawback attributable to them, then those with the next higher amount, and so forth. If the same amount of drawback is attributable to more than one lot of merchandise or articles, withdrawals are from the oldest (first-in) merchandise or articles among those lots with the same amount of drawback attributable. Drawback requirements are applicable to withdrawn merchandise or articles as identified (for example, if the merchandise or articles identified were attributable to an import more than 5 years (more than 3 years for unused merchandise drawback) before the claimed export, no drawback could be granted).

(ii) *Ordinary*—(A) *Method*. Under the ordinary low-to-high method, all receipts into and all withdrawals from the inventory are recorded in the accounting record and accounted for so that each withdrawal, whether for export or domestic shipment, is identified by recordkeeping on the basis of the lowest drawback amount per unit of the merchandise or articles available in the inventory.

(B) *Example*. In this example, the beginning inventory is zero, and receipts into and withdrawals from the inventory are as follows:

| Date | Receipt ($ per unit) | Withdrawals |
|---|---|---|
| Jan. 2 | 100 (zero). | |
| Jan. 5 | 50 ($1.00). | |
| Jan. 15 | | 50 (export). |
| Jan. 20 | 50 ($1.01). | |
| Jan. 25 | 50 ($1.02). | |
| Jan. 28 | | 50 (domestic). |
| Jan. 31 | 50 ($1.03). | |
| Feb. 5 | | 100 (export). |
| Feb. 10 | 50 ($.95). | |
| Feb. 15 | | 50 (export). |
| Feb. 20 | 50 (zero). | |
| Feb. 23 | | 50 (domestic). |
| Feb. 25 | 50 ($1.05). | |
| Feb. 28 | | 100 (export). |
| Mar. 5 | 50 ($1.06). | |
| Mar. 10 | 50 ($.85). | |
| Mar. 15 | | 50 (export). |

| Date | Receipt ($ per unit) | Withdrawals |
|---|---|---|
| Mar. 21 | | 50 (domestic). |
| Mar. 20 | 50 ($1.08). | |
| Mar. 25 | 50 ($.90). | |
| Mar. 31 | | 100 (export). |

The drawback attributable to the January 15 withdrawal for export is zero (the available receipt with the lowest drawback amount per unit is the January 2 receipt), the drawback attributable to the January 28 withdrawal for domestic shipment (no drawback) is zero (the remainder of the January 2 receipt), the drawback attributable to the February 5 withdrawal for export is $100.50 (the January 5 and January 20 receipts), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 23 withdrawal for domestic shipment (no drawback) is zero (the February 20 receipt), the drawback attributable to the February 28 withdrawal for export is $102.50 (the January 25 and January 31 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), the drawback attributable to the March 21 withdrawal for domestic shipment (no drawback) is $52.50 (the February 25 receipt), and the drawback attributable to the March 31 withdrawal for export is $98.00 (the March 25 and March 5 receipts). Remaining in inventory is the March 20 receipt of 50 units ($1.08 drawback/unit). Total drawback attributable to withdrawals for export in this example would be $391.00.

(iii) *Low-to-high method with established average inventory turn-over period*—(A) *Method*. Under the low-to-high method with established average inventory turn-over period, all receipts into and all withdrawals for export are recorded in the accounting record and accounted for so that each withdrawal is identified by recordkeeping on the basis of the lowest drawback amount per available unit of the merchandise or articles received into the inventory in the established average inventory turn-over period preceding the withdrawal.

(B) *Accounting for withdrawals (for domestic shipments and for export)*. Under this method, domestic withdrawals (withdrawals for domestic shipment) are not accounted for and do not affect the available units of merchandise or articles. All withdrawals for export must be accounted for whether or not drawback is available or claimed on the withdrawals. Once a withdrawal for export is made and accounted for under this method, the merchandise or articles withdrawn are no longer available for identification.

(C) *Establishment of inventory turn-over period*. For purposes of this section, average inventory turn-over period is based on the rate of withdrawal from inventory and represents the time in which all of the merchandise or articles in the inventory at a given time must have been withdrawn. To establish an average of this time, at least 1 year, or three (3) turn-over periods (if inventory turns over less than 3 times per year), must be averaged. The inventory turn-over period must be that for the merchandise or articles to be identified, except that if the person using the method has more than one kind of merchandise or articles with different inventory turn-over periods, the longest average turn-over period established under this section may be used (instead of using a different inventory turn-over period for each kind of merchandise or article).

(D) *Example*. In the example in paragraph (c)(3)(ii)(B) of this section (but, as required for this method, without accounting for domestic withdrawals, and with an established average inventory turn-over period of 30 days), the drawback attributable to the January 15 withdrawal for export is zero (the available receipt in the preceding 30 days with the lowest amount of drawback is the January 2 receipt, of which 50 units will remain after the withdrawal), the drawback attributable to the February 5 withdrawal for export is $101.50 (the January 20 and January 25 receipts), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 28 withdrawal for export is $51.50 (the February 20 and January 31 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50

(the March 10 receipt), and the drawback attributable to the March 31 withdrawal for export is $98.00 (the March 25 and March 5 receipts). No drawback may be claimed on the basis of the January 5 receipt or the February 25 receipt because in the case of each, there were insufficient withdrawals for export within the established average inventory turn-over period; the 50 units remaining from the January 2 receipt after the January 15 withdrawal are not identified for a withdrawal for export because there is no other withdrawal for export (other than the January 15 withdrawal) within the established average inventory turn-over period; the March 20 receipt (50 units at $1.08) is not yet attributed to withdrawals for export. Total drawback attributable to withdrawals for export in this example would be $341.00.

(iv) *Low-to-high blanket method*—(A) *Method*. Under the low-to-high blanket method, all receipts into and all withdrawals for export are recorded in the accounting record and accounted for so that each withdrawal is identified by recordkeeping on the basis of the lowest drawback amount per available unit of the merchandise or articles received into inventory in the period preceding the withdrawal equal to the statutory period for export under the kind of drawback involved (e.g., 180 days under 19 U.S.C. 1313(p), 3 years under 19 U.S.C. 1313(c) and 1313(j), and 5 years otherwise under 19 U.S.C. 1313(i)). Drawback requirements are applicable to withdrawn merchandise or articles as identified (for example, if the merchandise or articles identified were attributable to an import more than 5 years (more than 3 years for 19 U.S.C. 1313(j); more than 180 days after the date of import or after the close of the manufacturing period for 19 U.S.C. 1313(p)) before the claimed export, no drawback could be granted).

(B) *Accounting for withdrawals (for domestic shipments and for export)*. Under this method, domestic withdrawals (withdrawals for domestic shipment) are not accounted for and do not affect the available units of merchandise or articles. All withdrawals for export must be accounted for whether or not drawback is available or claimed on the withdrawals. Once a withdrawal for export is made and accounted for under this method, the merchandise or articles withdrawn are no longer available for identification.

(C) *Example*. In the example in paragraph (c)(3)(ii)(B) of this section (but, as required for this method, without accounting for domestic withdrawals), the drawback attributable to the January 15 withdrawal for export is zero (the available receipt in the inventory with the lowest amount of drawback is the January 2 receipt, of which 50 units will remain after the withdrawal), the drawback attributable to the February 5 withdrawal for export is $50.00 (the remainder of the January 2 receipt and the January 5 receipt), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 28 withdrawal for export is $50.50 (the February 20 and January 20 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), and the drawback attributable to the March 31 withdrawal for export is $96.00 (the March 25 and January 25 receipts). Receipts not attributed to withdrawals for export are the January 31 (50 units at $1.03), February 25 (50 units at $1.05), March 5 (50 units at $1.06), and March 20 (50 units at $1.08) receipts. Total drawback attributable to withdrawals for export in this example would be $286.50.

(4) *Average*—(i) *General*. The average method is the method by which fungible merchandise or articles are identified on the basis of the calculation by recordkeeping of the amount of drawback that may be attributed to each unit of merchandise or articles in the inventory. In this method, the ratio of:

(A) The total units of a particular receipt of the fungible merchandise in the inventory at the time of a withdrawal to;

(B) The total units of all receipts of the fungible merchandise (including each receipt into inventory) at the time of the withdrawal;

(C) Is applied to the withdrawal, so that the withdrawal consists of a proportionate quantity of units from each particular receipt and each receipt is correspondingly decreased. Withdrawals and corresponding decreases to

receipts are rounded to the nearest whole number.

(ii) *Example*. In the example in paragraph (c)(1)(ii) of this section, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of $133 (50 units from the receipt on the 15th with $2 drawback attributable per unit, 33 units from the receipt on the 2nd with $1 drawback attributable per unit, and 17 units from the receipt on the 5th with $0 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units ($1 drawback/unit) results in a balance of that amount; the receipt of 50 units ($0 drawback/unit) on the 5th results in a balance of 150 units (100 with $1 drawback/unit and 50 with $0 drawback/unit); the withdrawal on the 10th of 75 units (50 with $1 drawback/unit (applying the ratio of 100 units from the receipt on the 2nd to the total of 150 units at the time of withdrawal) and 25 with $0 drawback/unit (applying the ratio of 50 units from the receipt on the 5th to the total of 150 units at the time of withdrawal)) results in a balance of 75 units (with 50 with $1 drawback/unit and 25 with $0 drawback/unit, on the basis of the same ratios); the receipt of 75 units ($2 drawback/unit) on the 15th results in a balance of 150 units (50 with $1 drawback/unit, 25 with $0 drawback/unit, and 75 with $2 drawback/unit); the withdrawal on the 20th of 100 units (50 with $2 drawback/unit (applying the ratio of the 75 units from the receipt on the 15th to the total of 150 units at the time of withdrawal), 33 with $1 drawback/unit (applying the ratio of the 50 units remaining from the receipt on the 2nd to the total of 150 units at the time of withdrawal, and 17 with $0 drawback/unit (applying the ratio of the 25 units remaining from the receipt on the 5th to the total of 150 units at the time of withdrawal)) results in a balance of 50 units (25 with $2 drawback/unit, 17 with $1 drawback/unit, and 8 with $0 drawback/unit, on the basis of the same ratios).

(5) *Inventory turn-over for limited purposes*. A properly established average inventory turn-over period, as provided for in paragraph (c)(3)(iii)(C) of this section, may be used to determine:

(i) The fact and date(s) of use in manufacture or production of the imported designated merchandise and other (substituted) merchandise (see 19 U.S.C. 1313(b)); or

(ii) The fact and date(s) of manufacture or production of the finished articles (see 19 U.S.C. 1313(a) and (b)).

(d) *Approval of other accounting methods*. (1) Persons proposing to use an accounting method for identification of merchandise or articles for drawback purposes which has not been previously approved for such use (see paragraph (c) of this section), or which includes modifications from the methods listed in paragraph (c) of this section, may seek approval by Customs of the proposed accounting method under the provisions for obtaining an administrative ruling (see part 177 of this chapter). The conditions applied and the criteria used by Customs in approving such an alternative accounting method, or a modification of one of the approved accounting methods, will be the criteria in paragraph (b) of this section, as well as those in paragraph (d)(2) of this section.

(2) In order for a proposed accounting method to be approved by Customs for purposes of this section, it shall meet the following criteria:

(i) For purposes of calculations of drawback, the proposed accounting method must be either revenue neutral or favorable to the Government; and

(ii) The proposed accounting method should be:

(A) Generally consistent with commercial accounting procedures, as applicable for purposes of drawback;

(B) Consistent with inventory or material control records used in the ordinary course of business by the person proposing the method; and

(C) Easily administered by both Customs and the person proposing the method.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998; 63 FR 27489, May 19, 1998]

## § 191.15 Recordkeeping.

Pursuant to 19 U.S.C. 1508(c)(3), all records which pertain to the filing of a drawback claim or to the information contained in the records required by 19

U.S.C. 1313 in connection with the filing of a drawback claim shall be retained for 3 years after payment of such claims or longer period if required by law (under 19 U.S.C. 1508, the same records may be subject to a different period for different purposes).

## Subpart B—Manufacturing Drawback

### § 191.21 Direct identification drawback.

Section 313(a) of the Act, as amended (19 U.S.C. 1313(a)), provides for drawback upon the exportation, or destruction under Customs supervision, of articles which are not used in the United States prior to their exportation or destruction, and which are manufactured or produced in the United States wholly or in part with the use of particular imported, duty-paid merchandise and/or drawback product(s). Where two or more products result, drawback shall be distributed among the products in accordance with their relative value (see § 191.2(u)) at the time of separation. Merchandise may be identified for drawback purposes under 19 U.S.C. 1313(a) in the manner provided for and prescribed in § 191.14 of this part.

### § 191.22 Substitution drawback.

(a) *General*. If imported, duty-paid, merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed 3 years from the receipt of the imported merchandise by the manufacturer or producer of the articles, then upon the exportation, or destruction under Customs supervision, of any such articles, without their having been used in the United States prior to such exportation or destruction, drawback is provided for in § 313(b) of the Act, as amended (19 U.S.C. 1313(b)), even though none of the imported, duty-paid merchandise may have been used in the manufacture or production of the exported or destroyed articles. The amount of drawback allowable cannot exceed that which would have been allowable had the merchandise used therein been the imported, duty-paid merchandise.

(b) *Use by same manufacturer or producer at different factory*. Duty-paid merchandise or drawback products used at one factory of a manufacturer or producer within 3 years after the date on which the material was received by the manufacturer or producer may be designated as the basis for drawback on articles manufactured or produced in accordance with these regulations at other factories of the same manufacturer or producer.

(c) *Designation*. A manufacturer or producer may designate any eligible imported merchandise or drawback product which it has used in manufacture or production.

(d) *Designation by successor; 19 U.S.C. 1313(s)*—(1) *General rule*. Upon compliance with the requirements in this section and under 19 U.S.C. 1313(s), a drawback successor as defined in paragraph (d)(2) of this section may designate merchandise or drawback product used by a predecessor before the date of succession as the basis for drawback on articles manufactured or produced by the successor after the date of succession.

(2) *Drawback successor*. A ''drawback successor'' is a manufacturer or producer to whom another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor, provided that the value of the transferred assets and interests (realty, personalty, and intangibles, exclusive of the drawback rights) exceeds the value of such drawback rights, whether vested or contingent.

(3) *Certifications and required evidence*—(i) *Records of predecessor*. The predecessor or successor must certify that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback under the law and regulations with respect to the merchandise or drawback product.

(ii) *Merchandise not otherwise designated*. The predecessor or successor must certify in an attachment to the

claim, that the predecessor has not designated and will not designate, nor enable any other person to designate, such merchandise or product as the basis for drawback.

(iii) *Value of transferred property*. In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) *Review by Customs*. The written agreement, merger, or corporate resolution, provided for in paragraph (d)(2) of this section, and the records and evidence provided for in paragraph (d)(3)(i) through (iii) of this section, must be retained by the appropriate party(s) for 3 years from the date of payment of the related claim and are subject to review by Customs upon request.

(e) *Multiple products*—(1) *General*. Where two or more products are produced concurrently in a substitution manufacturing operation, drawback shall be distributed to each product in accordance with its relative value (see § 191.2(u)) at the time of separation.

(2) *Claims covering a manufacturing period*. Where the claim covers a manufacturing period rather than a manufacturing lot, the entire period covered by the claim is the time of separation of the products and the value per unit of product is the market value for the period (see § 191.2(u) of this part). Manufacturing periods in excess of one month may not be used without specific approval of Customs.

(3) *Recordkeeping*. Records shall be maintained showing the relative value of each product at the time of separation.

### § 191.23 Methods of claiming drawback.

(a) *Used in*. Drawback may be paid based on the amount of the imported or substituted merchandise used in the manufacture of the exported article, where there is no waste or the waste is valueless or unrecoverable. This method must be used when multiple products also necessarily and concurrently result from the manufacturing process, and there is no valuable waste (see paragraph (c) of this section).

(b) *Appearing in*. Drawback is allowable under this method based only on the amount of imported or substituted merchandise that appears in (is contained in) the exported articles. This method may not be used if there are multiple products also necessarily and concurrently resulting from the manufacturing process.

(c) *Used in less valuable waste*. Drawback is allowable under this method based on the quantity of merchandise or drawback products used to manufacture the exported or destroyed article, reduced by an amount equal to the quantity of this merchandise that the value of the waste would replace. This method must be used when multiple products also necessarily and concurrently result from the manufacturing process, and there is valuable waste.

(d) *Abstract or schedule*. A drawback claimant may use either the abstract or schedule method to show the quantity of material used or appearing in the exported or destroyed article. An abstract is the summary of records which shows the total quantity used in or appearing in all articles produced during the period covered by the abstract. A schedule shows the quantity of material used in producing, or appearing in, each unit of product. Manufacturers or producers submitting letters of notification of intent to operate under a general manufacturing drawback ruling (see § 191.7) and applicants for approval of specific manufacturing drawback rulings (see § 191.8) shall state whether the abstract or schedule method is used; if no such statement is made, drawback claims must be based upon the abstract method.

(e) *Recordkeeping*—(1) *Valuable waste*. When the waste has a value and the drawback claim is not limited to the quantity of imported or substituted merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback, the manufacturer or producer shall keep records to show the market value of the merchandise or drawback products used to manufacture or produce the exported or destroyed articles, as well as the market value of the resulting waste, under the used in less valuable

waste method (see § 191.2(u) of this part).

(2) *If claim for waste is waived.* If claim for waste is waived, only the ''appearing in'' basis may be used (see paragraph (b) of this section). Waste records need not be kept unless required to establish the quantity of imported duty-paid merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998]

### § 191.24 Certificate of manufacture and delivery.

(a) *When required.* When an article or drawback product manufactured or produced under a general manufacturing drawback ruling or a specific manufacturing drawback ruling is transferred from the manufacturer or producer to another party, a certificate of manufacture and delivery shall be prepared and certified by the manufacturer.

(b) *Information required on certificate.* The following information shall be required on the certificate of manufacture and delivery executed by the manufacturer or producer:

(1) The person to whom the article or drawback product is delivered;

(2) If the article or drawback product was manufactured or produced under a general manufacturing drawback ruling, the unique computer-generated number assigned to the letter of acknowledgment for that ruling, and if the article or drawback product was manufactured or produced under a specific manufacturing drawback ruling, either the unique computer number or the T.D. number for that ruling;

(3) The quantity, kind and quality of imported, duty-paid merchandise or drawback product designated;

(4) Import entry numbers, HTSUS number for the imported merchandise to at least the 6th digit (such HTSUS number shall be from the entry summary and other entry documentation for the imported, duty-paid merchandise unless the issuer of the certificate of manufacture and delivery received the merchandise under another certificate (either of delivery or of manufacture and delivery), in which case such HTSUS number shall be from the other certificate), and applicable duty amounts;

(5) Date received at factory;

(6) Date used in manufacture;

(7) Value at factory, if applicable;

(8) Quantity of waste, if any, if applicable;

(9) Market value of any waste, if applicable;

(10) Total quantity and description of merchandise appearing in or used;

(11) Total quantity and description of articles produced;

(12) Date of manufacture or production of the articles;

(13) The quantity of articles transferred; and

(14) The person from whom the article or drawback product is delivered.

(c) *Filing of certificate.* The certificate of manufacture and delivery shall be filed with the drawback claim it supports (unless previously filed) (see § 191.51 of this part).

(d) *Effect of certificate.* A certificate of manufacture and delivery documents the delivery of articles from the manufacturer or producer to another party, identifies such articles as being those to which a potential right to drawback exists, and assigns such potential rights to the transferee (see also § 191.82 of this part).

### § 191.25 Destruction under Customs supervision.

A claimant may destroy merchandise and obtain manufacturing drawback by complying with the procedures set forth in § 191.71 of this part relating to destruction.

### § 191.26 Recordkeeping for manufacturing drawback.

(a) *Direct identification manufacturing*—(1) *Records required.* Each manufacturer or producer under 19 U.S.C. 1313(a) shall keep records to allow the verifying Customs official to trace all articles manufactured or produced for exportation or destruction with drawback, from importation, through production, to exportation or destruction. To this end, these records shall specifically establish:

(i) The date or inclusive dates of manufacture or production;

(ii) The quantity and identity of the imported duty-paid merchandise or drawback products used in or appearing in (see § 191.23) the articles manufactured or produced;

(iii) The quantity, if any, of the non-drawback merchandise used, when these records are necessary to determine the quantity of imported duty-paid merchandise or drawback product used in the manufacture or production of the exported or destroyed articles or appearing in them;

(iv) The quantity and description of the articles manufactured or produced;

(v) The quantity of waste incurred, if applicable; and

(vi) That the finished articles on which drawback is claimed were exported or destroyed within 5 years after the importation of the duty-paid merchandise, without having been used in the United States prior to such exportation or destruction. (If the completed articles were commingled after manufacture, their identity may be maintained in the manner prescribed in § 191.14 of this part.)

(2) *Accounting*. The merchandise and articles to be exported or destroyed shall be accounted for in a manner which will enable the manufacturer, producer, or claimant:

(i) To determine, and the Customs official to verify, the applicable import entry, certificate of delivery, and/or certificate of manufacture and delivery associated with the claim; and

(ii) To identify with respect to that import entry, certificate of delivery, and/or certificate of manufacture and delivery, the imported duty-paid merchandise or drawback products used in manufacture or production.

(b) *Substitution manufacturing*. The records of the manufacturer or producer of articles manufactured or produced in accordance with 19 U.S.C. 1313(b) shall establish the facts in paragraph (a)(1)(i), (iv) through (vi) of this section, and:

(1) The quantity, identity, and specifications of the merchandise designated (imported duty-paid, or drawback product);

(2) The quantity, identity, and specifications of merchandise of the same kind and quality as the designated merchandise before its use to manufacture or produce (or appearing in) the exported or destroyed articles;

(3) That, within 3 years after receiving the designated merchandise at its plant, the manufacturer or producer used it in manufacturing or production and that during the same 3-year period it manufactured or produced the exported or destroyed articles; and

(4) If the designated merchandise is a chemical element that was contained in imported material that was subject to an *ad valorem* rate of duty, and a substitution drawback claim is made based on that chemical element:

(i) The duty paid on the imported material must be apportioned among its constituent components. The claim on the chemical element that is the designated merchandise must be limited to the duty apportioned to that element on a unit-for-unit attribution using the unit of measure set forth in the Harmonized Tariff Schedule of the United States (HTSUS) that is applicable to the imported material. If the material is a compound with other constituents, including impurities, and the purity of the compound in the imported material is shown by satisfactory analysis, that purity, converted to a decimal equivalent of the percentage, is multiplied against the entered amount of the material to establish the amount of pure compound. The amount of the element in the pure compound is to be determined by use of the atomic weights of the constituent elements and converting to the decimal equivalent of their respective percentages and multiplying that decimal equivalent against the above-determined amount of pure compound.

(ii) The amount claimed as drawback based on the chemical element must be deducted from the duty paid on the imported material that may be claimed on any other drawback claim.

*Example to paragraph (b)(4):* Synthetic rutile that is shown by appropriate analysis in the entry papers to be 91.7% pure titanium dioxide is imported and dutiable at a 5% *ad valorem* duty rate. The amount of imported synthetic rutile is 30,000 pounds with an entered value of $12,000. The total duty paid is $600. Titanium in the synthetic rutile is designated as the basis for a drawback claim under 19 U.S.C. 1313(b). The amount of titanium dioxide in the synthetic rutile is determined by converting the purity percentage

(91.7%) to its decimal equivalent (.917) and multiplying the entered amount of synthetic rutile (30,000 pounds) by that decimal equivalent (.917 × 30,000 = 27,510 pounds of titanium dioxide contained in the 30,000 pounds of imported synthetic rutile). The titanium, based on atomic weight, represents 59.93% of the constituents in titanium dioxide. Multiplying that percentage, converted to its decimal equivalent, by the amount of titanium dioxide determines the titanium content of the imported synthetic rutile (.5993 × 27,510 pounds of titanium dioxide = 16,486.7 pounds of titanium contained in the imported synthetic rutile). Therefore, up to 16,486.7 pounds of titanium is available to be designated as the basis for drawback. As the per-unit duty paid on the synthetic rutile is calculated by dividing the duty paid ($600) by the amount of imported synthetic rutile (30,000 pounds), the per-unit duty is two cents of duty per pound of the imported synthetic rutile ($600 ÷ 30,000 = $0.02). The duty on the titanium is calculated by multiplying the amount of titanium contained in the imported synthetic rutile by two cents of duty per pound (16,486.7 × $0.02 = $329.73 duty apportioned to the titanium). The product is then multiplied by 99% to determine the maximum amount of drawback available ($329.73 × .99=$326.44). If an exported titanium alloy ingot weighs 17,000 pounds, in which 16,000 pounds of titanium was used to make the ingot, drawback is determined by multiplying the duty per pound ($0.02) by the weight of the titanium contained in the ingot (16,000 pounds) to calculate the duty available for drawback ($0.02 × 16,000 = $320.00). Because only 99% of the duty can be claimed, drawback is determined by multiplying this available duty amount by 99% (.99 × $320.00 = $316.80). As the oxygen content of the titanium dioxide is 45% of the synthetic rutile, if oxygen is the designated merchandise on another drawback claim, 45% of the duty claimed on the synthetic rutile would be available for drawback based on the substitution of oxygen.

(c) *Valuable waste records.* When waste has a value and the manufacturer, producer, or claimant, has not limited the claims based on the quantity of imported or substituted merchandise appearing in the articles exported or destroyed, the manufacturer or producer shall keep records to show the market value of the merchandise used to manufacture or produce the exported or destroyed article, as well as the quantity and market value of the waste incurred (see §191.2(u) of this part). In such records, the quantity of merchandise identified or designated for drawback, under 19 U.S.C. 1313(a) or 1313(b), respectively, shall be based on the quantity of merchandise actually used to manufacture or produce the exported or destroyed articles. The waste replacement reduction will be determined by reducing from the quantity of merchandise actually used the amount of merchandise which the value of the waste would replace.

(d) *Purchase of manufactured articles for exportation.* Where the claimant purchases articles from the manufacturer and exports them, the claimant shall file the related certificate of manufacture and delivery as part of the claim (see §191.51(a)(1) of this part).

(e) *Multiple claimants*—(1) *General.* Multiple claimants may file for drawback with respect to the same export (for example, if an automobile is exported, where different parts of the automobile have been produced by different manufacturers under drawback conditions and the exporter waives the right to claim drawback and assigns such right to the manufacturers under §191.82 of this part).

(2) *Procedures*—(i) *Submission of letter.* Each drawback claimant shall file a separate letter, as part of the claim, describing the component article on the export bill of lading to which each claim will relate. Each letter shall show the name of the claimant and bear a statement that the claim shall be limited to its respective component article. The exporter shall endorse the letters, as required, to show the respective interests of the claimants.

(ii) *Blanket waivers and assignments of drawback rights.* Exporters may waive and assign their drawback rights for all, or any portion, of their exportations with respect to a particular commodity for a given period to a drawback claimant.

(iii) *Use of export summary procedure.* If the parties elect to use the export summary procedure (§191.73 of this part) each drawback claimant shall complete a chronological summary of exports for the respective component product to which each claim will relate. Each claimant shall identify in the chronological summary the name of the other claimant(s) and the component product for which each will independently claim drawback, if known at the time the drawback claim

is filed. The exporter shall endorse the summaries, as required, to show the respective interests of the claimants. Each claimant shall have on file and make available to Customs upon request, the endorsement from the exporter assigning the right to claim drawback.

(f) *Retention of records.* Pursuant to 19 U.S.C. 1508(c)(3), all records required to be kept by the manufacturer, producer, or claimant with respect to drawback claims, and records kept by others to complement the records of the manufacturer, producer, or claimant with respect to drawback claims shall be retained for 3 years after the date of payment of the related claims (under 19 U.S.C. 1508, the same records may be subject to a different retention period for different purposes).

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by T.D. 02–38, 67 FR 48370, July 24, 2002; CBP Dec. 03–23, 68 FR 50703, Aug. 22, 2003]

### § 191.27 Time limitations.

(a) *Direct identification manufacturing.* Drawback shall be allowed on imported merchandise used to manufacture or produce articles that are exported or destroyed under Customs supervision within 5 years after importation of the merchandise identified to support the claim.

(b) *Substitution manufacturing.* Drawback shall be allowed on the imported merchandise if the following conditions are met:

(1) The designated merchandise is used in manufacture or production within 3 years after receipt by the manufacturer or producer at its factory;

(2) Within the 3-year period described in paragraph (b)(1) of this section, the exported or destroyed articles, or drawback products, were manufactured or produced; and

(3) The completed articles must be exported or destroyed under Customs supervision within 5 years of the date of importation of the designated merchandise, or within 5 years of the earliest date of importation associated with a drawback product.

(c) *Drawback claims filed before specific or general manufacturing drawback ruling approved or acknowledged.* Drawback claims may be filed before the letter of notification of intent to operate under a general manufacturing drawback ruling covering the claims is acknowledged (§ 191.7), or before the specific manufacturing drawback ruling covering the claims is approved (§ 191.8), but no drawback shall be paid until such acknowledgement or approval, as appropriate.

### § 191.28 Person entitled to claim drawback.

The exporter (or destroyer) shall be entitled to claim drawback, unless the exporter (or destroyer), by means of a certification, assigns the right to claim drawback to the manufacturer, producer, importer, or intermediate party. Such certification shall also affirm that the exporter (or destroyer) has not and will not itself claim drawback or assign the right to claim drawback on the particular exportation or destruction to any other party. The certification provided for under this section may be a blanket certification for a stated period. Drawback is paid to the claimant, who may be the manufacturer, producer, intermediate party, importer, or exporter (destroyer).

## Subpart C—Unused Merchandise Drawback

### § 191.31 Direct identification.

(a) *General.* Section 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), provides for drawback upon the exportation or destruction under Customs supervision of imported merchandise upon which was paid any duty, tax, or fee imposed under Federal law because of its importation, if the merchandise has not been used within the United States before such exportation or destruction.

(b) *Time of exportation or destruction.* Drawback shall be allowed on imported merchandise if, before the close of the 3-year period beginning on the date of importation, the merchandise is exported from the United States or destroyed under Customs supervision.

(c) *Operations performed on imported merchandise.* In cases in which an operation or operations is or are performed

on the imported merchandise, the performing of any operation or combination of operations, not amounting to manufacture or production under the provisions of the manufacturing drawback law, on the imported merchandise is not a use of that merchandise for purposes of this section.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998]

### § 191.32 Substitution drawback.

(a) *General*. Section 313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2)), provides for drawback on merchandise which is commercially interchangeable with imported merchandise if the commercially interchangeable merchandise is exported, or destroyed under Customs supervision, before the close of the 3-year period beginning on the date of importation of the imported merchandise, and before such exportation or destruction, the commercially interchangeable merchandise is not used in the United States (see paragraph (e) of this section) and is in the possession of the party claiming drawback.

(b) *Requirements*. (1) The claimant must have possessed the substituted merchandise that was exported or destroyed, as provided in paragraph (d)(1) of this section;

(2) The substituted merchandise must be commercially interchangeable with the imported merchandise that is designated for drawback; and

(3) The substituted merchandise exported or destroyed must not have been used in the United States before its exportation or destruction (see paragraph (e) of this section).

(c) *Determination of commercial interchangeability*. In determining commercial interchangeability, Customs shall evaluate the critical properties of the substituted merchandise and in that evaluation factors to be considered include, but are not limited to, Governmental and recognized industrial standards, part numbers, tariff classification and value. A party may seek a nonbinding predetermination of commercial interchangeability directly from the appropriate drawback office. A determination of commercial interchangeability can be obtained in one of two ways:

(1) A formal ruling from the Duty and Refund Determination Branch, Office of Regulations and Rulings; or

(2) A submission of all the required documentation necessary to make a commercial interchangeability determination with each individual drawback claim filed.

(d) *Time limitations*. For substitution unused merchandise drawback:

(1) The claimant must have had possession of the exported or destroyed merchandise at some time during the 3-year period following the date of importation of the imported designated merchandise; and

(2) The merchandise to be exported or destroyed to qualify for drawback must be exported, or destroyed under Customs supervision, before the close of the 3-year period beginning on the date of importation of the imported designated merchandise.

(e) *Operations performed on substituted merchandise*. In cases in which an operation or operations is or are performed on the substituted merchandise, the performing of any operation or combination of operations, not amounting to manufacture or production under the provisions of the manufacturing drawback law, on the commercially interchangeable substituted merchandise is not a use of that merchandise for purposes of this section.

(f) *Designation by successor; 19 U.S.C. 1313(s)*—(1) *General rule*. Upon compliance with the requirements of this section and under 19 U.S.C. 1313(s), a drawback successor as defined in paragraph (f)(2) of this section may designate either of the following as the basis for drawback on merchandise possessed by the successor after the date of succession:

(i) Imported merchandise which the predecessor, before the date of succession, imported; or

(ii) Imported and/or commercially interchangeable merchandise which was transferred to the predecessor and for which the predecessor received, before the date of succession, a certificate of delivery from the person who imported and paid duty on the imported merchandise.

(2) *Drawback successor*. A ''drawback successor'' is an entity to which another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor, provided that the value of the transferred assets and interests (realty, personality, and intangibles, exclusive of the drawback rights) exceeds the value of such drawback rights, whether vested or contingent.

(3) *Certifications and required evidence*—(i) *Records of predecessor*. The predecessor or successor must certify in an attachment to the drawback claim that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback under the law and regulations with respect to the imported and/or commercially interchangeable merchandise.

(ii) *Merchandise not otherwise designated*. The predecessor or successor must certify in an attachment to the drawback claim, that the predecessor has not and will not designate, nor enable any other person to designate, the imported and/or commercially interchangeable merchandise as the basis for drawback.

(iii) *Value of transferred property*. In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) *Review by Customs*. The written agreement, merger, or corporate resolution, provided for in paragraph (f)(2) of this section, and the records and evidence provided for in paragraph (f)(3)(i) through (iii) of this section, must be retained by the appropriate party(ies) for 3 years from the date of payment of the related claim and are subject to review by Customs upon request.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998]

## § 191.33 Person entitled to claim drawback.

(a) *Direct identification*. (1) Under 19 U.S.C. 1313(j)(1), the exporter (or destroyer) shall be entitled to claim drawback.

(2) The exporter or destroyer may waive the right to claim drawback and assign such right to the importer or any intermediate party. A drawback claimant under 19 U.S.C. 1313(j)(1) other than the exporter or destroyer shall secure and retain a certification signed by the exporter or destroyer that such party waived the right to claim drawback, and did not and will not authorize any other party to claim the exportation or destruction for drawback (see § 191.82 of this part). The certification provided for under this section may be a blanket certification for a stated period. The claimant shall file such certification at the time of, or prior to, the filing of the claim(s) covered by the certification.

(b) *Substitution*. (1) Under 19 U.S.C. 1313(j)(2), the following parties may claim drawback:

(i) In situations where the exporter or destroyer of the substituted merchandise is also the importer of the imported merchandise, that party shall be entitled to claim drawback.

(ii) In situations where the exporter or destroyer receives from the person who imported and paid the duty on the imported merchandise a certificate of delivery documenting the transfer of imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise, and exports or destroys such transferred merchandise, that exporter or destroyer shall be entitled to claim drawback. (Any such transferred merchandise, regardless of its origin, will be treated as imported merchandise for purposes of drawback under § 1313(j)(2), and any retained merchandise will be treated as domestic merchandise.)

(iii) In situations where the transferred merchandise described in paragraph (b)(1)(ii) of this section is the subject of further transfer(s), such transfer(s) shall be documented by certificate(s) of delivery, and the exporter or destroyer shall be entitled to claim

drawback (multiple substitutions are not permitted).

(2) The exporter or destroyer may waive the right to claim drawback and assign such right to the importer or to any intermediate party, provided that the claimant had possession of the substituted merchandise prior to its exportation or destruction. A drawback claimant under 19 U.S.C. 1313(j)(2) other than the exporter or destroyer shall secure and retain a certification signed by the exporter or destroyer that such party waived the right to claim drawback, and did not and will not authorize any other party to claim the exportation or destruction for drawback (see § 191.82 of this part). The certification provided for under this section may be a blanket certification for a stated period. The claimant shall file such certification at the time of, or prior to, the filing of the claim(s) covered by the certification.

### § 191.34 Certificate of delivery required.

(a) *Direct identification; purpose; when required.* If the exported or destroyed merchandise claimed for drawback under 19 U.S.C. 1313(j)(1) was not imported by the exporter or destroyer, a properly executed certificate of delivery must be prepared by the importer and each intermediate party. Each such transfer of the merchandise must be documented by its own certificate of delivery.

(1) *Completion.* The certificate of delivery shall be completed as provided in § 191.10 of this part. Each party must also certify on the certificate of delivery that the party did not use the transferred merchandise (see § 191.31(c) of this part).

(2) *Retention; submission to Customs.* The certificate of delivery shall be retained by the party to whom the merchandise or article covered by the certificate was delivered. Customs may request the certificate from the claimant for the drawback claim based upon the certificate (see §§ 191.51, 191.52). If the certificate is requested by Customs, but is not provided by the claimant, the part of the drawback claim dependent on that certificate will be denied.

(b) *Substitution.* For purposes of substitution unused merchandise drawback, 19 U.S.C. 1313(j)(2), if the importer, or a party who received imported merchandise and a certificate of delivery for that imported merchandise, directly or indirectly, from the importer, transfers to another party imported merchandise, duty-paid merchandise, commercially interchangeable merchandise, or any combination thereof, the transferor shall prepare and issue in favor of such party a certificate of delivery covering the transferred merchandise. The certificate of delivery must expressly state that it is prepared pursuant to 19 U.S.C. 1313(j)(2). Merchandise so transferred for which drawback is allowed under 19 U.S.C. 1313(j)(2) may not be designated for any other drawback purposes. Each transfer, whether of the imported merchandise or of imported merchandise, duty-paid merchandise, commercially interchangeable merchandise, or any combination thereof, must be documented by its own certificate of delivery. Certificates of delivery under this paragraph are subject to the provisions for completion and retention of certificates of delivery in paragraphs (a)(1) and (a)(2) of this section.

(c) *Warehouse transfer and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No certificate of delivery need be prepared covering prior transfers of merchandise while in a bonded warehouse, because such transfers will be recorded in the warehouse entry (see § 144.22 of this chapter).

### § 191.35 Notice of intent to export; examination of merchandise.

(a) *Notice.* A notice of intent to export merchandise which may be the subject of an unused merchandise drawback claim (19 U.S.C. 1313(j)) must be provided to the Customs Service to give Customs the opportunity to examine the merchandise. The claimant, or the exporter, must file at the port of intended examination a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on Customs Form 7553 at least 2 working days prior to the date of intended exportation unless Customs approves another filing period or the claimant

has been granted a waiver of prior notice (see § 191.91 of this part).

(b) *Required Information.* The notice shall certify that the merchandise has not been used in the United States before exportation. In addition, the notice shall provide the bill of lading number, if known, the name and telephone number, mailing address, and, if available, fax number and e-mail address of a contact person, and the location of the merchandise.

(c) *Decision to examine or to waive examination.* Within two (2) working days after receipt of the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback (see paragraph (a) of this section), Customs will notify the party designated on the Notice in writing of Customs decision to either examine the merchandise to be exported, or to waive examination. If Customs timely notifies the designated party, in writing, of its decision to examine the merchandise (see paragraph (d) of this section), but the merchandise is exported without having been presented to Customs for examination, any drawback claim, or part thereof, based on the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback shall be denied. If Customs notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by Customs to examine or to waive examination is absent, the merchandise may be exported without delay.

(d) *Time and place of examination.* If Customs gives timely notice of its decision to examine the export merchandise, the merchandise to be examined shall be promptly presented to Customs. Customs shall examine the merchandise within five (5) working days after presentation of the merchandise. The merchandise may be exported without examination if Customs fails to timely examine the merchandise after presentation to Customs. If the examination is completed at a port other than the port of actual exportation, the merchandise shall be transported in-bond to the port of exportation.

(e) *Extent of examination.* The appropriate Customs office may permit release of merchandise without examination, or may examine routinely (to the extent determined to be necessary) the items exported.

### § 191.36 Failure to file Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback.

(a) *General; application.* Merchandise which has been exported without complying with the requirements of § 191.35(a) or § 191.91 of this part may be eligible for unused merchandise drawback under 19 U.S.C. 1313(j) subject to the following conditions:

(1) *Application.* The claimant must file a written application with the drawback office where the drawback claims will be filed. Such application shall include the following:

(i) Required information.

(A) Name, address, and Internal Revenue Service (IRS) number (with suffix) of applicant;

(B) Name, address, and Internal Revenue Service (IRS) number(s) (with suffix) of exporter(s), if applicant is not the exporter;

(C) Export period covered by this application;

(D) Commodity/product lines of imported and exported merchandise covered in this application;

(E) The origin of the above merchandise;

(F) Estimated number of export transactions covered in this application;

(G) Estimated number of drawback claims and estimated time of filing those claims to be covered in this application;

(H) The port(s) of exportation;

(I) Estimated dollar value of potential drawback to be covered in this application; and

(J) The relationship between the parties involved in the import and export transactions;

(ii) Written declarations regarding:

(A) The reason(s) that Customs was not notified of the intent to export; and

(B) Whether the applicant, to the best of its knowledge, will have future exportations on which unused merchandise drawback might be claimed; and

(iii) A certification that the following documentary evidence will be made available for Customs review upon request:

(A) For the purpose of establishing that the imported merchandise was not used in the United States (for purposes of drawback under 19 U.S.C. 1313(j)(1)) or that the exported merchandise was not used in the United States and was commercially interchangeable with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)), and, as applicable:

(*1*) Business records prepared in the ordinary course of business;

(*2*) Laboratory records prepared in the ordinary course of business; and/or

(*3*) Inventory records prepared in the ordinary course of business tracing all relevant movements and storage of the imported merchandise, substituted merchandise, and/or exported merchandise; and

(B) Evidence establishing compliance with all other applicable drawback requirements.

(2) *One-Time Use*. The procedure provided for in this section may be used by a claimant only once, unless good cause is shown (for example, successorship).

(3) *Claims filed pending disposition of application*. Drawback claims may be filed under this section pending disposition of the application. However, those drawback claims will not be processed or paid until the application is approved by Customs.

(b) *Customs action*. In order for Customs to evaluate the application under this section, Customs may request, and the applicant shall provide, any of the information listed in paragraph (a)(1)(iii)(A)(*1*) through (*3*) of this section. In making its decision to approve or deny the application under this section, Customs will consider factors such as, but not limited to, the following:

(1) Information provided by the claimant in the written application;

(2) Any of the information listed in paragraph (a)(1)(iii)(A)(*1*) through (*3*) of this section and requested by Customs under this paragraph; and

(3) The applicant's prior record with Customs.

(c) *Time for Customs action*. Customs will notify the applicant in writing within 90 days after receipt of the application of its decision to approve or deny the application, or of Customs inability to approve, deny or act on the application and the reason therefor.

(d) *Appeal of denial of application*. If Customs denies the application, the applicant may file a written appeal with the drawback office which issued the denial, provided that the applicant files this appeal within 30 days of the date of denial. If Customs denies this initial appeal, the applicant may file a further written appeal with Customs Headquarters, Office of Field Operations, Office of Trade Operations, provided that the applicant files this further appeal within 30 days of the denial date of the initial appeal. Customs may extend the 30 day period for appeal to the drawback office or to Customs Headquarters, for good cause, if the applicant applies in writing for such extension within the appropriate 30 day period above.

(e) *Future intent to export unused merchandise*. If an applicant states it will have future exportations on which unused merchandise drawback may be claimed (see paragraph (a)(1)(ii)(B) of this section), the applicant will be informed of the procedures for waiver of prior notice (see § 191.91 of this part). If the applicant seeks waiver of prior notice under § 191.91, any documentation submitted to Customs to comply with this section will be included in the request under § 191.91. An applicant which states that it will have future exportations on which unused merchandise drawback may be claimed (see paragraph (a)(1)(ii)(B) of this section) and which does not obtain waiver of prior notice shall notify Customs of its intent to export prior to each such exportation, in accordance with § 191.35.

### § 191.37 Destruction under Customs supervision.

A claimant may destroy merchandise and obtain unused merchandise drawback by complying with the procedures set forth in § 191.71 of this part relating to destruction.

### § 191.38 Records.

(a) *Maintained by claimant; by others.* Pursuant to 19 U.S.C. 1508(c)(3), all records which are necessary to be maintained by the claimant under this part with respect to drawback claims, and records kept by others to complement the records of the claimant, which are essential to establish compliance with the legal requirements of 19 U.S.C. 1313(j)(1) or (j)(2), as applicable, and this part with respect to drawback claims, shall be retained for 3 years after payment of such claims (under 19 U.S.C. 1508, the same records may be subject to a different retention period for different purposes).

(b) *Accounting for the merchandise.* Merchandise subject to drawback under 19 U.S.C. 1313(j)(1) and (j)(2) shall be accounted for in a manner which will enable the claimant:

(1) To determine, and Customs to verify, the applicable import entry or certificate of delivery;

(2) To determine, and Customs to verify, the applicable exportation or destruction; and

(3) To identify with respect to the import entry or certificate of delivery, the imported duty-paid merchandise.

## Subpart D—Rejected Merchandise

### § 191.41 Rejected merchandise drawback.

Section 313(c) of the Act, as amended (19 U.S.C. 1313(c)), provides for drawback upon the exportation or destruction under Customs supervision of imported merchandise which has been entered, or withdrawn from warehouse, for consumption, duty-paid; and which does not conform to sample or specifications; has been shipped without the consent of the consignee; or has been determined to be defective as of the time of importation. The claimant must show by evidence satisfactory to Customs that the exported or destroyed merchandise was defective at the time of importation, or was not in accordance with sample or specifications, or was shipped without the consent of the consignee (see subpart P for drawback of internal-revenue taxes for unmerchantable or nonconforming distilled spirits, wines, or beer).

### § 191.42 Procedure.

(a) *Return to Customs custody.* The claimant must return the merchandise to Customs custody within 3 years after the date the merchandise was originally released from Customs custody. Drawback will be denied on merchandise returned to Customs custody after the statutory 3-year time period or exported or destroyed without return to Customs custody.

(b) *Required documentation.* The claimant shall submit documentation to the drawback office as part of the drawback claim to establish that the merchandise did not conform to sample or specification, was shipped without the consent of the consignee, or was defective as of the time of importation. If the claimant was not the importer, the claimant must:

(1) Submit a statement signed by the importer and every other person, other than the ultimate purchaser, that owned the goods that no other claim for drawback was made on the goods by any other person; and

(2) Certify that records are available to support the statement required in paragraph (b)(1) of this section.

(c) *Notice.* A notice of intent to export or destroy merchandise which may be the subject of a rejected merchandise drawback claim (19 U.S.C. 1313(c)) must be provided to the Customs Service to give Customs the opportunity to examine the merchandise. The claimant, or the exporter (for destruction, see § 191.44), must file at the port of intended redelivery to Customs custody a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on Customs Form 7553 at least 5 working days prior to the date of intended return to Customs custody. Waiver of prior notice for exportations under 19 U.S.C. 1313(j) (see § 191.91 of this part) is inapplicable to exportations under 19 U.S.C. 1313(c).

(d) *Required Information.* The notice shall provide the bill of lading number, if known, the name and telephone number, mailing address, and, if available, fax number and e-mail address of a contact person, and the location of the merchandise.

(e) *Decision to waive examination.* Within two (2) working days after receipt of the Notice of Intent to Export,

Destroy, or Return Merchandise for Purposes of Drawback (see paragraph (c) of this section), Customs will notify, in writing, the party designated on the Notice of Customs decision to either examine the merchandise to be exported or destroyed, or to waive examination. If Customs timely notifies the designated party, in writing, of its decision to examine the merchandise (see paragraph (f) of this section), but the merchandise is exported or destroyed without having been presented to Customs for such examination, any drawback claim, or part thereof, based on the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback, shall be denied. If Customs notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by Customs to examine or to waive examination is absent, the merchandise may be exported or destroyed without delay and shall be deemed to have been returned to Customs custody.

(f) *Time and place of examination.* If Customs gives timely notice of its decision to examine the merchandise to be exported or destroyed, the merchandise to be examined shall be promptly presented to Customs. Customs shall examine the merchandise within five (5) working days after presentation of the merchandise. The merchandise may be exported or destroyed without examination if Customs fails to timely examine the merchandise after presentation to Customs, and in such case the merchandise shall be deemed to have been returned to Customs custody. If the examination is completed at a port other than the port of actual exportation or destruction, the merchandise shall be transported in-bond to the port of exportation or destruction.

(g) *Extent of examination.* The appropriate Customs office may permit release of merchandise without examination, or may examine, to the extent determined to be necessary, the items exported or destroyed.

(h) *Drawback claim.* When filing the drawback claim, the drawback claimant must correctly calculate the amount of drawback due (see § 191.51(b) of this part). The procedures for restructuring a claim (see § 191.53 of this part) shall apply to rejected merchandise drawback if the claimant has an ongoing export program which qualifies for this type of drawback.

(i) *Exportation.* The claimant shall export the merchandise and shall provide documentary evidence of exportation (see subpart G of this part). The claimant may establish exportation by mail as set out in § 191.74 of this part.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998]

### § 191.43 Unused merchandise claim.

Rejected merchandise may be the subject of an unused merchandise drawback claim under 19 U.S.C. 1313(j)(1), in accordance with subpart C of this part, to the extent that the merchandise qualifies therefor.

### § 191.44 Destruction under Customs supervision.

A claimant may destroy merchandise and obtain rejected merchandise drawback by complying with the procedures set forth in § 191.71 of this part relating to destruction.

## Subpart E—Completion of Drawback Claims

### § 191.51 Completion of drawback claims.

(a) *General*—(1) *Complete claim.* Unless otherwise specified, a complete drawback claim under this part shall consist of the drawback entry on Customs Form 7551, applicable certificate(s) of manufacture and delivery, applicable Notice(s) of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback, applicable import entry number(s), coding sheet unless the data is filed electronically, and evidence of exportation or destruction under subpart G of this part.

(2) *Certificates.* Additionally, at the time of the filing of the claim, the associated certificate(s) of delivery must be in the possession of the party to whom the merchandise or article covered by the certificate was delivered. Any required certificate(s) of manufacture and delivery, if not previously filed with Customs, must be filed with the claim. Previously filed certificates

of manufacture and delivery, if required, shall be referenced in the claim.

(b) *Drawback due*—(1) *Claimant required to calculate drawback.* Drawback claimants are required to correctly calculate the amount of drawback due. The amount of drawback requested on the drawback entry is generally to be 99 percent of the import duties eligible for drawback. (For example, if $1,000 in import duties are eligible for drawback less 1 percent ($10), the amount claimed on the drawback entry should be for $990.) Claims exceeding 99 percent (or 100% when 100% of the duty is available for drawback) will not be paid until the calculations have been corrected by the claimant. Claims for less than 99 percent (or 100% when 100% of the duty is available for drawback) will be paid as filed, unless the claimant amends the claim in accordance with § 191.52(c).

(2) *Merchandise processing fee apportionment calculation.* Where a drawback claimant seeks unused merchandise drawback pursuant to 19 U.S.C. 1313(j), or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv), for a merchandise processing fee paid pursuant to 19 U.S.C. 58c(a)(9)(A), the claimant is required to correctly apportion the fee to that merchandise that provides the basis for drawback when calculating the amount of drawback requested on the drawback entry. This is determined as follows:

(i) *Relative value ratio for each line item.* The value of each line item of entered merchandise subject to a merchandise processing fee is calculated (to four decimal places) by dividing the value of the line item subject to the fee by the total value of entered merchandise subject to the fee. The resulting value forms the relative value ratio.

(ii) *Merchandise processing fee apportioned to each line item.* To apportion the merchandise processing fee to each line item, the relative value ratio for each line item is multiplied by the merchandise processing fee paid.

(iii) *Amount of merchandise processing fee eligible for drawback per line item.* The amount of merchandise processing fee apportioned to each line item is multiplied by 99 percent to calculate that portion of the fee attributable to each line item that is eligible for drawback.

(iv) *Amount of merchandise processing fee eligible for drawback per unit of merchandise.* To calculate the amount of a merchandise processing fee eligible for drawback per unit of merchandise, the line item amount that is eligible for drawback is divided by the number of units covered by that line item (to two decimal places).

*Example 1:*

Line item 1—5,000 articles valued at $10 each total $50,000

Line item 2—6,000 articles valued at $15 each total $90,000

Line item 3—10,000 articles valued at $20 each total $200,000

Total units = 21,000

Total value = $340,000

Merchandise processing fee = $485 (for purposes of this example, the fee cap of $485, as per 19 U.S.C. 58c(a)(9)(B)(i), is applicable)

*Line item relative value ratios.* The relative value ratio for line item 1 is calculated by dividing the value of that line item by the total value ($50,000 ÷ 340,000 = .1470). The relative value ratio for line item 2 is .2647. The relative value ratio for line item 3 is .5882.

*Merchandise processing fee apportioned to each line item.* The amount of fee attributable to each line item is calculated by multiplying $485 by the applicable relative value ratio. The amount of the $485 fee attributable to line item 1 is $71.295 (.1470 × $485 = $71.295). The amount of the fee attributable to line item 2 is $128.3795 (.2647 × $485 = $128.3795). The amount of the fee attributable to line item 3 is $285.277 (.5882 × $485 = $285.277).

*Amount of merchandise processing fee eligible for drawback per line item.* The amount of merchandise processing fee eligible for drawback for line item 1 is $70.5821 ÷ (.99 × $71.295). The amount of fee eligible for drawback for line item 2 is $127.0957 (.99 × $128.3795). The amount of fee eligible for drawback for line item 3 is $282.4242 (.99 × $285.277).

*Amount of merchandise processing fee eligible for drawback per unit of merchandise.* The amount of merchandise processing fee eligible for drawback per unit of merchandise is calculated by dividing the amount of fee eligible for drawback for the line item by the number of units in the line item. For line item 1, the amount of merchandise processing fee eligible for drawback per unit is $.0141 ($70.5821 ÷ 5,000 = $.0141). If 1,000 widgets form the basis of a claim for drawback under 19 U.S.C. 1313(j), the total amount of drawback attributable to the merchandise processing fee is $14.10 (1,000 × .0141 = $14.10). For line item 2, the amount of fee eligible for drawback per unit is $.0212 ($127.0957 ÷ 6,000 =

$.0212). For line item 3, the amount of fee eligible for drawback per unit is $.0282 ($282.4242 ÷ 10,000 = $.0282).

*Example 2:* This example illustrates the treatment of dutiable merchandise that is exempt from the merchandise processing fee and duty-free merchandise that is subject to the merchandise processing fee.

Line item 1—700 meters of printed cloth valued at $10 per meter (total value $7,000) that is exempt from the merchandise processing fee under 19 U.S.C. 58c(b)(8)(B)(iii)

Line item 2—15,000 articles valued at $100 each (total value $1,500,000)

Line item 3—10,000 duty-free articles valued at $50 each (total value $500,000)

The relative value ratios are calculated using line items 2 and 3 only, as there is no merchandise processing fee imposed by reason of importation on line item 1.

Line item 2—1,500,000 ÷ 2,000,000 = .75 (line items 2 and 3 form the total value of the merchandise subject to the merchandise processing fee).

Line item 3—500,000 ÷ 2,000,000 = .25.

If the total merchandise processing fee paid was $485, the amount of the fee attributable to line item 2 is $363.75 (.75 × $485 = $363.75). The amount of the fee attributable to line item 3 is $121.25 (.25 × $485 = $121.25).

The amount of merchandise processing fee eligible for drawback for line item 2 is $360.1125 (.99 × $363.75). The amount of fee eligible for line item 3 is $120.0375 (.99 × $121.25).

The amount of drawback on the merchandise processing fee attributable to each unit of line item 2 is $.0240 ($360.1125 ÷ 15,000 = $.0240). The amount of drawback on the merchandise processing fee attributable to each unit of line item 3 is $.0120 ($120.0375 ÷ 10,000 = $.0120).

If 1,000 units of line item 2 were exported, the drawback attributable to the merchandise processing fee is $24.00 ($.0240 × 1,000 = $24.00).

(c) *HTSUS number(s) or Schedule B commodity number(s) of imports and exports*—(1) *General.* Drawback claimants are required to provide, on all drawback claims they submit, the Harmonized Tariff Schedule of the United States (HTSUS) number(s) for the designated imported merchandise and the HTSUS number(s) or the Schedule B commodity number(s) for the exported article or articles.

(2) *Imports.* For imports, HTSUS numbers shall be provided from the entry summary(s) and other entry documentation, when the claimant is the importer of record, or from the certificate of delivery and/or the certificate of manufacture and delivery, otherwise. Manufacturing drawback claimants filing drawback claims based on certificate(s) of manufacture and delivery filed with the claims or previously filed with Customs (see paragraph (a) of this section), may meet this requirement with the HTSUS number(s) for the designated imported merchandise on such certificate(s).

(3) *Exports.* For exports, the HTSUS number(s) or Schedule B commodity number(s) shall be from the Shipper's Export Declaration(s) (SEDs), when required. If no SED is required (see, e.g., 15 CFR 30.58), the claimant shall provide the Schedule B commodity number(s) or HTSUS number(s) that the exporter would have set forth on the SED, but for the exemption from the requirement for an SED.

(4) *6-digit level for HTSUS and Schedule B commodity numbers.* The HTSUS numbers and Schedule B commodity numbers shall be stated to at least 6 digits.

(5) *Effective date.* For imports, HTSUS numbers are required for merchandise entered, or withdrawn from warehouse, for consumption on or after April 6, 1998. For exports, HTSUS numbers or Schedule B commodity numbers are required for exported merchandise or articles exported on or after the date 1 year after April 6, 1998.

(d) *Place of filing.* For manufacturing drawback, the claimant shall file the drawback claim with the drawback office listed, as appropriate, in the general manufacturing drawback ruling or the specific manufacturing drawback ruling (see §§191.7 and 191.8 of this part). For other kinds of drawback, the claimant shall file the claim with any drawback office.

(e) *Time of filing*—(1) *General.* A completed drawback claim, with all required documents, shall be filed within 3 years after the date of exportation or destruction of the merchandise or articles which are the subject of the claim. Except for landing certificates (see §191.76 of this part), or unless this time is extended as provided in paragraph (e)(2) of this section, claims not completed within the 3-year period shall be considered abandoned. Except as provided in paragraph (e)(2) of this section, no extension will be granted unless it is established that Customs was responsible for the untimely filing.

(2) *Major disaster*. The 3-year period for filing a completed drawback claim provided for in paragraph (e)(1) of this section may be extended for a period not to exceed 18 months if:

(i) The claimant establishes to the satisfaction of Customs that the claimant was unable to file the drawback claim because of an event declared by the President to be a major disaster, within the meaning given to that term in 42 U.S.C. 5122(2), on or after January 1, 1994; and

(ii) The claimant files a request for such extension with Customs within 1 year from the last day of the 3-year period referred to in paragraph (e)(1) of this section.

(3) *Record retention*. If an extension is granted with respect to a request filed under paragraph (e)(2)(ii) of this section, the periods of time for retaining records under 19 U.S.C. 1508(c)(3) shall be extended for an additional 18 months.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by T.D. 01–14, 66 FR 8767, Feb. 2, 2001; T.D. 01–18, 66 FR 9649, Feb. 9, 2001; T.D. 02–39, 67 FR 48548, July 25, 2002; CBP Dec. 04–33, 69 FR 60083, Oct. 7, 2004]

### § 191.52 Rejecting, perfecting or amending claims.

(a) *Rejecting the claim*. Upon review of a drawback claim, if the claim is determined to be incomplete (see § 191.51(a)(1)), the claim will be rejected and Customs will notify the filer in writing. The filer shall then have the opportunity to complete the claim subject to the requirement for filing a complete claim within 3 years.

(b) *Perfecting the claim; additional evidence required*. If Customs determines that the claim is complete according to the requirements of § 191.51(a)(1), but that additional evidence or information is required, Customs will notify the filer in writing. The claimant shall furnish, or have the appropriate party furnish, the evidence or information requested within 30 days of the date of notification by Customs. Customs may extend this 30 day period for good cause if the claimant files a written request for such extension within the 30 day period. The evidence or information required under this paragraph may be filed more than 3 years after the date of exportation or destruction of the articles which are the subject of the claim. Such additional evidence or information may include, but is not limited to:

(1) The export bill of lading or other actual evidence of exportation, as provided for in § 191.72(a) of this part, which shall show that the articles were shipped by the person filing the drawback entry, or a letter of endorsement from the party in whose name the articles were shipped which shall be attached to such bill of lading, showing that the party filing the entry is authorized to claim drawback and receive payment (the claimant shall have on file and make available to Customs upon request, the endorsement from the exporter assigning the right to claim drawback);

(2) A copy of the import entry and invoice annotated for the merchandise identified or designated;

(3) A copy of the export invoice annotated to indicate the items on which drawback is being claimed; and

(4) Certificate(s) of delivery upon which the claim is based (see § 191.10(e) of this part).

(c) *Amending the claim; supplemental filing*. Amendments to claims for which the drawback entries have not been liquidated must be made within three (3) years after the date of exportation or destruction of the articles which are the subject of the original drawback claim. Liquidated drawback entries may not be amended; however, they may be protested as provided for in § 191.84 of this part and part 174 of this chapter.

### § 191.53 Restructuring of claims.

(a) *General*. Customs may require claimants to restructure their drawback claims in such a manner as to foster Customs administrative efficiency. In making this determination, Customs will consider the following factors:

(1) The number of transactions of the claimant (imports and exports);

(2) The value of the claims;

(3) The frequency of claims;

(4) The product or products being claimed; and

(5) For 19 U.S.C. 1313(a) and 1313(b) claims, the provisions, as applicable, of the general manufacturing drawback

ruling or the specific manufacturing drawback ruling.

(b) *Exemption from restructuring; criteria.* In order to be exempt from a restructuring, a claimant must demonstrate an inability or impracticability in restructuring its claims as required by Customs and must provide a mutually acceptable alternative. Criteria used in such determination will include a demonstration by the claimant of one or more of the following:

(1) Complexities caused by multiple commodities or the applicable general manufacturing drawback ruling or the specific manufacturing drawback ruling;

(2) Variable and conflicting manufacturing and inventory periods (for example, financial, accounting and manufacturing records maintained are significantly different);

(3) Complexities caused by multiple manufacturing locations;

(4) Complexities caused by difficulty in adjusting accounting and inventory records (for example, records maintained—financial or accounting—are significantly different); and/or

(5) Complexities caused by significantly different methods of operation.

## Subpart F—Verification of Claims

### § 191.61 Verification of drawback claims.

(a) *Authority*—(1) *Drawback office.* All claims shall be subject to verification by the port director where the claim is filed.

(2) *Two or more locations.* The port director selecting the claim for verification may forward copies of the claim and, as applicable, letters of notification and acknowledgement for the general manufacturing drawback ruling or application and letter of approval for a specific manufacturing drawback ruling, and request for verification, to other drawback offices when deemed necessary.

(b) *Method.* The verifying office shall verify compliance with the law and this part, the accuracy of the related general manufacturing drawback ruling or specific manufacturing drawback ruling (as applicable), and the selected drawback claims. Verification may include an examination of all records relating to the transaction(s).

(c) *Liquidation.* When a claim has been selected for verification, liquidation will be postponed only on the drawback entries for those claims selected for verification. Postponement will continue in effect until the verification has been completed and the appropriate port director issues a report. In the event that a substantial error is revealed during the verification, Customs may postpone liquidation of all related product line claims, or, in Customs discretion, all claims for that claimant.

(d) *Errors in specific or general manufacturing drawback rulings*—(1) *Specific manufacturing drawback ruling; action by port director.* If verification of a drawback claim filed under a specific manufacturing drawback ruling (see § 191.8 of this part) reveals errors of deficiencies in the drawback ruling or application therefor, the port director shall promptly inform Customs Headquarters (Attention: Duty and Refund Determination Branch, Office of Regulations and Rulings).

(2) *General manufacturing drawback ruling.* If verification of a drawback claim filed under a general manufacturing drawback ruling (see § 191.7 of this part) reveals errors or deficiencies in a general manufacturing drawback ruling, the letter of notification of intent to operate under the general manufacturing drawback ruling, or the acknowledgment of the letter of notification of intent, the port director shall promptly inform Customs Headquarters (Attention: Duty and Refund Determination Branch, Office of Regulations and Rulings).

(3) *Action by Customs Headquarters.* Customs Headquarters shall review the stated errors or deficiencies and take appropriate action (see 19 U.S.C. 1625; 19 CFR part 177).

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998]

### § 191.62 Penalties.

(a) *Criminal penalty.* Any person who knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback upon the exportation of merchandise or knowingly or

willfully makes or files any false document for the purpose of securing the payment to himself or others of any drawback on the exportation of merchandise greater than that legally due, shall be subject to the criminal provisions of 18 U.S.C. 550, 1001 or any other appropriate criminal sanctions.

(b) *Civil penalty*. Any person who seeks, induces or affects the payment of drawback, by fraud or negligence, or attempts to do so, is subject to civil penalties, as provided under 19 U.S.C. 1593a. A fraudulent violation is subject to a maximum administrative penalty of 3 times the total actual or potential loss of revenue. Repetitive negligent violations are subject to a maximum penalty equal to the actual or potential loss of revenue.

## Subpart G—Exportation and Destruction

### § 191.71 Drawback on articles destroyed under Customs supervision.

(a) *Procedure*. At least 7 working days before the intended date of destruction of merchandise or articles upon which drawback is intended to be claimed, a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on Customs Form 7553 shall be filed by the claimant with the Customs port where the destruction is to take place, giving notification of the date and specific location where the destruction is to occur. Within 4 working days after receipt of the Customs Form 7553, Customs shall advise the filer in writing of its determination to witness or not to witness the destruction. If the filer of the notice is not so notified within 4 working days, the merchandise may be destroyed without delay and will be deemed to have been destroyed under Customs supervision. Unless Customs determines to witness the destruction, the destruction of the articles following timely notification on Customs Form 7553 shall be deemed to have occurred under Customs supervision. If Customs attends the destruction, it must certify the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback.

(b) *Evidence of destruction*. When Customs does not attend the destruction, the claimant must submit evidence that destruction took place in accordance with the approved Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback. The evidence must be issued by a disinterested third party (for example, a landfill operator). The type of evidence depends on the method and place of destruction, but must establish that the merchandise was, in fact, destroyed within the meaning of ''destruction'' in § 191.2(g) (*i.e.*, that no articles of commercial value remained after destruction).

(c) *Completion of drawback entry*. After destruction, the claimant must provide the Customs Form 7553, certified by the Customs official witnessing the destruction in accordance with paragraph (a) of this section, to Customs as part of the completed drawback claim based on the destruction (see § 191.51(a) of this part). If Customs has not attended the destruction, the claimant must provide the evidence that destruction took place in accordance with the approved Customs Form 7553, as provided for in paragraph (b) of this section, as part of the completed drawback claim based on the destruction (see § 191.51(a) of this part).

### § 191.72 Exportation procedures.

Exportation of articles for drawback purposes shall be established by complying with one of the procedures provided for in this section (in addition to providing prior notice of intent to export if applicable (see §§ 191.35, 191.36, 191.42, and 191.91 of this part)). Supporting documentary evidence shall establish fully the date and fact of exportation and the identity of the exporter. The procedures for establishing exportation outlined by this section include, but are not limited to:

(a) Actual evidence of exportation consisting of documentary evidence, such as an originally signed bill of lading, air waybill, freight waybill, Canadian Customs manifest, and/or cargo manifest, or certified copies thereof, issued by the exporting carrier;

(b) Export summary (§ 191.73);

(c) Certified export invoice for mail shipments (§ 191.74);

(d) Notice of lading for supplies on certain vessels or aircraft (§ 191.112); or

(e) Notice of transfer for articles manufactured or produced in the U.S. which are transferred to a foreign trade zone (§ 191.183).

### § 191.73 Export summary procedure.

(a) *General*. The export summary procedure consists of a Chronological Summary of Exports used to support a drawback claim. It may be submitted as part of the claim in lieu of actual documentary evidence of exportation. It may be used by any claimant for manufacturing drawback, and for unused or rejected merchandise drawback, as well as for drawback involving the substitution of finished petroleum derivatives (19 U.S.C. 1313(a), (b), (c), (j), or (p)). It is intended to improve administrative efficiency.

(b) *Format of Chronological Summary of Exports*. The Chronological Summary of Exports shall contain the data provided for in the following sample:

CHRONOLOGICAL SUMMARY OF EXPORTS

Drawback entry No. _____.
Claimant _____; Exporter _____ (if different from claimant)
Period from _____ to _____.

| Date of export | Exporter if not claimant | Unique export identifier [1] | Description | Net quantity | Sched. B com. # or HTSUS # | Destination |
|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |

[1] This number is to be used to associate the export transaction presented on the Chronological Summary of Exports to the appropriate documentary evidence of exportation (for example, Bill of Lading, Manifest no., invoice, identification of vessel or aircraft and voyage or aircraft number (see subpart K), etc.).

(c) *Documentary evidence*—(1) *Records*. The claimant, whether or not the exporter, shall maintain the Chronological Summary of Exports and such additional evidence of exportation required by Customs to establish fully the identity of the exported articles and the fact of exportation. Actual evidence of exportation, as described in § 191.72(a) of this subpart, is the primary evidence of export for drawback purposes.

(2) *Maintenance of records*. The claimant shall submit as part of the claim the Chronological Summary of Exports (see § 191.51). The claimant shall retain records supporting the Chronological Summary of Exports for 3 years after payment of the related claim, and such records are subject to review by Customs.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15289, Mar. 31, 1998]

### § 191.74 Certification of exportation by mail.

If the merchandise on which drawback is to be claimed is exported by mail or parcel post, the official postal records which describe the mail shipment shall be sufficient to prove exportation. The postal record shall be identified on the drawback entry, and shall be retained by the claimant and submitted as part of the drawback claim (see § 191.51(a).

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15289, Mar. 31, 1998]

### § 191.75 Exportation by the Government.

(a) *Claim by U.S. Government*. When a department, branch, agency, or instrumentality of the United States Government exports products with the intention of claiming drawback, it may establish the exportation in the manner provided in §§ 191.72 and 191.73 of this subpart (see § 191.4 of this part).

(b) *Claim by supplier*. When a supplier of merchandise to the Government or any of the parties specified in § 191.82 of this part claims drawback, exportation shall be established under §§ 191.72 and 191.73 of this subpart.

### § 191.76 Landing certificate.

(a) *Requirement*. Prior to the liquidation of the drawback entry, Customs may require a landing certificate for every aircraft departing from the United States under its own power if drawback is claimed on the aircraft or a part thereof, except for the exportation of supplies under § 309 of the Act, as amended (19 U.S.C. 1309). The certificate shall show the exact time of landing in the foreign destination and describe the aircraft or parts subject to

drawback in sufficient detail to enable Customs officers to identify them with the documentation of exportation.

(b) *Written notice of requirement and time for filing.* A landing certificate shall be filed within one year from the written Customs request, unless Customs Headquarters grants an extension.

(c) *Signature.* A landing certificate shall be signed by a revenue officer of the foreign country of the export's destination, unless the embassy of that country certifies in writing that there is no Customs administration in that country, in which case the landing certificate may be signed by the consignee or the carrier's agent at the place of unlading.

(d) *Inability to produce landing certificates.* A landing certificate shall be waived by the requiring Customs authority if the claimant demonstrates inability to obtain a certificate and offers other satisfactory evidence of export.

## Subpart H—Liquidation and Protest of Drawback Entries

### § 191.81 Liquidation.

(a) *Time of liquidation.* Drawback entries may be liquidated after:

(1) Liquidation of the import entry becomes final; or

(2) Deposit of estimated duties on the imported merchandise and before liquidation of the import entry.

(b) *Claims based on estimated duties.* (1) Drawback may be paid on estimated duties if the import entry has not been liquidated, or the liquidation has not become final (because of a protest being filed) (see also § 173.4(c) of this chapter), and the drawback claimant and any other party responsible for the payment of liquidated import duties each files a written request for payment of each drawback claim, waiving any right to payment or refund under other provisions of law, to the extent that the estimated duties on the unliquidated import entry are included in the drawback claim for which drawback on estimated duties is requested under this paragraph. The drawback claimant shall, to the best of its knowledge, identify each import entry that has been protested or that is the subject of a request for reliquidation (19 U.S.C. 1520(c)(1)) and that is included in the drawback claim. A drawback entry, once finally liquidated on the basis of estimated duties, shall not be adjusted by reason of a subsequent final liquidation of the import entry.

(2) However, if final liquidation of the import entry discloses that the total amount of import duty is different from the total estimated duties deposited, except in those cases when drawback is 100% of the duty, the party responsible for the payment of liquidated duties, as applicable, shall:

(i) Be liable for 1 percent of all increased duties found to be due on that portion of merchandise recorded on the drawback entry; or

(ii) Be entitled to a refund of 1 percent of all excess duties found to be paid on that portion of the merchandise recorded on the drawback entry.

(c) *Claims based on voluntary tenders or other payments of duties*—(1) *General.* Subject to the requirements in paragraph (c)(2) of this section, drawback may be paid on voluntary tenders of the unpaid amount of lawful ordinary Customs duties or any other payment of lawful ordinary Customs duties for an entry, or withdrawal from warehouse, for consumption (see § 191.3(a)(1)(iii) of this part), provided that:

(i) The tender or payment is specifically identified as duty on a specifically identified entry, or withdrawal from warehouse, for consumption;

(ii) Liquidation of the specifically identified entry, or withdrawal from warehouse, for consumption became final prior to such tender or payment; and

(iii) Liquidation of the drawback entry in which that specifically identified import entry, or withdrawal from warehouse, for consumption is designated has not become final.

(2) *Written request and waiver.* Drawback may be paid on claims based on voluntary tenders or other payments of duties under this subsection only if the drawback claimant and any other party responsible for the payment of the voluntary tenders or other payments of duties each files a written request for payment of each drawback claim based on such voluntary tenders

or other payments of duties, waiving any claim to payment or refund under other provisions of law, to the extent that the voluntary tenders or other payment of duties under this paragraph are included in the drawback claim for which drawback on the voluntary tenders or other payment of duties is requested under this paragraph.

(d) *Claims based on liquidated duties.* Drawback shall be based on the final liquidated duties paid that have been made final by operation of law (except in the case of the written request for payment of drawback on the basis of estimated duties, voluntary tender of duties, and other payments of duty, and waiver, provided for in paragraphs (b) and (c) of this section).

(e) *Liquidation procedure.* When the drawback claim has been completed by the filing of the entry and other required documents, and exportation (or destruction) of the articles has been established, the drawback office shall determine drawback due on the basis of the complete drawback claim, the applicable general manufacturing drawback ruling or specific manufacturing drawback ruling, and any other relevant evidence or information.

(f) *Relative value; multiple products*—(1) *Distribution.* Where two or more products result from the manufacture or production of merchandise, drawback shall be distributed to the several products in accordance with their relative value at the time of separation.

(2) *Value.* The value to be used in computing the distribution of drawback where two or more products result from the manufacture or production of merchandise under drawback conditions shall be the market value (see § 191.2(u) of this part), unless another value is approved by Customs.

(g) *Payment.* The drawback office shall authorize the amount of the refund due as drawback to the claimant.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15289, Mar. 31, 1998]

### § 191.82 Person entitled to claim drawback.

Unless otherwise provided in this part (see §§ 191.42(b), 191.162, 191.175(a), 191.186), the exporter (or destroyer) shall be entitled to claim drawback, unless the exporter (or destroyer), by means of a certification, waives the right to claim drawback and assigns such right to the manufacturer, producer, importer, or intermediate party (in the case of drawback under 19 U.S.C. 1313(j)(1) and (2), see § 191.33(a) and (b)). Such certification shall also affirm that the exporter (or destroyer) has not and will not assign the right to claim drawback on the particular exportation or destruction to any other party. The certification provided for in this section may be a blanket certification for a stated period.

### § 191.83 Person entitled to receive payment.

Drawback is paid to the claimant (see § 191.82).

### § 191.84 Protests.

Procedures to protest the denial, in whole or in part, of a drawback entry shall be in accordance with part 174 of this chapter (19 CFR part 174).

## Subpart I—Waiver of Prior Notice of Intent To Export; Accelerated Payment of Drawback

### § 191.91 Waiver of prior notice of intent to export.

(a) *General*—(1) *Scope.* The requirement in § 191.35 of this part for prior notice of intent to export merchandise which may be the subject of an unused merchandise drawback claim under § 313(j) of the Act, as amended (19 U.S.C. 1313(j)), may be waived under the provisions of this section.

(2) *Effective date for claimants with existing approval.* For claimants approved for waiver of prior notice as of April 6, 1998, such approval of waiver of prior notice shall remain in effect, under the Customs Regulations in effect as of the time of the approval of waiver of prior notice, for a period of 1 year after April 6, 1998. The previously approved waiver of prior notice shall terminate at the end of such 1-year period unless the claimant applies for waiver of prior notice under this section. If a claimant approved for waiver of prior notice as of April 6, 1998 applies for waiver of prior notice under this section within such 1-year period, the claimant may continue to operate under its existing waiver of prior notice until Customs

approves or denies the application for waiver of prior notice under this section, subject to the provisions in this section (see, in particular, paragraphs (d) and (e) of this section).

(3) *Limited successorship for waiver of prior notice.* When a claimant (predecessor) is approved for waiver of prior notice under this section and all of the rights, privileges, immunities, powers, duties and liabilities of the claimant are transferred by written agreement, merger, or corporate resolution to a successor, such approval of waiver of prior notice shall remain in effect for a period of 1 year after such transfer. The approval of waiver of prior notice shall terminate at the end of such 1-year period unless the successor applies for waiver of prior notice under this section. If such successor applies for waiver of prior notice under this section within such 1-year period, the successor may continue to operate under the predecessor's waiver of prior notice until Customs approves or denies the successor's application for waiver of prior notice under this section, subject to the provisions in this section (see, in particular, paragraphs (d) and (e) of this section).

(b) *Application*—(1) *Who may apply.* A claimant for unused merchandise drawback under 19 U.S.C. 1313(j) may apply for a waiver of prior notice of intent to export merchandise under this section.

(2) *Contents of application.* An applicant for a waiver of prior notice under this section must file a written application with the drawback office where the claims will be filed. Such application shall include the following:

(i) Required information:

(A) Name, address, and Internal Revenue Service (IRS) number (with suffix) of applicant;

(B) Name, address, and Internal Revenue Service (IRS) number (with suffix) of current exporter(s) (if more than 3 exporters, such information is required only for the 3 most frequently used exporters), if applicant is not the exporter;

(C) Export period covered by this application;

(D) Commodity/product lines of imported and exported merchandise covered by this application;

(E) Origin of merchandise covered by this application;

(F) Estimated number of export transactions during the next calendar year covered by this application;

(G) Port(s) of exportation to be used during the next calendar year covered by this application;

(H) Estimated dollar value of potential drawback during the next calendar year covered by this application; and

(I) The relationship between the parties involved in the import and export transactions;

(ii) A written declaration whether or not the applicant has previously been denied a waiver request, or had an approval of a waiver revoked, by any other drawback office, and whether the applicant has previously requested a 1-time waiver of prior notice under § 191.36, and whether such request was approved or denied; and

(iii) A certification that the following documentary evidence will be made available for Customs review upon request:

(A) For the purpose of establishing that the imported merchandise was not used in the United States (for purposes of drawback under 19 U.S.C. 1313(j)(1)) or that the exported merchandise was not used in the United States and was commercially interchangeable with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)), and, as applicable:

(*1*) Business records prepared in the ordinary course of business;

(*2*) Laboratory records prepared in the ordinary course of business; and/or

(*3*) Inventory records prepared in the ordinary course of business tracing all relevant movements and storage of the imported merchandise, substituted merchandise, and/or exported merchandise; and

(B) Any other evidence establishing compliance with other applicable drawback requirements, upon Customs request under paragraph (b)(2)(iii) of this section.

(3) *Samples of records to accompany application.* To expedite the processing of applications under this section, the application should contain at least one sample of each of the records to be used to establish compliance with the applicable requirements (that is, sample of

import document (for example, Customs Form 7501), sample of export document (for example, bill of lading), and samples of business, laboratory, and inventory records certified, under paragraph (b)(2)(iii)(A)(*1*) through (*3*) of this section, to be available to Customs upon request).

(c) *Action on application*—(1) *Customs review*. The drawback office shall review and verify the information submitted on and with the application. Customs will notify the applicant in writing within 90 days of receipt of the application of its decision to approve or deny the application, or of Customs inability to approve, deny, or act on the application and the reason therefor. In order for Customs to evaluate the application, Customs may request any of the information listed in paragraph (b)(2)(iii)(A)(*1*) through (*3*) of this section. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with Customs, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with Customs include, but are not limited to (as applicable):

(i) The presence or absence of unresolved Customs charges (duties, taxes, or other debts owed Customs);

(ii) The accuracy of the claimant's past drawback claims;

(iii) Whether waiver of prior notice was previously revoked or suspended; and

(iv) The presence or absence of any failure to present merchandise to Customs for examination after Customs had timely notified the party filing a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback of Customs intent to examine the merchandise (see § 191.35 of this part).

(2) *Approval*. The approval of an application for waiver of prior notice of intent to export, under this section, shall operate prospectively, applying only to those export shipments occurring after the date of the waiver. It shall be subject to a stay, as provided in paragraph (d) of this section.

(3) *Denial*. If an application for waiver of prior notice of intent to export, under this section, is denied, the applicant shall be given written notice, specifying the grounds therefor, together with what corrective action may be taken, and informing the applicant that the denial may be appealed in the manner prescribed in paragraph (g) of this section. The applicant may not reapply for a waiver until the reason for the denial is resolved.

(d) *Stay*. An approval of waiver of prior notice may be stayed, for a specified reasonable period, should Customs desire for any reason to examine the merchandise being exported with drawback prior to its exportation for purposes of verification. Customs shall provide written notice, by registered or certified mail, of such a stay to the person for whom waiver of prior notice was approved. Customs shall specify the reason(s) for the stay in such written notice. The stay shall take effect 2 working days after the date the person signs the return post office receipt for the registered or certified mail. The stay shall remain in effect for the period specified in the written notice, or until such earlier date as Customs notifies the person for whom waiver of prior notice was approved in writing that the reason for the stay has been satisfied. After the stay is lifted, operation under the waiver of prior notice procedure may resume for exports on or after the date the stay is lifted.

(e) *Proposed revocation*. Customs may propose to revoke the approval of an application for waiver of prior notice of intent to export, under this section, for good cause (noncompliance with the drawback law and/or regulations). Customs shall give written notice of the proposed revocation of a waiver of prior notice of intent to export. The notice shall specify the reasons for Customs proposed action and provide information regarding the procedures for challenging Customs proposed revocation action as prescribed in paragraph (g) of this section. The written notice of proposed revocation may be included with a notice of stay of approval of waiver of prior notice as provided under paragraph (d) of this section. The revocation of the approval of waiver of prior notice shall take effect 30 days after the date of the proposed revocation if not timely challenged

under paragraph (g) of this section. If timely challenged, the revocation will take effect after completion of the challenge procedures in paragraph (g) of this section unless the challenge is successful.

(f) *Action by drawback office controlling.* Action by the appropriate drawback office to approve, deny, stay, or revoke waiver of prior notice of intent to export, unless reversed by Customs Headquarters, will govern the applicant's eligibility for this procedure in all Customs drawback offices. If the application for waiver of prior notice of intent to export is approved, the claimant shall refer to such approval in the first drawback claim filed after such approval in the drawback office approving waiver of prior notice and shall submit a copy of the approval letter with the first drawback claim filed in any drawback office other than the approving office, when the export upon which the claim is based was without prior notice, under this section.

(g) *Appeal of denial or challenge to proposed revocation.* An appeal of a denial of an application under this section, or challenge to the proposed revocation of an approved application under this section, may be made by letter to the drawback office issuing the denial or proposed revocation and must be filed within 30 days of the date of denial or proposed revocation. A denial of an appeal or challenge made to the drawback office may itself be appealed to Customs Headquarters, Office of Field Operations, Office of Trade Operations, and must be filed within 30 days of the denial date of the initial appeal or challenge. The 30-day period for appeal or challenge to the drawback office or to Customs Headquarters may be extended for good cause, upon written request by the applicant or holder for such extension filed with the appropriate office within the 30-day period.

**§ 191.92 Accelerated payment.**

(a) *General*—(1) *Scope.* Accelerated payment of drawback is available under this section on drawback claims under this part, unless specifically excepted from such accelerated payment. Accelerated payment of drawback consists of the payment of estimated drawback before liquidation of the drawback entry. Accelerated payment of drawback is only available when Customs review of the request for accelerated payment of drawback does not find omissions from, or inconsistencies with the requirements of the drawback law and part 191 (see, especially, subpart E of this part). Accelerated payment of a drawback claim does not constitute liquidation of the drawback entry.

(2) *Effective date for claimants with existing approval.* For claimants approved for accelerated payment of drawback as of April 6, 1998, such approval of accelerated payment shall remain in effect, under the Customs Regulations in effect as of the time of the approval of accelerated payment, for a period of 1 year after April 6, 1998. The previously approved accelerated payment of drawback shall terminate at the end of such 1-year period unless the claimant applies for accelerated payment under this section. If a claimant approved for accelerated payment of drawback as of April 6, 1998 applies for accelerated payment under this section within such 1-year period, the claimant may continue to operate under its existing approval of accelerated payment until Customs approves or denies the application for accelerated payment under this section, subject to the provisions in this section (see, in particular, paragraph (f) of this section).

(3) *Limited successorship for approval of accelerated payment.* When a claimant (predecessor) is approved for accelerated payment of drawback under this section and all of the rights, privileges, immunities, powers, duties and liabilities of the claimant are transferred by written agreement, merger, or corporate resolution to a successor, such approval of accelerated payment shall remain in effect for a period of 1 year after such transfer. The approval of accelerated payment of drawback shall terminate at the end of such 1-year period unless the successor applies for accelerated payment of drawback under this section. If such successor applies for accelerated payment of drawback under this section within such 1-year period, the successor may continue to operate under the predecessor's approval of accelerated payment until

Customs approves or denies the successor's application for accelerated payment under this section, subject to the provisions in this section (see, in particular, paragraph (f) of this section).

(b) *Application for approval; contents.* A person who wishes to apply for accelerated payment of drawback must file a written application with the drawback office where claims will be filed.

(1) *Required information.* The application must contain:

(i) Company name and address;

(ii) Internal Revenue Service (IRS) number (with suffix);

(iii) Identity (by name and title) of the person in claimant's organization who will be responsible for the drawback program;

(iv) Description of the bond coverage the applicant intends to use to cover accelerated payments of drawback (see paragraph (d) of this section), including:

(A) Identity of the surety to be used;

(B) Dollar amount of bond coverage for the first year under the accelerated payment procedure; and

(C) Procedures to ensure that bond coverage remains adequate (that is, procedures to alert the applicant when and if its accelerated payment potential liability exceeds its bond coverage);

(v) Description of merchandise and/or articles covered by the application;

(vi) Type(s) of drawback covered by the application; and

(vii) Estimated dollar value of potential drawback during the next 12-month period covered by the application.

(2) *Previous applications.* In the application, the applicant must state whether or not the applicant has previously been denied an application for accelerated payment of drawback, or had an approval of such an application revoked by any drawback office.

(3) *Certification of compliance.* In or with the application, the applicant must also submit a certification, signed by the applicant, that all applicable statutory and regulatory requirements for drawback will be met.

(4) *Description of claimant's drawback program.* With the application, the applicant must submit a description (with sample documents) of how the applicant will ensure compliance with its certification that the statutory and regulatory drawback requirements will be met. This description may be in the form of a booklet. The detail contained in this description should vary depending on the size and complexity of the applicant's accelerated drawback program (for example, if the dollar amount is great and there are several kinds of drawback involved, with differing inventory, manufacturing, and shipping methods, greater detail in the description will be required). The description must include at least:

(i) The name of the official in the claimant's organization who is responsible for oversight of the claimant's drawback program;

(ii) The procedures and controls demonstrating compliance with the statutory and regulatory drawback requirements;

(iii) The parameters of claimant's drawback record-keeping program, including the retention period and method (for example, paper, electronic, etc.);

(iv) A list of the records that will be maintained, including at least sample import documents, sample export documents, sample inventory and transportation documents (if applicable), sample laboratory or other documents establishing the qualification of merchandise or articles for substitution under the drawback law (if applicable), and sample manufacturing documents (if applicable);

(v) The procedures that will be used to notify Customs of changes to the claimant's drawback program, variances from the procedures described in this application, and violations of the statutory and regulatory drawback requirements; and

(vi) The procedures for an annual review by the claimant to ensure that its drawback program complies with the statutory and regulatory drawback requirements and that Customs is notified of any modifications from the procedures described in this application.

(c) *Sample application.* The drawback office, upon request, shall provide applicants for accelerated payment with a sample letter format to assist them in preparing their submissions.

(d) *Bond required.* If approved for accelerated payment, the claimant must furnish a properly executed bond in an amount sufficient to cover the estimated amount of drawback to be claimed during the term of the bond. If outstanding accelerated drawback claims exceed the amount of the bond, the drawback office will require additional bond coverage as necessary before additional accelerated payments are made.

(e) *Action on application*—(1) *Customs review.* The drawback office shall review and verify the information submitted in and with the application. In order for Customs to evaluate the application, Customs may request additional information (including additional sample documents) and/or explanations of any of the information provided for in paragraph (b)(4) of this section. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with Customs, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with Customs include, but are not limited to (as applicable):

(i) The presence or absence of unresolved Customs charges (duties, taxes, or other debts owed Customs);

(ii) The accuracy of the claimant's past drawback claims; and

(iii) Whether accelerated payment of drawback or waiver of prior notice of intent to export was previously revoked or suspended.

(2) *Notification to applicant.* Customs will notify the applicant in writing within 90 days of receipt of the application of its decision to approve or deny the application, or of Customs inability to approve, deny, or act on the application and the reason therefor.

(3) *Approval.* The approval of an application for accelerated payment, under this section, shall be effective as of the date of Customs written notification of approval under paragraph (e)(2) of this section. Accelerated payment of drawback shall be available under this section to unliquidated drawback claims filed before and after such date. For claims filed before such date, accelerated payment of drawback shall be paid only if the claimant furnishes a properly executed single transaction bond covering the claim, in an amount sufficient to cover the amount of accelerated drawback to be paid on the claim.

(4) *Denial.* If an application for accelerated payment of drawback under this section is denied, the applicant shall be given written notice, specifying the grounds therefor, together with what corrective action may be taken, and informing the applicant that the denial may be appealed in the manner prescribed in paragraph (i) of this section. The applicant may not reapply for accelerated payment of drawback until the reason for the denial is resolved.

(f) *Revocation.* Customs may propose to revoke the approval of an application for accelerated payment of drawback under this section, for good cause (that is, noncompliance with the drawback law and/or regulations). In case of such proposed revocation, Customs shall give written notice, by registered or certified mail, of the proposed revocation of the approval of accelerated payment. The notice shall specify the reasons for Customs proposed action and the procedures for challenging Customs proposed revocation action as prescribed in paragraph (h) of this section. The revocation shall take effect 30 days after the date of the proposed revocation if not timely challenged under paragraph (h) of this section. If timely challenged, the revocation will take effect after completion of the challenge procedures in paragraph (h) of this section unless the challenge is successful.

(g) *Action by drawback office controlling.* Action by the appropriate drawback office to approve, deny, or revoke accelerated payment of drawback will govern the applicant's eligibility for this procedure in all Customs drawback offices. If the application for accelerated payment of drawback is approved, the claimant shall refer to such approval in the first drawback claim filed after such approval in the drawback office approving accelerated payment of drawback and shall submit a copy of the approval letter with the first drawback claim filed in a drawback office other than the approving office.

(h) *Appeal of denial or challenge to proposed revocation.* An appeal of a denial of an application under this section, or challenge to the proposed revocation of an approved application under this section, may be made in writing to the drawback office issuing the denial or proposed revocation and must be filed within 30 days of the date of denial or proposed revocation. A denial of an appeal or challenge made to the drawback office may itself be appealed to Customs Headquarters, Office of Field Operations, Office of Trade Operations, and must be filed within 30 days. The 30-day period for appeal or challenge to the drawback office or to Customs Headquarters may be extended for good cause, upon written request by the applicant or holder for such extension filed with the appropriate office within the 30-day period.

(i) *Payment.* The drawback office approving a drawback claim in which accelerated payment of drawback was requested shall certify the drawback claim for payment within 3 weeks after filing, if a component for electronic filing of drawback claims, records, or entries which has been implemented under the National Customs Automation Program (NCAP) (19 U.S.C. 1411–1414) is used, and within 3 months after filing, if the claim is filed manually. After liquidation, the drawback office shall certify payment of any amount due or demand a refund of any excess amount paid. Any excess amount of duty the subject of accelerated payment that is not refunded within 30 days after the date of liquidation of the related drawback entry shall be considered delinquent (see §§ 24.3a and 113.65(b) of this chapter.)

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 27489, May 19, 1998]

### § 191.93 Combined applications.

An applicant for the procedures provided for in §§ 191.91 and 191.92 of this subpart may apply for only one procedure, both procedures separately, or both procedures in one application package (see also § 191.195 of this part regarding combined applications for certification in the drawback compliance program and waiver of prior notice and/or approval of accelerated payment of drawback). In the latter instance, the intent to apply for both procedures must be clearly stated. In all instances, all of the requirements for the procedure(s) applied for must be met (for example, in a combined application for both procedures, all of the information required for each procedure, all required sample documents for each procedure, and all required certifications must be included in and with the application).

## Subpart J—Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured From Domestic Tax-Paid Alcohol

### § 191.101 Drawback allowance.

(a) *Drawback.* Section 313(d) of the Act, as amended (19 U.S.C. 1313(d)), provides for drawback of internal revenue tax upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from the domestic tax-paid alcohol.

(b) *Shipment to Puerto Rico, the Virgin Islands, Guam, and American Samoa.* Drawback of internal revenue tax on articles manufactured or produced under this subpart and shipped to Puerto Rico, the Virgin Islands, Guam, or American Samoa shall be allowed in accordance with § 7653(c) of the Internal Revenue Code (26 U.S.C. 7653(c)). However, there is no authority of law for the allowance of drawback of internal-revenue tax on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced in the United States and shipped to Wake Island, Midway Islands, Kingman Reef, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

### § 191.102 Procedure.

(a) *General.* Other provisions of this part relating to direct identification drawback (see subpart B of this part) shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Manufacturing record.* The manufacturer of flavoring extracts or medicinal or toilet preparations on which drawback is claimed shall record the products manufactured, the quantity of waste, if any, and a full description of the alcohol. These records shall be available at all times for inspection by Customs officers.

(c) *Additional information required on the manufacturer's application for a specific manufacturing drawback ruling.* The manufacturer's application for a specific manufacturing drawback ruling, under § 191.8 of this part, shall state the quantity of domestic tax-paid alcohol contained in each product on which drawback is claimed.

(d) *Variance in alcohol content*—(1) *Variance of more than 5 percent.* If the percentage of alcohol contained in a medicinal preparation, flavoring extract or toilet preparation varies by more than 5 percent from the percentage of alcohol in the total volume of the exported product as stated in a previously approved application for a specific manufacturing drawback ruling, the manufacturer shall apply for a new specific manufacturing drawback ruling pursuant to § 191.8 of this part. If the variation differs from a previously filed schedule, the manufacturer shall file a new schedule incorporating the change.

(2) *Variance of 5 percent or less.* Variances of 5 percent or less of the volume of the product shall be reported to the appropriate drawback office where the drawback entries are liquidated. In such cases, the drawback office may allow drawback without specific authorization from Customs Headquarters.

(e) *Time period for completing claims.* The 3-year period for the completion of drawback claims prescribed in 19 U.S.C. 1313(r)(1) shall be applicable to claims for drawback under this subpart.

(f) *Filing of drawback entries on duty-paid imported merchandise and tax-paid alcohol.* When the drawback claim covers duty-paid imported merchandise in addition to tax-paid alcohol, the claimant shall file one set of entries for drawback of Customs duty and another set for drawback of internal revenue tax.

(g) *Description of the alcohol.* The description of the alcohol stated in the drawback entry may be obtained from the description on the package containing the tax-paid alcohol.

**§ 191.103 Additional requirements.**

(a) *Manufacturer claims domestic drawback.* In the case of medicinal preparations and flavoring extracts, the claimant shall file with the drawback entry, a declaration of the manufacturer showing whether a claim has been or will be filed by the manufacturer with the regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for domestic drawback on alcohol under §§ 5131, 5132, 5133 and 5134, Internal Revenue Code, as amended (26 U.S.C. 5131, 5132, 5133 and 5134).

(b) *Manufacturer does not claim domestic drawback*—(1) *Submission of statement.* If no claim has been or will be filed with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback on medicinal preparations or flavoring extracts, the manufacturer shall submit a statement, in duplicate, setting forth that fact to the appropriate regional regulatory administrator of the Bureau of Alcohol, Tobacco and Firearms for the region in which the manufacturer's factory is located.

(2) *Contents of the statement.* The statement shall show the:

(i) Quantity and description of the exported products;

(ii) Identity of the alcohol used by serial number of package or tank car;

(iii) Name and registry number of the warehouse from which the alcohol was withdrawn;

(iv) Date of withdrawal;

(v) Serial number of the tax-paid stamp or certificate, if any; and

(vi) Drawback office where the claim will be filed.

(3) *Verification of the statement.* The regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, shall verify receipt of this statement, forward the original of the document to the drawback office designated, and retain the copy.

### § 191.104 Alcohol, Tobacco and Firearms certificates.

(a) *Request*. The drawback claimant or manufacturer shall file a written request with the regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, in whose region the alcohol used in the manufacture was withdrawn requesting him to provide the Customs drawback office where the drawback claim will be processed, a tax-paid certificate on Alcohol, Tobacco and Firearms Form 5100.4 (Certificate of Tax-Paid Alcohol).

(b) *Contents*. The request shall state the:

(1) Quantity of alcohol in taxable gallons;

(2) Serial number of each package;

(3) Serial number of the stamp, if any;

(4) Amount of tax paid on the alcohol;

(5) Name, registry number, and location of the warehouse;

(6) Date of withdrawal;

(7) Name of the manufacturer using the alcohol in producing the exported articles;

(8) Address of the manufacturer and his manufacturing plant; and

(9) Customs drawback office where the drawback claim will be processed.

(c) *Extracts of Alcohol, Tobacco and Firearms certificates*. If a certification of any portion of the alcohol described in the Bureau of Alcohol, Tobacco and Firearms Form 5100.4 is required for liquidation of drawback entries processed in another drawback office, the drawback office, on written application of the person who requested its issuance, shall transmit a copy of the extract from the certificate for use at that drawback office. The drawback office shall note that the copy of the extract was prepared and transmitted.

### § 191.105 Liquidation.

The drawback office shall ascertain the final amount of drawback due by reference to the certificate of manufacture and delivery and the specific manufacturing drawback ruling under which the drawback claimed is allowable.

### § 191.106 Amount of drawback.

(a) *Claim filed with Bureau of Alcohol, Tobacco and Firearms*. If the declaration required by § 191.103 of this subpart shows that a claim has been or will be filed with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback, drawback under § 313(d) of the Act, as amended (19 U.S.C. 1313(d)), shall be limited to the difference between the amount of tax paid and the amount of domestic drawback claimed.

(b) *Claim not filed with Bureau of Alcohol, Tobacco and Firearms*. If the declaration and verified statement required by § 191.103 show that no claim has been or will be filed by the manufacturer with the Bureau of Alcohol, Tobacco and Firearms for domestic drawback, the drawback shall be the full amount of the tax on the alcohol used.

(c) *No deduction of 1 percent*. No deduction of 1 percent shall be made in drawback claims under § 313(d) of the Act, as amended (19 U.S.C. 1313(d)).

(d) *Payment*. The drawback due shall be paid in accordance with § 191.81(f) of this part.

## Subpart K—Supplies for Certain Vessels and Aircraft

### § 191.111 Drawback allowance.

Section 309 of the Act, as amended (19 U.S.C. 1309), provides for drawback on articles laden as supplies on certain vessels or aircraft of the United States or as supplies including equipment upon, or used in the maintenance or repair of, certain foreign vessels or aircraft.

### § 191.112 Procedure.

(a) *General*. The provisions of this subpart shall override other conflicting provisions of this part.

(b) *Customs forms*. The drawback claimant shall file with the drawback office the drawback entry on Customs Form 7551 annotated for 19 U.S.C. 1309, and attach thereto a notice of lading on Customs Form 7514, in quadruplicate, unless the export summary procedure, provided for in § 191.73, is used. If the export summary procedure is used, the requirements in § 191.73 shall be complied with, as applicable,

and the requirements in paragraphs (d)(1) and (f)(1) of this section shall also be complied with.

(c) *Time of filing notice of lading.* In the case of drawback in connection with 19 U.S.C. 1309(b), the drawback notice of lading on Customs Form 7514 may be filed either before or after the lading of the articles. If filed after lading, the notice shall be filed within 3 years after exportation of the articles.

(d) *Contents of notice.* The notice of lading shall show:

(1) The name of the vessel or identity of the aircraft on which articles were or are to be laden;

(2) The number and kind of packages and their marks and numbers;

(3) A description of the articles and their weight (net), gauge, measure, or number; and

(4) The name of the exporter.

(e) *Assignment of numbers and return of one copy.* The drawback office shall assign a number to each notice of lading and return one copy to the exporter for delivery to the master or authorized officer of the vessel or aircraft.

(f) *Declaration*—(1) *Requirement.* The master or an authorized representative of the vessel or aircraft having knowledge of the facts shall complete the section of the notice entitled ''Declaration of Master or Other Officer''.

(2) *Procedure if notice filed before lading.* If the notice is filed before lading of the articles, the declaration must be completed on the copy of the numbered drawback notice that was filed with the drawback office and returned to the exporter for this purpose.

(3) *Procedure if notice filed after lading.* If the drawback notice is filed after lading of the articles, the drawback claimant may file a separate document containing the declaration required on the Drawback Notice, Customs Form 7514.

(4) *Filing.* The drawback claimant shall file with the drawback office both the drawback entry and the drawback notice or separate document containing the declaration of the master or other officer or representative.

(g) *Information concerning class or trade.* Information about the class of business or trade of a vessel or aircraft is required to be furnished in support of the drawback entry if the vessel or aircraft is American.

(h) *Vessel or aircraft not required to clear or obtain a permit to proceed.* If the vessel or aircraft is not required to clear or obtain a permit to proceed to another port, the drawback office shall return to the exporter or the person designated by the exporter two copies of the notice, noting the absence of a requirement for clearance or permit to proceed, for subsequent filing with the drawback claim. The claimant shall file with the claim an itinerary of the vessel or aircraft for the immediate voyage or flight showing that the vessel or aircraft is engaged in a class of business or trade which makes it eligible for drawback.

(i) *Articles laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.* The drawback office where the drawback claim is filed shall require a declaration or other evidence showing to its satisfaction that articles have been laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.

(j) *Fuel laden on vessels or aircraft as supplies*—(1) *Composite notice of lading.* In the case of fuel laden on vessels or aircraft as supplies, the drawback claimant may file with the drawback office a composite notice of lading on the reverse side of Customs Form 7514, for each calendar month. The composite notice of lading shall describe all of the drawback claimant's deliveries of fuel supplies during the one calendar month at a single port or airport to all vessels or airplanes of one vessel owner or operator or airline. This includes fuel laden for flights or voyages between the contiguous U.S. and Hawaii, Alaska, or any U.S. possessions (see § 10.59 of this chapter).

(2) *Contents of composite notice.*omposite notice shall show for each voyage or flight, either on the reverse side of Customs Form 7514 or on a continuation sheet:

(i) The identity of the vessel or aircraft;

(ii) A description of the fuel supplies laden;

(iii) The quantity laden; and

(iv) The date of lading.

(3) *Declaration of owner or operator.* An authorized vessel or airline representative having knowledge of the facts shall complete the section ''Declaration of Master or Other Officer'' on Customs Form 7514.

(k) *Desire to land articles covered by notice of lading.* The master of the vessel or commander of the aircraft desiring to land in the United States articles covered by a notice of lading shall apply for a permit to land those articles under Customs supervision. All articles landed, except those transferred under the original notice of lading to another vessel or aircraft entitled to drawback, shall be considered imported merchandise for the purpose of § 309(c) of the Act, as amended (19 U.S.C. 1309(c)).

## Subpart L—Meats Cured With Imported Salt

### § 191.121 Drawback allowance.

Section 313(f) of the Act, as amended (19 U.S.C. 1313(f)), provides for the allowance of drawback upon the exportation of meats cured with imported salt.

### § 191.122 Procedure.

(a) *General.* Other provisions of this part relating to direct identification manufacturing drawback shall apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Customs form.* The forms used for other drawback claims shall be used and modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

### § 191.123 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than $100 and shall not be subject to the retention of 1 percent of duties paid.

## Subpart M—Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Ownership and Account

### § 191.131 Drawback allowance.

Section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), provides for drawback on imported materials used in the construction and equipment of vessels and aircraft built for foreign account and ownership, or for the government of any foreign country, notwithstanding that these vessels or aircraft may not be exported within the strict meaning of the term.

### § 191.132 Procedure.

Other provisions of this part relating to direct identification manufacturing drawback shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

### § 191.133 Explanation of terms.

(a) *Materials.* Section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), applies only to materials used in the original construction and equipment of vessels and aircraft, or to materials used in a ''major conversion'', as defined in this section, of a vessel or aircraft. Section 313(g) does not apply to materials used for alteration or repair, or to materials not required for safe operation of the vessel or aircraft.

(b) *Foreign account and ownership.* Foreign account and ownership, as used in § 313(g) of the Act, as amended (19 U.S.C. 1313(g)), means only vessels or aircraft built or equipped for the account of an owner or owners residing in a foreign country and having a bona fide intention that the vessel or aircraft, when completed, shall be owned and operated under the flag of a foreign country.

(c) *Major conversion.* For purposes of this subpart, a ''major conversion'' means a conversion that substantially changes the dimensions or carrying capacity of the vessel or aircraft, changes the type of the vessel or aircraft, substantially prolongs the life of the vessel or aircraft, or otherwise so changes

the vessel or aircraft that it is essentially a new vessel or aircraft, as determined by Customs (see 46 U.S.C. 2101(14a)).

## Subpart N—Foreign-Built Jet Aircraft Engines Processed in the United States

### § 191.141 Drawback allowance.

Section 313(h) of the Act, as amended (19 U.S.C. 1313(h)), provides for drawback on the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts.

### § 191.142 Procedure.

Other provisions of this part shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

### § 191.143 Drawback entry.

(a) *Filing of entry*. Drawback entries covering these foreign-built jet aircraft engines shall be filed on Customs Form 7551, modified to show that the entry covers jet aircraft engines processed under § 313(h) of the Act, as amended (19 U.S.C. 1313(h)).

(b) *Contents of entry*. The entry shall show the country in which each engine was manufactured and describe the processing performed thereon in the United States.

### § 191.144 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than $100, and shall not be subject to the deduction of 1 percent of duties paid.

## Subpart O—Merchandise Exported From Continuous Customs Custody

### § 191.151 Drawback allowance.

(a) *Eligibility of entered or withdrawn merchandise*—(1) *Under 19 U.S.C. 1557(a)*. Section 557(a) of the Act, as amended (19 U.S.C. 1557(a)), provides for drawback on the exportation to a foreign country, or the shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, of merchandise upon which duties have been paid which has remained continuously in bonded warehouse or otherwise in Customs custody for a period not to exceed 5 years from the date of importation.

(2) *Under 19 U.S.C. 1313*. Imported merchandise that has not been regularly entered or withdrawn for consumption, shall not satisfy any requirement for use, importation, exportation or destruction, and shall not be available for drawback, under § 313 of the Act, as amended (19 U.S.C. 1313) (see 19 U.S.C. 1313(u)).

(b) *Guantanamo Bay*. Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes under this subpart and merchandise shipped there is eligible for drawback. Imported merchandise which has remained continuously in bonded warehouse or otherwise in Customs custody since importation is not entitled to drawback of duty when shipped to Puerto Rico, Canton Island, Enderbury Island, or Palmyra Island.

### § 191.152 Merchandise released from Customs custody.

No remission, refund, abatement, or drawback of duty shall be allowed under this subpart because of the exportation or destruction of any merchandise after its release from Government custody, except in the following cases:

(a) When articles are exported or destroyed on which drawback is expressly provided for by law;

(b) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to statute and regulations prescribed by the Secretary of the Treasury; or

(c) When articles entered under bond are destroyed within the bonded period, as provided in § 557(c) of the Act, as amended (19 U.S.C. 1557(c)), or destroyed within the bonded period by death, accidental fire, or other casualty, and satisfactory evidence of destruction is furnished to Customs (see § 191.71), in which case any accrued duties shall be remitted or refunded and any condition in the bond that the articles shall be exported shall be deemed

to have been satisfied (see 19 U.S.C. 1558).

**§ 191.153 Continuous Customs custody.**

(a) *Merchandise released under an importer's bond and returned.* Merchandise released to an importer under a bond prescribed by § 142.4 of this chapter and later returned to the public stores upon requisition of the appropriate Customs office shall not be deemed to be in the continuous custody of Customs officers.

(b) *Merchandise released under Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS).* Merchandise released as provided for in Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202), shall not be deemed to be in the continuous custody of Customs officers.

(c) *Merchandise released from warehouse.* For the purpose of this subpart, in the case of merchandise entered for warehouse, Customs custody shall be deemed to cease when estimated duty has been deposited and the appropriate Customs office has authorized the withdrawal of the merchandise.

(d) *Merchandise not warehoused, examined elsewhere than in public stores*—(1) *General rule.* Except as stated in paragraph (d)(2) of this section, merchandise examined elsewhere than at the public stores, in accordance with the provisions of § 151.7 of this chapter, shall be considered released from Customs custody upon completion of final examination for appraisement.

(2) *Merchandise upon the wharf.* Merchandise which remains on the wharf by permission of the appropriate Customs office shall be considered to be in Customs custody, but this custody shall be deemed to cease when the Customs officer in charge accepts the permit and has no other duties to perform relating to the merchandise, such as measuring, weighing, or gauging.

**§ 191.154 Filing the entry.**

(a) *Direct export.* At least 6 working hours before lading the merchandise on which drawback is claimed under this subpart, the importer or the agent designated by him in writing shall file with the drawback office a direct export drawback entry on Customs Form 7551 in duplicate.

(b) *Merchandise transported to another port for exportation.* The importer of merchandise to be transported to another port for exportation shall file in triplicate with the drawback office an entry naming the transporting conveyance, route, and port of exit. The drawback office shall certify one copy and forward it to the Customs office at the port of exit. A bonded carrier shall transport the merchandise in accordance with the applicable regulations. Manifests shall be prepared and filed in the manner prescribed in § 144.37 of this chapter.

**§ 191.155 Merchandise withdrawn from warehouse for exportation.**

The regulations in part 18 of this chapter concerning the supervision of lading and certification of exportation of merchandise withdrawn from warehouse for exportation without payment of duty shall be followed to the extent applicable.

**§ 191.156 Bill of lading.**

(a) *Filing.* In order to complete the claim for drawback under this subpart, a bill of lading covering the merchandise described in the drawback entry (Customs Form 7551) shall be filed within 2 years after the merchandise is exported.

(b) *Contents.* The bill of lading shall either show that the merchandise was shipped by the person making the claim or bear an endorsement of the person in whose name the merchandise was shipped showing that the person making the claim is authorized to do so.

(c) *Limitation of the bill of lading.* The terms of the bill of lading may limit and define its use by stating that it is for Customs purposes only and not negotiable.

(d) *Inability to produce bill of lading.* When a required bill of lading cannot be produced, the person making the drawback entry may request the drawback office, within the time required for the filing of the bill of lading, to accept a statement setting forth the cause of failure to produce the bill of lading and such evidence of exportation and of his right to make the drawback entry as may be available. The request shall be granted if the drawback office

is satisfied by the evidence submitted that the failure to produce the bill of lading is justified, that the merchandise has been exported, and that the person making the drawback entry has the right to do so. If the drawback office is not so satisfied, such office shall transmit the request and its accompanying evidence to the Office of Field Operations, Customs Headquarters, for final determination.

(e) *Extracts of bills of lading.* Drawback offices may issue extracts of bills of lading filed with drawback claims.

### § 191.157 Landing certificates.

When required, a landing certificate shall be filed within the time prescribed in § 191.76 of this part.

### § 191.158 Procedures.

When the drawback claim has been completed and the bill of lading filed, together with the landing certificate, if required, the reports of inspection and lading made, and the clearance of the exporting conveyance established by the record of clearance in the case of direct exportation or by certificate in the case of transportation and exportation, the drawback office shall verify the importation by referring to the import records to ascertain the amount of duty paid on the merchandise exported. To the extent appropriate and not inconsistent with the provisions of this subpart, drawback entries shall be liquidated in accordance with the provisions of § 191.81 of this part.

### § 191.159 Amount of drawback.

Drawback due under this subpart shall not be subject to the deduction of 1 percent.

## Subpart P—Distilled Spirits, Wines, or Beer Which Are Unmerchantable or Do Not Conform to Sample or Specifications

### § 191.161 Refund of taxes.

Section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)), provides for the refund, remission, abatement or credit to the importer of internal-revenue taxes paid or determined incident to importation, upon the exportation, or destruction under Customs supervision, of imported distilled spirits, wines, or beer found after entry to be unmerchantable or not to conform to sample or specifications and which are returned to Customs custody.

### § 191.162 Procedure.

The export procedure shall be the same as that provided in § 191.42 except that the claimant must be the importer and as otherwise provided in this subpart.

### § 191.163 Documentation.

(a) *Entry.* Customs Form 7551 shall be used to claim drawback under this subpart.

(b) *Documentation.* The drawback entry for unmerchantable merchandise shall be accompanied by a certificate of the importer setting forth in detail the facts which cause the merchandise to be unmerchantable and any additional evidence that the drawback office requires to establish that the merchandise is unmerchantable.

### § 191.164 Return to Customs custody.

There is no time limit for the return to Customs custody of distilled spirits, wine, or beer subject to refund of taxes under the provisions of this subpart.

### § 191.165 No exportation by mail.

Merchandise covered by this subpart shall not be exported by mail.

### § 191.166 Destruction of merchandise.

(a) *Action by the importer.* A drawback claimant who proposes to destroy rather than export the distilled spirits, wine, or beer shall state that fact on Customs Form 7551.

(b) *Action by Customs.* Distilled spirits, wine, or beer returned to Customs custody at the place approved by the drawback office where the drawback entry was filed shall be destroyed under the supervision of the Customs officer who shall certify the destruction on Customs Form 7553.

### § 191.167 Liquidation.

No deduction of 1 percent of the internal revenue taxes paid or determined shall be made in allowing entries under § 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)).

### § 191.168 Time limit for exportation or destruction.

Merchandise not exported or destroyed within 90 days from the date of notification of acceptance of the drawback entry shall be considered unclaimed, unless upon written request by the importer, prior to the expiration of the 90-day period, the drawback office grants an extension of not more than 90 days.

## Subpart Q—Substitution of Finished Petroleum Derivatives

### § 191.171 General; drawback allowance.

(a) *General*. Section 313(p) of the Act, as amended (19 U.S.C. 1313(p)), provides for drawback on the basis of qualified articles which consist of either petroleum derivatives that are imported, duty-paid, and qualified for drawback under the unused merchandise drawback law (19 U.S.C. 1313(j)(1)), or petroleum derivatives that are manufactured or produced in the United States, and qualified for drawback under the manufacturing drawback law (19 U.S.C. 1313(a) or (b)).

(b) *Allowance of drawback*. Drawback may be granted under 19 U.S.C. 1313(p):

(1) In cases where there is no manufacture, upon exportation of the imported article, an article of the same kind and quality, or any combination thereof; or

(2) In cases where there is a manufacture or production, upon exportation of the manufactured or produced article, an article of the same kind and quality, or any combination thereof.

(c) *Merchandise processing fees*. In cases where the requirements of paragraph (b)(1) of this section have been met, merchandise processing fees will be eligible for drawback.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by T.D. 02–16, 67 FR 16637, Apr. 8, 2002; CBP Dec. 04–33, 69 FR 60083, Oct. 7, 2004]

### § 191.172 Definitions.

The following are definitions for purposes of this subpart only:

(a) *Qualified article*. ''Qualified article'' means an article described in headings 2707, 2708, 2710 through 2715, 2901, 2902, 2909.19.14, or 3901 through 3914 of the Harmonized Tariff Schedule of the United States (HTSUS). In the case of an article described in headings 3901 through 3914, the definition covers the article in its primary forms as provided in Note 6 to chapter 39 of the HTSUS.

(b) *Same kind and quality article*. ''Same kind and quality article'' means an article which is commercially interchangeable with, or which is referred to under the same 8-digit classification of the HTSUS as, the article to which it is compared. (For example, unleaded gasoline and jet fuel (naphtha or kerosene-type), both falling under the same HTSUS classification (2710.00.15) would be considered same kind and quality articles because they fall under the same 8 digit HTSUS classification, even though they are not ''commercially interchangeable''.)

(c) *Exported article*. ''Exported article'' means an article which has been exported and is the qualified article, an article of the same kind and quality as the qualified article, or any combination thereof.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by T.D. 02–16, 67 FR 16637, Apr. 8, 2002]

### § 191.173 Imported duty-paid derivatives (no manufacture).

When the basis for drawback under 19 U.S.C. 1313(p) is imported duty-paid petroleum derivatives (that is, not articles manufactured under 19 U.S.C. 1313(a) or (b)), the requirements for drawback are as follows:

(a) *Imported duty-paid merchandise*. The imported duty-paid merchandise designated for drawback must be a ''qualified article'' as defined in § 191.172(a) of this subpart;

(b) *Exported article*. The exported article on which drawback is claimed must be an ''exported article'' as defined in § 191.172(c) of this subpart;

(c) *Exporter*. The exporter of the exported article must have either:

(1) Imported the qualified article in at least the quantity of the exported article; or

(2) Purchased or exchanged (directly or indirectly) from an importer an imported qualified article in at least the quantity of the exported article;

(d) *Time of export*. The exported article must be exported within 180 days after the date of entry of the designated imported duty-paid merchandise; and

(e) *Amount of drawback*. The amount of drawback payable may not exceed the amount of drawback which would be attributable to the imported qualified article under 19 U.S.C. 1313(j)(1) which serves as the basis for drawback.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by T.D. 02–16, 67 FR 16637, Apr. 8, 2002]

### § 191.174 Derivatives manufactured under 19 U.S.C. 1313(a) or (b).

When the basis for drawback under 19 U.S.C. 1313(p) is petroleum derivatives which were manufactured or produced in the United States and qualify for drawback under the manufacturing drawback law (19 U.S.C. 1313(a) or (b)), the requirements for drawback are as follows:

(a) *Merchandise*. The merchandise which is the basis for drawback under 19 U.S.C. 1313(p) must:

(1) Have been manufactured or produced as described in 19 U.S.C. 1313(a) or (b) from crude petroleum or a petroleum derivative; and

(2) Be a ''qualified article'' as defined in § 191.172(a) of this subpart;

(b) *Exported article*. The exported article on which drawback is claimed must be an ''exported article'' as defined in § 191.172(c) of this subpart;

(c) *Exporter*. The exporter of the exported article must have either:

(1) Manufactured or produced the qualified article in at least the quantity of the exported article; or

(2) Purchased or exchanged (directly or indirectly) from a manufacturer or producer described in 19 U.S.C. 1313(a) or (b) the qualified article in at least the quantity of the exported article;

(d) *Manufacture in specific facility*. The qualified article must have been manufactured or produced in a specific petroleum refinery or production facility which must be identified;

(e) *Time of export*. The exported article must be exported either:

(1) During the period provided for in the manufacturer's or producer's specific manufacturing drawback ruling (see § 191.8 of this part) in which the qualified article is manufactured or produced; or

(2) Within 180 days after the close of the period in which the qualified article is manufactured or produced; and

(f) *Amount of drawback*. The amount of drawback payable may not exceed the amount of drawback which would be attributable to the article manufactured or produced under 19 U.S.C. 1313(a) or (b) which serves as the basis for drawback.

### § 191.175 Drawback claimant; maintenance of records.

(a) *Drawback claimant*. A drawback claimant under 19 U.S.C. 1313(p) must be the exporter of the exported article, or the refiner, producer, or importer of either the qualified article or the exported article. Any of these persons may designate another person to file the drawback claim.

(b) *Certificate of manufacture and delivery or delivery*—(1) *General*. A drawback claimant under 19 U.S.C. 1313(p) must provide a certificate of manufacture and delivery or a certificate of delivery, as applicable, establishing the drawback eligibility of the articles for which drawback is claimed.

(2) *Article substituted for the qualified article*. (i) Subject to paragraph (b)(2)(iii) of this section, the manufacturer, producer, or importer of a qualified article may transfer to the exporter an article of the same kind and quality as the qualified article, as so certified, respectively, in a certificate of manufacture and delivery or a certificate of delivery, in a quantity not greater than the quantity of the qualified article.

(ii) Subject to paragraph (b)(2)(iii) of this section, any intermediate party in the chain of commerce leading to the exporter from the manufacturer, producer, or importer of a qualified article may also transfer to the exporter or to another intermediate party an article

of the same kind and quality as the article purchased or exchanged from the prior transferor (whether the manufacturer, producer, importer, or another intermediate transferor), as so certified in a certificate of delivery, in a quantity not greater than the quantity of the article purchased or exchanged.

(iii) Under either paragraph (b)(2)(i) or (b)(2)(ii) of this section, the article transferred, regardless of its origin (imported, manufactured, substituted, or any combination thereof), so designated on a certificate of delivery or, in the case of the manufacturer or producer of a qualified article under 19 U.S.C. 1313(a) or (b), on a certificate of manufacture and delivery, will be the qualified article eligible for drawback for purposes of section 1313(p), provided that the following conditions are met:

(A) The party who issues the applicable certificate for the transferred article must expressly state on the certificate that the certificate is prepared pursuant to 19 U.S.C. 1313(p) (the article may not be designated for any other drawback purposes);

(B) The party must certify to the Commissioner of Customs on the certificate or an attachment that it has not, and will not, designate on that certificate and on any other such certificates issued a quantity of the article greater than the amount eligible for drawback; and

(C) The party must certify to the Commissioner of Customs on the applicable certificate or on an attachment that it will maintain appropriate records which establish that it has not designated on any such certificates issued a greater quantity than the amount eligible for drawback.

(c) *Maintenance of records*. The manufacturer, producer, importer, transferor, exporter and drawback claimant of the qualified article and the exported article must all maintain their appropriate records required by this part.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by T.D. 02–16, 67 FR 16637, Apr. 8, 2002]

### § 191.176 Procedures for claims filed under 19 U.S.C. 1313(p).

(a) *Applicability*. The general procedures for filing drawback claims shall be applicable to claims filed under 19 U.S.C. 1313(p) unless otherwise specifically provided for in this section.

(b) *Administrative efficiency, frequency of claims, and restructuring of claims*. The procedures regarding administrative efficiency, frequency of claims, and restructuring of claims (as applicable, see § 191.53 of this part) shall apply to claims filed under this subpart.

(c) *Imported duty-paid derivatives (no manufacture)*. When the basis for drawback under 19 U.S.C. 1313(p) is imported duty-paid petroleum (not articles manufactured under 19 U.S.C. 1313(a) or (b)), claims under this subpart may be paid and liquidated if:

(1) The claim is filed on Customs Form 7551; and

(2) The claimant provides a certification stating the basis (such as company records, or customer's written certification), for the information contained therein and certifying that:

(i) The exported merchandise was exported within 180 days of entry of the designated, imported merchandise;

(ii) The qualified article and the exported article are commercially interchangeable or both articles are subject to the same 8-digit HTSUS tariff classification;

(iii) To the best of the claimant's knowledge, the designated imported merchandise, the qualified article and the exported article have not and will not serve as the basis of any other drawback claim;

(iv) Evidence in support of the certification will be retained by the person providing the certification for 3 years after payment of the claim; and

(v) Such evidence will be available for verification by Customs.

(d) *Derivatives manufactured under 19 U.S.C. 1313(a) or (b)*. When the basis for drawback under 19 U.S.C. 1313(p) is articles manufactured under 19 U.S.C. 1313(a) or (b), claims under this section may be paid and liquidated if:

(1) The claim is filed on Customs Form 7551;

(2) All documents required to be filed with a manufacturing claim under 19 U.S.C. 1313(a) or (b) are filed with the claim;

(3) The claim identifies the specific refinery or production facility at which

the derivatives were manufactured or produced;

(4) The claim states the period of manufacture for the derivatives; and

(5) The claimant provides a certification stating the basis (such as company records or a customer's written certification), for the information contained therein and certifying that:

(i) The exported merchandise was exported during the manufacturing period for the qualified article or within 180 days after the close of that period;

(ii) The qualified article and the exported article are commercially interchangeable or both articles are subject to the same 8-digit HTSUS tariff classification;

(iii) To the best of the claimant's knowledge, the designated imported merchandise, the qualified article and the exported article have not and will not serve as the basis of any other drawback claim;

(iv) Evidence in support of the certification will be retained by the person providing the certification for 3 years after payment of the claim; and

(v) Such evidence will be available for verification by Customs.

## Subpart R—Merchandise Transferred to a Foreign Trade Zone From Customs Territory

### § 191.181 Drawback allowance.

The fourth proviso of § 3 of the Foreign Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c), provides for drawback on merchandise transferred to a foreign trade zone for the sole purpose of exportation, storage or destruction (except destruction of distilled spirits, wines, and fermented malt liquors), provided there is compliance with the regulations of this subpart.

### § 191.182 Zone-restricted merchandise.

Merchandise in a foreign trade zone for the purposes specified in § 191.181 shall be given status as zone-restricted merchandise on proper application (see § 146.44 of this chapter).

### § 191.183 Articles manufactured or produced in the United States.

(a) *Procedure for filing documents.* Except as otherwise provided, the drawback procedures prescribed in this part shall be followed as applicable to drawback under this subpart on articles manufactured or produced in the United States with the use of imported or substituted merchandise, and on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced with the use of domestic tax-paid alcohol.

(b) *Notice of transfer*—(1) *Evidence of export.* The notice of zone transfer on Customs Form 214 shall be in place of the documents under subpart G of this part to establish the exportation.

(2) *Filing procedures.* The notice of transfer, in triplicate, shall be filed with the drawback office where the foreign trade zone is located prior to the transfer of the articles to the zone, or within 3 years after the transfer of the articles to the zone. A notice filed after the transfer shall state the foreign trade zone lot number.

(3) *Contents of notice.* Each notice of transfer shall show the:

(i) Number and location of the foreign trade zone;

(ii) Number and kind of packages and their marks and numbers;

(iii) Description of the articles, including weight (gross and net), gauge, measure, or number; and

(iv) Name of the transferor.

(c) *Action of foreign trade zone operator.* After articles have been received in the zone, the zone operator shall certify on a copy of the notice of transfer the receipt of the articles (see § 191.184(d)(2)) and forward the notice to the transferor or the person designated by the transferor, unless the export summary procedure, provided for in § 191.73, is used. If the export summary procedure is used, the requirements in § 191.73 shall be complied with, as applicable. The transferor shall verify that the notice has been certified before filing it with the drawback claim.

(d) *Drawback entries.* Drawback entries shall be filed on Customs Form 7551 to indicate that the merchandise was transferred to a foreign trade zone. The ''Declaration of Exportation'' shall be modified as follows:

Declaration of Transfer to a Foreign Trade Zone

I,_____ _____
(member of firm, officer representing corporation, agent, or attorney), of

_____, declare that, to the best of my knowledge and belief, the particulars of transfer stated in this entry, the notices of transfer, and receipts are correct, and that the merchandise was transferred to a foreign trade zone for the sole purpose of exportation, destruction, or storage, not to be removed from the foreign trade zone for domestic consumption.

Dated: _____

_____

Transferor or agent

**§ 191.184 Merchandise transferred from continuous Customs custody.**

(a) *Procedure for filing claims.* The procedure described in subpart O of this part shall be followed as applicable, for drawback on merchandise transferred to a foreign trade zone from continuous Customs custody.

(b) *Drawback entry.* Before the transfer of merchandise from continuous Customs custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the drawback office a direct export drawback entry on Customs Form 7551 in duplicate. The drawback office shall forward one copy of Customs Form 7551 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator shall certify on the copy of Customs Form 7551 the receipt of the merchandise (see paragraph (d)(2) of this section) and forward the form to the transferor or the person designated by the transferor, unless the export summary procedure, provided for in § 191.73, is used. If the export summary procedure is used, the requirements in § 191.73 shall be complied with, as applicable. After executing the declaration provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 7551 to the drawback office in place of the bill of lading required by § 191.156.

(d) *Modification of drawback entry*—(1) *Indication of transfer.* Customs Form 7551 shall indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor shall endorse Customs Form 7551 as follows, for execution by the foreign trade zone operator:

Certification of Foreign Trade Zone Operator

The merchandise described in the entry was received from _____ on _____, 19___; in Foreign Trade Zone No._____,
(City and State)
Exceptions _____ _____
(Name and title)
By _____ _____
(Name of operator)

(3) *Transferor's declaration.* The transferor shall declare on Customs Form 7551 as follows:

Transferor's Declaration

I, _____ _____
of the firm of_____, declare that the merchandise described in this entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. _____, located at _____, (City and State) for the sole purpose of exportation, destruction, or storage, not to be removed from the foreign trade zone for domestic consumption. I further declare that to the best of my knowledge and belief, this merchandise is in the same quantity, quality, value, and package, unavoidable wastage and damage excepted, as it was at the time of importation; that no allowance nor reduction of duties has been made for damage or other cause except as specified in this entry; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated: _____
(Transferor)

**§ 191.185 Unused merchandise drawback and merchandise not conforming to sample or specification, shipped without consent of the consignee, or found to be defective as of the time of importation.**

(a) *Procedure for filing claims.* The procedures described in subpart C of this part relating to unused merchandise drawback, and in subpart D of this part relating to rejected merchandise, shall be followed as applicable to drawback under this subpart for unused merchandise drawback and merchandise that does not conform to sample or specification, is shipped without consent of the consignee, or is found to be defective as of the time of importation.

(b) *Drawback entry.* Before transfer of the merchandise to a foreign trade

zone, the importer or a person designated in writing by the importer for that purpose shall file with the drawback office an entry on Customs Form 7551 in duplicate. The drawback office shall forward one copy of Customs Form 7551 to the zone operator at the zone.

(c) *Certification by zone operator*. After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 7551 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor, unless the export summary procedure, provided for in § 191.73, is used. If the export summary procedure is used, the requirements in § 191.73 shall be complied with, as applicable. After executing the declaration provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 7551 to the drawback office in place of the bill of lading required by § 191.156.

(d) *Modification of drawback entry*—(1) *Indication of transfer*. Customs Form 7551 shall indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement*. The transferor or person designated by the transferor shall endorse Customs Form 7551 as follows, for execution by the foreign trade zone operator:

Certification of Foreign Trade Zone Operator

The merchandise described in this entry was received from _____ on _____, 19 ___, in Foreign Trade Zone No. _____, _____ (City and State).
Exceptions: _____
_____
_____
(Name of operator)
By _____
(Name and title)

(3) *Transferor's declaration*. The transferor shall declare on Customs Form 7551 as follows:

Transferor's Declaration

I, _____ _____ of the firm of _____, declare that the merchandise described in the within entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. _____, located at_____ (City and State) for the sole purpose of exportation, destruction, or storage, not to be removed from the foreign trade zone for domestic consumption. I further declare that to the best of my knowledge and belief, said merchandise is the same in quantity, quality, value, and package as specified in this entry; that no allowance nor reduction in duties has been made; and that no part of the duties paid has been refunded by drawback or otherwise.
Dated: _____
Transferor

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15289, Mar. 31, 1998]

### § 191.186 Person entitled to claim drawback.

The person named in the foreign trade zone operator's certification on the notice of transfer or the drawback entry, as applicable, shall be considered to be the transferor. Drawback may be claimed by, and paid to, the transferor.

## Subpart S—Drawback Compliance Program

### § 191.191 Purpose.

This subpart sets forth the requirements for the Customs drawback compliance program in which claimants and other parties in interest, including Customs brokers, may participate after being certified by Customs. Participation in the program is voluntary. Under the program, Customs is required to inform potential drawback claimants and related parties clearly about their rights and obligations under the drawback law and regulations. Reduced penalties and/or warning letters may be issued once a party has been certified for the program, and is in general compliance with the appropriate procedures and requirements thereof.

### § 191.192 Certification for compliance program.

(a) *General*. A party may be certified as a participant in the drawback compliance program after meeting the core requirements established under the program, or after negotiating an alternative drawback compliance program suited to the needs of both the party and Customs. Certification requirements shall take into account the size

and nature of the party's drawback program, the type of drawback claims filed, and the volume of claims filed. Whether the party is a drawback claimant, a broker, or one that provides data and documentation on which a drawback claim is based, will also be considered.

(b) *Core requirements of program.* In order to be certified as a participant in the drawback compliance program or negotiated alternative drawback compliance program, the party must be able to demonstrate that it:

(1) Understands the legal requirements for filing claims, including the nature of the records that are required to be maintained and produced and the time periods involved;

(2) Has in place procedures that explain the Customs requirements to those employees involved in the preparation of claims, and the maintenance and production of required records;

(3) Has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to Customs;

(4) Has designated a dependable individual or individuals who will be responsible for compliance under the program, and maintenance and production of required records;

(5) Has in place a record maintenance program approved by Customs regarding original records, or if approved by Customs, alternative records or recordkeeping formats for other than the original records; and

(6) Has procedures for notifying Customs of variances in, or violations of, the drawback compliance or other alternative negotiated drawback compliance program, and for taking corrective action when notified by Customs of violations and problems regarding such program.

(c) *Broker certification.* A Customs broker may be certified as a participant in the drawback compliance program only on behalf of a given claimant (see §191.194(b)). To do so, a Customs broker who is employed to assist a claimant in filing for drawback must be able to demonstrate, for and on behalf of such claimant, conformity with the core requirements of the drawback compliance program as set forth in paragraph (b) of this section. The broker shall ensure that the claimant has the necessary documentation and records to support the drawback compliance program established on its behalf, and that claims to be filed under the program are reviewed by the broker for accuracy and completeness.

**§ 191.193 Application procedure for compliance program.**

(a) *Who may apply.* Claimants and other parties in interest may apply for participation in the drawback compliance program. This includes any person, corporation or business entity that provides supporting information or documentation to one who files drawback claims, as well as Customs brokers who assist claimants in filing for drawback. Program participants may further consist of importers, manufacturers or producers, agent-manufacturers, complementary recordkeepers, subcontractors, intermediate parties, and exporters.

(b) *Place of filing.* An application in letter format containing the information as prescribed in paragraphs (c) and (d) of this section shall be submitted to any drawback office. However, in the event the applicant is a claimant for drawback, the application shall be submitted to the drawback office where the claims will be filed.

(c) *Letter of application; contents.* A party requesting certification to become a participant in the drawback compliance program shall file with the applicable drawback office a written application in letter format, signed by an authorized individual (see §191.6(c) of this part). The detail required in the application shall take into account the size and nature of the applicant's drawback program, the type of drawback claims filed, and the dollar value and volume of claims filed. However, the application shall contain at least the following information:

(1) Name of applicant, address, IRS number (with suffix), and the type of business in which engaged, as well as the name(s) of the individual(s) designated by the applicant to be responsible for compliance under the program;

(2) A description of the nature of the applicant's drawback program, including the type of drawback in which involved (such as, manufacturing, or unused or rejected merchandise), and the applicant's particular role(s) in the drawback claims process (such as claimant and/or importer, manufacturer or producer, agent-manufacturer, complementary recordkeeper, subcontractor, intermediate party (possessor or purchaser), or exporter (destroyer)); and

(3) Size of applicant's drawback program. (For example, if the applicant is a claimant, the number of claims filed over the previous 12-month period should be included, along with the number estimated to be filed over the next 12-month period, and the estimated amount of drawback to be claimed annually. Other parties should describe the extent to which they are involved in drawback activity, based upon their particular role(s) in the drawback process; for example, manufacturers should explain how much manufacturing they are engaged in for drawback, such as the quantity of drawback product produced on an annual basis, as established by the certificates of manufacture and delivery they have executed.)

(d) *Application package*. Along with the letter of application as prescribed in paragraph (c) of this section, the application package must include a description of how the applicant will ensure compliance with statutory and regulatory drawback requirements. This description may be in the form of a booklet or set forth otherwise. The description must include at least the following:

(1) The name and title of the official in the applicant's organization who is responsible for oversight of the applicant's drawback program, and the name and title, with mailing address and, if available, fax number and e-mail address, of the person[s] in the applicant's organization responsible for the actual maintenance of the applicant's drawback program;

(2) If the applicant is a manufacturer and the drawback involved is manufacturing drawback, a copy of the letter of notification of intent to operate under a general manufacturing drawback ruling or the application for a specific manufacturing drawback ruling (see §§ 191.7 and 191.8 of this part), as appropriate;

(3) A description of the applicant's drawback record-keeping program, including the retention period and method (for example, paper, electronic, etc.);

(4) A list of the records that will be maintained, including at least sample import documents, sample export documents, sample inventory and transportation documents (if applicable), sample laboratory or other documents establishing the qualification of merchandise or articles for substitution under the drawback law (if applicable), and sample manufacturing documents (if applicable);

(5) A description of the applicant's specific procedures for:

(i) How drawback claims are prepared (if the applicant is a claimant); and

(ii) How the applicant will fulfill any requirements under the drawback law and regulations applicable to its role in the drawback program;

(6) A description of the applicant's procedures for notifying Customs of variances in, or violations of, its drawback compliance program or negotiated alternative drawback compliance program, and procedures for taking corrective action when notified by Customs of violations or other problems in such program; and

(7) A description of the applicant's procedures for annual review to ensure that its drawback compliance program meets the statutory and regulatory drawback requirements and that Customs is notified of any modifications from the procedures described in this application.

### § 191.194 Action on application to participate in compliance program.

(a) *Review by applicable drawback office*—(1) *General*. It is the responsibility of the drawback office where the drawback compliance application package is filed to coordinate its decision making on the package both with Customs Headquarters and with the other field drawback offices as appropriate. Customs processing of the package will consist of the review of the information contained therein as well as any

additional information requested (see paragraph (a)(2) of this section).

(2) *Criteria for Customs review.* The drawback office shall review and verify the information submitted in and with the application. In order for Customs to evaluate the application, Customs may request additional information (including additional sample documents) and/or explanations of any of the information provided for in § 191.193(c) and (d) of this subpart. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with Customs, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with Customs shall include (as applicable):

(i) The presence or absence of unresolved Customs charges (duties, taxes, or other debts owed Customs);

(ii) The accuracy of the claimant's past drawback claims; and

(iii) Whether accelerated payment of drawback or waiver of prior notice of intent to export was previously revoked or suspended.

(b) *Approval.* Certification as a participant in the drawback compliance program will be given to applicants whose applications are approved under the criteria in paragraph (a)(2) of this section. The applicable drawback office will give written notification to an applicant of its certification as a participant in the drawback compliance program. A Customs broker obtaining certification for a drawback claimant will be sent written notification on behalf of such claimant, with a copy of the notification also being sent to the claimant.

(c) *Benefits of participation in program.* When a party that has been certified as a participant in the drawback compliance program and is generally in compliance with the appropriate procedures and requirements of the program commits a violation of 19 U.S.C. 1593a(a) (see § 191.62(b) of this part), Customs shall, in the absence of fraud or repeated violations, and in lieu of a monetary penalty as otherwise provided under § 1593a, issue a written notice of the violation to the party. Repeated violations by a participant, including a Customs broker, may result in the issuance of penalties and the removal of certification under the program until corrective action, satisfactory to Customs, is taken.

(d) *Denial.* If certification as a participant in the drawback compliance program is denied to an applicant, the applicant shall be given written notice by the applicable drawback office, specifying the grounds for such denial, together with any action that may be taken to correct the perceived deficiencies, and informing the applicant that such denial may be appealed to the appropriate drawback office and then appealed to Customs Headquarters.

(e) *Certification removal*—(1) *Grounds for removal.* The certification for participation in the drawback compliance program by a party may be removed when any of the following conditions are discovered:

(i) The certification privilege was obtained through fraud or mistake of fact;

(ii) The program participant is no longer in compliance with the Customs laws and regulations, including the requirements set forth in § 191.192;

(iii) The program participant repeatedly files false drawback claims or false or misleading documentation or other information relating to such claims; or

(iv) The program participant is convicted of any felony or has committed acts which would constitute a misdemeanor or felony involving theft, smuggling, or any theft-connected crime.

(2) *Removal procedure.* If Customs determines that the certification of a program participant should be removed, the applicable drawback office will serve the program participant with written notice of the removal. Such notice will inform the program participant of the grounds for the removal and will advise the program participant of its right to file an appeal of the removal in accordance with paragraph (f) of this section.

(3) *Effect of removal.* The removal of certification will be effective immediately in cases of willfulness on the part of the program participant or

when required by public health, interest, or safety. In all other cases, the removal of certification will be effective when the program participant has received notice under paragraph (e)(2) of this section and either no appeal has been filed within the time limit prescribed in paragraph (f)(2) of this section or all appeal procedures have been concluded by a decision that upholds the removal action. Removal of certification may subject the affected person to penalties.

(f) *Appeal of certification denial or removal*—(1) *Appeal of certification denial.* A party may challenge a denial of an application for certification as a participant in the drawback compliance program by filing a written appeal, within 30 days of issuance of the notice of denial, with the applicable drawback office. A denial of an appeal may itself be appealed to Customs Headquarters, Office of Field Operations, Office of Trade Programs, within 30 days after issuance of the applicable drawback office's appeal decision. Customs Headquarters will review the appeal and will respond with a written decision within 30 days after receipt of the appeal unless circumstances require a delay in issuance of the decision. If the decision cannot be issued within the 30-day period, Customs Headquarters will advise the appellant of the reasons for the delay and of any further actions which will be carried out to complete the appeal review and of the anticipated date for issuance of the appeal decision.

(2) *Appeal of certification removal.* A party who has received a Customs notice of removal of certification for participation in the drawback compliance program may challenge the removal by filing a written appeal, within 30 days after issuance of the notice of removal, with the applicable drawback office. A denial of an appeal may itself be appealed to Customs Headquarters, Office of Field Operations, Office of Trade Programs, within 30 days after issuance of the applicable drawback office's appeal decision. Customs Headquarters will consider the allegations upon which the removal was based and the responses made to those allegations by the appellant and will render a written decision on the appeal within 30 days after receipt of the appeal.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by T.D. 00–5, 65 FR 3812, Jan. 25, 2000]

### § 191.195 Combined application for certification in drawback compliance program and waiver of prior notice and/or approval of accelerated payment of drawback.

An applicant for certification in the drawback compliance program may also, in the same application, apply for waiver of prior notice of intent to export and accelerated payment of drawback, under subpart I of this part. Alternatively, an applicant may separately apply for certification in the drawback compliance program and either or both waiver of prior notice and accelerated payment of drawback. In the former instance, the intent to apply for certification and waiver of prior notice and/or approval of accelerated payment of drawback must be clearly stated. In all instances, all of the requirements for certification and the procedure applied for must be met (for example, in a combined application for certification in the drawback compliance program and both procedures, all of the information required for certification and each procedure, all required sample documents for certification and each procedure, and all required certifications must be included in and with the application).

## APPENDIX A TO PART 191—GENERAL MANUFACTURING DRAWBACK RULINGS

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XIV. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Woven Piece Goods (T.D. 83–84)

## I. General Instructions

A. There follow various general manufacturing drawback rulings which have been designed to simplify drawback procedures. Any person who can comply with the conditions of any one of these rulings may notify a Customs drawback office in writing of its intention to operate under the ruling (see §191.7 of this part). Such a letter of notification shall include the following information:

1. Name and address of manufacturer or producer;
2. IRS (Internal Revenue Service) number (with suffix) of manufacturer or producer;
3. Location[s] of factory[ies] which will operate under the general ruling;
4. If a business entity, names of persons who will sign drawback documents (see §191.6 of this part);
5. Identity (by T.D. number and title, as stated in this Appendix) of general manufacturing drawback ruling under which the manufacturer or producer intends to operate;
6. Description of the merchandise and articles, unless specifically described in the general manufacturing drawback ruling;
7. Only for General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Petroleum or Petroleum Derivatives, the name of each article to be exported or, if the identity of the product is not clearly evident by its name, what the product is, and the abstract period to be used for each refinery (monthly or other specified period (not to exceed 1 year)), subject to the conditions in the General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Petroleum or Petroleum Derivatives, I. Procedures and Records Maintained, 4(a) or (b);
8. Basis of claim used for calculating drawback; and
9. Description of the manufacturing or production process, unless specifically described in the general manufacturing drawback ruling.

For the General Manufacturing Drawback Ruling under §1313(a), the General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Component Parts, and the General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) or 1313(b) for Agents, if the drawback office has doubts as to whether there is a manufacture or production, as defined in §191.2(q) of this part, the manufacturer or producer will be asked to provide details of the operation purported to be a manufacture or production.

B. These general manufacturing drawback rulings supersede general ''contracts'' previously published under the following Treasury Decisions (T.D.'s): 81–74, 81–92, 81–181, 81–234, 81–300, 83–53, 83–59, 83–73, 83–77, 83–80, 83–84, 83–123, 84–49, and 85–110.

Anyone currently operating under any of the above-listed Treasury Decisions will automatically be covered by the superseding general ruling, including all privileges of the previous ''contract''.

## II. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) (T.D. 81–234; T.D. 83–123)

### A. Imported Merchandise or Drawback Products[1] Used

Imported merchandise or drawback products are used in the manufacture of the exported articles upon which drawback claims will be based.

### B. Exported Articles on which Drawback will be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

### C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (see §191.9 of this part).

### D. Process Of Manufacture Or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with §191.2(q) of this part.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

E. Multiple Products

1. Relative Values

Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. If multiple products are produced records will be maintained of the market value of each product at the time it is first separated in the manufacturing process.

2. Appearing-in method

The appearing in basis may not be used if multiple products are produced.

F. Loss or Gain

Records will be maintained showing the extent of any loss or gain in net weight or measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

G. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that is of the same kind and quality as the imported merchandise, meeting specifications set forth in the application by the manufacturer or producer for a determination of same kind and quality (see §191.11(c)), shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings (see 19 CFR 191.11).

H. Stock In Process

Stock in process does not result; or if it does result, details will be given in claims as filed, and it will not be included in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.

I. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

J. Procedures And Records Maintained

Records will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise, and

2. The quantity of imported merchandise[2] used in producing the exported articles.

(To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance).

K. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 191 of the Customs Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

L. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles less the amount of that merchandise which the value of the waste would replace.

M. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9)

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this general ruling.

III. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(a) OR 1313(b) FOR AGENTS (T.D. 81–181)

Manufacturers or producers operating under this general manufacturing drawback ruling must comply with T.D.s 55027(2), 55207(1), and 19 U.S.C. 1313(b), if applicable, as well as 19 CFR part 191 (see particularly, §191.9).

A. Name and Address of Principal

B. Process of Manufacture or Production

The imported merchandise or drawback products or other substituted merchandise will be used to manufacture or produce articles in accordance with §191.2(q) of this part.

C. Procedures and Records Maintained

Records will be maintained to establish:

1. Quantity, kind and quality of merchandise transferred from the principal to the agent;

2. Date of transfer of the merchandise from the principal to the agent;

3. Date of manufacturing or production operations performed by the agent;

4. Total quantity and description of merchandise appearing in or used in manufacturing or production operations performed by the agent;

5. Total quantity and description of articles produced in manufacturing or production operations performed by the agent;

6. Quantity, kind and quality of articles transferred from the agent to the principal; and

7. Date of transfer of the articles from the agent to the principal.

D. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when manufacturing or producing articles for account of the principal under the principal's general manufacturing drawback ruling or specific manufacturing drawback ruling, as appropriate;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates the claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this general ruling.

IV. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(a) FOR BURLAP OR OTHER TEXTILE MATERIAL (T.D. 83–53)

Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of bags or meat wrappers manufactured with the use of imported burlap or other textile material, subject to the following special requirements:

A. Imported Merchandise or Drawback Products[1] Used

Imported merchandise or drawback products (burlap or other textile material) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (see §191.9 of this part).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with §191.2(q) of this part.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

E. Multiple Products

Not applicable.

F. Loss or Gain

Not applicable.

G. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

H. Procedures and Records Maintained

Records will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and

2. The quantity of imported merchandise[2] used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 191 of the Customs Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

Each lot of imported material received by a manufacturer or producer shall be given a lot number and kept separate from other lots until used. The records of the manufacturer or producer shall show, as to each manufacturing lot or period of manufacture, the quantity of material used from each import lot and the number of each kind and size of bags or meat wrappers obtained. If applicable, a certificate of manufacture and delivery shall be filed covering each manufacturing lot or period of manufacture.

All bags or meat wrappers manufactured or produced for the account of the same exporter during a specified period may be designated as one manufacturing lot and, as applicable, covered by one certificate of manufacture and delivery. All exported bags or meat wrappers shall be identified by the exporter with the certificate of manufacture and delivery covering their manufacture, if applicable.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace.

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation.

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with 19, United States Code, §1313, part 191 of the Customs Regulations and this general ruling.

V. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(b) FOR COMPONENT PARTS (T.D. 81–300)

A. SAME KIND AND QUALITY (PARALLEL COLUMNS)

| Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products. | Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products. |
|---|---|
| Component parts identified by individual part numbers. | Component parts identified with the same individual part numbers as those in the column immediately to the left hereof. |

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The designated components will have been manufactured in accordance with the same specifications and from the same materials, and identified by the same part number as the substituted components. Further, the designated and substituted components are used interchangeably in the manufacture of the exported articles upon which drawback will be claimed. Specifications or drawings will be maintained and made available for Customs officers. The imported merchandise designated on drawback claims will be so similar to the merchandise used in producing the exported articles on which drawback is claimed that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise. Fluctuations in market value resulting from factors other than quality will not affect the drawback.

B. Exported Articles on Which Drawback Will Be Claimed

The exported articles will have been manufactured in the United States using components described in the parallel columns above.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1) (see §191.9 of this part).

D. Process of Manufacture or Production

The components described in the parallel columns will be used to manufacture or produce articles in accordance with §191.2(q) of this part.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

E. Multiple Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of components appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

G. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

H. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] used to produce the exported articles;

3. That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used the merchandise to produce articles. During the same 3-year period, the manufacturer or producer produced[3] the exported articles. To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of eligible components used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible components that appear in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible components used to produce the exported articles less the amount of those components which the value of the waste would replace.

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this general ruling.

VI. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(a) FOR FLAXSEED (T.D. 83–80)

Drawback may be allowed under the provision of 19 U.S.C. 1313(a) upon the exportation of linseed oil, linseed oil cake, and linseed oil meal, manufactured or produced with the use of imported flaxseed, subject to the following special requirements:

A. Imported Merchandise or Drawback Products[1] Used

Imported merchandise or drawback products (flaxseed) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1) (see § 191.9 of this part).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 191.2(q) of this part.

E. Multiple Products

Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. If multiple products are produced records will be maintained of the market value of each product at the time it is first separated in the manufacturing process (when a claim covers a manufacturing period, the entire period covered by the claim is the time of separation of the products and the value per unit of product is the market value for the period (see §§ 191.2(u), 191.22(e)). The ''appearing in'' basis may not be used if multiple products are produced.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

F. Loss or Gain

Records will be maintained showing the extent of any loss or gain in net weight or measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

G. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

H. Procedures and Records Maintained

Records will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and

2. The quantity of imported merchandise[2] used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 191 of the Customs Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

The inventory records of the manufacturer or producer shall show the inclusive dates of manufacture; the quantity, identity, and value of the imported flaxseed or screenings, scalpings, chaff, or scourings used; the quantity by actual weight and value, if any, of the material removed from the foregoing by screening prior to crushing; the quantity and kind of domestic merchandise added, if any; the quantity by actual weight or gauge and value of the oil, cake, and meal obtained; and the quantity and value, if any, of the waste incurred. The quantity of imported flaxseed, screenings, scalpings, chaff, or scourings used or of material removed shall not be estimated nor computed on the basis of the quantity of finished products obtained, but shall be determined by actually weighing the said flaxseed, screenings, scalpings, chaff, scourings, or other material; or, at the option of the crusher, the quantities of imported materials used may be determined from Customs weights, as shown by the import entry covering such imported materials, and the Government weight certificate of analysis issued at the time of entry. The entire period covered by an abstract shall be deemed the time of separation of the oil and cake covered thereby.

If the records of the manufacturer or producer do not show the quantity of oil cake used in the manufacture or production of the exported oil meal and the quantity of oil meal obtained, the net weight of the oil meal exported shall be regarded as the weight of the oil cake used in the manufacture thereof.

If various tanks are used for the storage of imported flaxseed, the mill records shall establish the tank or tanks in which each lot or cargo is stored. If raw or processed oil manufactured or produced during different periods of manufacture is intermixed in storage, a record shall be maintained showing the quantity, identity, and kind of oil so intermixed. Identity of merchandise or articles in either instance shall be in accordance with §191.14 of this part.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace.

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation.

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with 19, United States Code, §1313, part 191 of the Customs Regulations and this general ruling.

VII. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(a) FOR FUR SKINS OR FUR SKIN ARTICLES (T.D. 83–77)

Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of dressed, redressed, dyed, redyed, bleached, blended, or striped fur skins or fur skin articles manufactured or produced by any one or a combination of the foregoing processes with the use of fur skins or fur skin articles, such as plates, mats, sacs, strips, and crosses, imported in a raw, dressed, or dyed condition, subject to the following special requirements:

A. Imported Merchandise or Drawback Products[1] Used

Imported merchandise or drawback products (fur skins or fur skin articles) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (see §191.9 of this part).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with §191.2(q) of this part.

Drawback shall not be allowed under this general manufacturing drawback ruling when the process performed results only in the restoration of the merchandise to its condition at the time of importation.

E. Multiple Products

Not applicable.

F. Loss or Gain

Records will be maintained showing the extent of any loss or gain in net weight or measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

G. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

H. Procedures and Records Maintained

Records will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and

2. The quantity of imported merchandise[2] used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 191 of the Customs Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

The records of the manufacturer or producer shall show, as to each lot of fur skins and/or fur skin articles used in the manufacture or production of articles for exportation

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

with benefit of drawback, the lot number and date or inclusive dates of manufacture or production, the quantity, identity, and description of the imported merchandise used, the condition in which imported, the process or processes applied thereto, the quantity and description of the finished articles obtained, and the quantity of imported pieces rejected, if any, or spoiled in manufacture or production.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace. (If rejects and/or spoilage are incurred, the quantity of imported merchandise used shall be determined by deducting from the quantity of fur skins or fur skin articles put into manufacture or production the quantity of such rejects and/or spoilage.)

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation.

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with 19, United States Code, §1313, part 191 of the Customs Regulations and this general ruling.

VIII. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(b) FOR ORANGE JUICE (T.D. 85–110)

A. SAME KIND AND QUALITY (PARALLEL COLUMNS)

| Imported Merchandise or Drawback Products[1] To Be Designated as the Basis for Drawback on the Exported Products. | Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as That Designated Which Will Be Used in the Production of the Exported Products |
|---|---|
| Concentrated orange juice for manufacturing (of not less than 55° Brix) as defined in the standard of identity of the Food and Drug Administration (21 CFR 146.53) which meets the Grade A standard of the U.S. Dept. of Agriculture (7 CFR 52.1557, Table IV). | Concentrated orange juice for manufacturing as described in the left-hand parallel column. |

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The imported merchandise designated on drawback claims will be so similar in quality to the merchandise used in producing the exported articles on which drawback is claimed that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise. Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

B. Exported Articles on Which Drawback Will Be Claimed

1. Orange juice from concentrate (reconstituted juice).

2. Frozen concentrated orange juice.

3. Bulk concentrated orange juice.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account

of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1) (see §191.9 of this part).

D. Process of Manufacture or Production

1. Orange juice from concentrate (reconstituted juice). Concentrated orange juice for manufacturing is reduced to a desired 11.8° Brix by a blending process to produce orange juice from concentrate. The following optional blending processes may be used:

i. The concentrate is blended with fresh orange juice (single strength juice); or

ii. The concentrate is blended with essential oils, flavoring components, and water; or

iii. The concentrate is blended with water and is heat treated to reduce the enzymatic activity and the number of viable microorganisms.

2. Frozen concentrated orange juice. Concentrated orange juice for manufacturing is reduced to a desired degree Brix of not less than 41.8° Brix by the following optional blending processes:

i. The concentrate is blended with fresh orange juice (single strength juice); or

ii. The concentrate is blended with essential oils and flavoring components and water.

3. Bulk concentrated orange juice. Concentrated orange juice for manufacturing is blended with essential oils and flavoring components which would enable another processor such as a dairy to prepare finished frozen concentrated orange juice or orange juice from concentrate by merely adding water to the (intermediate) bulk concentrated orange juice.

E. Multiple Products, Waste, Loss or Gain

Not applicable.

F. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

G. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] used to produce the exported articles;

3. That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used the designated merchandise to produce articles. During the same 3-year period, the manufacturer or producer produced[3] the exported articles.

To obtain drawback it must be established that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. No drawback is payable without proof of compliance.

H. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading ''Procedures And Records Maintained'', and will show what components were blended with the concentrated orange juice for manufacturing. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

I. Basis of Claim for Drawback

The basis of claim for drawback will be the quantity of concentrated orange juice for manufacturing used in the production of the exported articles. It is understood that when fresh orange juice is used as ''cutback'', it will not be included in the ''pound solids'' when computing the drawback due.

J. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this general ruling.

IX. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(b) FOR PETROLEUM OR PETROLEUM DERIVATIVES (T.D. 84–49)

A. PARALLEL COLUMNS—"SAME KIND AND QUALITY"

| Imported Merchandise or Drawback Products[1] To Be Designated as the Basis for Drawback on the Exported Products. | Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as That Designated Which Will Be Used in the Production of the Exported Products. |
|---|---|

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The manufacturer or producer will substitute crude petroleum for crude petroleum and a petroleum derivative for the same petroleum derivative on a class-for-class basis only.

Class Designations:

Class I—API Gravity 0—11.9
Class II—API Gravity 12.0—24.9
Class III—API Gravity 25.0—44.9
Class IV—API Gravity 45—up

The imported merchandise which the manufacturer or producer will designate on its claims will be so similar in quality to the merchandise used in producing the exported articles on which drawback is claimed that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

B. Exported Articles Produced From Fractionation

1. Motor Gasoline
2. Aviation Gasoline
3. Special Naphthas
4. Jet Fuel
5. Kerosene & Range Oils
6. Distillate Oils
7. Residual Oils
8. Lubricating Oils
9. Paraffin Wax
10. Petroleum Coke
11. Asphalt
12. Road Oil
13. Still Gas
14. Liquified Petroleum Gas
15. Petrochemical Synthetic Rubber
16. Petrochemical Plastics & Resins
17. All Other Petrochemical Products

C. Exported Articles on Which Drawback Will Be Claimed

See the General Instructions, I.A.7., for this general drawback ruling. Each article to be exported must be named. When the identity of the product is not clearly evident by its name, there must be a statement as to what the product is, e.g., a herbicide.

D. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (see §191.9 of this part).

E. Process of Manufacture or Production

Heated crude oil is charged to an atmospheric distillation tower where it is subjected to fractionation. The charge to the distillation tower consists of a single crude oil, or of commingled crudes which are fed to the tower simultaneously or after blending in a tank. During fractionation, components of different boiling ranges are separated.

F. Multiple Products

1. Relative Values

Fractionation results in 17 products. In order to insure proper distribution of drawback to each of these products, the manufacturer or producer agrees to record the relative values as the time of separation. The entire period covered by an abstract is to be treated at the time of separation. The value per unit of each product shall be the average market value for the abstract period.

2. Producibility

The manufacturer or producer can vary the proportionate quantity of each product. The manufacturer or producer understands that drawback is payable on exported products only to the extent that these products could have been produced from the designated merchandise. The records of the manufacturer or producer will show that all of the products exported for which drawback will be claimed under this general manufacturing drawback

ruling could have been produced concurrently on a practical operating basis from the designated merchandise.

The manufacturer or producer agrees to establish the amount to be designated by reference to the Industry Standards of Potential Production published in T.D. 66–16.[2]

There are no valuable wastes as a result of the processing.

G. Loss or Gain

Because the manufacturer or producer keeps records on a volume basis rather than a weight basis, it is anticipated that the material balance will show a volume gain. For the same reason, it is possible that occasionally the material balance will show a volume loss. Fluctuations in type of crude used, together with the type of finished product desired make an estimate of an average volume gain meaningless. However, records will be kept to show the amount of loss or gain with respect to the production of export products.

H. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the merchandise designated;

2. The quantity of merchandise of the same kind and quality as the designated merchandise used to produce the exported articles.

3. That, within 3 years after receiving it at its refinery, the manufacturer or producer used the designated merchandise to produce articles. During the same 3-year period, the manufacturer or producer produced the exported articles.

4(a). The manufacturer or producer agrees to use a 28–31 day period (monthly) abstract period for each refinery covered by this general manufacturing drawback ruling, or

(b). The manufacturer or producer agrees to use an abstract period (not to exceed 1 year) for each refinery covered by this general manufacturing drawback ruling. The manufacturer or producer certifies that if it were to file abstracts covering each manufacturing period of not less than 28 days and not more than 31 days (monthly) within the longer period, in no such monthly abstract would the quantity of designated merchandise exceed, for the same class of designated merchandise, the material introduced into the manufacturing process during that monthly period. (Select (a) or (b), and state which is selected in the application, and, if (b) is selected, specify the length of the particular abstract period chosen (not to exceed 1 year (see General Instruction I.A.7.)).)

5. On each abstract of production the manufacturer or producer agrees to show the value per barrel to five decimal places.

6. The manufacturer or producer agrees to file claims in the format set forth in exhibits A through F which are attached to this general manufacturing drawback ruling. The manufacturer or producer realizes that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. It is understood that drawback is not payable without proof of compliance. Records will be kept in accordance with T.D. 84–49, as amended by T.D. 95–61.

J. Residual Rights

It is understood that the refiner can reserve as the basis for future payment the right to drawback only on the number of barrels of raw material computed by subtracting from Line E the larger of Lines A or B, of a given Exhibit E. It is further understood that this right to future payment can be claimed only against products concurrently producible with the products listed in Column 21, in the quantities shown in Column 22 of such Exhibit E. Such residual right can be transferred to another refinery of the same refiner only when Line B of Exhibit E is larger than Line A. Unless the number of residual barrels is specifically computed and rights thereto are expressly reserved on Exhibit E, such residual rights shall be deemed waived. The procedure the manufacturer or producer shall follow in preparing drawback entries claiming this residual right is illustrated in the attached sample Exhibit E–1. It is understood that claims involving residual rights shall be filed only at the port where the Exhibit E reserving such right was filed.

K. Inventory Procedures

The manufacturer or producer realizes that inventory control is of major importance. In accordance with the normal accounting procedures of the manufacturer or producer, each refinery prepares a monthly stock and yield report, which accounts for inventories,

[2] A manufacturer who proposes to use standards other than those in T.D. 66–16 must state the proposed standards and provide sufficient information to the Customs Service in order for those proposed standards to be verified in accordance with T.D. 84–49.

production and disposals from time of receipt to time of disposition. This provides an audit trail of all products.

The above-noted records will provide the required audit trail from the initial source documents to the drawback claims of the manufacturer or producer and will support adherence with the requirements discussed under the heading PROCEDURES AND RECORDS MAINTAINED.

L. Basis of Claim for Drawback

The amount of raw material on which drawback may be based shall be computed by multiplying the quantity of each product exported by the drawback factor for that product. The amount of any one type and class of raw material which may be designated as the basis for drawback on the exported products produced at a given refinery and covered by a drawback entry shall not exceed the quantity of such raw material used at the refinery during the abstract period or periods from which the exported products were produced. The quantity of raw material to be designated as the basis for drawback on exported products must be at least as great as the quantity of raw material of the same type and class which would be required to produce the exported products in the quantities exported.

M. Agreements

The manufacturer or producer specifically agrees that it will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its refinery and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this general ruling.

**EXHIBIT A**

ABSTRACT OF MANUFACTURING RECORDS
ABC OIL CO. INC. - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

Material Used (in Bbls. at 60°)

| | TOTALS | CRUDES | | | | DERIVATIVES | |
|---|---|---|---|---|---|---|---|
| | | CLASS I | CLASS II | CLASS III | CLASS IV | CRUDE TOPS CLASS IV | UNFINISHED NAPHTHA CLASS IV |
| 1) Opening Inventory | 4,007,438 | | | | | | |
| 2) Material Introduced* | 7,450,732 | - 0 - | 619,473 | 6,367,991 | -0- | 101,224 | 362,044 |
| 3) Closing Inventory | 3,671,005 | | | | | | |
| 4) Total Consumption | 7,787,165 | | | | | | |

Line (1) - Stock in process at beginning of manufacturing period.

Line (2) - Raw material introduced into manufacturing process during the period. The amount, by type and class, shown hereon, shall be the maximum that may be designated under T.D. 84-49.

Line (3) - Stock in process at end of period.

Line (4) - Total Consumed, namely, line 1 plus line 2 less line 3.

* All raw materials of a type and class not to be designated may be shown as a total.

EXHIBIT B

**ABSTRACT OF PRODUCTION**
**ABC OIL CO., INC. - BEAUMONT, TEXAS REFINERY**
**PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995**

| (5) Product | (6) Quantity in Bbls. | (7) Value per Bbl. | (8) Value of Product | (9) Drawback Factor per Bbl. |
|---|---|---|---|---|
| 1. Motor Gasoline | 2,699,934 | $ 6.14333 | $16,586,586 | 1.06678 |
| 2. Aviation Gasoline | 108,269 | 5.83363 | 631,601 | 1.01300 |
| 3. Special Naphthas | 372,676 | 8.06356 | 3,005,095 | 1.40023 |
| 4. Jet Fuel | 249,386 | 3.95698 | 986,815 | .68712 |
| 5. Kerosine and Range Oil | 321,263 | 4.69857 | 1,509,477 | .81590 |
| 6. Distillate Oils | 2,567,975 | 4.45713 | 11,445,798 | .77398 |
| 7. Residual Oils | 308,002 | 2.51322 | 774,077 | .43642 |
| 8. Lubricating Oils | 292,492 | 26.72296 | 7,816,252 | 4.64041 |
| 9. Paraffin Wax | 19,063 | 10.49642 | 200,093 | 1.82269 |
| 10. Petroleum Coke | 122,353 | 1.24291 | 152,074 | .21583 |
| 11. Asphalt | 75,231 | 3.59105 | 270,158 | .62358 |
| 12. Road Oil | - 0 - | - 0 - | - 0 - | - 0 - |
| 13. Still Gas | 245,784 | 1.00530 | 247,087 | .17457 |
| 14. Liquified Refinery Gas | 524,423 | 2.23013 | 1,169,531 | .38726 |
| 15. Petrochemical Synthetic Rubber | - 0 - | - 0 - | - 0 - | - 0 - |
| 16. Petrochemical Plastics & Resins | - 0 - | - 0 - | - 0 - | - 0 - |
| 17. All Other Petrochemical Products | 7,996 | 6.21343 | 49,683 | 1.07895 |
| Loss (or Gain) | (127,682) | | | |
| TOTAL | 7,787,165 | | $ 44,844,327 | |

Col. (6) Products are shown in the net quantities realized in the refining process and do not include non-petroleum additives.

Col. (7) Weighted average realization for the period covered.

Col. (8) Column 6 multiplied by column 7.

Col. (9) Quantity of raw materials allowable per barrel of product. (Formula for obtaining drawback factors: $44,844,327 ÷ 7,787,165 bbls. = $5.75875 divided into product values per barrel equals drawback factor.)

EXHIBIT C—INVENTORY CONTROL SHEET: ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY, PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

[All quantities exclude non-petroleum additives]

| | Aviation gasoline | | Residual oils | | Lubricating oils | | Petrochemicals, all other | |
|---|---|---|---|---|---|---|---|---|
| | Bbls. | Drawback factor | Bbls. | Drawback factor | Bbls. | Drawback factor | Bbls. | Drawback factor |
| (10) Opening Inventory | 11,218 | 1.00126 | 21,221 | .45962 | 9,242 | 4.52178 | 891 | 1.00244 |
| (11) Production | 108,269 | 1.01300 | 308,002 | .43642 | 292,492 | 4.64041 | 7,996 | 1.07895 |
| (11–A) Receipts. | | | | | | | | |
| (12) Exports | 11,218 | 1.00126 | 21,221 | .45962 | 8,774 | 4.52178 | 195 | 1.00244 |
| | 176 | 1.01300 | 104,397 | .43642 | | | | |
| (13) Drawback Deliveries | ..... | ..... | ..... | ..... | ..... | ..... | 696 | 1.00244 |
| | ..... | ..... | ..... | ..... | ..... | ..... | 319 | 1.07895 |
| (14) Domestic Shipments | 97,863 | 1.01300 | 180,957 | .43642 | 468 | 4.52178 | 6,867 | 1.07895 |
| | ..... | ..... | ..... | ..... | 278,286 | 4.64041 | | |
| (15) Closing Inventory | 10,230 | 1.01300 | 22,648 | .43642 | 14,206 | 4.64041 | 810 | 1.07895 |

Line (10)—Opening inventory from previous period's closing inventory.
Line (11)—From production period under consideration.
Line (11–A)—Product received from other sources.
Line (12)—From earliest on hand (inventory or production). Totals from drawback entry or entries recapitulated (see column 18).
Line (13)—Deliveries for export or for designation against further manufacture—earliest on hand after exports are deducted.
Line (14)—From earliest on hand after lines (12) and (13) are deducted.
Line (15)—Balance on hand.

EXHIBIT D

**RECAPITULATION OF DRAWBACK ENTRY**
**ABC OIL CO., INC. - BEAUMONT, TEXAS REFINERY**
**PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995**

| (16) Product | (17) Quantity in Bbls. Exported | (18) Quantity in Bbls. in the Terms of the Abstract | (19) Drawback Factor per Bbl. | (20) Crude Allowed for Drawback in Bbls. | (20a) Crude to be Allowed for Drawback Deliveries in Bbls. |
|---|---|---|---|---|---|
| Aviation Gasoline | 11,410 | 11,218<br>176 | 1.00126<br>1.01300 | 11,232<br>178 | |
| Residual Oils | 125,618 | 21,221<br>104,397 | .45962<br>.43642 | 9,754<br>45,561 | |
| Lubricating Oils | 8,875 | 8,774 | 4.52178 | 39,674 | |
| Petrochemicals - Other | 195 | 696<br>319<br>195 | 1.00244<br>1.07895<br>1.00244 | 195 | 698<br>344 |
| TOTAL | 146,098 | 146,996 | | 106,594 | 1,042 |

Duty paid on raw material selected for designation - $.1050 per bbl. (class III crude)
Amount of drawback claimed - gross - 106,594 x .1050 = $11,192
Less 1% - 112
Amount of drawback claimed - net $11,080

Col. (16) Lists only products exported.
Col. (17) Quantities in condition as shown on the notices of exportation and notices of lading.
Col. (18) Quantities in condition as shown on the abstract (i.e., less additives if any). These quantities will appear in line 12.
Col. (19) The drawback factor(s) shown on line 12.
Col. (20) Raw materials (crude or derivatives) allowable, determined by multiplying column 18 by column 19.
Col. (20a) Raw materials (crude or derivatives) allowable, for drawback deliveries determined by multiplying column 18 by column 19.

EXHIBIT E

**PRODUCIBILITY TEST FOR PRODUCTS EXPORTED (INCLUDING DRAWBACK DELIVERIES)**
**ABC OIL CO., INC. - BEAUMONT, TEXAS REFINERY**
**PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995**

Type and Class of Raw Material Designated -- Crude, Class III

| (21) Product | (22) Quantity In Barrels | (23) Industry Standard | (24) Quantity of Raw Material Of Type and Class Designated Needed To Produce Product |
|---|---|---|---|
| Aviation Gasoline | 11,394 | 40% | 28,485 |
| Residual Oils | 125,618 | 83% | 151,347 |
| Lubricating Oils | 8,774 | 50% | 17,548 |
| Petrochemicals, other | (195) | | |
| Petrochemicals, other (drawback deliveries) | (1,015) | | |
| Petrochemicals, other (Total) | 1,210 | 29% | 4,172 |
| **Total** | 146,996 | | |

A - Crude allowed (column 20: 106,594 plus column 20a: 1,042 — 107,636 bbls.
B - Total quantity exported (including drawback deliveries)(column 22): — 146,996 "
C - Largest quantity of raw material needed to produce an individual exported product (see column 24): — 151,347 "
D - The excess of raw material over the largest of lines A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered). — **NONE**
E - Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): — 151,347 "

**I hereby certify that all the above drawback deliveries and products exported by the Beaumont Refinery of ABC Oil Co., Inc. during the period from January 1, 1995 to January 31, 1995 could have been produced concurrently on a practical operating basis from 151,347 barrels of imported Class III crude against which drawback is claimed.**

**Signature**

EXHIBIT E - 1

**PRODUCIBILITY TEST FOR PRODUCTS ON WHICH RESIDUAL RIGHT TO DRAWBACK IS NOW CLAIMED AND PRODUCTS COVERED BY ABSTRACTS ON WHICH RAW MATERIALS COVERED WERE PREVIOUSLY DESIGNATED**
**ABC OIL CO., INC. - TULSA, OKLAHOMA REFINERY**
**PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995**

Type and Class of Raw Material Designated - Crude, Class III

| (21) Product | (22) Quantity in Barrels | (23) Industry Standard | (24) Quantity of Raw Material Of Type & Class Designated Needed to Produce Product: Separate | Combined | Covered by: 1. Period 2. Refinery | (19) Drawback Factor per Barrel | (20) Crude allowed for drawback |
|---|---|---|---|---|---|---|---|
| Aviation Gasoline | 11,394 | 40% | 28,485 | 29,125 | | 1.00126 | 11,232 |
| | | | | | | 1.01300 | 178 |
| Residual Oils | 125,618 | 83% | 151,347 | 151,347 | 1. Jan. 1995 | .45962 | 9,754 |
| | | | | | | .43642 | 45,561 |
| Lubricating Oils | 8,774 | 50% | 17,548 | 17,932 | 2. Beaumont | 4.52178 | 39,674 |
| Petrochemicals, Other | (195) | | | | | 1.00244 | 195 |
| Petrochemicals, Other (Drawback Deliveries) | (1,015) | | | | | | |
| Petrochemicals, other (Total) | 1,210 | 29% | 4,172 | 4,503 | | | |
| **[Residual Rights]** | | | | | | | |
| Aviation Gasoline | 256 | 40% | 640 | 29,125 | | 1.01265 | 259 |
| Lubricating Oils | 192 | 50% | 384 | 17,932 | 1. Jan. 1995 | 4.59006 | 881 |
| Petrochemicals, Other | 96 | 29% | 331 | 4,503 | 2. Tulsa | 1.12412108 | 108 |
| Distillate Oils | 3807 | 89% | 4,278 | 4,278 | | .76624 | 2,917 |
| | 151,347 | | | | | Subtotal | 4,165 |
| | | | | | | Total | 110,759 |

A - Crude allowed (column 20: 110,759; plus crude allowed for drawback deliveries: 1,042) 111,801 bbls.
B - Total quantity exported (including drawback deliveries)(column 22): 151,347 "

C - Largest quantity of raw material needed to produce an individual exported product (see col. 24): 151,347
D - The excess of raw material over the largest of line A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered): NONE
E - Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): See subtotal, col.20, for Residual Rights above 151,347

Drawback Computation
**4,165*bbls.** @10½ = $437.33
Less 1% 4.37
Amount of Drawback Claim - Net $432.96

**CERTIFICATE**

**I hereby certify that all the above drawback deliveries and products exported by the Tulsa, Oklahoma refinery of ABC Oil Co., Inc., during the period from January 1, 1995 to January 31, 1995, could have been produced concurrently on a practical operating basis together with all drawback deliveries and products exported covered by Exhibit E of the abstract for the period January 1, 1995 to January 31, 1995, filed by the Beaumont, Texas refinery of the company from 151,347 barrels of imported Class III crude against which drawback is claimed.**

**Signature**

EXHIBIT E (COMBINATION)—PRODUCIBILITY TEST FOR PRODUCTS EXPORTED (INCLUDING DRAWBACK DELIVERIES) ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY, PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

[Type and Class of Raw Material Designated—Crude, Class III]

| (21) Product | (22) Quantity in barrels | (23) Industry standard (%) | (24) Quantity of raw material of type and class designated needed to produce product per barrel | (19) Drawback factor | (20) Crude allowed for drawback |
|---|---|---|---|---|---|
| Aviation Gasoline [1] | [1] 11,218 | 40 | 28,045 | 1.00126 | 11,232 |
| | [1] 176 | 40 | 440 | 1.01300 | 178 |
| Residual Oils [1] | [1] 21,221 | 83 | 25,567 | .45962 | 9,754 |
| | [1] 104,397 | 83 | 125,780 | .43642 | 45,561 |
| Lubricating Oils [1] | [1] 8,774 | 50 | 17,548 | 4.52178 | 39,674 |
| Petrochemicals, Other [1] | [1] 195 | 29 | 672 | 1.00244 | 195 |
| Petrochemicals, Other [2] | [2] 696 | 29 | 2,400 | 1.00244 | 698 |
| Petrochemicals, Other [2] | [2] *319* | 29 | 1,100 | 1.07895 | 344 |
| Total | 146,996 | ..... | ..... | ..... | 107,636 |

[1] Exports.

[2] Drawback deliveries.

A—Crude allowed (column 20: 107,636 bbls. (106,594 for export, plus 1,042 for drawback deliveries)).

B—Total quantity exported (including drawback deliveries) (column 22): 146,996.

C—Largest quantity of raw material needed to produce an individual exported product (see column 24): 151,347.

D—The excess of raw material over the largest of lines A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered): None.

E—Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): 151,347 bbs.

I hereby certify that all the above drawback deliveries and products exported by the Beaumont refinery of ABC Oil Co., Inc. during the period from January 1, 1995 to January 31, 1995, could have been produced concurrently on a practical operating basis from 151,347 barrels of imported Class III crude against which drawback is claimed.

The attached sample, **EXHIBIT E (COMBINATION)**, illustrates the procedures to be followed when two classes or types of raw material are designated on a given abstract. For purposes of illustration it is assumed that the refiner has only 100,000 barrels of Class III crude to designate, but adequate supplies of Class II to designate.

In addition, please note that the computation of drawback on **EXHIBIT D** will be as follows:

Duty paid on raw material selected for designation:

$.1050 per barrel (Class III crude)
$.0525 per barrel (Class II crude)

| | | | |
|---|---|---|---|
| Amount of drawback claimed- | gross: 81,638 x .1050= | | $8,571.99 |
| | 24,956 x .0525= | | $1,310.19 |
| | | | $9,882.18 |
| | (Rounded Off) | | 9,882 |
| | Less 1% | | -99 |
| Amount of drawback claimed- | net: | | $9,783 |

EXHIBIT F—DESIGNATIONS FOR DRAWBACK CLAIM, ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY

[Period From January 1, 1995 to January 31, 1995]

| Certificate of delivery No. | Entry No. | Date of importation | Kind of materials | Quantity of materials in barrels | Date received | Date consumed | Rate of duty |
|---|---|---|---|---|---|---|---|
| | 26192 | 04/13/93 | Class III Crude | 75,125 | 04/13/93 | May 1993 | $.1050 |
| | 23990 | 08/04/94 | .....do | 37,240 | 08/04/94 | Oct. 1994 | .1050 |
| 3155 | 22517 | 10/05/94 | .....do | 38,982 | 10/05/94 | Nov. 1994 | .1050 |

X. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(b) FOR PIECE GOODS (T.D. 83–73)

A. SAME KIND AND QUALITY (PARALLEL COLUMNS)

| Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products. | Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products. |
|---|---|
| Piece goods | Piece goods. |

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under 19 U.S.C. 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The piece goods used in manufacture will be the same kind and quality as the piece goods designated as the basis of claim for drawback, and are used interchangeably without change in manufacturing processes or resultant products (including, if applicable, multiple products), or wastes. Some tolerances between imported-designated piece goods and the used-exported piece goods will be permitted to accommodate variations which are normally found in piece goods. These tolerances are no greater than the tolerances generally allowed in the industry for piece goods of the same kind and quality as follows:

1. A 4% weight tolerance so that the piece goods used in manufacture will be not more than 4% lighter or heavier than the imported piece goods which will be designated;

2. A tolerance of 4% in the aggregate thread count per square inch so that the piece goods used in manufacture will have an aggregate thread count within 4%, more or less of the aggregate thread count of the imported piece goods which will be designated. In each case, the average yarn number of the domestic piece goods will be the same or greater than the average yarn number of the imported piece goods designated, and in each case, the substitution and tolerance will be employed only within the same family of fabrics, *i.e.*, print cloth for print cloth, gingham for gingham, greige for greige, dyed for dyed, bleached for bleached, etc. The piece goods used in manufacture of the exported articles will be designated as containing the identical percentage of identical fibers as the piece goods designated as the basis for allowance of drawback; for example, piece goods containing 65% cotton and 35% dacron will be designated against the use of piece goods shown to contain 65% cotton and 35% dacron. The actual fiber composition may vary slightly from that described on the invoice or other acceptance of the fabric as having the composition described on documents in accordance with trade practices. The substituted piece goods used in the manufacture of articles for exportation with drawback will be so similar in quality to the imported piece goods designated for the basis of allowance of drawback, that the piece goods used, if imported, would have been subject to the same or greater amount of duty as was paid on the imported designated piece goods. Differences in value resulting from factors other than quality, as for example, price fluctuations, will not preclude an allowance of drawback.

B. Exported Articles on Which Drawback Will Be Claimed

Finished piece goods.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.'s. 55027(2) and 55207(1) (see § 191.9 of this part).

D. Process of Manufacture or Production

Piece goods are subject to any one of the following finishing productions:

1. Bleaching,
2. Mercerizing,
3. Dyeing,
4. Printing,

5. A combination of the above, or
6. Any additional finishing processes.

E. Multiple Products

Not applicable.

F. Waste

Rag waste may be incurred. No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer will show the quantity of rag waste, if any, and its value. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such waste records will also be kept. In instances where rag waste occurs and it is impractical to account for the actual quantity of rag waste incurred, it may be assumed that such rag waste constituted 2% of the piece goods put into the finishing processes.

G. Shrinkage, Gain, and Spoilage

Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer will show the yardage lost by shrinkage or gained by stretching during manufacture or production, and the quantity of remnants resulting and of spoilage incurred, if any. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such records for shrinkage, gain and spoilage will also be kept.

H. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;
2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] used to produce the exported articles;
3. That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used the merchandise to produce articles. During the same 3-year period, the manufacturer or producer produced[3] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of eligible piece goods used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible piece goods that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste from each lot of piece goods, drawback may be claimed on the quantity of eligible piece goods used to produce the exported articles less the amount of piece goods which the value of the waste would replace.

L. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9)

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this general ruling.

XI. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(b) FOR RAW SUGAR (T.D. 83–59)

Drawback may be allowed under 19 U.S.C. 1313(b) upon the exportation of hard or soft refined sugars and sirups manufactured from raw sugar, subject to the following special requirements:

A. The drawback allowance shall not exceed 99 percent of the duty paid on a quantity of raw sugar designated by the refiner which contains a quantity of sucrose not in excess of the quantity required to manufacture the exported sugar or sirup, ascertained as provided in this general rule.

B. The refined sugars and sirups shall have been manufactured with the use of duty-paid, duty-free, or domestic sugar, or combinations thereof, within 3 years after the date on which designated sugar was received by the refiner, and shall have been exported within 5 years from the date of importation of the designated sugar.

C. All granulated sugar testing by the polariscope 99.5° and over shall be deemed hard refined sugar. All refined sugar testing by the polariscope less than 99.5° shall be deemed soft refined sugar. All ''blackstrap,'' ''unfiltered sirup,'' and ''final molasses'' shall be deemed sirup.

D. The imported duty-paid sugar selected by the refiner as the basis for the drawback claim (designated sugar) shall be of the same kind and quality as that used in the manufacture of the exported refined sugar or sirup and shall have been used within 3 years after the date on which it was received by the refiner. Duty-paid sugar which has been used at a plant of a refiner within 3 years after the date on which it was received by such refiner may be designated as the basis for the allowance of drawback on refined sugars or sirups manufactured at another plant of the same refiner.

E. For the purpose of distributing the drawback, relative values shall be established between hard refined (granulated) sugar, soft refined (various grades) sugar, and sirups at the time of separation. The entire period covered by an abstract shall be deemed the time of separation of the sugars and sirups covered by such abstract.

F. The sucrose allowance per pound on hard refined (granulated) sugar established by an abstract, as provided for in this general ruling, shall be applied to hard refined sugar commercially known as loaf, cut loaf, cube, pressed, crushed, or powdered sugar manufactured from the granulated sugar covered by the abstract.

G. The sucrose allowance per gallon on sirup established by an abstract, as provided for in this general ruling, shall be applied to sirup further advanced in value by filtration or otherwise, unless such sirup is the subject of a special manufacturing drawback ruling.

H. As to each lot of imported or domestic sugar used in the manufacture of refined sugar or sirup on which drawback is to be claimed, the raw stock records shall show the refiner's raw lot number, the number and character of the packages, the settlement weight in pounds, and the settlement polarization. Such records covering imported sugar shall show, in addition to the foregoing, the import entry number, date of importation, name of importing carrier, country of origin, the Government weight, and the Government polarization.

I. The melt records shall show the date of melting, the number of pounds of each lot of raw sugar melted, and the full analysis at melting.

J. There shall be kept a daily record of final products boiled showing the date of the melt, the date of boiling, the magma filling serial number, the number of the vacuum pan or crystallizer filling, the date worked off, and the sirup filling serial number.

K. The sirup manufacture records shall show the date of boiling, the period of the melt, the sirup filling serial number, the number of barrels in the filling, the magma filling serial number, the quantity of sirup, its disposition in tanks or barrels and the refinery serial manufacture number.

L. The refined sugar stock records shall show the refinery serial manufacture number, the period of the melt, the date of manufacture, the grade of sugar produced, its polarization, the number and kind of packages, and the net weight. When soft sugars are manufactured, the commercial grade number and quantity of each shall be shown.

M. Each lot of hard or soft refined sugar and each lot of sirup manufactured, regardless of the character of the containers or vessels in which it is packed or stored, shall be marked immediately with the date of manufacture and the refinery manufacture number applied to it in the refinery records provided for and shown in the abstract, as provided for in this general ruling, from such records. If all the sugar or sirup contained in any lot manufactured is not intended for exportation, only such of the packages as are intended for exportation need be marked as prescribed above, provided there is filed with the drawback office immediately after such marking a statement showing the date of manufacture, the refinery manufacture number, the number of packages marked, and the

quantity of sugar or sirup contained therein. No drawback shall be allowed in such case on any sugar or sirup in excess of the quantity shown on the statement as having been marked. If any packages of sugar or sirup so marked are repacked into other containers, the new containers shall be marked with the marks which appeared on the original containers and a revised statement covering such repacking and remarking shall be filed with the drawback office. If sirups from more than one lot are stored in the same tank, the refinery records shall show the refinery manufacture number and the quantity of sirup from each lot contained in such tank.

N. An abstract from the foregoing records covering manufacturing periods of not less than 1 month nor more than 3 months, unless a different period shall have been authorized, shall be filed when drawback is to be claimed on any part of the refined sugar or sirup manufactured during such period. Such abstract shall be filed by each refiner with the drawback office where drawback claims are filed on the basis of this general ruling. Such abstract shall consist of: (1) A raw stock record (accounting for Refiner's raw lot No., Import entry No., Packages No. and kind, Pounds, Polarization, By whom imported or withdrawn, Date of importation, Date of receipt by refiner, Date of melt, Importing carrier, Country of origin); (2) A melt record [number of pounds in each lot melted] (accounting for Lot No. Pounds, and Polarization degrees and pounds sucrose); (3) Sirup stock records (accounting for Date of boiling, Refinery serial manufacture No., Quantity of sirup in gallons, and Pounds sucrose contained therein); (4) Refined sugar stock record (accounting for Refinery serial production No., Date of manufacture, Hard or soft refined, Polarization and No., Net weight in pounds); (5) Recapitulation (consisting of (in pounds): (a) sucrose in process at beginning of period, (b) sucrose melted during period, (c) sucrose in process at end of period, (d) sucrose used in manufacture, and (e) sucrose contained in manufacture, in which item (a) plus item (b), minus item (c), should equal item (d)); and (6) A statement as follows:

I, _____, the _____ refiner at the _____ refinery of _____, located at _____, do solemnly and truly declare that each of the statements contained in the foregoing abstract is true to the best of my knowledge and belief and can be verified by the refinery records, which have been kept in accordance with Treasury Decision 83–59 and Appendix A of 19 CFR Part 191 and which are at all times open to the inspection of Customs.

. Date _____

. Signature _____

O. The refiner shall file with each abstract a statement, showing the average market values of the products specified in the abstract and including a statement as follows:

I, _____, (Official capacity) of the _____ (Refinery), do solemnly and truly declare that the values shown above are true to the best of my knowledge and belief, and can be verified by our records.

Date _____

Signature _____

P. At the end of each calendar month the refiner shall furnish to the drawback office a statement showing the actual sales of sirup and the average market values of refined sugars for the calendar month.

Q. The sucrose allowance to be applied to the various products based on the abstract and statement provided for in this general ruling shall be in accordance with the example set forth in Treasury Decision 83–59.

R. Certificates of manufacture and delivery under this general ruling shall be in the following form:

Certificate of manufacture and delivery—Sugar and Sirup No. _____

Certificate of manufacture and delivery of _____ manufactured by _____ under abstract No. _____ filed at the port of _____.

| Description | Quantity | Polarization |
|---|---|---|
| | | |

DESIGNATION OF IMPORTED SUGAR

| Import entry No. | By whom imported or withdrawn from warehouse | Name of importing carrier | When imported | Where imported | Quantity of raw sugar (pounds) | Polarization | Sucrose (pounds) |
|---|---|---|---|---|---|---|---|
| | | | | | | | |

I, _____, the _____ of _____, located at _____, declare that the sugar (or sirup) described in the within certificate of manufacture and delivery was manufactured by said company at its refinery at _____ and is part of the sugar (or sirup) covered by abstract No. _____, filed at the port of _____ and was delivered to _____ on or about _____, _____, and that no other certificate of manufacture and delivery has been issued covering the above merchandise; that, subject to 19 U.S.C. 1508 and 1313(t), the refinery and other records of the company verifying the statements contained in said abstract are now and at all times hereafter will be open to inspection by Customs.

I further declare that the above-designated imported sugar (upon which the duties have been paid) was received by said company on _____ and was used in the manufacture of sugar and sirup on _____.

. Date _____

. Signature _____

S. Drawback entries under this general ruling shall be on Customs Form 7551 and, in addition to the information required thereon, shall state the polarization in degrees and the sucrose in pounds for the designated imported sugar. Drawback claims under this general ruling shall include a statement as follows:

I, _____, the _____ of _____, located at _____ declare that the sugar (or sirup) described in this entry, was manufactured by said company at its refinery at _____ [or, if the claim is based on a certificate of manufacture and delivery, was manufactured by _____ at its refinery at _____ for which the accompanying certificate of manufacture and delivery was received by this company] and is part of the sugar (or sirup) covered by abstract No. _____, filed at the port of _____; that, subject to 19 U.S.C. 1508 and 1313(t), the refinery and other records of the company verifying the statements contained in said abstract are now and at all times hereafter will be open to inspection by Customs. I further declare that the above-designated imported sugar (upon which the duties have been paid) was received by said company on _____ and was used in the manufacture of sugar and sirup during the period covered by abstract No. _____, Customs No. _____, on file with the port director at _____.

I further declare that the sugar or sirup specified therein was exported as stated in the entry.

. Date _____

. Signature _____

T. General Statement. The refiner manufactures or produces for its own account. The refiner may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the refiner's account under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1) (see §191.9 of this part).

U. Waste. No drawback is payable on any waste which results from the manufacturing operation. Unless drawback claims are based on the ''appearing in'' method, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

V. Loss or Gain. The refiner will maintain records showing the extent of any loss or gain in net weight or measurement of the sugar caused by atmospheric conditions, chemical reactions, or other factors.

W. Tradeoff. The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality requirements provided for in this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

X. Procedures And Records Maintained. Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[1] used to produce the exported articles; and

3. That, within 3 years after receiving the designated merchandise at its factory, the refiner used the designated merchandise to produce articles. During the same 3-year period, the refiner produced[2] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

Y. General requirements. The refiner will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

[1] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[2] The date of production is the date an article is completed.

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this general ruling.

## XII. General Manufacturing Drawback Ruling under 19 U.S.C. 1313(b) for Steel (T.D. 81–74)

### A. Same Kind and Quality (Parallel Columns)

| Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products. | Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products. |
|---|---|
| Steel of one general class, e.g., an ingot, falling within one SAE, AISI, or ASTM[2] specification and, if the specification contains one or more grades, falling within one grade of the specification. | Steel of the same general class, specification, and grade as the steel in the column immediately to the left hereof. |

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

[2] Standards set by the Society of Automotive Engineers (SAE), the American Iron and Steel Institute (AISI), or the American Society for Testing and Materials (ASTM).

1. The duty-paid, duty-free, or domestic steel used instead of the imported, duty-paid steel (or drawback products) will be interchangeable for manufacturing purposes with the duty-paid steel. To be interchangeable a steel must be able to be used in place of the substituted steel without any additional processing step in the manufacture of the article on which drawback is to be claimed.

2. Because the duty-paid steel (or drawback products) that is to be designated as the basis for drawback is dutiable according to its value, the amount of duty can vary with its size (gauge, width, or length) or composition (e.g., chrome content). If such variances occur, designation will be by ''price extra'', and in no case will drawback be claimed in a greater amount than that which would have accrued to that steel used in manufacture of or appearing in the exported articles. Price extra is not available for coated or plated steel, covered in paragraph 5, *infra,* insofar as the coating or plating is concerned.

3. The duty-paid steel (or drawback products) will be so similar in quality to the steel used to manufacture the articles on which drawback will be claimed that the steel so used, if imported, would be classifiable in the same tariff subheading number and at the same rate of duty as the duty-paid imported steel.

4. Any fluctuation in market value caused by a factor other than quality does not affect drawback.

5. If the steel is coated or plated with a base metal, in addition to meeting the requirements for uncoated or unplated steel set forth in the parallel columns, the base-metal coating or plating on the duty-paid, duty-free, or domestic steel used in place of the duty-paid steel (or drawback products) will have the same composition and thickness as the coating or plating on the duty-paid steel. If the coated or plated duty-paid steel is within a SAE, AISI, ASTM specification, any duty-paid, duty-free, or domestic coated or plated steel covered by the same specification and grade (if two or more grades are in the specification) is considered to meet this criterion for ''same kind and quality.''

### B. Exported Articles on Which Drawback Will Be Claimed

The exported articles will have been manufactured in the United States using steels described in the parallel columns above.

### C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1) (see § 191.9 of this part).

D. Process of Manufacture or Production

The steel described in the parallel columns will be used to manufacture or produce articles in accordance with § 191.2(q) of this part.

E. Multiple Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of steel appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

G. Loss or Gain

The manufacturer or producer will maintain records showing the extent of any loss or gain in net weight or measurement of the steel caused by atmospheric conditions, chemical reactions, or other factors.

H. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[3] used to produce the exported articles;

3. That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used the merchandise to produce articles. During the same 3-year period, the manufacturer or producer produced[4] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of steel used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible steel that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste from each lot of steel, drawback may be claimed on the quantity of eligible steel used to produce the exported articles less the amount of that steel which the value of the waste would replace.

L. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this general ruling.

[3] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[4] The date of production is the date an article is completed.

XIII. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(b) FOR SUGAR (T.D. 81–92)

A. SAME KIND AND QUALITY (PARALLEL COLUMNS)

| Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products. | Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products. |
|---|---|
| 1. Granulated or liquid sugar for manufacturing, containing sugar solids of not less than 99.5 sugar degrees. | 1. Granulated or liquid sugar for manufacturing, containing sugar solids of not less than 99.5 sugar degrees. |
| 2. Granulated or liquid sugar for manufacturing, containing sugar solids of less than 99.5 sugar degrees. | 2. Granulated or liquid sugar for manufacturing, containing sugar solids of less than 99.5 sugar degrees. |

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The sugars listed above test within three-tenths of a degree on the polariscope. Sugars in each column are completely interchangeable with the sugars directly opposite and designation will be made on this basis only. The designated sugar on which claims for drawback will be based will be so similar in quality to the sugar used in manufacture of the products exported with drawback that the sugar used in manufacture would, if imported, be subject to the same amount of duty paid on a like quantity of designated sugar. Differences in value resulting from factors other than quality, such as market fluctuation, will not affect the allowance of drawback.

B. Exported Articles on Which Drawback Will Be Claimed

Edible substances (including confectionery) and/or beverages and/or ingredients therefor.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1) (see §191.9 of this part).

D. Process of Manufacture or Production

The sugars are subjected to one or more of the following operations to form the desired product(s):

1. Mixing with other substances,
2. Cooking with other substances
3. Boiling with other substances,
4. Baking with other substances,
5. Additional similar processes

E. Multiple Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of sugar appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

G. Loss or Gain

The manufacturer or producer will maintain records showing the extent of any loss or gain in net weight or measurement of the sugar caused by atmospheric conditions, chemical reactions, or other factors.

H. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures And Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;
2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] used to produce the exported articles;
3. That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used the merchandise to produce articles. During the same 3-

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

year period, the manufacturer or producer produced[3] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of sugar used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible sugar that appears in the exported articles regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles less the amount of that sugar which the value of the waste would replace.

L. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this general ruling.

XIV. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(a) FOR WOVEN PIECE GOODS (T.D. 83–84)

Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of bleached, mercerized, printed, dyed, or redyed piece goods manufactured or produced by any one or a combination of the foregoing processes with the use of imported woven piece goods, subject to the following special requirements:

A. Imported Merchandise or Drawback Products[1] Used

Imported merchandise or drawback products (woven piece goods) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (see §191.9 of this part).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with §191.2(q) of this part.

The piece goods used in manufacture or production under this general manufacturing drawback ruling may also be subjected to one or more finishing processes. Drawback shall not be allowed under this general manufacturing drawback ruling when the process performed results only in the restoration of the merchandise to its condition at the time of importation.

[3] The date of production is the date an article is completed.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

E. Multiple Products

Not applicable.

F. Waste

Rag waste may be incurred. No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer will show the quantity of rag waste, if any, its value, and its disposition. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such waste records will also be kept. If no waste results, records will be maintained to establish that fact. In instances where rag waste occurs and it is impractical to account for the actual quantity of rag waste incurred, it may be assumed that such rag waste constituted 2% of the woven piece goods put into process.

G. Shrinkage, Gain, and Spoilage

Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer will show the yardage lost by shrinkage or gained by stretching during manufacture, and the quantity of remnants resulting and of spoilage incurred, if any. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such records for shrinkage, gain, and spoilage will also be kept.

H. Procedures and Records Maintained

Records will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and

2. The quantity of imported merchandise[2] used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 191 of the Customs Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

The records of the manufacturer or producer shall show, as to each lot of piece goods manufactured or produced for exportation with benefit of drawback, the lot number and the date or inclusive dates of manufacture or production, the quantity, identity, and value of the imported (or drawback product) piece goods used, the condition in which imported or received (whether in the gray, bleached, dyed, or mercerized), the working allowance specified in the contract under which they are received, the process or processes applied thereto, and the quantity and description of the piece goods obtained. The records shall also show the yardage lost by shrinkage or gained by stretching during manufacture or production, and the quantity of remnants resulting and of spoilage incurred.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace. (If remnants and/or spoilage occur during manufacture or production, the quantity of imported merchandise used shall be determined by deducting from the quantity of piece goods received and put into manufacture or production the quantity of such remnants and/or spoilage. The remaining quantity shall be reduced by the quantity thereof which the value of the rag waste, if any, would replace.)

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation.

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with 19, United States Code, §1313, part 191 of the Customs Regulations and this general ruling.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 13105, Mar. 17, 1998; 63 FR 15291, Mar. 31, 1998; 63 FR 65060, Nov. 25, 1998; T.D. 02–16, 67 FR 16638, Apr. 8, 2002]

## APPENDIX B TO PART 191—SAMPLE FORMATS FOR APPLICATIONS FOR SPECIFIC MANUFACTURING DRAWBACK RULINGS

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### I. GENERAL

These sample formats for applications for specific manufacturing drawback rulings must be submitted to and reviewed and approved by Customs Headquarters. A specific manufacturing drawback ruling consists of the letter of approval that Customs issues to the applicant, a synopsis of which is published in the Customs Bulletin, as provided in 19 CFR 191.8. In these application formats, remarks in parentheses and footnotes are for explanatory purposes only and should not be copied. Other material should be quoted directly in the applications.

### II. FORMAT FOR APPLICATION FOR SPECIFIC MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(a) AND 1313(b) (COMBINATION)

COMPANY LETTERHEAD (Optional)

U.S. Customs Service, Duty and Refund Determination Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Dear Sir: We, (Applicant's Name), a (State, e.g., Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, §§1313 (a) & (b), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see §191.8(a)).)

LOCATION OF FACTORY

(Give the address of the factory(s) where the process of manufacture or production will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to Names of Partners or Proprietor in the case of a partnership or sole proprietorship, respectively (see footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The 8 offices where drawback claims can be filed are located at: Boston, MA; New York, NY; Miami, FL; New Orleans, LA; Houston, TX; Long Beach, CA; Chicago, IL; San Francisco, CA)
(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, one additional copy of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The following questions must be answered:)

1. Who will be the importer of the designated merchandise?

(If the applicant will not always be the importer of the designated merchandise, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)

2. Will an agent be used to process the designated or the substituted merchandise into articles?

(If an agent is to be used, the applicant must state it will comply with T.D.'s 55027(2) and 55207(1) and §191.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see §191.7 and Appendix A) or an application for a specific manufacturing drawback ruling (see §191.8 and this Appendix B).)

3. Will the applicant be the exporter?

(If the applicant will not be the exporter in every case but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 191.82).)

(Since the permission to grant use of the accelerated payment procedure rests with the Customs office with which claims will be filed, do not include any reference to that procedure in this application.)

PROCEDURES UNDER SECTION 1313(B) (PARALLEL COLUMNS—"SAME KIND AND QUALITY")

| Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products | Duty-paid, Duty-free or Domestic Merchandise of the Same Kind and Quality as That Designated Which Will be Used in the Production of the Exported Products. |
|---|---|
| 1. | 1. |
| 2. | 2. |
| 3. | 3. |

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.)

(Following the items listed in the parallel columns, a statement will be made, by the applicant, that affirms the "same kind and quality" of the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise which we will designate on our claims will be so similar in quality to the merchandise used in producing the exported articles on which we claim drawback that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

(In order to successfully claim drawback it is necessary to prove that the duty-paid, duty-free or domestic merchandise which is to be substituted for the imported merchandise is the "same kind and quality". "Same kind and quality" does not necessarily mean that the merchandise is identical. It does mean that the merchandise is of the same nature or character ("same kind") and that the merchandise to be substituted is interchangeable with the imported merchandise with little or no change in the manufacturing process to produce the same exported article ("same quality"). In order to enable Customs to rule on "same kind and quality", the application must include a detailed description of the designated imported merchandise and of the substituted duty-paid, duty-free or domestic merchandise to be used to produce the exported articles.)

(It is essential that all the characteristics which determine the quality of the merchandise are provided in the application in order to substantiate that the merchandise meets the "same kind and quality" statutory requirement. These characteristics should clearly distinguish merchandise of different qualities. For example, USDA standards; FDA standards; industry standards, e.g., ASTM; concentration; specific gravity; purity; luster; melting point, boiling point; odor; color; grade; type; hardness; brittleness; etc. Note that these are only a few examples of characteristics and that each kind of merchandise has its own set of specifications that characterizes its quality. If specifications are given with a minimum value, be sure to include a maximum value. The converse is also true. Often characteristics are given to Customs on attached specification sheets. These specifications should not include Material Safety Data sheets or other descriptions of the merchandise that do not contribute to the "same kind and quality" determination. When the merchandise is a chemical, state the chemical's generic name as well as its trade name plus any generally recognized identifying number, e.g., CAS number; Color Index Number, etc.)

(In order to expedite the specific manufacturing drawback ruling process, it will be helpful if you provide copies of technical

standards/specifications (particularly industry standards such as ASTM standards) referred to in your application.)

(The descriptions of the ''same kind and quality'' merchandise should be formatted in the parallel columns. The left-hand column will consist of the name and specifications of the designated imported merchandise under the heading set forth above. The right-hand column will consist of the name and specifications for the duty-paid, duty-free or domestic merchandise under the heading set forth above.)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, e.g., a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE OR PRODUCTION section below and each article listed here.)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under §1313(b) is not allowable except where a manufacture or production exists. Manufacture or production is defined, for drawback purposes, in §191.2(q). In order to obtain drawback under §1313(b), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. This description should include the name and exact condition of the merchandise listed in the Parallel Columns, a complete explanation of the processes to which it is subjected in this country, the effect of such processes, the name and exact description of the finished article, and the use for which the finished article is intended. When applicable, give equations of the chemical reactions. The attachment of a flow chart in addition to the description showing the manufacturing process is an excellent means of illustrating whether or not a manufacture or production has occurred. Flow charts can clearly illustrate if and at what point during the manufacturing process by-products and wastes are generated.)

(This section should contain a description of the process by which each item of merchandise listed in the parallel columns above is used to make or produce every article that is to be exported.)

MULTIPLE PRODUCTS

1. Relative Values

(Some processes result in the separation of the merchandise used in the same operation into two or more products. List all of the products. State that you will record the market value of each product at the time it is first separated in the manufacturing process. If this section is not applicable to you, then state so.)

Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. For instance, the refining of flaxseed necessarily produces linseed oil and linseed husks (animal feed), and drawback must be distributed to each product in accordance with its relative value. However, the voluntary election of a steel fabricator, for instance, to use part of a lot of imported steel to produce automobile doors and part of the lot to produce automobile fenders does not call for relative value distribution.)

(The relative value of a product is its value divided by the total value of all products, whether or not exported. For example, 100 gallons of drawback merchandise are used to produce 100 gallons of products, including 60 gallons of product A, 20 gallons of product B, and 20 gallons of product C. At the time of separation, the unit values of products A, B, and C are $5, $10, and $50 respectively. The relative value of product A is $300 divided by $1500 or 1/5. The relative value of B is 2/15 and of product C is 2/3, calculated in the same manner. This means that 1/5 of the drawback product payments will be distributed to product A, 2/15 to product B, and 2/3 to product C.)

(Drawback is allowable on exports of any of multiple products, but is not allowable on exports of valuable waste. In making this distinction between a product and valuable waste, the applicant should address the following significant elements: (1) the nature of the material of which the residue is composed; (2) the value of the residue as compared to the value of the principal manufactured product and the raw material; (3) the use to which it is put; (4) its status under the tariff laws, if imported; (5) whether it is a commodity recognized in commerce; (6) whether it must be subjected to some process to make it saleable.)

2. Producibility

(Some processes result in the separation of fixed proportions of each product, while other processes afford the opportunity to increase or decrease the proportion of each product. An example of the latter is petroleum refining, where the refiner has the option to increase or decrease the production of one or more products relative to the others. State under this heading whether you can or cannot vary the proportionate quantity of each product.)

(The MULTIPLE PRODUCTS section consists of two sub-sections: Relative Values and Producibility. If multiple products do not result from your operation state ''Not Applicable'' for the entire section. If multiple products do result from your operation Relative Values will always apply. However, Producibility may or may not apply. If

Producibility does not apply to your multiple product operation state ''Not Applicable'' for this sub-section.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.)

(If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what ''Basis'' you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See ''Basis of Claim for Drawback'' section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process may exist when residual material resulting from a manufacturing or processing operation is reintroduced into a subsequent manufacturing or processing operation; e.g., trim pieces from a cast article. The effect of stock in process on a drawback claim is that the amount of drawback for the period in which the stock in process was withdrawn from the manufacturing or processing operation (or the manufactured article, if manufacturing or processing periods are not used) is reduced by the quantity of merchandise or drawback products used to produce the stock in process if the ''used in'' or ''used in less valuable waste'' methods are used (if the ''appearing in'' method is used, there will be no effect on the amount of drawback), and the quantity of merchandise or drawback products used to produce the stock in process is added to the merchandise or drawback products used in the subsequent manufacturing or production period (or the subsequently produced article)).

(If stock in process occurs and claims are to be based on stock in process, the application must include a statement to that effect. The application must also include a statement that merchandise is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.)

TRADEOFF

(If an applicant proposes to use tradeoff (19 CFR 191.11), the applicant should so state and the applicant should describe the contractual arrangement between the applicant and its partner for tradeoff. The person claiming drawback under the tradeoff provision has the burden of establishing compliance with the law and regulations. In this regard, the terms of a written contract are always easier to establish than those of an oral contract.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. The identity and specifications of the merchandise we designate;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] we used to produce the exported articles;

3. That, within 3 years after receiving it at our factory, we used the designated merchandise to produce articles. During the same 3-year period, we produced[3] the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following areas, as applicable, should be included in your discussion:)

RECEIPT AND STORAGE OF DESIGNATED MERCHANDISE
RECORDS OF USE OF DESIGNATED MERCHANDISE
BILLS OF MATERIALS
MANUFACTURING RECORDS
WASTE RECORDS
RECORDS OF USE OF DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE REQUIRED SAME KIND AND QUALITY WITHIN 3 YEARS AFTER THE RECEIPT OF THE DESIGNATED MERCHANDISE
FINISHED STOCK STORAGE RECORDS
SHIPPING RECORDS

(Proof of time frames may be specific or inclusive, e.g. within 120 days, but specific proof is preferable. Separate storage and identification of each article or lot of merchandise usually will permit specific proof of exact dates. Proof of inclusive dates of use, production or export may be acceptable, but in such cases it is well to describe very specifically the data you intend to use to establish each legal requirement, thereby avoiding misunderstandings at the time of audit.)

(If you do not describe the inventory records that you will use, a statement that the legal requirements will be met by your inventory procedures is acceptable. However, it should be noted that without a detailed description of the inventory procedures set forth in the application a judgement as to the adequacy of such a statement cannot be made until a drawback claim is verified. Approval of this application for a specific manufacturing drawback ruling merely constitutes approval of the ruling application as submitted; it does not constitute approval of the applicant's record keeping procedures if, for example, those procedures are merely described as meeting the legal requirements, without specifically stating how the requirements will be met. Drawback is not payable without proof of compliance.)

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The ''Used In'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''Used In'' basis. Drawback is payable in the amount of 99 percent of the duty paid on the quantity of imported material designated as the basis for the allowance of drawback on the exported articles. The designated quantity may not exceed the quantity of material actually used in the manufacture of the exported articles.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duty paid on the 100 pounds of designated material used to produce the exported articles.)

(The ''Appearing In'' basis may be used regardless of whether there is waste. If the ''Appearing in'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''Appearing In'' basis. Drawback is payable on 99 percent of the duty paid on the quantity of material designated, which may not exceed the quantity of eligible material that appears in the exported articles. ''Appearing In'' may not be used if multiple products are involved.)

(Based on the previous example, drawback would be payable on the 90 pounds of merchandise which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The ''Used Less Valuable Waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

[3] The date of production is the date an article is completed.

quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the ''Used Less Valuable Waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duty paid on the quantity of merchandise used in the manufacture, reduced by the quantity of such merchandise which the value of the waste would replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 191.26(c) of the Customs Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the designated material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duty paid on the 95 pounds of imported material designated as the basis for the allowance of drawback on the exported article rather than on the 100 pounds ''Used In'' or the 90 pounds ''Appearing In'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An ''abstract'' is the summary of the records (which may be set forth on Customs Form 7551) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base his claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by Schedule follows:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the ''Appearing In'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

PROCEDURES UNDER SECTION 1313(a)

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS USED UNDER 1313(a)

(List the imported merchandise or drawback products)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, e.g., a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

(If the merchandise used under §1313(a) is not also used under §1313(b), the sections entitled PROCESS OF MANUFACTURE OR PRODUCTION, BY-PRODUCTS, LOSS OR GAIN, and STOCK IN PROCESS should be included here to cover merchandise used under §1313(a). However, if the merchandise used under §1313(a) is also used under §1313(b) these sections need not be repeated unless they differ in some way from the §1313(b) descriptions.)

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise, and

2. The quantity of imported merchandise[4] we used in producing the exported articles

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise.

[4] If claims are to be made on an ''appearing In'' basis, the remainder of the sentence should read ''appearing in the exported articles we produce.''

We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(This section must be completed separately from that set forth under the §1313(b) portion of your application. The legal requirements under §1313(a) differ from those under §1313(b).) (Describe your inventory procedures and state how you will identify the imported merchandise from the time it is received at your factory until it is incorporated in the articles to be exported. Also describe how you will identify the finished articles from the time of manufacture until shipment.)

BASIS OF CLAIM FOR DRAWBACK

(See section with this title for procedures under §1313(b). Either repeat the same basis of claim or use a different basis of claim, as described above, specifically for drawback claimed under §1313(a).)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;
4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under §191.9 or the identity of an agent under that section, the drawback office where claims will be filed under the ruling, or the corporate organization by succession or reincorporation;
5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;
6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and
7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 19____, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By[5] _____

(Signature and Title)

_____

(Print Name)

III. FORMAT FOR APPLICATION FOR SPECIFIC MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(b)

COMPANY LETTERHEAD (Optional)

U.S. Customs Service, Duty and Refund Determination Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Dear Sir: We, (Applicant's Name), a (State, e.g., Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(b), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific

[5] Section 191.6(a) requires that applications for specific manufacturing drawback rulings be signed by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port your Customs power(s) of attorney is/are filed.

manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see §191.8(a)).)

LOCATION OF FACTORY

(Give the address of the factory(ies) where the process of manufacture or production will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively (see footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The 8 offices where drawback claims can be filed are located at: Boston, MA; New York, NY; Miami, FL; New Orleans, LA; Houston, TX; Long Beach, CA; Chicago, IL; San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, one additional copy of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The following questions must be answered:

1. Who will be the importer of the designated merchandise?

(If the applicant will not always be the importer of the designated merchandise, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)

2. Will an agent be used to process the designated or the substituted merchandise into articles?

(If an agent is to be used, the applicant must state it will comply with T.D.'s 55027(2) and 55207(1), and §191.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see §191.7 and Appendix A), or an application for a specific manufacturing drawback ruling (see §191.8 and this Appendix B).)

3. Will the applicant be the exporter?

(If the applicant will not be the exporter in every case but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 191.82).)

(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be filed, do not include any reference to that procedure in this application.)

(PARALLEL COLUMNS—"SAME KIND AND QUALITY")

| Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products. | Duty-paid, Duty-free or Domestic Merchandise of the Same Kind and Quality as That Designated Which Will be Used in the Production of the Exported Products. |
|---|---|
| 1. | 1. |
| 2. | 2. |
| 3. | 3. |

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under §1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

(Following the items listed in the parallel columns, a statement will be made, by the applicant, that affirms the "same kind and quality" of the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise which we will designate on our claims will be so similar in quality to the merchandise used in producing the exported articles on which we claim drawback that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

(In order to successfully claim drawback it is necessary to prove that the duty-paid, duty-free or domestic merchandise which is to be substituted for the imported merchandise is the ''same kind and quality''. ''Same kind and quality'' does not necessarily mean that the merchandise is identical. It does mean that the merchandise is of the same nature or character (''same kind'') and that the merchandise to be substituted is interchangeable with the imported merchandise with little or no change in the manufacturing process to produce the same exported article (''same quality''). In order to enable Customs to rule on ''same kind and quality'', the application must include a detailed description of the designated imported merchandise and of the substituted duty-paid, duty-free or domestic merchandise to be used to produce the exported articles.)

(It is essential that all the characteristics which determine the quality of the merchandise are provided in the application in order to substantiate that the merchandise meets the ''same kind and quality'' statutory requirement. These characteristics should clearly distinguish merchandise of different qualities. For example, USDA standards; FDA standards; industry standards, e.g., ASTM; concentration; specific gravity; purity; luster; melting point, boiling point; odor; color; grade; type; hardness; brittleness; etc. Note that these are only a few examples of characteristics and that each kind of merchandise has its own set of specifications that characterizes its quality. If specifications are given with a minimum value, be sure to include a maximum value. The converse is also true. Often characteristics are given to Customs on attached specification sheets. These specifications should not include Material Safety Data sheets or other descriptions of the merchandise that do not contribute to the ''same kind and quality'' determination. When the merchandise is a chemical, state the chemical's generic name as well as its trade name plus any generally recognized identifying number, e.g., CAS number; Color Index Number, etc.)

(In order to expedite the specific manufacturing drawback ruling review process, it will be helpful if you provide copies of technical standards/specifications (particularly industry standards such as ASTM standards) referred to in your application.)

(The descriptions of the ''same kind and quality'' merchandise should be formatted in the parallel columns. The left-hand column will consist of the name and specifications of the designated imported merchandise under the heading set forth above. The right-hand column will consist of the name and specifications for the duty-paid, duty-free or domestic merchandise under the heading set forth above.)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, e.g., a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under §1313(b) is not allowable except where a manufacture or production exists. Manufacture or production is defined, for drawback purposes, in §191.2(q). In order to obtain drawback under §1313(b), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. This description should include the name and exact condition of the merchandise listed in the Parallel Columns, a complete explanation of the processes to which it is subjected in this country, the effect of such processes, the name and exact description of the finished article, and the use for which the finished article is intended. When applicable, give equations of the chemical reactions. The attachment of a flow chart in addition to the description showing the manufacturing process is an excellent means of illustrating whether or not a manufacture or production has occurred. Flow charts can clearly illustrate if and at what point during the manufacturing process by-products and wastes are generated.)

(This section should contain a description of the process by which each item of merchandise listed in the parallel columns above is used to make or produce every article that is to be exported.)

MULTIPLE PRODUCTS

1. Relative Values

(Some processes result in the separation of the merchandise used in the same operation into two or more products. List all of the products. State that you will record the market value of each product or by-product at the time it is first separated in the manufacturing process. If this section is not applicable to you, then state so.)

(Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. For instance, the refining of flaxseed necessarily produces linseed oil and linseed husks (animal feed), and drawback must be distributed to each product in accordance with its relative value. However, the voluntary election of a steel fabricator, for instance, to use part of a lot of imported steel to produce automobile doors and part

of the lot to produce automobile fenders does not call for relative value distribution.)

(The relative value of a product is its value divided by the total value of all products, whether or not exported. For example, 100 gallons of drawback merchandise are used to produce 100 gallons of products, including 60 gallons of product A, 20 gallons of product B, and 20 gallons of product C. At the time of separation, the unit values of products A, B, and C are $5, $10, and $50 respectively. The relative value of product A is $300 divided by $1500 or 1/5. The relative value of B is 2/15 and of product C is 2/3, calculated in the same manner. This means that 1/5 of the drawback product payments will be distributed to product A, 2/15 to product B, and 2/3 to product C.)

(Drawback is allowable on exports of any of multiple products, but is not allowable on exports of valuable waste. In making this distinction between a product and valuable waste, the applicant should address the following significant elements: (1) the nature of the material of which the residue is composed; (2) the value of the residue as compared to the value of the principal manufactured product and the raw material; (3) the use to which it is put; (4) its status under the tariff laws, if imported; (5) whether it is a commodity recognized in commerce; (6) whether it must be subjected to some process to make it saleable.)

2. Producibility

(Some processes result in the separation of fixed proportions of each product, while other processes afford the opportunity to increase or decrease the proportion of each product. An example of the latter is petroleum refining, where the refiner has the option to increase or decrease the production of one or more products relative to the others. State under this heading whether you can or cannot vary the proportionate quantity of each product.)

(The MULTIPLE PRODUCTS section consists of two sub-sections: Relative Values and Producibility. If multiple products do not result from your operation state ''Not Applicable'' for the entire section. If multiple products do result from your operation Relative Values will always apply. However, Producibility may or may not apply. If Producibility does not apply to your multiple product operation state ''Not Applicable'' for this sub-section.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.)

(If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what ''Basis'' you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles less valuable waste, state that you will keep records to establish the quantity and value of the waste recovered. See ''Basis of Claim for Drawback'' section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process may exist when residual material resulting from a manufacturing or processing operation is reintroduced into a subsequent manufacturing or processing operation; e.g., trim pieces from a cast article. The effect of stock in process on a drawback claim is that the amount of drawback for the period in which the stock in process was withdrawn from the manufacturing or processing operation (or the manufactured article, if manufacturing or processing periods are not used) is reduced by the quantity of merchandise or drawback products used to produce the stock in process if the ''used in'' or ''used in less valuable waste'' methods are used (if the ''appearing in'' method is used, there will be no effect on the amount of drawback), and the quantity of merchandise or drawback products used to produce the stock in process is added to the merchandise or drawback products used in the subsequent

manufacturing or production period (or the subsequently produced article)).

(If stock in process occurs and claims are to be based on stock in process, the application must include a statement to that effect. The application must also include a statement that merchandise is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.)

TRADEOFF

(If an applicant proposes to use tradeoff (19 CFR 191.11), the applicant should so state and the applicant should describe the contractual arrangement between the applicant and its partner for tradeoff. The person claiming drawback under the tradeoff provisions has the burden of establishing compliance with the law and regulations. In this regard, the terms of a written contract are always easier to establish than those of an oral contract.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. The identity and specifications of the merchandise we designate;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] we used to produce the exported articles;

3. That, within 3 years after receiving it at our factory, we used the designated merchandise to produce articles. During the same 3-year period, we produced[3] the exported articles;

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following areas, as applicable, should be included in your discussion:)

RECEIPT AND STORAGE OF DESIGNATED MERCHANDISE

RECORDS OF USE OF DESIGNATED MERCHANDISE

BILLS OF MATERIALS

MANUFACTURING RECORDS

WASTE RECORDS

RECORDS OF USE OF DUTY-PAID, DUTY-FREE OR DOMESTIC

MERCHANDISE OF THE REQUIRED SAME KIND AND QUALITY

WITHIN 3 YEARS AFTER THE RECEIPT OF THE DESIGNATED MERCHANDISE

FINISHED STOCK STORAGE RECORDS

SHIPPING RECORDS

(Proof of time frames may be specific or inclusive, e.g., within 120 days, but specific proof is preferable. Separate storage and identification of each article or lot of merchandise usually will permit specific proof of exact dates. Proof of inclusive dates of use, production or export may be acceptable, but in such cases it is well to describe very specifically the data you intend to use to establish each legal requirement, thereby avoiding misunderstandings at the time of audit.)

(If you do not describe the inventory records that you will use, a statement that the legal requirements will be met by your inventory procedures is acceptable. However, it should be noted that without a detailed description of the inventory procedures set forth in the application a judgement as to the adequacy of such a statement cannot be made until a drawback claim is verified. Approval of this application for a specific manufacturing drawback ruling merely constitutes approval of the ruling application as submitted; it does not constitute approval of the applicant's record keeping procedures if, for example, those procedures are merely described as meeting the legal requirements, without specifically stating how the requirements will be met. Drawback is not payable without proof of compliance.)

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

[3] The date of production is the date an article is completed.

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The ''Used In'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''Used In'' basis. Drawback is payable in the amount of 99 percent of the duty paid on the quantity of imported material designated as the basis for the allowance of drawback on the exported articles. The designated quantity may not exceed the quantity of material actually used in the manufacture of the exported articles.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duty paid on the 100 pounds of designated material used to produce the exported articles.)

(The ''Appearing In'' basis may be used regardless of whether there is waste. If the ''Appearing In'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''Appearing In'' basis. Drawback is payable on 99 percent of the duty paid on the quantity of material designated, which may not exceed the quantity of eligible material that appears in the exported articles. ''Appearing In'' may not be used if multiple products are involved.)

(Based on the previous example, drawback would be payable on the 90 pounds of merchandise which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The ''Used Less Valuable Waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the ''Used Less Valuable Waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duty paid on the quantity of merchandise used in the manufacture, reduced by the quantity of such merchandise which the value of the waste would replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 191.26(c) of the Customs Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the designated material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duty paid on the 95 pounds of imported material designated as the basis for the allowance of drawback on the exported article rather than on the 100 pounds ''Used In'' or the 90 pounds ''Appearing In'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An ''abstract'' is the summary of the records (which may be set forth on Customs Form 7551) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base his claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the ''Appearing In'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;
4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under §191.9 or the identity of an agent under that section, the drawback office where claims will be filed under the ruling, or the corporate organization by succession or reincorporation;
5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;
6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and
7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this application and letter of approval.

Declaration of Official

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 19____, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By[4] _____

(Signature and Title)

_____

(Print Name)

IV. FORMAT FOR APPLICATION FOR SPECIFIC MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(d)

COMPANY LETTERHEAD (Optional)

U.S. Customs Service, Duty and Refund Determination Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Dear Sir: We, (Applicant's Name), a (State, e.g., Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(d), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see §191.8(a)).)

LOCATION OF FACTORY

(Give the address of the factory(s) where the process of manufacture or production will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

[4] Section 191.6(a) requires that applications for specific manufacturing drawback rulings be signed by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port your Customs power(s) of attorney is/are filed.

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively (see footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).

CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The 8 offices where drawback claims can be filed are located at: Boston, MA; New York, NY; Miami, FL; New Orleans, LA; Houston, TX; Long Beach, CA; Chicago, IL; San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, one additional copy of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The exact material placed under this heading in individual cases will vary, but it should include such information as the type of business in which the manufacturer is engaged, whether the manufacturer is manufacturing for his own account or is performing the operation on a toll basis (including commission or conversion basis) for the account of others, whether the manufacturer is a direct exporter of his products or sells or delivers them to others for export, and whether drawback will be claimed by the manufacturer or by others.)

(If an agent is to be used, the applicant must state it will comply with T.D.'s 55027(2) and 55207(1), and § 191.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see § 191.7 and Appendix A), or an application for a specific manufacturing drawback ruling (see § 191.8 and this Appendix B).)

(Regarding drawback operations conducted under § 1313(d), the data may describe the flavoring extracts, medicinal, or toilet preparations (including perfumery) manufactured with the use of domestic tax-paid alcohol; and where such alcohol is obtained or purchased.)

(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be filed, do not include any reference to that procedure in this application.)

TAX-PAID MATERIAL USED UNDER SECTION 1313(d)

(Describe or list the tax-paid material)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under § 1313(d) is not allowable except where a manufacture or production exists. ''Manufacture or production'' is defined, for drawback purposes, in § 191.2(q). In order to obtain drawback under § 1313(d), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. Describe how the tax-paid material is processed into the export article.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.) (If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of domestic tax-paid alcohol used in manufacturing. If the claim is based upon the quantity of domestic tax-paid alcohol appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation, does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what ''Basis'' you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of domestic tax-paid alcohol used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See ''Basis of Claim for Drawback'' section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process may exist when residual material resulting from a manufacturing or processing operation is reintroduced into a subsequent manufacturing or processing operation; e.g., trim pieces from a cast article. The effect of stock in process on a drawback claim is that the amount of drawback for the period in which the stock in process was withdrawn from the manufacturing or processing operation (or the manufactured article, if manufacturing or processing periods are not used) is reduced by the quantity of merchandise or drawback products used to produce the stock in process if the ''used in'' or ''used in less valuable waste'' methods are used (if the ''appearing in'' method is used, there will be no effect on the amount of drawback), and the quantity of merchandise or drawback products used to produce the stock in process is added to the merchandise or drawback products used in the subsequent manufacturing or production period (or the subsequently produced article)).

(If stock in process occurs and claims are to be based on stock in process, the application must include a statement to that effect. The application must also include a statement that the domestic tax-paid alcohol is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the domestic tax-paid alcohol used to manufacture the finished articles on which drawback is claimed.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported articles on which drawback is claimed were produced with the use of a particular lot (or lots) of domestic tax-paid alcohol, and

2. The quantity of domestic tax-paid alcohol[1] we used in producing the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the tax has been paid on the domestic alcohol. Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(d) and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following areas should be included in your discussion:)

RECEIPT AND RAW STOCK STORAGE RECORDS
MANUFACTURING RECORDS
FINISHED STOCK STORAGE RECORDS

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The ''Used In'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''Used In'' basis. Drawback is payable in the amount of 100% of the tax paid on the quantity of domestic alcohol used in the manufacture of flavoring extracts and medicinal or toilet preparation (including perfumery).)

(For example, if 100 gallons of alcohol, valued at $1.00 per gallon, were used in manufacture resulting in 10 gallons of irrecoverable or valueless waste, the 10 gallons of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 100% of the tax paid on the 100 gallons of domestic alcohol used to produce the exported articles.)

The ''Appearing In'' basis may be used regardless of whether there is waste. If the

[1] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

''Appearing In'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''Appearing In'' basis. Drawback is payable on 100% of the tax paid on the quantity of domestic alcohol which appears in the exported articles.

(Based on the previous example, drawback would be payable on the 90 gallons of domestic alcohol which actually went into the exported product (appearing in) rather than the 100 gallons used in as set forth previously.)

(The ''Used Less Valuable Waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of domestic tax-paid alcohol. The value of the waste reduces the amount of drawback when claims are based on the ''Used Less Valuable Waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the quantity of tax-paid alcohol used to manufacture the exported articles, reduced by the quantity of such alcohol which the value of the waste would replace.)

(Based on the previous examples, if the 10 gallons of waste had a value of $.50 per gallon, then the 10 gallons of waste, having a total value of $5.00, would be equivalent in value to 5 gallons of the tax-paid alcohol. Thus the value of the waste would replace 5 gallons of the alcohol used, and drawback is payable on 100% of the tax paid on 95 gallons of alcohol rather than on the 100 gallons ''Used In'' or the 90 gallons ''Appearing In'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An ''abstract'' is the summary of the records (which may be set forth on Customs Form 7551) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base his claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by schedule follows:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the ''Appearing In'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under §191.9 or the identity of an agent under that section, the drawback office where claims will be filed under the ruling, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned

to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 19___, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By[2] _____

(Signature and Title)

_____

(Print Name)

V. FORMAT FOR APPLICATION FOR SPECIFIC MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(g)

COMPANY LETTERHEAD (Optional)

U.S. Customs Service, Duty and Refund Determination Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Dear Sir: We, (Applicant's Name), a (State, e.g., Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(g), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 191.8(a) of the Customs Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §191.7 of the Customs Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see §191.8(a).)

LOCATION OF FACTORY OR SHIPYARD

(Give the address of the factory(s) or shipyard(s) at which the construction and equipment will take place. If the factory or shipyard is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the Customs Regulations permits only the president, vice-president, secretary, treasurer, or any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively (see footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

CUSTOMS OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The 8 offices where drawback claims can be filed are located at: Boston, MA; New York, NY; Miami, FL; New Orleans, LA; Houston, TX; Long Beach, CA; Chicago, IL; San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, one additional copy of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The following questions must be answered:

1. Who will be the importer of the merchandise?

[2] Section 191.6(a) requires that applications for specific manufacturing drawback rulings be signed by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port your Customs power(s) of attorney is/are filed.

(If the applicant will not always be the importer, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)

2. Who is the manufacturer?

(Is the applicant constructing and equipping for his own account or merely performing the operation on a toll basis for others?)

(If an agent is to be used, the applicant must state it will comply with T.D.s 55027(2) and 55207(1), and § 191.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see § 191.7 and Appendix A), or an application for a specific manufacturing drawback ruling (see § 191.8 and this Appendix B).)

3. Will the applicant be the drawback claimant?

(State how the vessel will qualify for drawback under 19 U.S.C. 1313(g). Who is the foreign person or government for whom the vessel is being made or equipped?)

(There shall be included under this heading the following statement:

We are particularly aware of the terms of § 191.76(a)(1) of and subpart M of part 191 of the Customs Regulations, and shall comply with these sections where appropriate.)

(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be filed, do not include any reference to that procedure in this application.)

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS USED

(Describe the imported merchandise or drawback products)

ARTICLES CONSTRUCTED AND EQUIPPED FOR EXPORT

(Name the vessel or vessels to be made with imported merchandise or drawback products)

PROCESS OF CONSTRUCTION AND EQUIPMENT

(What is required here is a clear, concise description of the process of construction and equipment involved. The description should also trace the flow of materials through the manufacturing process for the purpose of establishing physical identification of the imported merchandise or drawback products and of the articles resulting from the processing.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.)

(If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what ''Basis'' you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See ''Basis of Claim for Drawback'' section below.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported article on which drawback is claimed was constructed and equipped with the use of a particular lot (or lots) of imported material; and

2. The quantity of imported merchandise[1] we used in producing the exported article.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313 and part 191 of the Customs Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following should be included in your discussion:)

RECEIPT AND RAW STOCK STORAGE RECORDS
CONSTRUCTION AND EQUIPMENT RECORDS
FINISHED STOCK STORAGE RECORDS
SHIPPING RECORDS

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The ''Used In'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''Used In'' basis. Drawback is payable in the amount of 99 percent of the duty paid on the quantity of imported material used to construct and equip the exported article.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duty paid on the 100 pounds of imported material used in constructing and equipping the exported articles.)

(The ''Appearing In'' basis may be used regardless of whether there is waste. If the ''Appearing In'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''Appearing In'' basis. Drawback is payable on 99 percent of the duty paid on the quantity of imported material which appears in the exported articles. ''Appearing In'' may not be used if multiple products are involved.)

(Based on the previous example, drawback would be payable on the 90 pounds of imported material which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The ''Used Less Valuable Waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the ''Used Less Valuable Waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duty paid on the quantity of imported material used to construct and equip the exported product, reduced by the quantity of such material which the value of the waste would replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 191.26(c) of the Customs Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the imported material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duty paid on the 95 pounds of imported material rather than on the 100 pounds ''Used In'' or the 90 pounds ''Appearing In'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An ''abstract'' is the summary of the records (which may be set forth on Customs Form 7551) which shows the total quantity

[1] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base his claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the Customs Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the ''Appearing In'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under §191.9 or the identity of an agent under that section, the drawback office where claims will be filed under the ruling, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the Customs Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 19____, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By[2] _____

(Signature and Title)

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15291, Mar. 31, 1998; 63 FR 65060, Nov. 25, 1998]

# PART 192—EXPORT CONTROL

Sec.
192.0 Scope.

## Subpart A—Exportation of Used Self-Propelled Vehicles, Vessels, and Aircraft

192.1 Definitions.
192.2 Requirements for exportation.
192.3 Penalties.

[2] Section 191.6(a) requires that applications for specific manufacturing drawback rulings be signed by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a Customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port your Customs power(s) of attorney is/are filed.

192.4 Liability of carriers.

## Subpart B—Filing of Export Information Through the Automated Export System (AES)

192.11 Description of the AES.
192.12 Criteria for denial of applications requesting AES post-departure (Option 4) filing status; appeal procedures.
192.13 Revocation of participant's AES post-departure (Option 4) filing privileges; appeal procedures.
192.14 Electronic information for outward cargo required in advance of departure.

AUTHORITY: 19 U.S.C. 66, 1624, 1646c. Subpart A also issued under 19 U.S.C. 1627a, 1646a, 1646b; subpart B also issued under 13 U.S.C. 303; 19 U.S.C. 2071 note; 46 U.S.C. 91.

SOURCE: T.D. 89–46, 54 FR 15403, Apr. 18, 1989, unless otherwise noted.

### § 192.0 Scope.

This part sets forth regulations pertaining to procedures for the lawful exportation of used self-propelled vehicles, vessels and aircraft, and the penalties and liabilities incurred for failure to comply with any of the procedures. This part also sets forth regulations concerning controls exercised by Customs with respect to the exportation of certain merchandise. This part also makes provision for the Automated Export System (AES), implemented by the Census Regulations at part 30, subpart E (15 CFR part 30, subpart E), and provides the grounds under which Customs, as one of the reviewing agencies of the government's export partnership, may deny an application for post-departure filing status or revoke a participant's privilege to use such filing option, and provides for the appeal procedures to challenge such action by Customs.

[T.D. 89–46, 54 FR 15403, Apr. 18, 1989, as amended by T.D. 99–57, 64 FR 40987, July 28, 1999]

## Subpart A—Exportation of Used Self-Propelled Vehicles, Vessels, and Aircraft

### § 192.1 Definitions.

The following are general definitions for the purposes of this subpart A.

*Certified*. ''Certified'' when used with reference to a copy means a document issued by a government authority that includes on it a signed statement by the authority that the copy is an authentic copy of the original.

*Copy*. ''Copy'' refers to a duplicate or photocopy of an original document. Where there is any writing on the backside of an original document, a ''complete copy'' means that both sides of the document are copied.

*Export*. ''Export'' refers to the transportation of merchandise out of the U.S. for the purpose of being entered into the commerce of a foreign country.

*Self-propelled vehicle*. ''Self-propelled vehicle'' includes any automobile, truck, tractor, bus, motorcycle, motor home, self-propelled agricultural machinery, self-propelled construction equipment, self-propelled special use equipment, and any other self-propelled vehicle used or designed for running on land but not on rail.

*Ultimate purchaser*. ''Ultimate purchaser'' means the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases a self-propelled vehicle for purposes other than resale.

*Used*. ''Used'' refers to any self-propelled vehicle the equitable or legal title to which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

[T.D. 89–46, 54 FR 15403, Apr. 18, 1989, as amended by T.D. 99–34, 64 FR 16639, Apr. 6, 1999]

### § 192.2 Requirements for exportation.

(a) *Basic requirements*. A person attempting to export a used self-propelled vehicle shall present to Customs, at the port of exportation, both the vehicle and the required documentation describing the vehicle, which includes the Vehicle Identification Number or, if the vehicle does not have a Vehicle Identification Number, the product identification number. Exportation of a vehicle will be permitted only upon compliance with these requirements, unless the vehicle was entered into the United States under an in-bond procedure, or under a carnet or Temporary Importation Bond; a vehicle entered under an in-bond procedure, or under a carnet or Temporary Importation Bond is exempt from these requirements. The person attempting to

export the vehicle may employ an agent for the exportation of the vehicle.

(b) *Documentation required*—(1) *For U.S.-titled vehicles.*—(i)*Vehicles issued an original certificate of title.* For used, self-propelled vehicles issued, by any jurisdiction in the United States, a Certificate of Title or a Salvage Title that remains in force, the owner must provide to Customs, at the time and place specified in this section, the original Certificate of Title or a certified copy of the Certificate of Title and two complete copies of the original Certificate of Title or certified copy of the original.

(ii) *Where title evidences third-party ownership/claims.* If the used, self-propelled vehicle is leased or a recorded lien exists in the U.S., in addition to complying with paragraph (b)(1)(i) of this section, the provisional owner must provide to Customs a separate writing from the third-party-in-interest which expressly provides that the subject vehicle may be exported. This writing must be on the third-party's letterhead paper, and contain a complete description of the vehicle including the Vehicle Identification Number (VIN), the name of the owner or lienholder of the leased vehicle, and the telephone numbers at which that owner or lienholder may be contacted. The writing must bear an original signature of the third-party and state the date it was signed.

(iii) *Where U.S. Government employees are involved.* If the used, self-propelled vehicle is owned by a U.S. government employee and is being exported in conjunction with that employee's reassignment abroad pursuant to official travel orders, then, in lieu of complying with paragraph (b)(1)(i) of this section, the employee may be required to establish that he has complied with the sponsoring agency's internal travel department procedures for vehicle export.

(2) *For foreign-titled vehicles.* For used, self-propelled vehicles that are registered or titled abroad, the owner must provide to Customs, at the time and place specified in this section, the original document that provides satisfactory proof of ownership (with an English translation of the text if the original language is not in English), and two complete copies of that document (and translation, if necessary).

(3) *For untitled vehicles.*—(i) Newly-manufactured vehicles issued an MSO. For newly-manufactured, self-propelled vehicles that are purchased from a U.S. manufacturer, distributor, or dealer that become used, as defined in this subpart, and are issued a Manufacturer's Statement of Origin (MSO), but not issued a Certificate of Title by any jurisdiction of the United States, the owner must provide to Customs, at the time and place specified in this section, the original MSO and two complete copies of the original MSO.

(ii) *Newly-manufactured vehicles not issued an MSO.* For newly-manufactured, self-propelled vehicles purchased from a U.S. manufacturer, distributor, or dealer that become used, as defined in this subpart, and not issued an MSO or a Certificate of Title by any jurisdiction of the United States, the owner must establish that the jurisdiction from where the vehicle comes does not have any ownership documentation requirements regarding such vehicles and provide to Customs, at the time and place specified in this section, an original document that proves ownership, such as a dealer's invoice, and two complete copies of such original documentation.

(iii) *Vehicles issued a junk or scrap certificate.* For used, self-propelled vehicles for which a junk or scrap certificate issued, by any jurisdiction of the United States, remains in force, the owner must provide to Customs, at the time and place specified in this section, the original certificate or a certified copy of the original document and two complete copies of the original document or certified copy of the original.

(iv) *Vehicles issued a title or certificate that is not in force or are otherwise not registered.* For used, self-propelled vehicles that were issued, by any jurisdiction of the United States, a title or certificate that is no longer in force, or that are not required to be titled or registered, and for which an MSO was not issued, the owner must establish that the jurisdiction from where the vehicle comes does not have any ownership documentation requirements regarding such vehicles and provide to

Customs, at the time and place specified in this section, the original document that shows his basis for ownership or right of possession, such as a bill of sale, and two complete copies of that original document. Further, the owner must certify in writing to Customs that the procurement of the vehicle was a bona fide transaction, and that the vehicle presented for export is not stolen.

(c) *When presented*—(1) *Exportation by vessel or aircraft*. For those vehicles exported by vessel or aircraft, the required documentation and the vehicle must be presented to Customs at least 72 hours prior to export.

(2) *Exportation at land border crossing points*. For those vehicles exported by rail, highway, or under their own power:

(i) The required documentation must be submitted to Customs at least 72 hours prior to export; and

(ii) The vehicle must be presented to Customs at the time of exportation.

(d) *Where presented*. Port directors will establish locations at which exporters must present the required documentation and the vehicles for inspection. Port directors will publicize these locations, including their hours of operation.

(e) *Authentication of documentation*. Customs will determine the authenticity of the documents submitted. Once the authenticity of the documents is established, Customs will mark the documents. In most cases the original document(s) will be returned to the exporter. In those cases where the original title document was presented to and retained by Customs and cannot be found prior to the vehicle's export, the exporter's authenticated copy of the original documentation serves as evidence of compliance with the reporting requirements.

[T.D. 89–46, 54 FR 15403, Apr. 18, 1989, as amended by T.D. 90–71, 55 FR 37708, Sept. 13, 1990; T.D. 99–34, 64 FR 16639, Apr. 6, 1999]

### § 192.3 Penalties.

(a) A $500 penalty shall be assessed against an exporter attempting to export a vehicle without complying with the requirements set forth in this part of the regulations.

(b) A $500 penalty shall be assessed against an exporter who has exported a vehicle without complying with the requirements set forth in this part of the regulations.

(c) A penalty not to exceed $10,000 may be assessed against an importer or exporter who knowingly imports, exports or attempts to import or export:

(1) Any stolen self-propelled vehicle, vessel, aircraft or part of a self-propelled vehicle, vessel or aircraft; or

(2) Any self-propelled vehicle or part of a self-propelled vehicle from which the identification number has been removed, obliterated, tampered with, or altered.

(d) Any stolen self-propelled vehicle, vessel or aircraft or part thereof or any self-propelled vehicle or part of a self-propelled vehicle from which the identification number has been removed, obliterated, tampered with or altered may be subject to seizure and foreiture pursuant to 19 U.S.C. 1627a.

### § 192.4 Liability of carriers.

Under the provisions of 19 U.S.C. 1436, the vessel master is charged with the responsibility for presenting a true manifest. If used vehicles are not included on the manifest or are inaccurately described thereon, a liability for penalties may be incurred.

[T.D. 89–46, 54 FR 15403, Apr. 18, 1989, as amended by T.D. 98–74, 63 FR 51290, Sept. 25, 1998]

## Subpart B—Filing of Export Information Through the Automated Export System (AES)

SOURCE: T.D. 99–57, 64 FR 40987, July 28, 1999, unless otherwise noted.

### § 192.11 Description of the AES.

AES is a voluntary program that allows all exporters required to report commodity export information (*see*, 15 CFR 30.16) to submit such information electronically, rather than on paper, and sea carriers to report required outbound vessel information electronically (*see*, §§ 4.63, 4.75, and 4.76 of this chapter). Eligibility and application procedures are found at subpart E of part 30 of the Census Regulations (15 CFR part 30, subpart E), denominated

Electronic Filing Requirements—Exporters. These Census Regulations (15 CFR part 30, subpart E) provide that exporters may choose to submit export information through AES by any one of three electronic filing options available. Only Option 4, the complete post-departure submission of export information, requires prior approval by participating agencies before it can be used by AES participants.

### § 192.12 Criteria for denial of applications requesting AES post-departure (Option 4) filing status; appeal procedures.

(a) *Approval process.* Applications for the option of filing export commodity information electronically through AES after the vessel has departed (Option 4 filing status) must be unanimously approved by Customs, Census and other participating government agencies. Disapproval by one of the participating agencies will cause rejection of the application.

(b) *Grounds for denial.* Customs may deny a participant's application for any of the following reasons:

(1) The applicant is not an exporter, as defined in the Census Regulations (15 CFR 30.7(d));

(2) The applicant has a history of non-compliance with export regulations (e.g., exporter has a history of late electronic submission of commodity records or a record of non-submission of required export documentation);

(3) The applicant has been indicted, convicted, or is currently under an investigation, wherein Customs has developed probable cause, for a felony involving any Customs law or any export law administered by another government agency; or

(4) The applicant has made or caused to be made in the ''Letter of Intent'', a false or misleading statement or omission with respect to any material fact.

(c) *Notice of denial; appeal procedures.* Applicants will be notified of approval or denial in writing by Census. (Applicants whose applications are denied by other agencies must contact those agencies for their specific appeal procedures.) Applicants whose applications are denied by Customs will be provided with the specific reason(s) for non-selection. Applicants may challenge Customs decision by following the appeal procedure provided at § 192.13(b).

### § 192.13 Revocation of participants' AES post-departure (Option 4) filing privileges; appeal procedures.

(a) *Reasons for revocation.* Customs may revoke Option 4 privileges of participants for the following reasons:

(1) The exporter has made or caused to be made in the ''Letter of Intent'', a false or misleading statement or omission with respect to any material fact;

(2) The exporter submitting the ''Letter of Intent'' is indicted, convicted, or is currently under an investigation, wherein Customs has developed probable cause, for a felony involving any Customs law or any export law administered by another government agency;

(3) The exporter fails to substantially comply with export regulations; or

(4) Continued participation in AES as an Option 4 filer would pose a threat to national security, such that continued participation in Option 4 should be terminated.

(b) *Notice of revocation; appeal procedures.* When Customs has decided to revoke a participant's Option 4 filing privileges, the participant will be notified in writing of the reason(s) for the decision. The participant may challenge Customs decision by filing an appeal within thirty (30) calendar days of receipt of the notice of decision. Except as stated elsewhere in this paragraph, the revocation will become effective when the participant has either exhausted all appeal proceedings or thirty (30) calendar days after receipt of the notice of revocation if no appeal is filed. However, in cases of intentional violations of any Customs law on the part of the program participant or when required by the national security, revocations will become effective immediately upon notification. Appeals should be addressed to the Director, Outbound Programs, U.S. Customs, Ronald Reagan Building, 1300 Pennsylvania Ave, NW, Room 5.4c, Washington, DC 20229. Customs will issue a written decision or notice of extension to the participant within thirty (30) calendar days of receipt of the appeal. If a notice of extension is forwarded, the applicant

will be provided with the reason(s) for extension of this time period and an expected date of decision. Participants who have had their Option 4 filing privileges revoked and applicants not selected to participate in Option 4 of AES may not reapply for this filing status for one year following written notification of rejection or revocation.

**§ 192.14 Electronic information for outward cargo required in advance of departure.**

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for any commercial cargo that is to be transported out of the United States by vessel, aircraft, rail, or truck, unless exempted under paragraph (d) of this section, the United States Principal Party in Interest (USPPI), or its authorized agent, must electronically transmit for receipt by Customs and Border Protection (CBP), no later than the time period specified in paragraph (b) of this section, certain cargo information, as enumerated in paragraph (c) of this section. Specifically, to effect the advance electronic transmission of the required cargo information to CBP, the USPPI or its authorized agent must use a CBP-approved electronic data interchange system (currently, the Automated Export System (AES)).

(b) *Presentation of data*—(1) *Time for presenting data.* USPPIs or their authorized agents must electronically transmit and verify system acceptance of required cargo information for outbound cargo no later than the time period specified as follows (see paragraph (b)(3) of this section):

(i) For vessel cargo, the USPPI or its authorized agent must transmit and verify system acceptance of export vessel cargo information no later than 24 hours prior to departure from the U.S. port where the vessel cargo is to be laden;

(ii) For air cargo, including cargo being transported by Air Express Couriers, the USPPI or its authorized agent must transmit and verify system acceptance of export air cargo information no later than 2 hours prior to the scheduled departure time of the aircraft from the last U.S. port;

(iii) For truck cargo, including cargo departing by Express Consignment Courier, the USPPI or its authorized agent must transmit and verify system acceptance of export truck cargo information no later than 1 hour prior to the arrival of the truck at the border; and

(iv) For rail cargo, the USPPI or its authorized agent must transmit and verify system acceptance of export rail cargo information no later than two hours prior to the arrival of the train at the border.

(2) *Applicability of time frames.* The time periods in paragraph (b)(1) of this section for reporting required export cargo information to CBP for outward vessel, air, truck, or rail cargo only apply to shipments without an export license, that require full pre-departure reporting of shipment data, in order to comply with the advance cargo information filing requirements under section 343(a), as amended. Paragraph (e) of this section details dates for compliance with the time frames provided in paragraph (b)(1) of this section. Requirements placed on exports controlled by other Government agencies will remain in force unless changed by the agency having the regulatory authority to do so. The CBP will also continue to require 72-hour advance notice for used vehicle exports pursuant to § 192.2(c)(1) and (c)(2)(i) of this part. USPPIs or their authorized agents should refer to the relevant titles of the Code of Federal Regulations (CFR) for pre-filing requirements of other Government agencies. In particular, for the advance reporting requirements for exports of U.S. Munitions List items, see the U.S. Department of State's International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130).

(3) *System verification of data acceptance.* Once the USPPI or its authorized agent has transmitted the data required under paragraphs (c)(1) and (c)(2) of this section, and the CBP-approved electronic system has received and accepted this data, the system will generate and transmit to the USPPI or its authorized agent (whichever is the filer in AES) a confirmation number (this number is known as the Internal Transaction Number (ITN)), which

verifies that the data has been accepted as transmitted for the outgoing shipment.

(c) *Information required*—(1) *Currently collected commodity data.* The export cargo information to be collected from USPPIs or their authorized agents for outbound cargo is already contained in the Bureau of Census electronic Shipper's Export Declaration (SED) that the USPPI or its authorized agent currently presents to CBP through the approved electronic system. The AES Commodity Module already captures the requisite export data, so no new data elements for export cargo are required under this section. The export cargo data elements that are required to be reported electronically through the approved system are also found in § 30.63 of the Bureau of Census Regulations (15 CFR 30.63).

(2) *Transportation data.* Reporting of the following transportation information is currently mandatory for AES participants under 15 CFR 30.63 for the vessel, air, truck, and rail modes (see also paragraph (c)(3) of this section):

(i) Method of transportation (the method of transportation is defined as that by which the goods are exported or shipped (vessel, air, rail, or truck));

(ii) Carrier identification (for vessel, rail and truck shipments, the unique carrier identifier is the 4-character Standard Carrier Alpha Code (SCAC); for aircraft, the carrier identifier is the 2- or 3-character International Air Transport Association (IATA) code);

(iii) Conveyance name (the conveyance name is the name of the carrier; for sea carriers, this is the name of the vessel; for others, the carrier name);

(iv) Country of ultimate destination (this is the country as known to the USPPI or its authorized agent at the time of exportation, where the cargo is to be consumed or further processed or manufactured; this country would be identified by the 2-character International Standards Organization (ISO) code for the country of ultimate destination);

(v) Estimated date of exportation (the USPPI or its authorized agent must report the date the cargo is scheduled to leave the United States for all modes of transportation; if the actual date is not known, the USPPI or its authorized agent must report the best estimate as to the time of departure); and

(vi) Port of exportation (the port where the outbound cargo departs from the United States is designated by its unique code, as set forth in Annex C, Harmonized Tariff Schedule of the United States (HTSUS); the USPPI or its authorized agent must report the port of exportation as known when the USPPI or its agent tenders the cargo to the outbound carrier; should the carrier export the cargo from a different port and the carrier so informs the USPPI or agent, the port of exportation must be corrected by the filer in AES.).

(3) *Proof of electronic filing; exemption from filing.* The USPPI, or its authorized agent, must furnish to the outbound carrier a proof of electronic filing citation (the ITN), low-risk exporter citation (currently, the Option 4 filing citation), or exemption statement, for annotation on the carrier's outward manifest, waybill, or other export documentation covering the cargo to be shipped. The proof of electronic filing citation, low-risk exporter citation, or exemption statement, will conform to the approved data formats found in the Bureau of Census Foreign Trade Statistics Regulations (FTSR) (15 CFR part 30) and FTSR Letter 168, Amendment 2 (this Letter may be obtained from the Census Bureau).

(4) *Carrier responsibility*—(i) *Loading of cargo.* The carrier may not load cargo without first receiving from the USPPI or its authorized agent either the related electronic filing citation as prescribed under paragraph (c)(3) of this section, or an appropriate exemption statement for the cargo as specified in paragraph (d) of this section.

(ii) *High-risk cargo.* For cargo that CBP has identified as potentially high-risk, the carrier, after being duly notified by CBP, will be responsible for delivering the cargo for inspection/examination. If the cargo identified as high risk has already departed, CBP may demand that the export carrier redeliver the cargo in accordance with the terms of its international carrier bond (see § 113.64(g)(2) of this chapter).

(5) *USPPI receipt of information believed to be accurate.* Where the USPPI

or its authorized agent electronically presenting the cargo information required in paragraphs (c)(1) and (c)(2) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the USPPI or its authorized agent acquired this information, and whether and how the USPPI or authorized agent is able to verify this information. Where the USPPI or authorized agent is not reasonably able to verify any information received, CBP will permit this party to electronically present the information on the basis of what it reasonably believes to be true.

(d) *Exemptions from reporting; Census exemptions applicable.* The USPPI or authorized agent must furnish to the outbound carrier an appropriate exemption state-ment (low-risk exporter or other exemption) for any export shipment laden that is not subject to predeparture electronic information filing under this section. The exemption statement will conform to the proper format approved by the Bureau of Census. Any exemptions from reporting requirements for export cargo are enumerated in §§30.50 through 30.58 of the Bureau of Census Regulations (15 CFR 30.50 through 30.58). These exemptions are equally applicable under this section.

(e) *Date for compliance.* The requirements of this section, including the pre-departure time frames for reporting export cargo information for required shipments, and the requirement of the ITN, will be implemented concurrent with the completion of the redesign of the AES commodity module and the effective date of mandatory filing regulations that will be issued by the Department of Commerce pursuant to the Security Assistance Act (Pub. L. 107–228). This date will be announced in the FEDERAL REGISTER.

[CBP Dec. 03–32, 68 FR 68176, Dec. 5, 2003]

## PARTS 193–199 [RESERVED]