DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PARTS 7, 10, 145, 173, 174, 178, 181, 191

[T.D. 98–16]

RIN 1515–AB95

Drawback

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document revises the Customs Regulations regarding drawback. The document revises the regulations to implement the extensive and significant changes to the drawback law contained in the Customs modernization portion of the North American Free Trade Agreement Implementation Act; to change some administrative procedures involving manufacturing and unused merchandise drawback, for the purpose of expediting the filing and processing of drawback claims thereunder, while maintaining effective Customs enforcement and control over the drawback program; and to generally simplify and improve the editorial clarity of the regulations.

EFFECTIVE DATE: April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Operational aspects: Maryanne Carney, Chief, Drawback and Records Branch, New York, (212–466–4575).

Legal aspects: Paul Hegland, Office of Regulations and Rulings, (202–927–1172).

SUPPLEMENTARY INFORMATION:

Background

Drawback is a refund or remission, in whole or in part, of a Customs duty, internal revenue tax, or fee. There are a number of different kinds of drawback authorized under law, including manufacturing and unused merchandise drawback. The statute providing for specific types of drawback is 19 U.S.C. 1313, the implementing regulations for which are contained in part 191, Customs Regulations (19 CFR part 191).

The North American Free Trade Agreement Implementation Act, Public Law 103–182 (December 8, 1993), specifically Title VI thereof, popularly known as the Customs Modernization Act, significantly amended certain Customs laws. In particular, § 632 of Title VI effected extensive and major amendments to the drawback law, 19 U.S.C. 1313. Also, § 622 of Title VI authorized the establishment of a ''Drawback Compliance Program'' as well as specific civil monetary penalties for false drawback claims.

Public Law 103–182 also approved and implemented the North American Free Trade Agreement (NAFTA). Section 203 of the Public Law provides special drawback provisions for exports to NAFTA countries. NAFTA drawback is separately provided for in part 181 of the Customs Regulations (19 CFR part 181). Drawback and other duty-deferral programs are addressed in subpart E of part 181. General drawback provisions under part 191 and the NAFTA drawback regulations in part 181 contain substantial differences (*e.g.*, the ''lesser of'' calculation versus full drawback, same condition versus unused merchandise drawback, etc.) Separate claims are required for drawback claims governed by NAFTA (see 19 CFR 181.46 and 191.0a).

By a document published in the **Federal Register** on January 21, 1997 (62 FR 3082), Customs proposed regulatory revisions principally to part 191 in implementation of the statutory changes. In addition, the document proposed to generally rearrange and revise part 191 largely in an effort to further simplify and improve the editorial clarity of those regulatory procedures primarily dealing with the manufacturing and unused merchandise provisions, these being the most commonly used types of drawback. Several administrative changes were proposed as well with respect to the regulatory procedures governing these provisions, for the purpose of expediting the filing and processing of drawback claims thereunder, while ensuring that Customs has the necessary enforcement information to maintain effective administrative oversight over the drawback program. Also, minor conforming changes occasioned by the general reorganization of part 191 were proposed with respect to other parts of the Customs Regulations (19 CFR parts 7, 10, 145, 173, 174 and 181).

In formulating the notice of proposed rulemaking, as noted therein, Customs consulted extensively with the drawback trade community. In particular, in the summer of 1995, Customs initiated informal rulemaking consultations in a series of meetings with various trade groups.

Numerous comments from the public were received in response to the publication of the notice of proposed rulemaking. A description, together with Customs analysis, of the comments that were submitted is set forth below.

Discussion of Comments

General

Comment: Many views were expressed about the process of informal consultations that were effected through a series of meetings initiated by Customs with various trade groups, most of these commenters variously observing that this process was instrumental and effective in assisting Customs in the preparation of a notice of proposed rulemaking which would fairly and accurately implement the drawback and related laws, and their underlying Congressional intent, as well as better reflect current industry practices and expectations.

Customs Response: Customs agrees that this final rule, based on the notice of proposed rulemaking which was developed through the innovative process described, correctly reflects the intent of the drawback law, as well as current industry concerns, and will improve drawback processing efficiency.

Comment: It was stated that the paperwork burden which would be generated by the proposed regulations was underestimated, due in part to the need to obtain certification in the drawback compliance program, and to provide Harmonized Tariff Schedule numbers in certain instances.

Customs Response: It should be noted that the information collection and recordkeeping burden in question contained in the proposed rule represents an estimated average annual burden. Customs, in accordance with the Paperwork Reduction Act of 1995, periodically reviews the accuracy of the information collection estimates required for compliance with its regulatory provisions. In the course of such review, changes to an estimated information collection burden will be made as appropriate.

Comment: The concern was expressed about the new Customs Forms that would be issued for drawback; it was asked that Customs work closely with the trade in the development of such forms, with one comment suggesting that the forms be finalized and included in the final drawback regulations herein.

Customs Response: Customs has worked closely with the public in developing new Customs Forms for drawback. The new drawback forms are: ''Drawback Entry'' (Customs Form 7551), ''Delivery Certificate for Purposes of Drawback'' (Customs Form 7552), and ''Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback'' (Customs Form 7553). The titles and numbers of the new forms are inserted where appropriate in the regulations.

Comment: Questions were raised about the nature and intent underlying the information contained in the

''BACKGROUND'' section of the proposed rule.

Customs Response: The ''BACKGROUND'' section of a rulemaking document presents its regulatory history. The information in this section is intended to give the specific detail necessary to explain the basis and purpose of the subject regulatory provisions and to furnish adequate notice of the issues to be commented on, as required by the Administrative Procedure Act. This enables a reviewing body, such as a court of law, to be aware of the legal and factual framework underlying an agency's action (see, *e.g., American Standard, Inc.,* v. *United States,* 602 F. 2d 256, 269 (Ct. Cl. 1979)).

Comment: A comment noted that some general drawback contracts were not included in Appendix A to part 191 in the proposed rule, along with the other general contracts.

Customs Response: The comment has merit. Four of the general manufacturing drawback rulings, as they are now considered, specifically T.D.s 83–53, 83–77, 83–80, and 83–84, were inadvertently omitted from Appendix A. They are now included therein. Also, T.D. 84–49, which required Customs Headquarters approval to obtain petroleum drawback under 19 U.S.C. 1313(b), was thus included in Appendix B as ''Format for 1313(b) Petroleum Drawback Application''. However, T.D. 84–49 is now included among the general manufacturing drawback rulings for which a letter of notification of intent to operate must be submitted to a drawback field office.

Comment: A statement was desired in the ''BACKGROUND'' section of the final rule that certain existing rulings concerning what constituted a manufacture or production for drawback purposes would remain in effect.

Customs Response: No change as to what constitutes a manufacture or production is intended by these regulations. As to non-revoked rulings generally, to the extend that such rulings do not materially conflict with the statute and these regulations, they remain in effect and may be relied upon to the extent provided in 19 U.S.C. 1625 and 19 CFR part 177.

It is also pointed out that any changes made to the rulings published in the Appendix to part 191 in this final rule are merely conforming to these regulations and do not adversely affect the public.

Comment: An objection was made about the planned transfer of drawback claims from the Customs field office where filed to another such office having more expertise in the handling of the particular claims, as was mentioned in the ''BACKGROUND'' section of the proposed rule.

Customs Response: Customs believes that the planned redistribution of drawback workload, as described, which, as observed in the proposed rule, is an internal work management issue not requiring regulatory action, will result in quicker, more efficient, and more accurate processing of drawback claims.

Comment: Changes were requested in the drawback and duty-deferral provisions, related primarily to inventory management procedures and accounting, that were promulgated in part 181, Customs Regulations (19 CFR part 181) pursuant to the North American Free Trade Agreement (NAFTA).

Customs Response: The provision in part 181 for accounting for fungible goods in inventory which are to be exported to Canada or Mexico in the same condition as imported and for which drawback is claimed under 19 U.S.C 1313(j)(1) is modified consistent with the changes to accounting methods for drawback in part 191 (see § 191.14). Under the amended provision, if all of the goods in a particular inventory are non-originating goods, the identification of the goods for purposes of designation for drawback shall be on the basis of one of the accounting methods authorized in 19 CFR 191.14, as authorized therein, including first-in first-out (FIFO), last-in, first out (LIFO), low-to-high (ordinary, with established average inventory turn-over period, and blanket methods), and average. Fungible originating and non-originating goods still may be commingled in inventory. When such originating and non-originating goods are commingled, the origin of the goods would continue to be determined according to the inventory methods provided for in the appendix to part 181, *see* 19 U.S.C. 3333(a)(2)(B). In this situation (*i.e.,* when originating and non-originating fungible goods are commingled in inventory), the identification of the goods for purposes of designation for drawback must also be on the basis of the inventory method from the appendix to part 181. The reason that one of the accounting methods authorized in § 191.14 may not be used in the latter instance is that to do so would make so complicated area that verification by Customs would be an extreme administrative burden.

Subpart A, Part 191

Comment: It was asked that definitions for ''merchandise'', ''articles'', ''perfecting'', ''restructuring'', and ''stay'' be added to proposed § 191.2. It was requested that a definition be included for the term ''operator'' as used in Appendix A, while another comment suggested adding a definition for the term ''records''.

Customs Response: Customs concludes that definitions for ''merchandise'' and ''articles'' are unnecessary and could prove confusing, inasmuch as these general terms have different meanings depending on the particular type of drawback involved. Also, Customs finds that the terms ''perfecting'', restructuring'', and ''stay'' are already adequately explained in the specific regulatory sections in which they appear. Furthermore, no definition of ''operator'' is added, but any confusion caused by the use of this term in the general manufacturing drawback rulings in Appendix A is removed by substituting ''Manufacturer or Producer'' therefor.

Customs has, however, determined to include a definition in § 191.2 for the term ''records'' based on the definition of this term appearing in 19 U.S.C. 1508. In addition, a definition of ''filing'', based in part on the definition of that term in 19 CFR 141.0a for purposes of the entry of merchandise, is included in § 191.2 to implement 19 U.S.C. 1313(l), which authorizes regulations which may include, but need not be limited to, the electronic submission of drawback entries. These definitions are added to § 191.2 in appropriate alphabetical order.

Comment: It was suggested that proposed § 191.2(a) defining the term ''abstract'' be clarified by stating that a certificate of manufacture and delivery when properly completed may serve as an abstract.

Customs Response: Customs finds that this is unnecessary. No reference is made in these regulations to an ''abstract of manufacturing records'', which is how the term ''abstract'' was apparently viewed. As used herein, an abstract is simply one of two methods (the other being the schedule method) by which a manufacturer may show the amount of merchandise used or appearing in the exported article. To make this clear, a paragraph (d) is included in § 191.23.

Comment: The definition for a certificate of delivery in proposed § 191.2(b) was addressed, with the suggestion being made that the definition provide for the delivery of the qualified or substituted article under 19 U.S.C. 1313(p) dealing with the substitution of finished petroleum products. It was further recommended that the definition be made consistent with proposed § 191.10, in particular by

providing that a certificate of delivery was also used to document intermediate transfers of merchandise or product.

Customs Response: These comments have merit. The transfer of a qualified article from a manufacturer, producer or importer, under 19 U.S.C. 1313(p), is added to the definition of a certificate of delivery in § 191.2(c), as redesignated, and this definition is made consistent with the meaning and purpose of a certificate of delivery as set forth in § 191.10.

In the case of certificates of delivery for transfers under 19 U.S.C. 1313(p), a certificate of delivery would be required for a transfer of the qualified article from the importer to the exporter and for all intermediate transfers of the qualified article from the importer to the exporter (§§ 1313(p)(2)(A)(iv), 1313(p)(2)(F)). Similarly, a certificate of manufacture and delivery would be required for a transfer of the qualified article from the manufacturer or producer to the exporter (intermediate transfers of the qualified article would require a certificate of delivery) (§§ 1313(p)(2)(A)(ii), 1313(p)(2)(F)). Because the exporter of the exported (substituted) article must itself either have manufactured or produced or imported the qualified article or have purchased or exchanged, directly or indirectly, the qualified article from the manufacturer or producer or the importer (§ 1313(p)(2)(A)(i), (ii), (iii), and (iv)), no certificate or delivery would be used for the substituted exported article under 19 U.S.C. 1313(p), (*i.e.*, because the exporter would not transfer the exported article and issue a certificate of delivery to itself).

Also, proposed § 191.2(d) defining the term ''Act'' is redesignated as § 191.2(b).

Comment: It was requested that the definition for a certificate of manufacture and delivery in proposed § 191.2(c) be changed to make it consistent with proposed § 191.24.

Customs Response: Customs agrees and has modified the definition of a certificate of manufacture and delivery in § 191.2(d), as redesignated, to be consistent with the information for this certificate as set forth in § 191.24. Also, § 191.2(d) adds a cross-reference to § 191.24.

Comment: The recommendation was made that the definition for commercially interchangeable merchandise in proposed § 191.2(e) include a reference to proposed § 191.32(c) dealing with determinations of commercial interchangeability under the substitution unused merchandise drawback law. A comment urged that proposed § 191.32(c) be changed to declare that commercial interchangeability existed if the governing criteria in this regard were substantially rather than completely met.

Customs Response: A cross reference to § 191.32(c) is added to § 191.2(e). However, Customs cannot change § 191.32(c) as requested. The criteria employed in determining commercial interchangeability is adopted from the legislative history of the substitution unused merchandise drawback law. However, to better implement legislative intent in this regard, § 191.32(c) is changed to provide that in determining commercial interchangeability, Customs will evaluate the critical properties of the substituted merchandise. It is noted that procedures for contesting specific rulings on commercial interchangeability are found in 19 U.S.C. 1625 and 19 CFR part 177.

Comment: It was observed that the definition of designated merchandise appearing in proposed § 191.2(f) to include drawback products could be misleading in relation to proposed § 191.26(b)(3) which provided for exportation or destruction ''within 5 years of the importation of the designated merchandise'', the concern apparently being that drawback products would not be imported.

Customs Response: Customs agrees, and has appropriately modified § 191.27(b)(3) as redesignated. No change to the definition of designated merchandise in § 191.2(f) is warranted.

Comment: It was variously contended that the definition of destruction in proposed § 191.2(g) should provide for the allowance of drawback when merchandise was not completely destroyed, had value, and was partially recovered or recycled.

Customs Response: It is Customs position that the proposal to allow drawback when complete destruction does not occur (and the resulting scrap has value) is not within Customs authority to implement by regulations.

Comment: A suggestion was made that the definition for direct identification drawback reflect that such identification could be effected using an approved accounting method provided for in proposed § 191.14.

Customs Response: Customs agrees. Section 191.2(h) is modified accordingly.

Comment: A request was made that the definition of drawback in proposed § 191.2(i) state the amount of the drawback refund and include a cross reference to proposed § 191.3 concerning the types of duty which could be the subject of drawback recovery.

Customs Response: A reference to § 191.3 is added to § 191.2(i). However, the measure of the drawback refund is not warranted. Customs has reviewed each kind of drawback to ensure that in situations in which the amount of drawback recovery is 100%, the applicable regulation specifically so states.

Comment: It was remarked, with respect to the definition for drawback product in proposed § 191.2(l), that such a product need not be ''wholly'' manufactured in the United States.

Customs Response: This comment has merit. The reference to a drawback product as being wholly manufactured in the United States is deleted.

Comment: The suggestion was put forth that the definition of exportation in proposed § 191.2(m) be revised to make provision for the lading of goods on qualifying vessels and aircraft under 19 U.S.C. 1309.

Customs Response: Customs agrees. Section 191.2(m) is revised consistent with 19 U.S.C. 1309 and reference to 19 CFR 10.59 through 10.65 is added. Also, as already noted, a definition of ''exporter'' is added to this provision, consistent with the definition of this term in the regulations of the Bureau of Export Administration, Department of Commerce (15 CFR part 772).

Consistent with the definition of ''exportation'', the definition of ''exporter'' provides that for ''deemed exportations'' the exporter is the 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 (*e.g.*, 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 supplies on the qualifying aircraft or vessel). Thus, if an aircraft or vessel operator has such power and responsibility, that aircraft or vessel operator is the exporter and is entitled to claim drawback or to waive and assign the right to claim drawback to another authorized party (see § 191.82). If another party (*e.g.*, a fuel supply company) has such power and responsibility, that party is the exporter and is entitled to claim drawback or to waive and assign the right to claim drawback to another authorized party. This will enable the public, and Customs, to identify with greater certainty the party responsible for keeping records of exportation and the party who may claim drawback.

Comment: It was recommended that the term ''general manufacturing drawback ruling'' in proposed § 191.2(o) be changed to ''general drawback

statement''. It was asked that any new general rulings be published first as Treasury Decisions (T.D.s) and thereafter included in Appendix A to part 191.

Customs Response: Customs hereby affirms the change from drawback ''contracts'' to ''rulings'', which was occasioned only after thorough review and consideration, as noted in the proposed rule (see 62 FR 3086). The reasons for this change were thoroughly described in the proposed rule (see 62 FR 3083 and 3096–3087).

The comment suggesting that new general rulings should first be published as T.D.s and subsequently added to the Appendix has merit and is adopted. To this end, the definition for general manufacturing drawback rulings now appearing in § 191.2(p), as redesignated, is changed to note that such rulings will be published as T.D.s and in Appendix A of part 191. This change is also effected in greater detail in § 191.7 dealing with the procedures for general manufacturing drawback rulings.

Additionally, the explanation in the definition stating when a manufacturer or producer may operate under a general manufacturing drawback ruling and describing the procedures for such rulings is removed as unnecessary and not a part of the definition. The removed material is instead provided for in § 191.7.

Comment: The question was asked as to whether the definition of manufacture or production in proposed § 191.2(p) was intended in any way to undermine existing precedential rulings or decisions in this connection.

Customs Response: There is no intent to change the existing definition of manufacture or production for drawback purposes (now redesignated as § 191.2(q)). This was made clear in the proposed rule.

Comment: It was asked that the term ''possession'' in proposed § 191.2(q) be further defined and explained.

Customs Response: Customs believes that the definition of possession (now redesignated as § 191.2(s)), which is based on the language of the statute (19 U.S.C. 1313(j)(2)), is sufficiently clear as is.

Comment: With respect to proposed § 191.2(r) defining relative value in situations where multiple products concurrently result in manufacture, it was suggested that a definition be included in proposed § 191.2 for multiple products.

Customs Response: Customs agrees. A definition for multiple products as ''two or more products produced concurrently by a manufacture or production operation or operations'' is added in appropriate alphabetical order to § 191.2. The definition for relative value is redesignated as § 191.2(u), and the reference to by-product appearing therein is removed.

Comment: Changes were suggested to the definition for substituted merchandise in proposed § 191.2(s) to provide, respectively, for substitution under 19 U.S.C. 1313(b), 1313(j)(2), and 1313(p). Also, it was suggested that this definition be placed in alphabetical order in proposed § 191.2.

Another comment requested that Customs provide guidance to the trade as to what constituted a substantial change in manufacture or production, which would preclude merchandise from being of the ''same kind and quality'' under 19 U.S.C. 1313(b), the criterion for permitting substitution for drawback purposes thereunder. This comment asked that merchandise falling under the same 8-digit harmonized tariff schedule (HTS) number be accepted as being of the same kind and quality.

Customs Response: Customs has revised the definition for substituted merchandise under § 191.2(x), as redesignated, so as to simplify it. Also, the definitions in § 191.2 have been placed in alphabetical order.

However, the comment suggesting the inclusion of an explanation as to what constitutes a substantial change in manufacture or production which would preclude a finding of same kind and quality under 19 U.S.C. 1313(b) is not adopted, inasmuch as Customs believes that such determinations are better made on a case-by-case basis. While the use of the HTS number is expressly recognized for this purpose under 19 U.S.C. 1313(p), no such provision to this effect exists in § 1313(b).

Comment: Various concerns were expressed over the definition of a specific manufacturing drawback ruling under proposed § 191.2(u); it was generally desired that the term ''ruling'' be changed to ''statement'', which would occasion the removal of the reference to the applicability of 19 CFR part 177 to such rulings. Since a ruling under part 177 applied to prospective transactions, it was principally asked whether drawback claims could still be filed prior to issuance of a general or specific manufacturing drawback ruling, and what type of confidential treatment would be accorded the manufacturing drawback ruling request.

Customs Response: As already noted, Customs has determined to retain the term ''ruling'' in § 191.2(w), as redesignated, rather than the term ''contract'' or ''statement'', for the reasons amply explained in the proposed rule. In any event, § 191.27(c) as redesignated makes it clear that drawback claims may continue to be filed before a letter of notification of intent to operate under a general manufacturing drawback ruling is acknowledged or a specific manufacturing drawback ruling is approved.

Also, the applicability of 19 U.S.C. 1625 and 19 CFR part 177 to a drawback ruling hereunder will not affect the confidentiality otherwise accorded under the Freedom of Information Act either to an application for a specific manufacturing drawback ruling, or to a letter of intent to operate under a general manufacturing drawback ruling. That is, the general ''ruling'' is the published T.D. appearing in Appendix A to part 191. In the case of a specific manufacturing drawback ruling, the ''ruling'' is the letter of approval issued by Customs, which would be published as a synopsis in the Customs Bulletin. Section 191.2(w) as redesignated is changed to clarify this.

Comment: With respect to proposed § 191.3(a), clarity was requested regarding the payment of drawback on voluntary tenders made in connection with notices of prior disclosure pursuant to 19 U.S.C. 1592(c). Also, it was advocated that proposed § 191.3(a)(1)(iii) set forth a definition of what comprised voluntary tenders subject to drawback, in order to avoid confusion.

It was suggested that proposed § 191.3(a)(1) (ii), (iii) and (iv) be changed to simply reference proposed § 191.81 which would contain the substantive requirement pertaining to the provisions that a written request be submitted for the payment of drawback, along with a waiver of payment under any other provision of law. It was also suggested that proposed § 191.3(a)(1)(iii) be changed to indicate that any waiver be conditioned on the refund being received as drawback and not subject to repayment. A comment asked with reference to proposed § 191.3(a) (and proposed § 191.81) that the filing of the written request waiver be allowed at any time prior to final liquidation of the drawback entry.

In addition, in proposed § 191.3(a)(1) (iii) and (iv), a question was presented as to the need for a waiver of payment in the case of warehouse withdrawals whose liquidation had become final.

It was also noted that the references in proposed § 191.3(a)(1) (ii), (iii), and (iv) to § 191.82 (b) and (c) should be instead to proposed § 191.81 (b) and (c).

Customs Response: The erroneous citations are duly corrected.

The comment suggesting a clear definition of ''voluntary tenders'' has merit and is adopted. ''Voluntary tenders'' are thus defined in § 191.3(a)(1)(iii) for purposes of § 191.3, as a payment of duties on imported merchandise in excess of the amount 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 in the provision and § 191.81 are met.

In response to the comment about what must be waived, it is any claim to payment or refund limited to the drawback granted. However, this is provided for in § 191.81(c), not in § 191.3. Also in this regard, the comment that the written request and waiver may be filed at any time prior to final liquidation of the drawback entry requires no change to § 191.81(c) because there is no time limit provided therein.

The comment suggesting inclusion of tenders made in connection with a notice of prior disclosure pursuant to 19 U.S.C. 1592 has merit and is adopted. The adoption of this suggestion is implemented by combining § 191.3(a)(1)(iii) and (iv), and adding to it tenders of duty made in connection with notices of prior disclosure under 19 U.S.C. 1592(c)(4), so that there is now one provision (§ 191.3(a)(1)(iii)) providing that duties subject to drawback include tenders of duties after liquidation has become final, such tenders to include voluntary tenders, including tenders of duty in connection with notices of prior disclosure under 19 U.S.C. 1592(c)(4), and duties restored under 19 U.S.C. 1592(d).

Insofar as the comment suggesting the removal to § 191.81 of the requirement for filing a written request and waiver is concerned, this comment has merit. The provision is being changed to refer to § 191.81, which will contain the substantive requirement for a written request and waiver. In answer to the question of why a waiver would be needed for warehouse withdrawals, the reason such a waiver would be needed is that the warehouse withdrawal for consumption would have been liquidated, and liquidation would have become final, after which the tender upon which drawback is claimed would have been made, so that a waiver would be desirable to ensure that Customs would not pay *both* drawback and a refund of the tender under some other provision of law.

Comment: The assertion was made, with respect to proposed § 191.3(b), that harbor maintenance fees should be subject to drawback. Also, a comment wanted drawback payable on interest paid pursuant to post-entry assessments.

Customs Response: Customs disagrees that harbor maintenance fees should be subject to drawback, inasmuch as such fees are imposed in connection with part use, not importation of merchandise (within the legal meanings of 19 U.S.C. 1313 and 26 U.S.C. 4462). Likewise, drawback is not payable on interest.

Comment: A comment asserted that proposed § 191.3(c) needed to be revised specifically to make clear that products falling within the tariff-rate quota (but not payable at the over-quota rate of duty) were eligible for all types of drawback, while products assessed the over-quota rates of duty were eligible only under 19 U.S.C. 1313(j)(1), with tobacco being eligible under both 19 U.S.C. 1313(j)(1) and 1313(a).

Customs Response: This comment has merit and is adopted. The provision is re-drafted accordingly.

Comment: One comment suggested that, in proposed § 191.4(b), the word ''was'' be changed to ''is''.

Customs Response: The comment has merit and is adopted.

Comment: It was contended that proposed § 191.6 concerning who may sign drawback documents was in contradiction to proposed § 191.8 dealing with specific manufacturing drawback rulings, as well as 19 CFR part 177 regarding the submission of requests for rulings. One such comment noted that the list of persons did not include attorneys who should have signing authority for their clients at least with respect to applications for drawback rulings.

Customs Response: These comments have merit, insofar as they raise questions regarding the applicability of the limitations on who may conduct ''Customs business'' under 19 U.S.C. 1641 and 19 CFR part 111. The comments are adopted, and § 191.6 is appropriately redrafted to add a new paragraph (c), so that the persons listed in paragraph (a) are the only persons who may sign any of the documents listed in paragraph (b).

Under new paragraph (c), letters of notification of intent to operate under a general manufacturing drawback ruling (§ 191.7(b)) and applications for a specific manufacturing drawback ruling (§ 191.8), as well as requests for nonbinding predeterminations of commercial interchangeability (§ 191.32(c)(2)), applications for waiver of prior notice (§ 191.91), applications for accelerated payment (§ 191.92), and applications for participation in the drawback compliance program (subpart S) may be signed by any of the persons listed in paragraph (a), or any other individual legally authorized to bind the person (or entity).

Comment: Referring to proposed § 191.6(a)(1), a question was raised as to who specifically would be ''any other individual legally authorized to bind the corporation''.

Customs Response: The comment has merit. The word ''individual'' therein is changed to ''employee''.

Comment: With respect to proposed § 191.6(a)(4), it was suggested that any employee of ''a'' business entity be changed to ''the'' business entity.

Customs Response: The comment has merit and is adopted.

Comment: One comment expressed concern that the authority of an individual acting on his or her own behalf, as set forth in proposed § 191.6(a)(5), implied that an unlicensed person might be permitted to conduct Customs business.

Customs Response: This provision is intended to provide for a situation in which an individual (*e.g.*, an individual drawback claimant or exporter) signs documents in his or her own capacity. Since the provision contains the modifier ''acting on his or her own behalf'', Customs does not believe that this provision could be interpreted to allow an unlicensed person to conduct Customs business on behalf of another (see 19 U.S.C. 1641(a)(2)).

Comment: A question was presented as to whether proposed § 191.6(b) should include a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback.

Customs Response: The suggestion that Notices of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback should be listed as one of the documents that can be signed by the persons in § 191.6(a) has merit and is adopted.

Comment: A concern was raised about ''endorsements'' of exporters on bills of lading or evidence of exportation in proposed § 191.6(b)(6).

Customs Response: The comment appears to be concerned that the practice of permitting blanket letters of endorsement (which should be blanket certifications) be provided for in the regulations. This comment has merit and is adopted; the reference to ''Endorsements'' is changed to ''Certifications'', and citations to §§ 191.28 (as redesignated from proposed § 191.27) and 191.82 are added in § 191.6(b)(5), as redesignated (proposed § 191.6(b)(7) is also redesignated as § 191.6(b)(6)). It is noted that §§ 191.28 as redesignated and 191.82 are modified to provide for ''blanket'' certifications.

Comment: As to proposed § 191.7 dealing with general manufacturing drawback rulings, the recommendation was made in connection with proposed § 191.2(o) that the term ''rulings'' be changed to ''statements''.

It was asked that general drawback rulings be published first as T.D.s, and then subsequently be included in Appendix A to part 191. Another comment asked how the general rulings in Appendix A would be identified.

A comment wanted Customs to acknowledge requests for general rulings within 30 days.

It was stated that approved letters of intent should receive a unique computer-generated ruling number.

The question was asked as to how modifications of letters of intent to operate under a general ruling would be handled; a comment wanted provisions included in proposed § 191.7 concerning the use of accounting procedures and tradeoff; another comment stated that there was no provision for transferring a general ruling to another drawback office.

Customs Response: In regard to the comment suggesting that new general rulings should first be published as T.D.s and subsequently added to the Appendix, this comment has merit and is adopted in § 191.7(b)(1). Furthermore, the general manufacturing drawback rulings in Appendix A are being identified by their T.D. numbers.

In regard to the change in nomenclature (from ''rulings''), these comments are not adopted, as previously discussed in reference to proposed § 191.2(o).

In regard to the suggestion that there should be a time limitation on acknowledgments by drawback offices of applications and that the time should be 30 days, Customs is not adopting this suggestion, as such, but is adding in § 191.7(c) that Customs is required to act ''promptly'' on applications. Because drawback claims may be filed pending acknowledgment of a letter of notification of intent to operate under a general drawback ruling or before approval of a specific manufacturing drawback ruling (see § 191.27(c) as redesignated), it is Customs' position that a time limit for action is not necessary.

In regard to the comment suggesting a unique electronic ruling number for each general manufacturing drawback ruling, this comment has merit and is also added in § 191.7(c).

In regard to the comment asking how modifications to letters of intent are to be made, because letters of notification of intent are relatively short and simple, no provision like that appearing in § 191.8(g) is provided. When the information included in a letter of notification of intent changes, a new letter of notification of intent must be filed.

The suggestion relating to a statement regarding the use of a particular accounting method and the use of tradeoff under the general manufacturing drawback ruling is not adopted (because application of those provisions is provided for in the applicable regulations).

In regard to the comment that the regulation does not address how a change in the drawback office where claims will be filed may be made, no provision such as that added to § 191.8 is being provided for in this section (because, as is true of modifications, letters of intent are relatively short and simple). When the person who submitted the letter of intent wishes to add a different drawback office, a new letter of intent (to that drawback office) must be filed.

Comment: The observation was made that the identification of the general manufacturing drawback rulings was potentially confusing. It was suggested that the precise general manufacturing drawback ruling under which the manufacturer proposed to operate should be listed as one of the requirements in proposed § 191.7(b)(3) and that the general manufacturing drawback rulings in Appendix A should be identified by their Treasury Decision numbers (or some other Customs-assigned number).

Customs Response: This comment has merit and is adopted. Section 191.7 is revised to include a paragraph (b)(3)(iv) to this effect, with redesignation accordingly. As already noted, the T.D. numbers of the respective general manufacturing drawback rulings have been included in Appendix A.

Comment: A comment, with respect to proposed § 191.7(b)(2), stated that the number of copies of letters of intent required to be submitted should be limited to only one copy per drawback office.

Customs Response: This comment has merit and is adopted.

Comment: Concerning proposed § 191.7(b)(3)(iv), one comment asked that a description of the merchandise and articles be included in the letter of intent under a general ruling, while another comment wanted to require a description of the manufacturing process. A third comment asked about the processing of a letter of intent under proposed § 191.7(c).

Customs Response: Section 191.7(b)(3)(v), as redesignated from proposed § 191.7(b)(3)(iv), requires that merchandise and articles be described unless specifically described in the letter of notification (instead of ''letter of notification'', this should have read ''general manufacturing drawback ruling'' and is changed accordingly). There are instances in which the merchandise and articles are specifically so described (*e.g.*, orange juice (T.D. 85–110, raw sugar (T.D. 83–59)) and it is in these situations that the merchandise and articles do not have to be described (because they are already described in the general manufacturing drawback ruling).

As for the second comment, § 191.7 is changed by adding a paragraph (b)(3)(vi) (with redesignation accordingly), to provide that a letter of notification of intent to operate under a general manufacturing drawback ruling must include a description of the manufacture, if such a description is not already described in the general manufacturing drawback ruling.

Additionally, § 191.7(c) is changed to provide that the drawback office will acknowledge the letter of intent *if:* (1) the letter of notification of intent is complete; (2) the general manufacturing drawback ruling identified by the manufacturer or producer is applicable to the manufacturing or production process described; (3) the general manufacturing drawback ruling is followed without variation; and (4) the manufacturing or production process described meets the definition of a manufacture or production under § 191.2(q) (as redesignated).

In this latter regard, as further provided in § 191.7(c), the letter of acknowledgment from the drawback office will contain specific authorization to operate under the general manufacturing drawback ruling, subject to the requirements and conditions of that general manufacturing drawback ruling and the law and regulations.

In addition, § 191.7(c) is revised to require that the manufacturer or producer be advised, in writing, if the letter of intent cannot be acknowledged. To this end, if the letter of notification of intent to operate under a general manufacturing drawback ruling includes conditions or terms varying from the general manufacturing drawback ruling published as a T.D. or in Appendix A, the drawback office may not acknowledge the letter and will return it to the manufacturer or producer for modification and resubmission or for submission to Customs Headquarters as a specific manufacturing drawback ruling.

Comment: It was commented, with respect to proposed § 191.7(b)(3)(vi),

that the requirement of a suffix to the IRS number should be included.

Customs Response: The comment that a suffix to the IRS number should be stated has merit and is adopted. This provision is redesignated as § 191.7(b)(3)(viii).

Comment: A comment requested that, rather than terminating a ruling automatically after 5 years of non-use, proposed § 191.7(d) be changed to permit a manufacturer a period of time, such as 60 days, within which to request Customs not to revoke the ruling.

Customs Response: This request is not adopted. This suggestion would add unnecessarily to the administrative burden of processing drawback. If a claimant is inactive for 5 years and notice of termination is published, the claimant may, under the very simple procedures provided in § 191.7, submit a new notification of intent to operate under the general manufacturing drawback ruling.

Comment: The statement was made, in relation to proposed § 191.8 addressing the procedures for specific manufacturing drawback rulings, that the term be changed from ''rulings'' to ''statements'', and that requests for manufacturing contracts under 19 U.S.C. 1313(a) should continue to be approvable by local drawback offices.

Customs Response: As already averred, Customs has determined to retain the change from drawback ''contracts'' or ''statements'' to ''rulings''. Drawback offices would, as proposed and as in this final rule, acknowledge receipt of letters of notification of intent to operate under a general manufacturing drawback ruling under 19 U.S.C. 1313(a) (unless the proposal varied from the general manufacturing drawback ruling, in which case Headquarters approval would be necessary.) An application for a specific manufacturing drawback ruling under § 191.8(d) must be submitted to Customs Headquarters.

Comment: A comment suggested that the IRS number required in the application for a specific ruling in proposed § 191.8(c)(2), include the suffix.

Customs Response: This comment has merit and is adopted.

Comment: A comment with respect to proposed § 191.8(e)(1) questioned the use of T.D.s under which to publish approved drawback rulings. It was noted that the term ''contract'' was inadvertently used in this provision. Another comment suggested that the Headquarters approval letter should include the computer-generated ruling number.

Customs Response: Customs is not prepared at this time to eliminate the use of T.D.s for this purpose. The comment noting the misuse of the term ''contract'' in this provision is correct; the provision is changed. The comment that the Headquarters approval letters should include the computer-generated number has merit and is adopted.

In addition, consistent with the comment and response for § 191.7(b)(2), only 1 copy of the approved application for the specific manufacturing drawback ruling is forwarded to the appropriate drawback office(s). A change to this same effect is made in § 191.8(d).

Comment: A comment on proposed § 191.8(e)(2) stated that, for consistency, the notification to an applicant that the application could not be approved should be in writing. Another comment suggested that the term ''promptly'' (within which to notify the applicant that the application could not be approved) should be specifically defined.

Customs Response: The comment suggestion that the notice of disapproval be in writing has merit and is adopted. However, the suggestion that ''promptly'' be specifically defined is not adopted.

Comment: Concerning the modification of specific manufacturing drawback rulings in proposed § 191.8(g), it was variously asked if changes in corporate officers, changes in factory locations, changes in the basis of claim, changes in filing location, and changes in brokers could also be handled by the limited modification procedure, set forth in proposed § 191.8(g)(2), or were they intended to be made through Headquarters, as provided in proposed § 191.8(g)(1) which required the filing of a supplemental application in the form of the original application.

Another comment asked for which limited modification should the drawback office notify Headquarters, for which limited modification should the drawback office notify the claimant in writing of receipt, and for which limited modification should the ACS (Automated Commercial Systems) drawback database ruling be revoked and reissued, and when would an amendment be appropriate.

Customs Response: These comments have some merit and, to the extent necessary, are adopted in § 191.8(g)(2). It is noted that changes in factory locations are already covered in § 191.8(g)(2)(i)(A), and changes in corporate officers and brokers are covered by the provision for those persons who will sign drawback documents in § 191.8(g)(2)(i)(D) (corporate officers are no longer required).

Changes in the basis of claim are added in § 191.8(g)(2)(i), as are changes in the filing location. In addition, changes in the decision to use or not to use an agent for drawback purposes, and the identity of an agent if one is used, are made subject to the limited modification procedures.

In the case of changes in the filing location, Customs is adding to the regulation a provision (§ 191.8(g)(2)(iii)), based on current practice as shown by a letter of October 19, 1960 (published as Customs Information Exchange letter (CIE) 1454/60), which permits the change of the drawback office where claims will be filed.

Under the foregoing provision in § 191.8(g)(2)(iii), the claimant files, with the new drawback office, a written application to file claims at that office, with a copy of the application and approval letter from the drawback office where claims are currently filed. The claimant is required to provide a copy to the latter drawback office of the written application to the new drawback office.

Also, § 191.8(g)(2)(ii) is revised to specifically provide detailed procedures for handling limited modifications (the drawback office is given notice by the manufacturer or producer operating under a specific manufacturing drawback ruling, with a copy to Customs Headquarters, and the drawback office acknowledges acceptance of the limited modification in writing to the manufacturer or producer (with a copy to Customs Headquarters) and makes corresponding changes to the ACS drawback database, as necessary (the latter (changes to the ACS drawback database) is not provided for in the regulations, as this is an internal administrative procedure). No revocation in the ACS drawback database is necessary.

Furthermore, to simplify the process and limit the administrative burden, the provision for supplemental application procedures in § 191.8(g)(1) is changed to provide that, at the discretion of the manufacturer or producer, a supplemental application may be in the form of an original application or it may include only the provisions in the specific manufacturing drawback ruling application that are sought to be modified, and the unchanged provisions, in an existing approved specific manufacturing drawback ruling, may be incorporated by reference to the approved ruling.

Comment: It was desired that a successorship under 19 U.S.C. 1313(s) be handled under the limited

modification procedure of proposed § 191.8(g)(2).

Customs Response: This comment is not adopted. Successorships under § 1313(s) are subject to the supplemental application procedures. However, it is noted here that the supplemental application procedures of § 191.8(g)(1) have been simplified.

Comment: A change was requested in the duration of the approval of a specific drawback ruling in proposed § 191.8(h). A comment asked about the effect of these final regulations on existing drawback contracts.

Customs Response: The comment suggesting a change to the duration of the approval of a drawback ruling is not adopted. Customs believes that this suggestion would add unnecessarily to the administrative burden of processing drawback.

As for the comment questioning the effect of these regulations on existing drawback ''contracts'' under the prior subparts B and D of part 191, such existing drawback ''contracts'' may continue to be relied upon by the manufacturer or producer who applied for or adhered to the ''contract'', *provided that such existing drawback ''contracts'' do not materially conflict with the statute or these regulations.* Existing drawback ''contracts'' which materially conflict with the statute or these regulations are superseded by the statute or these regulations effective as follows. A drawback entry based upon existing drawback ''contract'' which materially conflicts with these regulations and for which exportation is before the effective date of these regulations is governed by the existing drawback ''contract'', unless there is also a necessary material conflict with the amendments to the statute (19 U.S.C. 1313) made by the NAFTA Implementation Act (Public Law 103–182, § 632), in which case the effective date of § 632 of that Act controls.

It is further noted, with respect to § 191.8(h), that the reference to part 177 in this provision is modified to include a reference as well to 19 U.S.C. 1625.

Comment: With reference to proposed § 191.9 dealing with the principal-agent procedure in drawback, one comment opposed limiting the principal-agent procedure exclusively to substitution manufacturing drawback under 19 U.S.C. 1313(b), stating that the procedure should be available as well under 19 U.S.C. 1313(a).

It was said that the terms ''owner'', ''principal'', ''agent'', ''use'' and ''manufacture'', as employed therein, should be more clearly defined. It was also remarked that the specific provisions required in the contract between the principal and agent in proposed § 191.9(c) should be deleted, particularly if such a contract was required to be in force before there was any transfer of merchandise. The provision, if retained, should allow for oral contracts. It was also contended here that legal or equitable title, but not both, to the merchandise in question should be enough to establish principal status under the contract.

It was contended that the requirement that the agent provide a certificate of manufacture and delivery to the principal should be eliminated or be allowed to be waived in appropriate circumstances.

Customs Response: The intent was to limit this provision to drawback under 19 U.S.C. 1313(b) where the imported merchandise was used in manufacture or production by the principal or an agent and the exported article or drawback product was respectively manufactured or produced by an agent or the principal, or the imported merchandise was used in manufacture or production and the exported article or drawback product was manufactured or produced by different agents.

After further consideration and consistent with Customs current practice, Customs is now taking the position that the application of drawback principal-agent principles need not be so limited. The provision applies to drawback under 19 U.S.C. 1313(b) and 1313(a) and may be used regardless of whether different parties (agent-principal, principal-agent, or two agents) are involved. To this end, § 191.9(a) as proposed is deleted, with the succeeding paragraphs redesignated accordingly Section 191.9(a), as thus redesignated from proposed § 191.9(b), is revised as described.

As much as possible, the terms questioned (owner, principal, agent, and use in manufacture or production) are clarified in § 191.9(a) and (c) as thus redesignated.

The provision in § 191.9(b), as redesignated from proposed § 191.9(c), for what the contract (between principal and agent) must provide, is retained, to provide notice to persons using this provision of what is required, but rather than mandating that the requirements be ''specified'', the requirements are to be ''included'' in the contract.

As for the comment that a contract should not be required to have been in force before there was a transfer of merchandise, § 191.6(b) as redesignated provides the requirements for a principal-agent drawback relationship. To use the principal-agent procedures in drawback, these requirements must be met (*i.e.*, for the principal to be deemed the manufacturer or producer when the agent does the physical manufacturing or production, the requirements (including those for a contract) must be met, although there is no requirement that the contract be in writing).

Regarding the comment that the provision should specifically authorize oral contracts, redesignated § 191.9(b) does not require the form that the contract must take; it requires that there be a contract and what the contract must contain.

As for the comment referring to legal and/or equitable title, the basic requirement in redesignated § 191.9(b) for assertion of the principal-agent relationship under the provision is that the principal be ''[a]n owner'' of the merchandise. It is Customs position here that the requirement for both legal and equitable title is consistent with the requirements for assertion of the principal-agent relationship for drawback purposes.

Consistent with the purpose of a certificate of manufacture and delivery and with the treatment of the owner-principal as the manufacturer or producer when an agent performs the manufacturing or production operations for the principal, no certificate of manufacture and delivery is required from the agent to the principal. Hence, § 191.9(d) as redesignated from proposed § 191.9(e) is revised as described. As such, the comment regarding waiver of the requirement for certificate of manufacture and delivery from the agent to the principal is moot.

However, to ensure compliance with the drawback law, while simplifying drawback procedures where possible, a principal using the principal-agent procedures for drawback is required to attach to its drawback entries, or certificates of manufacture and delivery, a certificate certifying that it can establish certain specific facts, upon request by Customs. The principal must certify that it can establish the information that would have otherwise been required in a certificate of manufacture and delivery. The certificate and information are specifically provided to be subject to the recordkeeping requirements in § 191.26 as redesignated (including the requirement for maintenance of records 3 years from the date of payment of a drawback claim). Provision is also made for the certificate to be in ''blanket'' form, covering a particular kind and quality of merchandise for a stated period.

Comment: In proposed § 191.10, it was asked that transfers under 19 U.S.C. 1313(p) included among the purposes

for which a certificate of delivery may be used.

It was also suggested that the word ''exists'' instead of ''has attached'' be used in proposed § 191.10(a)(2). In addition, it was stated that the term ''if applicable'' should be used for the information required in proposed § 191.10(b)(3), (7), and (8). It was also said that it was unclear when the HTSUS would be required for merchandise under proposed § 191.10(b)(10).

The requirement in proposed § 191.10(b)(5) that the total duty paid be shown on the certificate of delivery was opposed. It was advocated that Customs, with its computer access, should itself be able to identify the duties paid on the imported merchandise on which drawback was claimed.

It was also contended that certificates of manufacture and delivery (as opposed to certificates of delivery) should be used in all cases where the transferred article was manufactured under drawback conditions, and, as such, that proposed § 191.10(c)(2) be eliminated. It was suggested that there be a clarification as to the requirement for a certificate of delivery to transfer articles received by an intermediate party from a drawback manufacturer or producer.

One comment asked that the recordkeeping requirement in proposed § 191.10(d) be eliminated. Another comment suggested that a citation to 19 U.S.C. 1508(c) be added to this provision, indicating the statutory basis for the record retention requirement here.

With regard to proposed § 191.10(e) relating to the submission of a certificate of delivery to Customs, concerns were raised about the language of this provision. In particular, it was stated that the certificate was not ''part'' of a drawback claim, but that it ''supported'' the claim; and that the claim submitted without the certificate should not be ''rejected'', but would be ''denied''.

Customs Response: The comment relating to inclusion of transfers under 19 U.S.C. 1313(p) among the purposes for which a certificate of delivery may be used is adopted, to the extent provided therein (see CUSTOMS RESPONSE to the comment on the definition of certificate of delivery, in proposed § 191.2(b) redesignated as § 191.2(c), above).

In regard to the comment that the three effects of certificates of delivery should be included in the regulation, this has been provided for in § 191.2(c) as redesignated.

The suggestion that the term ''exists'' be used in place of ''has attached'' in § 191.10(a)(2) is adopted.

As for the requirement in § 191.10(b)(5) that total duty paid be stated on a certificate of delivery, Customs believes this information is no more sensitive than other information required on the certificate (*e.g.*, the HTSUS number and entry number with the person from whom the merchandise was received (usually the importer)). The procedure suggested by the comment would be effective in the verification stage, but would create an untenable administrative burden in Customs processing of drawback claims and of accelerated payment claims.

The comment that ''if applicable'' should be included for § 191.10(b)(3), (7), and (8) (information required on a certificate of delivery includes import entry number, date of importation, and port where import entry filed), is also not adopted. The requirement for this information is applicable for all certificates of delivery (there is always an import number, date of importation, and port of import entry filing for a drawback claim).

The comment questioning when HTSUS numbers are required for certificates of delivery has merit, in that it points out a lack of clarity in the regulation. The provision is modified, by adding § 191.10(b)(11) and (12), to make it clear that the HTSUS number (to at least 6 digits) is always required for the designated imported merchandise on a certificate of delivery and, additionally, when the certificate of delivery transfers merchandise substituted under 19 U.S.C. 1313(j)(2) for the designated imported merchandise, the HTSUS number or Schedule B commodity number (to at least 6 digits) is likewise required for the substituted merchandise. Otherwise (*e.g.*, if what is transferred is an article manufactured under 19 U.S.C. 1313(a) or (b) from a party who received the article from the manufacturer or producer), no such number is required for the article transferred.

In any event, although only the 6-digit HTSUS or Schedule B commodity number is required on the certificate of delivery for the transfer of substituted merchandise under 19 U.S.C. 1313(j)(2), full tariff classification is required to establish commercial interchangeability under 19 U.S.C. 1313(j)(2) (see § 191.32(c)).

The comment that certificates of manufacture and delivery should be used in all cases where a manufactured article is being delivered is inconsistent with the purposes of the two kinds of certificates (of delivery and of manufacture and delivery). The former is used when the deliverer did not manufacture or produce the merchandise or article transferred and the latter is used when the deliverer did manufacture or produce the article transferred. It is Customs position that this provision is the most simple for the public to follow and the most simple for Customs to administer. This comment is not adopted.

The comment suggesting clarification of the requirement for a certificate of delivery to transfer articles received by an intermediate party from a manufacturer or producer (under 19 U.S.C. 1313(a) or (b)) has some merit. Section 191.10(c)(2) is changed to make it clear that the manufacturer or producer transfers the manufactured or produced article on a certificate of manufacture and delivery and subsequent non-manufacturers or producers who are intermediate parties transfer the article on a certificate of delivery (as already stated, the certificate of delivery for such a transfer would not require the 6-digit HTSUS number for the transferred article).

The requirement for retention of records supporting the information on certificates of delivery for 3 years after payment of a drawback claim is statutorily required (see 19 U.S.C. 1508(c)(3)). The comment suggesting inclusion in the regulation of a citation to 19 U.S.C. 1508(c)(3) has merit and is adopted. In addition, to alert the public to the general applicability to drawback of the statutory recordkeeping requirements in 19 U.S.C. 1508, a new § 191.15, based on § 1508, is added stating those general requirements.

The comment concerning the particular language used in § 191.10(e) has merit and is adopted. Consistent with § 191.51, certificates of delivery are not ''part'' of claims but support claims, so that if Customs requests a certificate of delivery upon which a drawback claim is dependent and the certificate is not provided, the claim is not rejected but, instead, is denied.

Since a certificate of delivery is not ''part'' of a complete claim (as the regulation is modified), providing a certificate of delivery upon Customs request is in the nature of ''perfecting'' a claim (see § 191.52 (note the addition of this as one of the instances of perfection provided in § 191.52(b))) and may be done outside the 3-year time for filing a complete claim. Denial of a drawback claim for failure to supply, in response to Customs request, a certificate of delivery upon which a portion of the claim is dependent is limited to denial of that portion of the claim dependent on the certificate of

delivery which is not supplied. The provision is changed to make this clear.

Also, pursuant to changes to other sections (see §§ 191.51(a) and 191.52(b)), certificates of delivery are required to be in the possession of the party to whom the merchandise covered in the certificate was delivered, and if that party is not the claimant, the claimant is required to obtain the certificate and provide it to Customs, if Customs requests the certificate under the procedures for ''perfecting'' a claim.

Comment: With respect to proposed § 191.11(a), it was requested that the words ''or drawback product'' be included in the tradeoff provision. A Customs ruling was cited in support of this request. With respect to proposed § 191.11(b), it was asserted that additional payments, including payments in kind, in relation to the exchanged merchandise, should be permitted. In regard to the problem of how much drawback should be allowed (when additional payments in kind are made), it was suggested that language could be inserted to limit drawback to the amount of duty paid on the imported barrels.

Customs Response: The statute involved (19 U.S.C. 1313(k)) expressly provides only for the use of any domestic merchandise acquired in exchange for imported merchandise of the same kind and quality. The Customs ruling cited by the comments held that a drawback claimant may identify a commercial lot of imported duty-paid merchandise as domestic merchandise for purposes of substitution drawback, 19 U.S.C. 1313(b), which is the provision interpreted in the ruling. This was adopted by Public Law 103–182, for purposes of § 1313(j) (by providing for the substitution of any other merchandise (whether imported or domestic) instead of duty-free or domestic merchandise). No similar change was made to § 1313(k), however. Accordingly, Customs concludes that no such interpretation was intended.

The comment relating to § 191.11(b) has merit and is adopted, in part. Customs must ensure that no more drawback than that attributable to the imported merchandise may be allowed. Also, the merchandise which is to be treated as the imported merchandise must be identified.

Accordingly, the second sentence of § 191.11(b) is changed to provide that the quantity of imported merchandise and domestic merchandise exchanged under this provision need not be the same, but that if the quantities are different, the lesser quantity shall be the quantity available for drawback. If a greater quantity of domestic merchandise than that of imported merchandise is received, the quantity identified for drawback shall be the quantity first received.

The restriction on payments other than payments in kind under § 191.11(b), however, is retained. Section 1313(k) provides for the use of any domestic merchandise acquired in exchange for imported merchandise of the same kind and quality, not for the use of domestic merchandise acquired for imported merchandise *and* a payment of something other than domestic merchandise of the same kind and quality.

Further, the use of the term ''exchange'' indicates an intent to provide for exchange of merchandise only (if the statutory provision was intended to provide for the ''purchase or exchange'' of the imported merchandise of the same kind and quality, Congress could have explicitly so provided (see, *e.g.,* 19 U.S.C. 1313(p)(2)(A)(ii) and (iv))).

Comment: With reference to proposed § 191.12 dealing with a claim filed under the wrong subsection of the drawback statute, it was advocated that this provision be rewritten to require Customs to notify the claimant as expeditiously as possible that the claim was filed under the wrong provision; it was also remarked that proposed § 191.12 was wrong in requiring a drawback claim to have to meet all the legal requirements of an alternative subsection of the drawback statute.

It was also pointed out that § 7 of Public Law 104–295, adding 19 U.S.C. 1313(r)(3) to the drawback law, allowing an extension of time for filing a drawback claim in the case of a major disaster, was not provided for in the proposed drawback regulations.

Customs Response: The legislative history to the statutory provision (19 U.S.C. 1313(r)(2)) is that the provision does not impose a requirement on Customs to investigate all alternatives in addition to the claimed basis before liquidating a drawback claim as presented (see H. Rep. 103–361, 103d Cong., 1st Sess. (1993), part I, at 131; Sen. Rep. 103–189, 103d Cong., 1st Sess. (1993), at 84). Accordingly to the Senate Report, § 1313(r)(2) was intended to allow a claimant to raise the alternative subsections by protest under 19 U.S.C. 1514. If an alternative provision of the drawback law is applicable, and the claimed provision is not applicable, it is clearly within the claimant's self-interest to bring to the attention of Customs the alternative provision (*i.e.,* so that the claimant may be paid drawback). Therefore, and consistent with the legislative intent stated in the Senate Report (see above) for § 1313(f)(2), § 191.12 is modified by the addition of a statement that the claimant may raise alternative provisions prior to liquidation or by protest. (It is in the interest of Customs and the public to provide that a claimant may raise alternative provisions prior to liquidation, as well as by protest, because this simplifies administration of the provision (by not requiring the filing and processing of a protest when the alternative provisions can be raised prior to liquidation).)

As the background to the proposed rule clearly stated, a claimant seeking to take advantage of this provision must qualify under the alternative subsection (see the example given in the background to the proposed rule). Customs may not waive the statutory requirement that a complete claim be filed within 3 years of export. Compliance with the alternative subsection is a statutory requirement (see 19 U.S.C. 1313(r)(2)).

It is recommended that claimants who are unsure of the correct subsection under which to claim drawback should ensure that their claims are filed promptly to allow compliance with the possible alternatives, and they should ensure that their claims comply with the possible alternatives.

Additionally, the comment pointing out that § 7 of Public Law 104–295, adding 19 U.S.C. 1313(r)(3) to the drawback law, is not implemented in the regulations has merit and is adopted, although in § 191.51(e)(2), and not in § 191.12.

Comment: It was suggested that proposed § 191.13 relating to packaging material be revised to make clear that all information required by the particular drawback provision under which the packaging material was being claimed had to be furnished for such material.

Customs Response: This suggestion has merit and is adopted, with the last sentence in § 191.13 being changed with the addition of the following at the end thereof: ''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''.

Comment: Regarding proposed § 191.14(a), the issue was variously raised about the applicability of the accounting procedures included in this section to merchandise exported to Canada or Mexico under the North American Free Trade Agreement (NAFTA), when the merchandise was exported in the same condition as imported. It was also requested that proposed § 191.14(a) make clear that the accounting procedures of this section

were not applicable in cases where the drawback law specifically authorized substitution. It was further asked that a cross reference to proposed § 191.2(h) defining direct identification drawback be included in proposed § 191.14(a).

Customs Response: The concerns presented regarding § 191.14(a) raise questions on the applicability of the accounting procedures provided for in § 191.14 to exportations to Canada or Mexico, given the enactment and implementation of NAFTA. In order to avoid confusion in this matter, the last sentence of § 191.14(a) as proposed, regarding the applicability of § 191.14 to exportations to Canada or Mexico under the NAFTA, is deleted. Applicability to such exportations will be governed by the law (see 19 U.S.C. 3333) and regulations promulgated thereunder.

The comment that the statement as to when this section is applicable (not in cases where substitution is permitted, citing specific subsections of 19 U.S.C. 1313) may be misinterpreted has merit and is adopted. The third sentence of § 191.14(a) is modified to make clear that § 191.14 is inapplicable in those situations in the cited subsections where substitution is allowed, but that the section does apply to situations in those subsections in which substitution is not allowed.

As for the comment suggesting a cross-reference to § 191.2(h), this comment has merit and is adopted. The second sentence of § 191.14(a) is modified accordingly. Additionally, a cross-reference to § 191.14 is added to § 191.2(h).

Comment: One comment asked that the words ''is established'' appearing in the last sentence of proposed § 191.14(b)(2) be modified to read ''can be established''. Otherwise, according to the comment, the provision might be read that each claimant had to seek a ruling establishing the inventory requirements contained therein.

Customs Response: The comment requesting the change of language in § 191.14(b)(2) has merit. However, instead of making the modification to the last sentence, the first sentence is modified to provide that ''[t]he person using the identification method must be able to establish * * *''. The language in the provision following this first sentence is interpretive and the described change to the first sentence resolves the problem raised by the comment.

Comment: It was recommended that the parenthetical language appearing in proposed § 191.14(b)(3) be revised or removed.

Customs Response: Customs agrees. The parenthetical appearing in § 191.14(b)(3) is deleted as unnecessary.

Comment: As to proposed § 191.14(b)(4), it was asserted that if the verification of inventory records supporting a drawback identification method required the ability of the inventory system to include drawback per unit, this requirement should be removed from the regulation. It was further declared that this provision presumed that all acceptable identification methods required accounting for all inputs and withdrawals from inventory, which was not true.

Customs Response: Regarding the requirement in § 191.14(b)(4) that the records supporting any identification method employed are subject to Customs verification, the intent of this requirement is to provide that the person using the identification method must be able to demonstrate how the records account for the drawback per unit of each receipt and withdrawal (in addition to the other things the records must account for). It is not required that the records themselves account for, or state, drawback per unit; rather that the person using the records must be able to demonstrate how drawback per unit can be established from the records.

It is correct that the low-to-high method with inventory turnover and the low-to-high blanket method may be used without accounting for domestic withdrawals; however if the method is subject to verification by Customs, the person using the method must be able to demonstrate, under generally accepted accounting procedures, how the records account for the required elements (including *all* withdrawals). That is, the integrity of the accounting method, as used by the person involved, is subject to verification. It is Customs position that no change to this provision is necessary.

Comment: Concerning proposed § 191.14(c) (1) and (2) addressing the first-in, first-out (FIFO), and last-in, first out (LIFO) accounting methods, it was recommended that after the word ''identified'' in each paragraph, the words ''by recordkeeping'' be added.

Customs Response: The recommendation that the words ''by recordkeeping'' be added after ''identified'' is adopted for § 191.14(c) (1) and (2), and in § 191.14(c) (3) and (4) as well. Additionally, examples are provided for each of the methods set forth therein.

Comment: With reference to proposed § 191.14(c)(3), it was declared that other accounting methods approved under other Customs rulings could be used if applicable.

One comment believed that direct identification under the unused merchandise drawback law, 19 U.S.C. 1313(j)(1), was a fiction; that the law did not require the type of accounting methods that were provided in this proposed section; and that, at the very least, high-to-low accounting as allowed in C.S.D. 84–82 should be reinstated.

Another comment suggested that Customs permit industries to submit proposals for acceptable accounting methods.

It was further asked that accounting methods in addition to low-to-high with inventory turnover (LIFO and FIFO) permit the claimant to omit accounting for domestic withdrawals when all receipts into inventory were of foreign origin.

Customs Response: Section 191.14 is intended to establish the accounting methods which may be used to identify merchandise or articles for drawback purposes, and is intended to be consistent with T.D. 95–61. Rulings issued prior to the effective date of these regulations may not be resorted to unless consistent with § 191.14 and T.D. 95–61. However, in order to make available to the public as many options for identification by recordkeeping as possible, while adhering to the principles of T.D. 95–61, § 191.14(c)(3) is modified by the addition of the so-called ''blanket'' low-to-high accounting method.

Under this long-established and used method (see, *e.g.*, 19 CFR 22.4(f) (1982 Customs Regulations) and C.S.D. 80–132), commingled merchandise or articles are identified first from the lot or lots of merchandise or articles with the lowest drawback attributable, then from the lot or lots with the next higher drawback attributable, and so on from lower to higher until all lots have been accounted for. The period from which withdrawals for export are identified is 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)). Thus, this method is similar to the low-to-high method with inventory turn-over method, except that instead of identifying the merchandise or articles with the lowest drawback attributable in the established average inventory period, merchandise or articles with the lowest drawback attributable in the statutory period for export are identified.

Members of the public should be aware that drawback requirements are applicable to withdrawn merchandise or

articles as identified (for example, if the merchandise or articles identified were attributable to merchandise which had been imported 2 years, 11 months prior to withdrawal and export or destruction did not occur until 2 months later, drawback under 19 U.S.C. 1313(j) would be denied (because that provision requires export or destruction within 3 years of import)).

Additionally, language is added to make it clear that, once a withdrawal for export is made and accounted for under the low-to-high method with established average inventory turn-over period, or under the ''blanket'' method, the merchandise or articles so withdrawn are no longer available for identification under the method.

Also, new examples, more clearly illustrative of the low-to-high methods (ordinary, with average inventory turn-over period, and blanket), and comparing the results of those methods, are added to § 191.14(c)(3).

Customs does have procedures under which industries may obtain from Customs a ruling, or an approved manufacturing drawback ruling, upon which it may rely (see 19 CFR part 177, for rulings, and the sample formats for specific manufacturing drawback rulings in Appendix B).

Regarding the suggestion that the ''high-to-low'' accounting method should be reinstated as a drawback accounting method, that would be inconsistent with T.D. 95–61, which revoked the published Customs ruling (C.S.D 84–82) permitting use of that method.

The requirement in certain of the drawback identification procedures for accounting for domestic withdrawals (with the exceptions described) is consistent with T.D. 95–61, in which Customs and Treasury stated the criteria for accounting methods used for identification of merchandise or articles for drawback purposes, and it is consistent with generally accepted accounting procedures.

As for the comment that the description of drawback under 19 U.S.C. 1313(j)(1) as direct identification drawback is a fiction, Customs disagrees. Under the plain language of this law, the imported merchandise must be exported or destroyed and drawback is payable on the amount of duty specifically paid thereon.

Comment: With specific regard to proposed § 191.14(c)(3)(i) describing the low-to-high inventory accounting method, it was reiterated that domestic (or nondrawback) input and domestic sales from inventory should not have to be taken into consideration.

Customs Response: As made clear in the modified regulation, all receipts and all withdrawals (including domestic withdrawals) must be accounted for when using the ''ordinary'' low-to-high method (low-to-high without an established average inventory turn-over period and not under the ''blanket'' method). Under the low-to-high method with average inventory turn-over period and the low-to-high blanket method all receipts into and all withdrawals for export are recorded in the accounting record and accounted for and domestic withdrawals (withdrawals for domestic shipment) are not accounted for and do not affect the available (under the methods) units of merchandise or articles.

Comment: With specific regard to proposed § 191.14(c)(3)(ii)(B) concerning the use of low-to-high accounting with an inventory turn-over period, it was stated that rather than providing that ''the longest average turn-over period * * * may be used'', this should provide instead that it ''must'' be used, and asked in this connection whether users of this method would have an option to choose periods.

Customs Response: This comment has merit and is adopted (although instead of the change proposed, the provision as redesignated (§ 191.14(c)(3)(iii)(C)) is modified by the addition of a parenthetical statement to make it clear that users of this method will have the option of using either the properly established average turn-over period for the merchandise or articles to be identified, or, if the person using the method has more than one kind of merchandise or articles with different inventory turn-over periods, the properly established average turn-over period which is longest).

Comment: With respect to proposed § 191.14(c)(4) concerning the average inventory method, a question was raised about the requirement that claimants wishing to use this inventory method obtain a ruling under 19 CFR part 177. In particular, it was remarked in this regard that the use of a weighted average as set forth therein was an officially recognized method of inventory management. Another comment asked that a practical example of how this inventory method would work be included under this provision.

Customs Response: The comment questioning why a ruling is needed for use of the average method and/or asking that an illustration of the average method be included in the regulations has merit and is adopted in § 191.14(c)(4). An example of an average method and provision for use of the average method, if in compliance with the applicable requirements of § 191.14 and the example, are included in the section.

When the average method is used the ratio of each receipt in inventory to all merchandise in the inventory at the time of the withdrawal is applied to the withdrawal, so that the withdrawal is comprised of proportionate quantities of each receipt and each receipt is correspondingly decremented. The reference to ''weighted averaging'' is removed, because weighting is unnecessary in this method.

As with other methods, when a person proposes a method which diverts from the methods as provided for in the regulations, a ruling must be obtained from Headquarters, or approval may be obtained in a specific manufacturing drawback ruling (see § 191.8 and Appendix B).

Comment: One comment asserted that the requirement in proposed § 191.14(d)(2)(i) that any accounting system approved by Customs be ''either revenue neutral or favorable to the Government'' was imprecise, and recommended the addition of the words, ''when compared to the method of separate storage and specific identification'' following the word ''Government'' in this provision.

Customs Response: Customs disagrees. The phrase, ''either revenue neutral or favorable to the Government'', was approved after notice and comment procedures pursuant to T.D. 95–61. The intent here is that the accounting methods for the identification of merchandise or articles for drawback purposes must meet the requirements in § 191.14(d)(2), as demonstrated by the methods provided for in § 191.14 (which now includes much more illustrative examples).

Subpart B

Comment: It was asked that a reference to drawback products be included in proposed § 191.21 concerning direct identification drawback, 19 U.S.C. 1313(a).

Customs Response: This request has merit and is adopted.

Comment: It was stated that proposed § 191.22(d) fell under the heading of substitution drawback and discussed designation by a successor; it was stated that this gave the impression that designations by successors were restricted to substitution claims.

Customs Response: This provision deals with successorship under 19 U.S.C. 1313(s), which concerns only substitution drawback under 19 U.S.C. 1313(b) and 19 U.S.C. 1313(j)(2). The concern raised here is addressed by making reference in this provision to

successorship under § 1313(s). Notably, the same change is also made with respect to § 191.32(f).

Comment: With respect to proposed § 191.22(e), concerning multiple products, it was advocated that Customs approval should not be required for manufacturing periods longer than a month. It was also stated that the use of an alternative to market value in determining the relative value of multiple products was unnecessary.

Customs Response: These comments are not adopted. As to the length of the manufacturing period, the provision follows current practice and provides for ''specific approval of Customs'' for a longer period.

With respect to the determination of relative value, it is provided in § 191.2(u) (as redesignated) that relative value is based on the market value of the products, or an alternative value approved by Customs. In other words, the default value is market value and if another value is to be used, Customs is to be advised (and such advice to Customs would be in the specific manufacturing drawback ruling of the company involved). Otherwise, a claimant would have to establish by its records that the value used is proper.

It is noted that consistent with the comments and response for proposed § 191.2(r), the heading for this paragraph is changed from ''By-products'' to ''Multiple products''.

Comment: As to proposed § 191.23(d)(1), it was asserted that the reference to the ''market value of the merchandise or products used in manufacture'' was not clear. A clarification of this language was requested.

Customs Response: The provision is modified to require records to show the market value of the merchandise or drawback products used to manufacture the exported or destroyed article, consistent with § 191.23(c).

It is also noted that a new § 191.23(d) is added providing for use of the ''abstract'' or ''schedule'' method of showing the quantity of material used or appearing in the exported or destroyed article. Thus, § 191.23(d) as proposed is renumbered as § 191.23(e).

Comment: It was requested that proposed § 191.24(a) concerning the certificate of manufacture and delivery be revised to make clear that such a certificate was required for each delivery of an article which had been manufactured or produced.

Customs Response: A certificate of manufacture and delivery is required for each delivery of an article which has been manufactured or produced (as defined in § 191.2(q), as redesignated) (this would be so whether the article has been subject to one or more than one manufacturing or production operations). The section is modified to make this clear.

Comment: It was believed that paragraphs (a) and (d) of proposed § 191.24 were in conflict (one required physical delivery, the other did not). It was suggested the provisions be reworded for consistency.

Customs Response: This comment has merit and is adopted. Section 191.24 (a) and (d) are revised accordingly.

Comment: Concerning the information required on a certificate of manufacture and delivery in proposed § 191.24(b), it was asked that the identity of the transferee and transferor, IRS number, and unique electronic number assigned to the manufacturing ruling be added.

Customs Response: The identity of the transferee and transferor is added, consistent with § 191.10, as § 191.24 (b)(1) and (b)(14), respectively. The comment as to the unique electronic number assigned to the manufacturing drawback ruling is also adopted in § 191.24(b)(2), although either the unique electronic number or the T.D. number may be provided (the latter, if the manufacturer or producer is operating under a specific manufacturing drawback ruling). The paragraphs of § 191.24(b) are renumbered accordingly.

Comment: It was stated, with respect to proposed § 191.24(b)(2), that the section inferred that the HTSUS numbers for designated merchandise from one certificate of manufacture and delivery should be transferred to a second certificate of manufacture and delivery. It was further stated here that, even if known, it would be a useless gesture to repeat import HTSUS numbers on the second certificate of manufacture and delivery, as they would not relate to the merchandise designated on the second certificate. It was asked that the provision clearly state that HTSUS numbers were not required on a second certificate of manufacture and delivery.

It was also noted that the language therein to the effect, ''* * * and applicable duty amounts, if applicable'' appeared redundant.

Customs Response: The reference to the redundancy of ''if applicable'' has merit. The second ''if applicable'' is deleted from this provision.

The concerns expressed in relation to HTSUS numbers have merit (in that the section does not make it clear that the HTSUS numbers required are those for the imported merchandise, and not for the manufactured or produced merchandise).

Insofar as the comment suggesting that import HTSUS numbers should not be repeated on a second certificate of manufacture and delivery, this comment is not adopted because in many cases involving more than one certificate of manufacture and delivery for sequential manufacturing or production operations, the merchandise and/or drawback products covered by one certificate may not be completely covered by the other certificate(s).

Comment: It was observed that, in proposed § 191.24(b) (3) and (4), the words ''if applicable'' did not pertain to this information; the dates received and used in manufacture should always be supplied.

Customs Response: This comment has merit and is adopted. Customs is aware of no situation in which the information provided for in the subsections would not be applicable (particularly in view of the changes made to the requirement for a certificate of manufacture and delivery in the principal-agent situation).

Comment: It was stated that proposed § 191.24(c) was unclear insofar as it required the filing of a certificate of delivery with the drawback claim unless such certificate was ''previously filed''. The phrase ''previously filed'' was found to be vague. The previous filing may be at a different port. It was recommended that information as to the port and date of filing along with a copy of the certificate be submitted therewith, if the original certificate was not filed with the claim.

Customs Response: This comment has merit and is adopted (although it is adopted in § 191.51(a)(2), and not in this provision).

Comment: With respect to proposed § 191.24(d) concerning the effect of a certificate of manufacture and delivery, it was asked whether there would be a place on the certificate of manufacture and delivery to indicate whether drawback rights were being transferred and, if not, how an issuer would so indicate on the certificate. It was also stated that this section should address the ''effect'' of internal certificates of manufacture and delivery in order to document multiple manufacturing processes performed by one manufacturer.

Customs Response: The comment regarding the effect of certificates of manufacture and delivery is addressed by the changes made to the requirements for a certificate of manufacture and delivery (*i.e.*, such a certificate is only used when drawback rights are transferred and is not used in

a transfer from an agent to the principal).

Therefore, the provision is modified accordingly (*i.e.*, a certificate of manufacture and delivery establishes the transfer of an article manufactured or produced under 19 U.S.C. 1313 (a) or (b), identifies that article as an article to which a potential right to drawback exists, and assigns the drawback rights for the article from the transferor to the transferee). For the same reason, the example referring to principal-agency is removed.

The comment stating that the provision should address the ''effect'' of internal certificates of manufacture and delivery (internal to the company involved) is not adopted; since certificates of manufacture and delivery always transfer drawback rights, a certificate of manufacture and delivery would not be appropriate in such a situation (because the same legal person transfers and receives the merchandise).

Comment: With respect to proposed § 191.25(a), it was asked what would happen if the manufacturer did not want to divulge the abstract details to the claimant. It was recommended here that the current practice be followed—*i.e.*, the manufacturer would file the certificate of manufacture and delivery and advise the claimant of the certificate number and the port where filed and the claimant could designate against the certificate.

Customs Response: This comment is not adopted. The procedure suggested by the comment would create an untenable administrative burden in Customs processing of drawback claims and of accelerated payment claims.

(It is noted that § 191.25 as proposed is now redesignated as § 191.26, due to the addition of a new § 191.25 covering the destruction of articles manufactured or produced for drawback; and, as such, §§ 191.26 and 191.27 as proposed are redesignated as §§ 191.27 and 191.28, respectively.)

Comment: Regarding proposed § 191.25(b) addressing recordkeeping requirements for substitution manufacturing drawback, it was stated that the requirement that a manufacturer claiming drawback under 19 U.S.C. 1313(b) establish the facts in proposed § 191.25(a)(1) (ii) and (iii) was incorrect, since under substitution, the manufacturer only had to provide the quantity and kind of merchandise used or appearing in the manufactured articles. It was observed that proposed § 191.25(a)(1) (ii) and (iii) related specifically to drawback under 19 U.S.C. 1313(a), and should be removed from the reference in proposed § 191.25(b).

Customs Response: This request has merit and is adopted.

Comment: It was observed that the words ''or destroyed'' should be inserted between the words ''exported'' and ''articles'' in proposed § 191.25(b)(2). Also, it was noted therein that the term ''(or appearance in)'' should be ''or appearing in''.

Customs Response: This comment has merit and is adopted.

Comment: Regarding proposed § 191.25(c) dealing with valuable waste, it was asserted that the statement that ''the quantity of merchandise identified or designated * * * shall be based on the quantity of merchandise actually used * * * reduced by the amount of merchandise which the value of the waste would replace'' was incorrect and misleading, in that a claimant might think that it need only designate the reduced quantity (after the waste replacement). It was recommended that this language be revised.

It was also suggested that it be clarified as to which merchandise value was subject to reporting and recordkeeping with regard to 19 U.S.C. 1313(a) versus 19 U.S.C. 1313(b).

Customs Response: These comments have merit and are adopted. Section 191.26(c) as redesignated is revised accordingly.

Comment: Concerning the requirement in proposed § 191.25(e) that the claimant retain the certificate of delivery if the related merchandise was not imported by the manufacturer, it was asserted that this provision would be impossible for the claimant to comply with if the claimant was a party other than the manufacturer and the manufacturer was a party other than the importer because the claimant would never have received the certificate of delivery (the certificate would be from the importer to the manufacturer). An objection was also raised here as to the use of the word ''designated'' in the phrase ''designated on a certificate of delivery for manufacturing drawback'' because designation inferred substitution. It was advocated that proposed § 191.25(e) either be deleted or revised.

Customs Response: The assertion that this provision would be impossible to comply with when the claimant is a party other than the manufacturer, and the manufacturer a party other than the importer, raises a valid concern. The provision is deleted, consistent with the changes to §§ 191.10 (c) and (e), 191.51(a), and 191.52(b).

Under the previously cited provisions, certificates of delivery are required to be in the possession of the party to whom the merchandise covered in the certificate is delivered, and if that party is not the claimant, the claimant is required to obtain the certificate and provide it to Customs, if Customs requests the certificate under the procedures for ''perfecting'' a claim.

With the deletion of paragraph (e) of § 191.26 as redesignated, paragraphs (f) and (g) thereof are themselves redesignated as paragraphs (e) and (f), respectively. Also, the example in § 191.26(e)(1), as redesignated, is modified, consistent with the restriction in 19 U.S.C. 1313 (a) and (b) on the use in the United States after manufacture of articles manufactured or produced under those provisions.

Comment: In regard to proposed § 191.25(f)(2)(iii) dealing with the export summary procedure, it was recommended that the clause ''if known at the time of entry'' be added at the end of the requirement that ''[e]ach 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''. It was observed here that one claimant might be unaware of other claimants and to which component part they could claim.

Customs Response: The request has merit and is adopted.

Comment: With reference to proposed § 191.25(g) dealing with recordkeeping requirements for manufacturing drawback, it was observed that this section provided a reasonable reflection of the various records required to establish entitlement to the kinds of drawback involved.

However, the concern was expressed about the possible confusion resulting from the 3-year (from date of payment) record-retention period for drawback and the general 5-year record retention period for other Customs purposes. It was suggested that greater clarity was needed here, because a drawback claimant could think it could dispose of records after the 3-year period and be subject to penalties for disposing of them before the termination of the 5-year general period (if the records were also subject to the 5-year record retention period).

It was further recommended that the final rule here should expressly state whether all drawback-related records had to be retained for a minimum of 5 years from the date of entry of the imported merchandise, or 3 years from the date of payment of the related drawback claim, or, alternatively, a detailed, comprehensive list of records and the time periods for retaining each one should be provided.

It was also noted that in the background of the proposed rule,

Customs had stated that drawback records ought to be maintained until the liquidation of the drawback entry became final. It was asserted in this regard that if more than 3 years had passed since payment, but the subject drawback claim was still not finally liquidated, and a question regarding documents arose, Customs should presume that the claimant satisfied the drawback documentation requirements as long as the claimant had been approved under the drawback compliance program.

Furthermore, it was suggested that, in the case of an audit commenced more than 3 years after payment of a drawback claim, Customs should not be able to recover any drawback paid, if a relevant supporting record was no longer in existence.

It was additionally asked that a claimant be permitted to maintain the required documentation in paper or electronic form, either of which could be used to satisfy the recordkeeping requirements, and where a party was unable to produce necessary documentation, including records that were in the possession of another party or an original signature from a carrier, Customs should allow that party to present alternative documentation.

It was stated that a reference to 19 U.S.C. 1508(c)(3) should be included in proposed § 191.25(g) concerning the time period for the retention of records.

Customs Response: The comment suggesting more clarity as to the time period for keeping drawback records (3 years from payment) versus other records provided for in 19 U.S.C. 1508, which are generally required to be retained for 5 years from the date of entry, filing of a reconciliation, or exportation, as appropriate, is adopted. Paragraph (g) of § 191.25, as proposed (now redesignated as § 191.26(f)), is modified to clarify that the 3-year time period provided for therein is for drawback purposes, and that the same records may be required, for other purposes (with a citation to 19 U.S.C. 1508), to be retained for a different time period.

In reference to the statement in the background that drawback records ought to be maintained until liquidation of the drawback entry becomes final, the comment is correct that the applicable statutory provision (as well as the regulations based thereon) require retention for 3 years from the date of payment.

It is Customs position that the effect of a claimant not having records prior to final liquidation but after termination of the 3-year period, as well as the effect of an audit commenced after termination of this period, must be determined on a case-by-case basis.

In regard to the comment that a claimant be permitted to maintain the required documentation in paper or electronic form, a definition of ''records'' has been added to § 191.2, to the effect that records include electronically generated or machine readable data normally kept in the ordinary course of business.

A reference to 19 U.S.C. 1508(c)(3) is added to § 191.26(f) as thus redesignated.

Comment: It was believed that a conflict was apparent in proposed § 191.26(b)(3) regarding the phrase ''importation of the designated merchandise''. It was remarked that there was no date of importation for a drawback product, which could also be designated for drawback.

Customs Response: The comment has merit. The following phrase is added at the end of paragraph (b)(3) of this section (§ 191.27 as redesignated): '', or within 5 years of the earliest date of importation associated with a drawback product''.

Comment: It was asked if the exporter could waive its right to drawback in proposed § 191.27 by means of a blanket letter covering extended time frames.

Customs Response: The comment referring to a ''blanket'' letter for certification by the exporter (or destroyer) assigning drawback rights has merit. Section 191.28 as thus redesignated is revised accordingly.

Subpart C

Comment: In proposed § 191.31(c), relating to when merchandise would be considered to be used for purposes of the unused merchandise drawback law (19 U.S.C. 1313(j)(1)), it was variously recommended that the words ''In general'' be deleted from the beginning of the first sentence thereof, and that the sentence be revised to be more specific, or be deleted entirely.

Customs Response: The comment concerning the use of the phrase ''In general'' at the beginning of the first sentence of § 191.31(c) is addressed by changing the heading of the provision to read ''Operations performed on imported merchandise.'', by deleting the first sentence, and by adding to the second sentence as proposed the phrase, ''In cases in which an operation or operations is or are performed on the imported merchandise,''. Notably, the same changes are also made with respect to § 191.32(e).

Further definition of the restriction on ''use'' in 19 U.S.C. 1313(j) will be addressed on a case-by-case basis by ruling.

Comment: In proposed § 191.32(c), concerns were raised essentially as to how Customs would interpret and apply the four criteria listed therein in making commercial interchangeability determinations.

It was stated that by listing the four factors to be used in making such determinations, Customs was creating a ''bright line'' test in contravention of the legislative intent underlying the statute.

Customs Response: The criteria used by Customs in making commercial interchangeability determinations are adopted from the legislative history of 19 U.S.C. 1313(j)(2). In order to better implement legislative intent, § 191.32(c) is modified to provide that in determining commercial interchangeability, Customs shall evaluate the critical properties of the substituted merchandise, and, pursuant to that evaluation, Customs consideration will include, but not be limited to, the factors listed in the legislative history.

Further definition of commercial interchangeability will be on a case-by-case basis, by obtaining a determination as provided in § 191.32(c). Procedures for contesting specific rulings are found in 19 U.S.C. 1625 and 19 CFR part 177.

Section 191.32(c) is modified to make it clear that the determination of commercial interchangeability may be obtained by a formal ruling or submission of all required documentation with each individual claim, while the nonbinding predetermination is just that, nonbinding and a pre-determination, and, therefore, is not sufficient to obtain a *determination* of commercial interchangeability. Required documentation for commercial interchangeability determinations includes competent evidence of the basis on which the merchandise is claimed to be exchanged.

For example, if merchandise meeting a range of criteria is claimed to be exchanged in the industry, contracts evidencing that fact should be provided.

Comment: As concerns the person entitled to claim drawback set forth in proposed § 191.33(a), it was suggested that the waiver of drawback by the exporter be permitted by a blanket letter.

Customs Response: The suggestion regarding a blanket certification by the exporter (or destroyer) assigning drawback rights is adopted. Section 191.33(a)(2) is revised accordingly. In addition, § 191.33(a)(2) is changed to provide that the certification must be filed at the time of, or prior to, filing of the claim(s) covered by the certification.

Comment: It was requested, under proposed § 191.33(b)(2), that blanket waiver letters also be authorized.

Customs Response: Customs agrees. Section 191.33(b)(2) is revised accordingly. Furthermore, § 191.33(a)(2) is changed to provide that the certification must be filed at the time of, or prior to, filing of the claim(s) covered by the certification.

Comment: In the context of proposed § 191.33(b), it was extensively argued, citing the statute, its legislative history, as well as case law, that multiple substitutions of merchandise were permissible under the substitution unused merchandise drawback provision, 19 U.S.C. 1313(j)(2). It was contended that, by permitting an intermediate party to claim drawback in proposed § 191.33(b), Customs itself provided for multiple substitutions. It was asserted that multiple substitutions were allowable under § 1313(j)(2), in the case of a successorship thereunder, pursuant to 19 U.S.C. 1313(s). One comment said that the matter of multiple substitutions under § 1313(j)(2) should be specifically addressed in the regulations.

Customs Response: Customs is bound by the current statutory language in 19 U.S.C. 1313(j)(2). Under the current statute (19 U.S.C. 1313(j)(2)), the other (substituted merchandise) must be commercially interchangeable with the imported merchandise, exported or destroyed within 3 years after import of the imported merchandise, and before exportation or destruction, not be used in the United States and be in the possession of the drawback claimant.

The drawback claimant (under § 1313(j)(2)(C)(ii)) must be the importer of the imported merchandise or have received from the importer (and person who paid any duty) a certificate of delivery transferring to the claimant the imported merchandise, commercially interchangeable merchandise, or any combination thereof (and the transferred merchandise will be treated as the imported merchandise and any retained merchandise will be treated as domestic merchandise), and upon exportation or destruction of the other merchandise, drawback shall be refunded.

In the first case (when the claimant is the importer of the imported merchandise), no multiple substitutions are authorized by the statute, since the other merchandise must be in the possession of the claimant, and it (the other merchandise) must be exported (*i.e.*, no matter how many transfers or substitutions of the merchandise which becomes the ''other'' merchandise occur prior to receipt by the claimant of the merchandise, what is required to be exported is the ''other'' merchandise which the claimant must have possessed).

In the second case (when the claimant receives from the importer and duty payer a certificate of delivery), no multiple substitutions are authorized by the statute since the other merchandise must be in the possession of the claimant and it (the other merchandise) must be exported (*i.e.*, if the ''other'' merchandise is treated as the imported merchandise, so that it, or commercially interchangeable merchandise, could be transferred to another party, the transferror would not be the importer and duty payer, as required by the statute).

Customs position in this regard is consistent with the legislative history of the statute (see also Senate Report 103–189, page 182, declaring that § 1313(j)(2) would allow exporters to claim drawback on imported merchandise, or other domestic or imported merchandise that is substituted *for the imported merchandise).*

As for the contention that Customs, in the proposed provision, by permitting an intermediate party to claim drawback under § 1313(j)(2), provides for multiple substitutions, Customs disagrees. Customs proposed interpretation of the statute, authorizing multiple transfers and claims by intermediate parties (under the waiver and assignment, and certification procedures) is based on the provision in § 1313(j)(1) as to who may claim drawback (the exporter (or destroyer) or, with endorsement, the importer or *any intermediate party*), and the legislative history (H. Rep. 103–361, 103d Cong., 1st Sess. (1993), part I, at 129; Sen. Rep. 103–189, 103d Cong., 1st Sess. (1993), at 82, noting that, due to a recent court decision, the provision also permitted an exporter or destroyer to endorse the right to claim drawback to the importer or any intermediate party).

Section 1313(j)(2) does not specifically authorize the delivery ''directly or indirectly'' of the certificate of delivery for the imported merchandise, commercially interchangeable merchandise, or any combination thereof, so the proposed construction of the statute, based on the allowance in the regulations for an intermediate party to claim drawback (with the required waiver and assignment, and certification) must fail.

As for the comment that 19 U.S.C. 1313(s) permits multiple substitutions under § 1313(j)(2), Customs disagrees. Under § 1313(s), in pertinent part, a drawback successor (meeting the requirements of that section) may designate as the basis for drawback on merchandise possessed by the drawback successor after the date of succession imported merchandise, commercially interchangeable merchandise, or any combination thereof for which the predecessor received, before the date of succession, from the importer and duty payer a certificate of delivery transferring to the predecessor such merchandise.

In other words, under § 1313(s), the predecessor receives a certificate of delivery for the ''other'' merchandise and the successor possesses the merchandise. Section 1313(j)(2) requires the party claiming drawback to both possess the ''other'' merchandise and to have received from the importer and duty payer a certificate of delivery for the imported merchandise, commercially interchangeable merchandise, or any combination thereof. Thus, § 1313(s) allows drawback when these parties are different and a permitted succession occurs, it does not allow a further substitution, nor does the legislative history have any indication of an intent to add such substantive rights in the successorship situation.

The comment that the restriction on multiple substitutions should be provided for in the regulations themselves has merit and is adopted. Section 191.33(b)(1)(iii) is revised accordingly.

Comment: It was suggested, with respect to proposed § 191.33(b)(1)(ii), that the words ''or destroys'' should be inserted following the phrase, ''commercially interchangeable merchandise, and exports'' and before the phrase, ''such transferred merchandise'', and the words ''or destroyer'' should be inserted following the phrase, ''that exporter'', and before the phrase, ''shall be entitled to claim drawback''.

Customs Response: The comment has merit and is adopted.

Comment: It was recommended, in proposed § 191.34(a)(1), that instead of certifying on the certificate of delivery that the party did not use ''the exported or destroyed merchandise'', the requirement should be for a certificate that the party did not use ''the transferred merchandise''. It was noted that the merchandise, at the time of the certification, would not yet be exported or destroyed.

Customs Response: The comment has merit and is adopted.

Comment: With respect to proposed § 191.34(a)(2), it was stated that instead of requiring the drawback claimant to ''retain the certificate for submission to Customs as part of the claim, if requested'', the requirement should be

to ''retain the certificate for submission to Customs when requested''.

Customs Response: Consistent with § 191.51, certificates of delivery are not ''part'' of claims but support claims, so that if Customs requests a certificate of delivery upon which a drawback claim is dependent and the certificate is not provided, the claim is not rejected but, instead, is denied. Since a certificate of delivery is not ''part'' of a complete claim (as the regulation is modified), providing a certificate of delivery upon Customs request is in the nature of ''perfecting'' a claim. Notably, this is added as one of the instances of perfection provided in § 191.52(b), and may be done outside the 3-year time for filing a complete claim.

The denial of a drawback claim for failure to supply, in response to Customs request, a certificate of delivery upon which part of the claim is dependent is limited to denial of that portion of the claim dependent on the certificate of delivery which is not supplied. The provision is changed to make this clear.

Also, pursuant to changes to other sections (see §§ 191.51(a) and 191.52(b)), certificates of delivery are required to be in the possession of the party to whom the merchandise covered in the certificate was delivered, and if that party is not the claimant, the claimant is required to obtain the certificate and provide it to Customs, if Customs requests the certificate under the procedures for ''perfecting'' a claim. The provision is changed to make this clear.

Comment: With respect to proposed § 191.34 (a) and (b) generally, it was contended that these provisions imply that a certificate of delivery which directly identified imported merchandise could not be used to transfer merchandise to a party who claimed drawback under 19 U.S.C. 1313(j)(2). It was asserted that the opposite was true, and that proposed § 191.34(a) should specifically state that a directly identified certificate of delivery to a party may be subject to a § 1313(j)(1) or 1313(j)(2) claim by that party.

Customs Response: The intent of these provisions is to make clear the requirements for and effect of certificates of delivery. Section 191.34(a) does not preclude the use of a certificate of delivery for the imported merchandise (and not substituted merchandise) which then may be the subject of a further delivery (under substitution procedures under 19 U.S.C. 1313(j)(2)), nor does § 191.34(b) preclude transfers (but not substitutions) before and/or after the substitution-transfer. The provisions are changed to make this clearer.

Further, the provisions are changed to reflect that the certificate of delivery is required to be retained by the person to whom the merchandise was delivered (and is not a ''part'' of a drawback claim), and must be provided to Customs by the claimant upon a request to ''perfect'' the claim.

Comment: It was observed that proposed § 191.34(b) did not contain a provision dealing with intermediate transfers.

Customs Response: The comment has merit and is adopted. A sentence similar to the last sentence of § 191.34(a) is added to § 191.34(b).

Further, in the penultimate sentence of § 191.34(b) as proposed, the words ''as imported merchandise for the purpose of manufacturing drawback'' are deleted and replaced with ''for any other drawback purposes''.

Comment: It was requested that the procedures for the waiver of prior notice set forth in proposed § 191.35 for purposes of 19 U.S.C. 1313(j) also be employed for purposes of drawback under 19 U.S.C. 1313(c). It was further suggested that the form referred to here and in other sections as ''Notice of Intent to Export'' or ''Notice of Intent to Export or Destroy'' be renamed as the ''Notice of Intent to Export, Destroy or Return Merchandise to Customs Custody''.

Customs Response: The comment, suggesting that the provision for waiver of prior notice should be extended to drawback under 19 U.S.C. 1313(c), is not adopted. The statutory provisions are different. Under § 1313(c) the merchandise is required to be returned to Customs custody for exportation or destruction under Customs supervision; there is no such requirement in 19 U.S.C. 1313(j) for the return to Customs custody. The form for export or destruction or return to Customs custody, however, is renamed, as stated above.

Comment: It was recommended that the information required on the notice of intent in proposed § 191.35(b) include, in addition to the name and telephone number of a contact person, the mailing address, fax number and, if available, the e-mail address.

Also, it was stated that the phrase, ''* * * the bill of lading number, if known'', as set forth therein, was unnecessary, since the bill of lading number would not be known prior to export of the merchandise (the bill of lading is numbered upon preparation of the Outward Manifest).

Customs Response: The recommendation that other information regarding the contact person should be stated has merit and is adopted. The comment suggesting deletion of the requirement for the bill of lading number, if known, is not adopted (*i.e.*, the requirement is subject to the caveat ''if known'').

Comment: It was stated, with respect to proposed § 191.35(c) that the regulations on the process of filing the notice of intent to export should provide the ability to file notice to Customs electronically. Furthermore, it was contended that Customs should be required to notify the party named in proposed § 191.35(b) by telephone, within 2 working days, and that a telephone contact should be required as well.

Customs Response: The comment that the regulations should provide for electronic filing of the ''Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback'' has merit and is adopted. This is accomplished by the addition of a definition of ''filing'' in § 191.2. The comment (that the party should be notified by telephone) is not adopted. Customs believes that the existing requirements in § 191.35(c) are adequate as regards the examination of merchandise to be exported or destroyed.

Comment: Referring to the time and place of examination in proposed § 191.35(d), it was mentioned that, for consistency, the notice of the decision to examine provided for in this provision should be ''in writing''.

Customs Response: The suggestion that notice of the decision to examine should be in writing has merit, although the requirement for notice in this regard is in § 191.35(c), not (d). Thus, the requested modification is made to § 191.35(c).

Comment: It was observed that inclusion of a requirement in proposed § 191.36(a)(1)(i) for the estimated number of claims to be filed under this procedure, and when they would be filed, would assist Customs in maintaining control over the filing of the claims under this provision.

Customs Response: A requirement to this effect is included in § 191.36(a)(1)(i).

Comment: It was stated that the IRS number (9-digit number plus two character suffix) was needed in proposed § 191.36(a)(1)(i) (A) and (B).

Customs Response: The comment has merit and is adopted.

Comment: A question was presented as to the meaning of the phrase, ''Export period covered by this application'' appearing in proposed § 191.36(a)(1)(i)(C). It was asked

whether the term ''export period'' included past as well as future export activity.

Customs Response: ''Export period covered by this application'', as used in § 191.36(a)(1)(i)(C), means the time beginning with the first export for which prior notice was not given and ending with the time of the last export for which such notice was not given. Section 191.36 deals with merchandise which *has* been exported without the filing of a notice of intent to do so. This provision, therefore, covers past transactions.

Comment: There was a recommendation that the words ''and/or'' be added to proposed § 191.36(a)(1)(iii)(A) (*1*) and (*2*), on the basis that a claimant might not have ''laboratory records'' as such.

Customs Response: The comment has merit and is adopted, with the additional statement that the requirements for the records are ''as applicable''.

Comment: It was contended that the restriction, in proposed § 191.36(a)(2), of retroactivity for waivers of prior notice to a ''one-time'' use by the claimant was unfair and might not be legal.

It was also stated that the one-time restriction should be on a product basis, because, with the diversification of business today, a firm could have several business areas that operated independently and could discover retroactive unused merchandise drawback scenarios at different times. It was further observed that the phrase ''unless good cause is shown'' afforded Customs too much discretion and could lead to capricious judgments.

Customs Response: The one-time restriction is retained in § 191.36(a)(2). Because this provision may be used for all exports occurring prior to approval by Customs of the application, a reasonably prudent drawback claimant should not be harmed (*i.e.*, once aware of the requirement for prior notice of intent to export or destroy, such notice should be given, and under this procedure past exports may qualify for drawback).

It is Customs position that the phrase ''unless good cause is shown'' as used in § 191.36(a)(2) gives proper discretion to the Customs officers responsible for administering the provision.

Comment: In relation to proposed § 191.36(c), the suggestion was made that the words ''receipt of the application of'' should be inserted immediately after the words ''within 90 days of'', so that the provision did not require Customs to make its decision to approve or deny and then inform the applicant within 90 days of that decision. It was further stated in this regard that Customs should have to justify and state its reasons for the ''inability to approve, deny or act on the application''. It was observed that this could be accomplished by the addition of ''and the reason thereof'' at the end of this section.

Customs Response: The comments have merit and are adopted.

Comment: It was asserted that the second sentence in proposed § 191.36(e) should be: ''If the applicant seeks waiver of prior notice under 191.91, reference should be included that application was submitted under this section and whether or not it was approved.''.

Customs Response: The comment has merit and is adopted (but by a change to § 191.91(b)(2)(ii) stating that the statement as to action on previous waiver requests includes one-time waivers under § 191.36).

Comment: It was believed that proposed § 191.37 provided no guidance as to the specific document type and format that the claimant or other recordkeeper had to maintain.

Concern was also expressed here that possible confusion could result from the 3-year (from date of payment) record-retention period for drawback, and the general 5-year record retention period for other Customs purposes. More clarity was requested.

It was further stated that if more than 3 years had passed since payment but a drawback claim was not finally liquidated and a question regarding documents arose, Customs should presume that the claimant had satisfied the drawback documentation requirements as long as the claimant was approved under the drawback compliance program.

It was additionally suggested that a claimant should be permitted to maintain the required documentation in paper or electronic form.

Customs Response: Customs plans to make available to the public, from the field drawback offices, descriptions, with examples, of the documents referred to in this section (now redesignated as § 191.38, due to the addition of a § 191.37 regarding destruction).

Section 191.38(a) as redesignated is also modified to make it clear that the 3-year time period provided for therein is for drawback purposes, and that the same records may be required, for other purposes, to be retained for a different time period. To this end, a citation to 19 U.S.C. 1508 is also added to redesignated § 191.38(a).

While records must be retained for 3 years from the date of payment of a drawback claim, it is Customs position, as previously stated, that the effect of a claimant no longer having records following this period must be determined on a case-by-case basis, when the related drawback claim has not yet been finally liquidated.

Concerning the particular format in which records may be kept, as also previously noted, Customs has determined to include a definition in § 191.2 for the term ''records'' based on the definition of this term appearing in 19 U.S.C. 1508.

Comment: It was observed that a reference to the destruction of merchandise should be included in proposed § 191.37(b)(2), and that a section should be added to subpart C addressing the destruction of merchandise.

Customs Response: The comment that § 191.38(b)(2) as redesignated should also include a reference to destruction has merit and is adopted. Also, as already noted, a new § 191.37 is added to subpart C addressing the destruction of unused merchandise under Customs supervision. A similar section regarding destruction for manufacturing drawback has likewise been included in subpart B.

Subpart D

Comment: It was asked, with reference to proposed § 191.41, whether taxes or fees are eligible for drawback on rejected merchandise under 19 U.S.C. 1313(c).

Customs Response: Section 1313(c)) authorizes drawback on ''duties''. However, this comment indirectly raises the question of the applicability of 26 U.S.C. 5062(c) (drawback on distilled spirits, wines, or beer, which are unmerchantable or do not conform to sample or specifications). To alert the public to the possible application of that provision, a parenthetical reference to subpart P dealing with that type of drawback is added to § 191.41.

Comment: It was observed that a close reading of proposed § 191.42(c), (e), and (f) revealed that the ''Notice of Intent to Export/Destroy'' form was to be used not only as a notice of intent to export or destroy merchandise, but also as a notice of intent to return merchandise to Customs custody. As such, it was suggested that the form be appropriately renamed.

It was further stated that, by providing, in proposed § 191.42(e) and (f), certain situations in which merchandise would ''be deemed'' to have been returned to Customs custody, these provisions indicated that the merchandise might not actually have been returned to Customs custody. It was advocated that this should be

reconciled with the wording in proposed § 191.42(a) providing that the claimant had to return the merchandise to Customs custody.

In addition, for consistency, it was requested here that each time the terms ''exported'' or ''exportations'' were used in proposed § 191.42, the terms ''destroyed'' and ''destructions'' should be added.

Customs Response: The request regarding the use of ''destroyed'' or ''destruction'' with the corresponding exportation terms has merit and is adopted, and, as previously noted, the form is re-named.

Customs, however, sees no need for any change to § 191.42(a). Since § 191.42(e) and (f) provide that merchandise is ''deemed'' to have been returned to Customs custody in the situations provided for, the requirement for return to Customs custody in § 191.42(a) is met.

Comment: It was requested that the waiver of prior notice and the one-time retroactive claim procedures provided for unused merchandise in proposed § 191.36 be made available for drawback under 19 U.S.C. 1313(c) and for destroyed merchandise, and that if this were done, merchandise exported or destroyed under these procedures should be ''deemed'' to be ''returned to Customs custody'' or destroyed ''under Customs supervision''.

Customs Response: The comment suggesting that waiver of prior notice and the one-time waiver procedures be made available for drawback under 19 U.S.C. 1313(c) is not adopted. In particular, as previously pointed out, 19 U.S.C. 1313(c) and 1313(j) are different statutory provisions. Under § 1313(c), there must be a return to Customs custody for exportation. There is no such requirement in § 1313(j).

Comment: It was recommended that the information required in the notice under proposed § 191.42(d) should include, in addition to the name and telephone number of a contact person, the mailing address, fax number and, if available, the e-mail address.

Customs Response: Customs agrees, and § 191.42(d) is changed to provide for this additional information.

Comment: It was asked that the notification given by Customs to examine merchandise under the first sentence in proposed § 191.42(e) be in writing.

Customs Response: This comment has merit and is adopted.

Comment: A concern was expressed in relation to proposed § 191.42(i), in that the provision appeared to require the exportation of rejected merchandise under Customs supervision.

Customs Response: The comment raises a valid concern. The statute does not require exportation to be under Customs supervision. The phrase, ''under Customs supervision'', is thus deleted from this section. Also, a parenthetical reference to subpart G is added to § 191.42(i).

Comment: In proposed § 191.44, it was suggested that the reference to ''§ 191.71(a)'' be changed to ''191.71''.

Customs Response: This comment has merit and is adopted.

Subpart E

Comment: It was asserted that, in proposed § 191.51, a complete claim should contain a calculation sheet.

Customs Response: The provision in § 191.51(b) does require the correct calculation of drawback due, under which claims exceeding 99% of the duties will not be paid until corrected, and claims for less than 99% will be paid as filed, unless the claimant amends the claim. This provision is modified to provide for those situations when drawback is 100% of duties.

In addition, it is noted that the provision on the time for filing a complete claim (in proposed § 191.52(a)(2)) is moved to § 191.51, as paragraph (e), and titled ''Time of filing''. The provision in 19 U.S.C. 1313(r)(3), providing for an extension to the time for filing a drawback claim when a claimant establishes that it was unable to file the drawback claim because of a major disaster is also included in § 191.51(e).

Comment: A question was posed, in connection with proposed § 191.51(a)(1), as to why drawback offices still required a coding sheet for disk/electronic filings, and would those offices be informed to eliminate this requirement.

Customs Response: As set forth in § 191.51(a)(1), a coding sheet is required, unless the data is filed electronically.

Comment: Concern was expressed about the requirement in proposed § 191.51(a)(2) that certificates of delivery be in the possession of the claimant at the time of filing the claim.

Customs Response: Certificates of delivery must be in possession of the party to whom the merchandise is delivered. Section 191.51(a)(2) is changed to so state.

Comment: A question was presented regarding the statement in proposed § 191.51(b) that claims for less than 99 percent would be paid as filed, unless the claimant amended the claim. It was advocated that Customs make an additional refund in such cases on its own.

Customs Response: Customs recognizes the interest of a claimant in being able to exercise caution by under-claiming. Also, adoption of the procedure suggested by the comment would create an untenable administrative burden for Customs in its processing of drawback claims.

Comment: With respect to proposed § 191.51(c), it was suggested that the effective dates for providing HTSUS numbers on drawback claims be included in the regulations themselves. It was also contended that if a certificate of manufacture and delivery was identified or designated, the claimant should be exempt from providing the HTSUS numbers on the related claim. As such, it was requested that the phrase, ''and/or the certificate of manufacture and delivery'', be deleted from proposed § 191.51(c).

A concern was also expressed that proposed § 191.51(c) might imply that for exports, if Schedule B commodity numbers were used, the entire ten-digit number would be required. It was advocated that it should be specified here that the Schedule B number was limited to 6-digits.

A question was raised as to what the effect of incorrect HTSUS numbers or Schedule B commodity numbers would be when those numbers were incorrect on the entry documentation or Shipper's Export Declarations (SEDs) from which they were derived. It was suggested that ''good faith effort'' language, as discussed in prior consultations, should be incorporated within proposed § 191.51. It was further suggested that if drawback claims were required to provide the SED tariff number to the 6-digit level for exports, they should also be permitted to provide a statement as to any discrepancy between that number and the actual number that would be reported to Customs at entry if the merchandise had been imported.

In addition, with reference to the provision in proposed § 191.51(c) that claimants using certificates of manufacture and delivery could meet the requirement with the HTSUS number on such a certificate, it was asked if this meant the HTSUS number of the imported designated merchandise, or the manufactured article, since the claimant might be using the previously manufactured article to make a second product for export.

Customs Response: The comment that the effective dates for when HTSUS numbers or Schedule B commodity numbers are required should be included in the regulations has merit and is adopted. Section 191.51(c) adds a provision in this regard.

As for the second comment suggesting deletion of the reference to a certificate of manufacture and delivery, this comment points out a lack of clarity in the regulation. The provision is modified to make it clear that the 6-digit HTSUS number is always required for the designated imported merchandise, and that this number shall be provided from the entry documentation when the claimant is the importer of record and from the certificate of delivery and/or certificate of manufacture and delivery when the claimant is not the importer of record. Because the certificate of manufacture and delivery is part of a drawback claim, manufacturing drawback claimants filing claims for which such a certificate or certificates is or are parts may meet the requirement for providing the HTSUS number for the imported merchandise with the HTSUS number(s) on such certificate(s).

In the case of exports, the HTSUS number(s) or Schedule B commodity number(s) (to the 6-digit level in each instance) are also always required, and they shall be from the Shipper's Export Declaration(s) when required, or if not required, the numbers shall be the numbers that the exporter would have set forth on the SED(s), but for the exemption from the requirement for an SED.

As provided in §§ 191.10(b)(12) and 191.24(b), HTSUS numbers and/or Schedule B commodity number(s) are not required to be included for the transferred merchandise on certificates of delivery or certificates of manufacture and delivery unless the transferred merchandise is the designated imported merchandise or merchandise substituted therefor under 19 U.S.C. 1313(j)(2).

The comment regarding the possible implication that the 10-digit HTSUS number is required for Schedule B numbers from an SED is addressed by making clear in § 191.51(c) that the 6-digit limitation applies to both HTSUS numbers and/or Schedule B numbers.

As for the comment regarding the effect on drawback of the use of incorrect HTSUS numbers or Schedule B commodity numbers, when those numbers were incorrect on the entry documentation and/or SEDs from which they were derived, the requirement is that the HTSUS numbers for the designated imported merchandise be from the entry summary and other entry documentation (§§ 191.51(c), 191.10(b)(11), 191.24(b)(4)) and that the HTSUS numbers or Schedule B commodity numbers for the exported merchandise or articles be from the SED or, if no SED is required, the numbers that would have been on an SED if required. Thus, in each instance (except in the case of substituted merchandise under 19 U.S.C. 1313(j)(2), in which, according to the legislative history (see above), classification is one of the criteria on which commercial interchangeability is based), the HTSUS or Schedule B commodity numbers are derived from other documents. That is, no independent classification is required.

It is true that earlier consultations discussed a ''good faith effort'' in the HTSUS or Schedule B commodity numbers to be used on drawback entries and certificates. As stated in the background to the proposed regulations, the intent of the requirement for HTSUS or Schedule B commodity numbers was to enable Customs to ensure greater compliance through the use of enhanced penalty and automated drawback selectivity programs (62 FR 3090). The change from earlier discussions under which, instead of requiring independent classification for drawback, the HTSUS or Schedule B commodity numbers to be provided on drawback entries and certificates are those already required (except in the case of substitution under 19 U.S.C. 1313(j)(2), see above), simplifies drawback procedures in this regard. As stated above, all that is required is that the HTSUS numbers or Schedule B commodity numbers from the entry summary and other entry documentation or the SED be provided.

In view of these changes, Customs sees no need, benefit, or purpose to be served by some sort of ''good faith effort'' requirement. However, the current requirement, which merely provides for the source of the classification number for exports, does not preclude a claimant from explaining any discrepancy in this number for other drawback purposes (*e.g.*, commercial interchangeability under 19 U.S.C. 1313(j)(2) or same kind and quality under 19 U.S.C. 1313(p)).

The comment questioning whether the HTSUS number on a certificate of manufacture and delivery is that for the imported designated merchandise or the manufactured article raises a valid concern and is addressed by further clarifying § 191.51(c) in this respect.

Comment: A definition of the term ''perfecting'' was requested in proposed § 191.52. It was also requested that Customs develop a formal procedure for tolling or suspending the 3-year claim completion period during an audit, internal advice request, or other action initiated by Customs regarding a drawback claim.

It was observed that copies of export bills of lading were requested in proposed § 191.52(b)(1), but that in proposed § 191.72(a), the original was required.

It was also asked whether protesting a drawback claim gave the right to amend the claim even though the 3-year period may have passed.

Customs Response: Customs believes that a specific definition of the term ''perfecting'' in § 191.52 is unnecessary. The comment that procedures should be provided for tolling or suspending the 3-year period for completion of a claim is also not adopted. It is the claimant's responsibility to file a complete claim; a prudent claimant would ensure timely filing of a complete claim for all possible applicable provisions.

The comment regarding copies or originals of bills of lading, in § 191.52(b)(1), raises a valid concern. Modifications, consistent § 191.72(a), are made here.

In response to the question of whether protesting a claim may allow a claimant to amend a claim outside the 3-year time period, the 3-year time period is statutory, and may not be extended unless specifically provided for in the statute. As part of protest procedures, a claim may be perfected, but it may not be amended (insofar as amendment would result in a complete claim not being filed within the 3-year time limit).

It is noted that the heading of § 191.52 is changed to ''Rejecting, perfecting or amending claims'', and the heading of paragraph (a) thereof is changed to ''Rejecting the claim''.

Comment: It was believed that, for consistency, the notification to the applicant provided for in proposed § 191.52(a)(1) should be ''in writing.''

Customs Response: This comment has merit and is adopted.

Comment: It was asserted that proposed § 191.52(a)(2) failed to recognize the retroactive application of 19 U.S.C. 1313(p), in that the restriction in 19 U.S.C. 1313(r)(1) did not apply to claims under § 1313(p).

Customs Response: As for the retroactive application of 19 U.S.C. 1313(p), it is Customs position that resolution of the applicability of § 1313(p) to past drawback claims will be resolved on a case-by-case basis.

In addition, a reference to 19 U.S.C. 1313(r)(3) is included in § 191.51(a)(2) as proposed, which, as noted, is redesignated as § 191.51(e). Additionally, § 191.51(e), as thus redesignated, which provides the time for filing a completed claim, is further modified by the addition of the statutory provision that claims not completed within the 3-year period (unless specifically exempted) shall be considered abandoned.

Comment: With reference to proposed § 191.52(b), it was thought that a new paragraph should be added to include certificates of delivery requested by Customs among the additional evidence or information that could be filed more than 3 years after the date of exportation. It was also suggested that a new paragraph be added to provide for the submission of other alternative information as approved by the drawback office, in lieu of that set forth in proposed § 191.52(b)(1)–(3). In addition, it was mentioned that provision should be made for a situation when the drawback office decides after receipt of the claim that the claimant should have its own filer code. Furthermore, it was recommended that, for consistency, the notification to the applicant provided for in this provision should be in writing.

Customs Response: The comment suggesting the inclusion of requested certificates of delivery to perfect a drawback claim has merit and is adopted. The comment regarding the addition of a paragraph providing for other alternative information is not adopted, as not necessary. Section § 191.52(b) already provides that the information described therein may include, but not be limited to, the information set forth in paragraphs (b)(1)–(3) thereof, as modified. The comment regarding a claimant's filer code is not adopted, as unnecessary. The comment that, for consistency, the notification to the filer should be ''in writing'' has merit and is adopted.

Comment: It was observed, with respect to proposed § 191.52(b)(2), that if the drawback claimant was not also the importer, the requirement that the import entry and invoice be submitted would be difficult to meet. The comment suggests that providing the entry number and a full description of the imported merchandise (but not the total duty paid or total value and volume of the import) should be sufficient for Customs.

Customs Response: Customs believes that the total duty paid is no more sensitive than the other information required under § 191.52(b). This comment is not adopted.

Comment: It was suggested that it be specifically set forth in proposed § 191.52(b)(2) and (3) that other types of data, in lieu of invoices, would be acceptable.

Customs Response: Customs believes that this is unnecessary. As previously noted, § 191.52(b) already provides that the information required may include, but is not limited to, that specifically set forth thereunder.

Comment: Regarding proposed § 191.52(c), the request was made that the word ''original'' be added before ''drawback claim'' to avoid confusion.

Customs Response: The comment that ''original'' should be added before ''drawback claim'' has merit and is adopted.

Comment: A question was raised about the need for proposed § 191.53, concerning the ''restructuring'' of claims; it was asked that this term be defined. The concern was also expressed that drawback offices might not fairly exercise the discretionary authority given to them in this section.

Customs Response: The procedures in § 191.53 permit Customs to require claimants to restructure their drawback claims so as to foster Customs administrative efficiency, subject to consideration by Customs of relevant factors (as listed in the provision). To protect the interests of claimants, a claimant may demonstrate an inability or impracticability in restructuring, with the criteria for so demonstrating specifically provided, and may propose a mutually acceptable alternative. Customs plans to provide training on the restructuring procedures to the field drawback offices.

Subpart F

Comment: A recommendation was made that a provision be added to proposed § 191.61 for the amendment of a claimant's specific or general manufacturing drawback ruling, if verification revealed errors or deficiencies with respect thereto. Current § 191.10(e) was referred to here.

Customs Response: Regarding amendments to correct errors or deficiencies found in verification, Customs agrees that § 191.61 should be appropriately changed to deal with this matter, although not with inclusion of all of the material currently in § 191.10(e). In this connection, with the change in terminology from drawback ''contracts'' to specific and general manufacturing drawback rulings, modification of the rulings and the effect thereof are governed by 19 U.S.C. 1625 and 19 CFR part 177.

As changed, § 191.61 adds a new paragraph (d), to provide that Customs Headquarters shall be promptly informed of any errors or deficiencies in a specific manufacturing drawback ruling or a general manufacturing drawback ruling, the letter of notification of intent to operate under a general manufacturing drawback ruling, or the acknowledgment of the letter of notification of intent, and that Customs Headquarters shall take appropriate action (with a citation to 19 U.S.C. 1625 and 19 CFR part 177).

Comment: It was stated that proposed § 191.61(b) appeared to be limited to manufacturing claims, and recommended that the language be expanded to cover the verification of all types of claims.

Customs Response: Customs agrees. Section 191.61 is modified accordingly.

Comment: With reference to proposed § 191.61(c), even though firm deadlines were not able to be established in the absence of ''deemed liquidated'' language, it was asked that Customs indicate the maximum time period it planned to use to liquidate a drawback entry.

Customs Response: This comment is not adopted. It is Customs position that, as previously set forth, no such time period must be specified, but claimants can avail themselves of accelerated drawback provisions to obtain early payment secured by a bond.

Comment: The suggestion was made that if the technical definition of ''falsification'', as used in proposed § 191.62, meant or implied fraudulent activity to the exclusion of negligent activity, then, in order to clarify the subject matter thereof (which included both fraud and negligence), the title of proposed § 191.62 should be changed. It was also observed here that a negligent violation was not necessarily a falsification.

Customs Response: The heading of § 191.62 is changed to ''Penalties''.

Comment: The question was raised in relation to proposed § 191.62(a) as to why criminal penalties were included therein. It was believed that Customs had agreed to eliminate the criminal provisions if civil penalties were included in the Customs Modernization Act.

Customs Response: Neither the statute nor the legislative history thereto contains any such provision.

Subpart G

Comment: It was believed that the phrase, ''after receipt'', should be added after ''4 working days'' in proposed § 191.71(a).

Customs Response: Customs agrees. The provision is changed accordingly.

Comment: For consistency, it was recommended that advising the filer, as provided in proposed § 191.71(a), be ''in writing''. It was also stated that the 7-day period for notice before the intended date of destruction was too long and that the same 2-day period used for notice of export should be used.

Customs Response: Customs agrees that advising the filer should be in

writing, and this provision is changed accordingly. However, Customs disagrees that a change in the applicable time period is needed. Customs does not anticipate undue confusion resulting from the different time frames for different purposes.

Comment: The view was expressed that proposed § 191.71(b) failed to provide for the evidence required when the merchandise was destroyed, in those cases where Customs did not notify the filer within the time in proposed § 191.71(a). It was believed that the wording of this provision should be changed from, ''When Customs declines the opportunity to attend'', to: ''When Customs does not attend (or witness) the destruction''.

Customs Response: This comment has merit and is adopted, although the modification of the wording, by the addition of ''(or witness)'' is not made, as unnecessary. Evidence of destruction must be provided whether or not Customs declines the opportunity to attend the destruction, or Customs decides to witness the destruction but does not do so.

Comment: A rewording of proposed § 191.71(c) was recommended, concerning the submission of evidence of destruction.

Customs Response: Customs agrees. After destruction the claimant must provide either the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback, certified by the Customs officer attending the destruction, or, if Customs has not witnessed the destruction, the evidence that destruction took place in accordance with the approved Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback. The provision is changed accordingly.

In addition, the heading of subpart G is changed from ''Evidence of Exportation and Destruction'' to ''Exportation and Destruction'' because the subpart contains export and destruction provisions on procedures as well as evidence.

Comment: It was stated that the list of documentation for establishing exportation in proposed § 191.72(a) through (e) is not all inclusive. A suggestion was put forth here that the introductory text of proposed § 191.72 preceding paragraphs (a) through (e) should be revised to read: ''The procedures for establishing exportation outlined by this section include, but are not limited to:''. It was further recommended that the word ''Alternative'' should be removed from the heading and introductory text. It was also suggested that the word ''time'' of exportation in the introductory text be replaced with ''date'' of exportation.

Customs Response: The comment that ''include, but are not limited to'' should be inserted is adopted. The use of the word ''alternative'' in the heading and introductory text of § 191.72 is superfluous, as this section contains the exportation procedures in question. The heading is changed to ''Exportation procedures''. Also, the word ''time'' appearing in the introductory text is changed to ''date''.

Comment: The requirement in proposed § 191.72(a) for an original bill of lading was said to be inconsistent with industry practice. The elimination of this requirement was requested.

Customs Response: Customs agrees that the requirement for ''the original'' bill of lading or other document is inconsistent with actual practice. The provision is thus changed to provide for ''an originally signed bill of lading, air waybill, freight waybill, Canadian Customs manifest, and/or cargo manifest, or copies thereof certified by the exporting carrier or holder of the original, issued by the exporting carrier''. This is consistent with C.S.D. 82–59.

Comment: The recommendation was made that a separate column be added in the sample format for the export summary procedure in proposed § 191.73, to indicate the exporter's name, if different from the claimant. Additionally, it was asked if this procedure could be used for transfers to a foreign trade zone.

It was also noted that the capitalization of Chronological Export Summary was inconsistent in this provision.

Customs Response: A column is added to the sample format in § 191.73 to indicate the exporter's name if different from the claimant. In addition, a change is made to subpart R to include language making the export summary procedure applicable to transfers to foreign trade zones of merchandise placed in zone-restricted status (see 19 CFR 146.44). Also, § 191.73 is changed to consistently capitalize ''Chronological Summary of Exports'' throughout. Also, export identification is provided for ''deemed'' exports under subpart K.

Comment: In proposed § 191.73(b), it was said that the number sign (''#'') after the word ''destination'' appeared to be a ''typo''

Customs Response: Customs agrees, and the number sign ''#'' is deleted.

Comment: It was asked that a requirement be added to proposed § 191.73(c), specifying that the claimant, if not the exporter, would have to have an endorsement from the exporter to order to claim drawback.

Customs Response: The comment is correct. However, this is now provided for in § 191.82.

Comment: A recommendation was made that the word ''proof'' appearing in proposed § 191.73(c)(1) be changed to ''evidence''. It was also suggested that the last sentence thereof should be amended consistent with proposed § 191.72(a), which would prevent a filer from claiming that a copy or unsigned duplicate original was satisfactory.

Customs Response: These proposals have merit and are adopted. In § 191.73(c)(1), the word ''proof'' is changed to ''evidence'', and a reference is made to the actual evidence provided for in § 191.72(a).

Comment: The deletion of the last sentence in proposed § 191.73(c)(2) was requested.

Customs Response: Customs agrees. The last sentence in § 191.73(c)(2) is removed, and the second sentence is modified by the addition, at the end thereof, of the phrase '', and such records are subject to review by Customs''.

Comment: It was asked whether the reference in proposed § 191.75(a) and (b) to ''§ 191.73'' should instead be to ''191.72''.

Customs Response: The comment has merit. However, reference to both §§ 191.72 and 191.73 is intended. The provision is changed accordingly.

Comment: A question was raised as to the meaning of the statement in proposed § 191.75(a) that no bond would be required when the U.S. Government claimed drawback.

Customs Response: This comment raises a valid concern. The quoted statement, in § 191.75(a) as proposed, is of general application and is incorporated, as a separate paragraph, in § 191.4, which is revised accordingly.

Comment: In proposed § 191.75(b), it was believed that a reference to § 191.4(b) was needed.

Customs Responses: The comment has merit and is adopted.

Subpart H

Comment: With reference to proposed § 191.81, the comment was made that nowhere did Customs discuss the actual determination of drawback due.

It was also suggested that the regulations include a provision encouraging the timely and expeditious payment and liquidation of drawback claims.

Customs Response: Section 191.51(b) addresses the determination of drawback due. Also, the suggested inclusion of a provision encouraging

timely and expeditious payment of drawback and liquidation of drawback entries is not adopted. The accelerated payment procedure provides for expeditious payment of drawback. As previously noted, Customs takes the position that a categorical time limit regarding liquidation of drawback entries will not be set out, but claimants can avail themselves of accelerated drawback provisiosn to obtain early payment secured by a bond.

Comment: A comment suggested that the following be added at the end of the first sentence of proposed § 191.81(b)(1): ''only to the extent the merchandise in the quantities identified or designated is subject to a drawback claim''.

Customs Response: Customs agrees. To this end, the phrase, '', 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.'', is added at the end of the first sentence of § 191.81(b)(1).

It is also pointed out here that in identifying, to the best of its knowledge, each import entry on a drawback claim that has been protested or that is the subject of a request for reliquidation, as required under § 191.81(b), the drawback claimant must use reasonable care (see 19 U.S.C. 1593a).

Comment: A clear definition of what constituted a voluntary tender was recommended in relation to proposed § 191.81(c), as well as a corresponding change to the waiver language in proposed § 191.81(c)(3). In this latter regard, it was asked what exactly was meant by the phrase in proposed § 191.81(c)(3), ''waiving any right to payment or refund under other provisions of law''.

Customs Response: A definition of voluntary tenders is added in § 191.3(a)(1)(iii). In addition, for purposes of clarification, proposed § 191.81(c)(3) is modified in the same manner as § 191.81(b)(1). It is also noted that proposed § 191.81(c)(1) and (2) are combined and redesignated as § 191.81(c)(1), and proposed § 191.81(c)(3) is redesignated as § 191.81(c)(2).

Comment: It was suggested that the heading in proposed § 191.81(f) be changed to ''By-products''. It was further suggested that the term ''Relative values'' be added there as well.

Customs Response: In view of the changes made in § 191.2(u) as redesignated, the heading of § 191.81(f) is changed to read ''Relative value; multiple products''.

Comment: Noting that specific reference was made in proposed § 191.82 as to the party who could claim drawback under 19 U.S.C. 1313(j)(1), it was suggested that specific reference also be provided in this section for § 1313(j)(2). Also, based on the second sentence of proposed § 191.175(a), Customs was urged to adopt a similar provision to apply to claims for all other types of drawback.

It was further asked whether the ''certification'' referred to in this section had to be executed on a new Customs Form or whether it could be done on company letterhead; whether it had to be submitted as part of the claim; and whether the manufacturer would have to issue a certificate of manufacture and delivery to the exporter who would then issue a certification back to the manufacturer allowing the manufacturer to file and claim drawback.

Customs Response: A reference to § 191.33(b) is included in § 191.82, for parties who may claim under 19 U.S.C. 1313(j)(2).

The comment that a provision such as in § 191.175(a) be added to § 191.82 is not adopted. The authority for the provision in § 191.175(a) is specifically provided in 19 U.S.C. 1313(p)(3)(C), but such a provision is not specifically provided for other subsections of the drawback law.

The certification may be executed on company letterhead as in current practice; it need not be submitted as part of a claim (although it must be filed at the time of, or prior to, the filing of the claim). Furthermore, in the situation covered by this provision, a certificate of manufacture and delivery is not required from the manufacturer to the exporter, nor is a certificate required from the exporter back to the manufacturer (see § 191.25). Also, provision is made for the filing of a ''blanket'' certification for a specified period, under this provision, consistent with similar provisions elsewhere in the regulations (see §§ 191.28, 191.33(a), 191.33(b)).

Subpart I

Comment: In proposed §§ 191.91 and 191.92, it was advocated that a successor be allowed to assume a predecessor's approvals for waiver of prior notice and accelerated payment, on the basis of the language in 19 U.S.C. 1313(s)(3)(A) providing for drawback successorship when an entity had transferred to another entity all or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor.

It was suggested in this regard that such an assumption would be effective for one year from the date of succession. Within that year, the successor corporation would have to re-apply for the privilege. If the successor company applied within one year, then the privilege would remain in force until the new application was acted upon by Customs.

The suggestion was also put forth that the effect of existing waiver of prior notice and accelerated payment approvals, and requirements for reapplication, be included in the regulations themselves.

Customs Response: The assumption of waiver of prior notice and accelerated payment approvals by a successor has some merit, although Customs must ensure the protection of the revenue. Therefore, the provisions (§§ 191.91 and 191.92) are modified to provide for the limited, temporary assumption by a successor of waiver of prior notice of intent to export and accelerated payment approvals in a successorship such as that described in 19 U.S.C. 1313(s)(3)(A).

Unlimited assumption by the successor, however, is not provided for in a successorship such as that described in 19 U.S.C. 1313(s)(3)(B) (transfer of the assets and other business interests of a division, plant, or other business unit of the predecessor, under certain conditions).

The assumption by the successor of waiver of prior notice and accelerated payment approvals provided for will be effective for 1 year from the date of succession. Within that year, the successor must re-apply following the application procedures in § 191.91 and/or 191.92, as appropriate, and if the successor applies within 1 year, the approval of waiver of prior notice or accelerated payment remains in force until the new application is acted upon by Customs.

Furthermore, the request that provision for existing waiver of prior notice and accelerated payment approvals and requirements for re-applications be included in the regulations themselves has merit and is adopted.

In addition, all references to ''privileges'' are eliminated from subpart I and throughout part 191, and the references are replaced by reference to the particular procedure involved (either waiver of prior notice of intent to export or accelerated payment).

Comment: It was observed in relation to proposed § 191.91(b)(1) that the procedures for waiver of prior notice should also be extended to applicants who might wish to apply under 19 U.S.C. 1313(c).

Customs Response: This comment is not adopted. The waiver of the notice of intent to export applies under 19 U.S.C.

1313(j), which is a different statutory provision than 19 U.S.C. 1313(c). Under 19 U.S.C. 1313(c), the merchandise is required to be returned to Customs custody for exportation. No such requirement exists with respect to 19 U.S.C. 1313(j).

Comment: The observation was made that the nine-digit suffix, plus two-character suffix, should be required in proposed § 191.91(b)(2)(i)(A) and (B). Also, with reference to proposed § 191.91(b)(2)(i)(B), it was noted that the name, address, and identification number of current exporters, if the applicant was not the exporter, would be of minimal value, since it would be an extensive list and the exporters would be constantly changing.

Customs Response: Paragraphs (b)(2)(i)(A) and (B) of § 191.91 are modified to require the suffix in question; and paragraph (b)(2)(i)(B) thereof is further modified to require only the 3 most frequently used exporters, if there are multiple exporters, to appear in the application.

Comment: The question was asked as to what was meant by the term ''export period'', in proposed § 191.91(b)(2)(i)(C). It was further asserted in this connection that it was unnecessary to require applicants to provide the ''export period covered'', except in cases where the application was intended to cover other than prospective transactions.

Customs Response: The export period covered by the application means the period during which exports are made for which waiver of prior notice is requested (the period may be indefinite beginning with a stated date; or it may be a period with specified beginning and ending dates); it is Customs position that this information is necessary.

Comment: In proposed § 191.91(b)(2)(i)(F), (G), and (H), it was recommended that the reference to the ''next 12-month period'' be changed to refer to the next calendar year; it was asked what other requirements were referred to in proposed § 191.91(b)(2)(iii)(B); and it was suggested that a statement be required in proposed § 191.91(b)(2)(ii) as to whether an applicant was previously denied or had been approved for the one-time waiver procedure.

Customs Response: The ''12-month period'' referred to in § 191.91(b)(2)(F), (G), and (H) is changed to make it clear that the period covered is the next calendar year; § 191.91(b)(2)(ii) is changed to include a statement of whether the applicant was previously denied or had approved a 1-time waiver of prior notice under § 191.36; and the evidence referred to in § 191.91(b)(2)(iii)(B) is ''any other'' evidence, and the provision is changed by the addition of this modifier.

Comment: The suggestion was made that the words ''and/or'' be added for proposed § 191.91(b)(2)(iii)(A)(*1*) and (*2*), on the ground that a claimant may not have laboratory records as such.

Customs Response: This comment has merit and is adopted, with the additional statement that the requirements for the records are ''as applicable''.

Comment: It was remarked that Customs should justify and state its reason for the ''inability to* * *act on the application'', as set forth in proposed § 191.91(c)(1). It was further observed in this connection that the last sentence should add the language, ''but are not limited to''. It was stated here that the proposal was too restrictive, and that it would require granting of a waiver if the applicant had a history of bad exams.

Customs Response: The comment that Customs must justify and state its reason for the inability to act on the application has merit and is adopted. Customs will endeavor to meet a directory 90-day time limit in this regard. The comment requesting the addition of ''but are not limited to'' is also adopted, for the reason given.

Comment: In proposed § 191.91(c)(2), it was contended that Customs did not have the right to limit future filings for waiver of prior notice (and it was contended that Customs could not limit retroactive waivers of prior notice). It was asked that if the waiver could only be ''prospective'' as used in proposed § 191.91(c)(2), it be from the date of the application for waiver, not the waiver approval. In this regard, it was noted that proposed § 191.36 provided for claims that were filed pending disposition of application. The question was put as to what an applicant was supposed to do between filing its request for waiver of notice of intent to export and receiving approval of the request.

Customs Response: These comments are not adopted. The elimination of unlimited retroactive waivers of prior notice meets the interest of eliminating a significant internal control weakness reported by the Treasury Inspector General; while the provision for a one-time opportunity for drawback claims under 19 U.S.C. 1313(j), without having provided Customs with prior notice, meets the interest of claimants who may not have known of the requirement for prior notice of intent to export before the exports occurred.

Approvals of waiver of prior notice are effective for exportations occurring after the date of approval. Between the time of filing a request for waiver of prior notice and approval of the waiver, applicants should provide prior notice of export as provided in § 191.35.

Comment: With reference to proposed § 191.91(d), it was contended that a ''stay'' without cause could become too burdensome to the drawback community. It was urged that the provision be eliminated entirely or changed to allow Customs to inspect a few export transactions during a specified period of time. If Customs wanted to ''stay'' waiver of prior notice altogether, then there should be a ''good cause'' requirement for staying waiver of prior notice, for any duration of time. In this latter connection, it was asked that a stay be specifically limited, such as for 30 days.

It was also observed that under proposed § 191.91(d), a ''stay'' would take effect on the date of the agency's letter of notification, even though such a letter would be received after the date thereon. It was requested here that a privilege holder be afforded a reasonable period after the date of Customs letter of notification of a ''stay''.

In addition, a suggestion was made that the last sentence of proposed § 191.91(d) make clear that, upon reinstatement, the waiver of prior notice would apply to exports occurring on or after the date of such reinstatement. Also, an editorial comment recommended that the word ''agency'' appearing several times in the provision be replaced with other terminology.

Customs Response: The stay procedure for waiver of prior notice is retained in § 191.91(d). The waiver of prior notice procedure has been identified as a significant weakness in Customs administration of drawback. As explained in the BACKGROUND'' section of the proposed rule, the stay procedure would not be an adverse action, suspension, or other form of sanction against the person for whom the privilege is approved; rather it is a limitation on what is being granted in the approval itself, there being no statutory entitlement to this procedure. Customs continues to believe that this limitation would best protect the revenue and the public interest in sound administration of the drawback program.

However, the time within which a stay goes into effect, that is, before the person received notice of the stay, raises concerns. The provision is accordingly changed to provide that written notice of a stay be given to the person for

whom waiver of prior notice was approved, and that such written notice shall be by registered or certified mail. The stay will take effect two working days after the date the person signs the return post office receipt for the registered mail. The delay of two business days is required by 19 CFR § 191.35(a) (i.e., notice of intent to export at least 2 working days prior to the date of intended export).

The comment stating that ''good cause'' or similar language be added in proposed § 191.91(d) governing the implementation of a stay is not adopted. Once Customs has waived the requirement for prior notice of intent to export, Customs has no way of ensuring, before the fact, that the exported merchandise is the merchandise claimed and meets the requirements of the drawback law. Thus, it continues to be Customs position that an approval of waiver of prior notice may be stayed, should Customs for any reason desire to examine the subject merchandise prior to its exportation, for purposes of verification. However, the provision is modified to provide that in its letter notifying the person to whom approval of waiver of prior notice has been granted Customs must specify the reason(s) for the stay.

In regard to the comment asking that the period for a stay be limited to a specific period, such as 30 days, this comment is also not adopted. The period for a stay remains ''a specified reasonable period''. The reason that the time-period may not be specified is that the time will vary from case to case (*e.g.*, one person for whom waiver of prior notice has been approved may have many exports within a month and another may have only a few exports in a year; thus it could be that sufficient exports for Customs to verify compliance with the drawback laws occur in less than a month or no exports occur within several months).

The editorial comment (noting the frequency of use of the term ''agency'') is addressed. Also, § 191.91(d) is further modified by the addition of the phrase, '', for exports occurring on or after the date of reinstitution'' after the word ''resume'' in the last sentence of this section.

Comment: A question was raised as to the meaning of the phrase ''proposed revocation'' as used in proposed § 191.91(e). Clarification was also urged here as to when such a revocation would take effect.

Customs Response: To address the commenter's inquiry, a proposed revocation does not immediately deprive the person of waiver of prior notice procedures, unless it is accompanied by a notice of stay under § 191.91(d), under which the stay is effective two working days after the date the person signs the return post office receipt for the registered mail. The provision is changed to make that clear. Otherwise, proposed revocation will become effective 30 days after written notice thereof, unless the proposed revocation is timely challenged under § 191.91(g). If challenged, the procedures in § 191.91(g) apply to the proposed revocation.

In addition, because it is anticipated that many claimants will have approval of waiver of prior notice, approval of accelerated payment of drawback (under § 191.92), and certification in the drawback compliance program (under subpart S), in the interest of administrative efficiency, therefore, the same delay procedures (except for the stay, which is only potentially applicable to waiver of prior notice) are provided for revocation of accelerated payment and certification in the drawback compliance program.

As a result, claimants with approval for more than one of these procedures and/or certification (see §§ 191.93 and 191.195) could be notified in one written notice of the proposed revocation of the procedure[s] and/or certification, if applicable.

Comment: It was stated that, in proposed § 191.91(f), the claim should also be flagged to indicate that it was the first claim filed with waiver of prior notice, to reduce the possibility of the drawback office's failure to record that the claimant had waiver of prior notice.

Customs Response: This comment has merit and is adopted, the last sentence in the section being changed to provide that in addition to submitting a copy of the approval letter with the first drawback claim filed in any drawback office other than the approving office, reference shall be made to the approval of waiver of prior notice in the first drawback claim filed after approval in the approving drawback office.

Comment: The contention was made that the requirements for accelerated payment of drawback in proposed § 191.92 were virtually identical to the requirements for participation in the drawback compliance program. The accelerated payment requirements were said to be quite onerous, and would be time consuming and costly.

Customs Response: Customs disagrees. It is Customs position that the criteria for approval for accelerated payment and certification for participation in the drawback compliance program are not identical. The criteria for each were developed with specific regard for each of the programs and criteria.

Comment: It was advocated that accelerated payment of drawback should be available under 19 U.S.C. 1313(d).

Customs Response: This comment has merit and is adopted (consistent with current practice). Section 191.92(a) is modified to provide that accelerated payment of drawback is available for all kinds of drawback claims, unless specifically excepted.

Additionally, accelerated payment of drawback is defined as the payment of estimated drawback before liquidation of the drawback entry. Also, this provision is modified to make it clear that, consistent with current practice, 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. A reference to subpart E is also added to this provision, to make it clear to the public that, at a minimum, a complete drawback claim meeting the requirements in that subpart is required for accelerated drawback.

Comment: It was believed that the IRS number (9 digits, plus 2 character suffix) was needed in proposed § 191.92(b)(1)(ii).

Customs Response: This comment has merit and is adopted.

Comment: A requirement should be added to proposed § 191.92(e)(2) that Customs justify its reasons for being unable to act on the application within 90 days.

Customs Response: This request has merit and is adopted.

Comment: Opposition was expressed to the requirement in proposed § 191.92(e) that approval of accelerated payment operated only prospectively. This was said to be counter to past administrative practices. Past drawback claims could be bonded by single transaction bonds.

Customs Response: Customs agrees. Consistent with current practice, accelerated payment, following its approval, will be available for claims filed prior thereto, but such claims must be covered by a single transaction bond. Section 191.92(e) is so modified.

Comment: The need for a stay of the privilege of accelerated payment was questioned, in proposed § 191.92(f).

Customs Response: The provision for a ''stay'' is removed for approvals of accelerated payment because, in the case of that procedure, there are procedures protecting the revenue (the requirement for a bond in an amount sufficient to cover the estimated amount

of drawback to be claimed during the term of the bond (§§ 191.92(b)(1)(iv)(A) through (C) and 191.92(d)), and Customs may determine whether to grant accelerated payment for a claim before the fact (distinguished from waiver of prior notice, in which case the exportation has occurred and Customs has no before-the-fact opportunity for review). Section 191.92 is changed accordingly; paragraph (f) thereof is removed, and the succeeding paragraphs duly redesignated.

Comment: The meaning of ''proposed revocation'' in proposed § 191.92(g) was questioned, as well as when the notice thereof would take effect.

Customs Response: Section 191.92(f) as thus redesignated from proposed § 191.92(g) is revised, consistent with the changes made in § 191.91(e).

Comment: With reference to proposed § 191.92(h), it was advised that the first claim should be flagged to reduce the possibility of the drawback office's failure to record that the claimant had approval of accelerated payment.

Customs Response: Customs agrees. Section 191.92(g) as redesignated from proposed § 191.92(h) is revised, consistent with the changes made in § 191.91(f).

Comment: In proposed § 191.92(j), it was requested that Customs address the circumstance when accelerated payment was less than the actual refund entitlement.

A request was also made here that the requirement for certifying the drawback claim for payment within 3 weeks after filing should be changed to 3 weeks after filing a complete and accurate claim or, alternatively, the term ''filing'' should be clearly defined as requiring filing a complete and accurate claim, not simple presentation. Furthermore, it was asserted that the parenthetical in proposed § 191.92(j) appeared to contradict proposed paragraph (h) thereof, by restricting accelerated payment to the office where the privilege was approved.

Customs Response: Customs disagrees that it should address the situation where a party claims less drawback than entitled. Customs recognizes the interest of a claimant in exercising caution by under-claiming, as well as its own interest in not assuming the administrative burden of correcting such claims.

Also, § 191.92(a) has been modified to make it clear that, consistent with current practice, accelerated payment of drawback under § 191.92 is only available when Customs review of the request for accelerated payment does not find omissions from, or inconsistencies with, the requirements of the drawback law and part 191. In this regard, a parenthetical reference to subpart E is added to § 191.92(a).

The comment that this provision may be inconsistent with proposed § 191.92(h) (now redesignated as § 191.92(g)), permitting accelerated payment to be applied for at a drawback office other than the approving office, has merit. The first sentence of § 191.92(i) as redesignated from proposed § 191.92(j) is modified, by deleting the parenthetical therefrom, in order to make it clear that the drawback office where the request for accelerated payment is made is responsible for certifying the claim for payment.

Comment: It was suggested that proposed § 191.93, relating to combined applications, be revised to more closely parallel § 191.195, concerning the drawback compliance program.

Customs Response: This comment has merit in that it raises the concern that § 191.93 does not refer to the drawback compliance program, which may also be applied for in a combined application for waiver of prior notice and approval of accelerated payment of drawback. The provision is modified by the addition of a parenthetical citation to § 191.195.

Subpart K

Comment: The requirement in proposed § 191.112(h) that the drawback office certify the Customs Form 7514 after the vessel or aircraft had cleared from the port of entry, and return a copy to the exporter, was said to be unnecessary. The deletion of this requirement was advised.

Customs Response: Customs agrees. The certification is deleted therefrom. Also, if the export summary procedure is used under this subpart, the requirements for a notice of lading in § 191.112(d)(1) and declaration in § 191.112(f)(1) must be met.

Subpart M

Comment: A question was raised as to the requirement in proposed § 191.133(a) that 19 U.S.C. 1313(g) applied only to materials used in the ''original'' construction and equipment of vessels or aircraft. An objection was also raised about the reference therein to § 1313(g) not applying to material not required for the safe operation of a vessel or aircraft.

Customs Response: A similar comment was made when the same provision was added to the current regulations (see T.D. 83–212). Customs position at that time was that this restriction followed the intent of Congress. If an article is not attached to, or made a part of, a vessel, or is merely placed aboard the vessel and not required for safe operation of the vessel or safety of the crew, Congress did not intend that it be the subject of drawback. Customs position here has not changed.

However, the comment does raise a valid concern. The statute (19 U.S.C. 1313(g)) provides for drawback on materials imported and used in the construction and equipment of the covered vessels. The statute does not directly address the precise question of whether the materials have to be imported and used in original construction and equipment of vessels and aircraft.

Accordingly, § 191.133(a) is modified to provide that 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'' of a vessel or aircraft. ''Major conversion'' has the same meaning as in 46 U.S.C. 2101(14a) (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).

In either instance, the restriction against materials used for alteration or repair, or against materials not required for safe operation of the vessel or aircraft, continues in effect (except to the extent that a qualifying ''major conversion'' could be considered an alteration).

Subpart O

Comment: A comment with reference to proposed § 191.152(c) suggested the use of ''evidence of destruction'' instead of ''proof of destruction''.

Customs Response: This comment has merit and is adopted.

Subpart P

Comment: The comment was made that the phrase ''any additional proof'' in proposed § 191.163(b) be changed to ''any additional evidence''.

Customs Response: This comment has merit and is adopted.

Subpart Q

Comment: It was requested that Customs implement in proposed § 191.175(b) certain interim procedures relating to certificates of manufacture and delivery and certificates of delivery, as set forth in a Customs issuance dated September 2, 1994 (although referred to in the comment as being dated September 14, 1994).

Customs Response: The provision implements the statutory language (see §§ 191.173(c)(1) and (2), and 191.174(c)(1) and (2)). Further, it is not inconsistent with the cited interim procedures which, in any case, are superseded by these regulations.

Comment: It was requested, in connection with proposed § 191.176, that Customs allow drawback claimants a certain period of time in which to file new drawback claims, or amend previously filed claims, that satisfy the requirements of 19 U.S.C. 1313(p), without regard to the requirement that drawback claims would have to be completed within 3 years after the date of exportation.

Customs Response: As previously stated, it is Customs position that the applicability of 19 U.S.C. 1313(p) to past drawback claims will be resolved on a case-by-case basis.

Subpart R

Comment: It was suggested that the phrase, ''Proof of export'', in proposed § 191.183(b)(1), be changed to ''Evidence of export''.

Customs Response: This comment has merit and is adopted.

Comment: A comment suggested adoption of Customs Form 214 for drawback in proposed § 191.183(b), and that the functions that proposed § 191.183(c) required to be performed by drawback offices should be removed.

Customs Response: Customs agrees. The Customs Form for transfers to a foreign trade zone of zone restricted merchandise (Customs Form 214) is used for notice of transfer instead of Customs Form 7514. Section 191.183(b) is revised accordingly, and § 191.183(c) is deleted, as unnecessary.

Subpart S

Comment: It was asked how Customs intended to inform the public of its obligations to drawback, pursuant to proposed § 191.191.

Customs Response: The statute and the regulations inform the public of its obligations and responsibilities for drawback purposes. As a matter of outreach and to enhance understanding thereof, Customs is developing and will make available, from field drawback offices, materials to help inform the public of its obligations and responsibilities for drawback purposes. This material will be available to the public in paper form and electronically.

Comment: Regarding the individuals authorized to sign an application for the drawback compliance program, in proposed § 191.193(c), it was suggested that this matter be reviewed in connection with parts 111, 177, and 191 of the Customs Regulations.

Customs Response: The concerns expressed in this comment have already been addressed by the changes made to § 191.6.

Comment: It was recommended that proposed § 191.193(c)(1) include the 9-digit IRS number, plus two character suffix, as being required to be used on drawback claims.

Customs Response: This comment has merit and is adopted.

Comment: It was requested that the term ''subcontractor'' in proposed § 191.193(c)(2) be defined. It was noted that ''agent'' in proposed § 191.9(d)(2) was defined, but not ''subcontractor''.

Customs Response: The concerns raised here are addressed by changes made in §§ 191.9, 191.10, and 191.26 (§ 191.25 as proposed).

Comment: The recommendation was made that the oversight responsibilities of the official described in proposed § 191.193(d)(1) be specifically shown, and that proposed § 191.193(d)(1) be further amended to require the name, title, and telephone number of the individual(s) responsible for the actual maintenance of the drawback program.

Customs Response: This comment has merit and is adopted in part; provision is made for the inclusion of the individual(s) responsible for the actual maintenance of the drawback program (as opposed to supervisory responsiblity), if different from the person responsible for oversight of the drawback program. Additionally, the reference therein to ''claimant's'' is changed to ''applicant's'' because applicants for participation in the drawback compliance program may be other than claimants.

Comment: It was recommended, with respect to proposed § 191.193(d)(2), that if a drawback manufacturing ruling or acknowledgment had been previously issued under § 191.8 or 191.7, a copy or statement of that fact with the date and place of issue be submitted.

Customs Response: This comment has merit and is adopted.

Comment: It was stated that proposed § 191.194 had a paragraph (c)(1) but no paragraph (c)(2).

Customs Response: Section 191.194(c) is revised accordingly.

Comment: A question arose as to the meaning of ''proposed revocation'' in proposed § 191.194(e), and it was further asked when such a revocation would take effect. It was also suggested that the words ''drawback compliance'' be inserted after the word ''negotiated'' and before the words ''alternative program'' therein.

Customs Response: Section 191.194(e) is changed, consistent with the changes made in §§ 191.91(e) and 191.92(g). Also, the editorial comment that ''drawback compliance'' should be inserted between ''negotiated alternative'' and ''program'' has merit and is adopted.

Appendix A

Comment: It was asked why a detailed format for the drawback compliance program was not included as an appendix to proposed part 191.

Customs Response: The material referred to by the comment was determined to be appropriate for publication as part of the regulations or an appendix thereto. The material, and other similar material, will, when satisfactorily developed, be made available to the public both in paper form (from the field drawback offices) and electronically.

Comment: A comment was made that the general manufacturing drawback rulings in Appendix A should be identified by their Treasury Decision (T.D.) numbers (or some other Customs-assigned number).

Customs Response: The comment has merit and is adopted; the general manufacturing drawback rulings are identified by their T.D. numbers. Additionally, to provide easier access to the public and to simplify use of the appendices, a table of contents is added to each Appendix listing each of the general and specific manufacturing drawback rulings, the general manufacturing drawback rulings are set forth in alphabetical order in Appendix A, and the specific manufacturing drawback rulings are set forth in numerical order in Appendix B.

Comment: It was observed with respect to Appendix A that ''I.A.'' (General Instructions) did not include the basis of claim for drawback as one of the items; that ''operator'' was used instead of ''claimant''; that ''I.A.3.'' should be explained better and reference made to proposed § 191.6; that ''I.B.'' indicated old general T.D. numbers were superseded, but did not include T.D.s 83–53, 83–8, 83–77, and 83–80; that the meaning of ''privileges'' in the last sentence of ''I.B.'' was unclear; that Ruling ''III.'' needed an explanatory paragraph as to when this Ruling would apply (it was also asked if the reference therein to T.D.s 55027(2) and 55207(1) could be removed).

Customs Response: The basis of claim is added to the information that the applicant must provide in ''I.A.'' (General Instructions) in Appendix A; the word ''operator'' therein is changed to ''manufacturer or producer'';

reference is added to § 191.6; the T.D.s not included in the proposed rule are added; to avoid confusion the phrase, ''including all privileges of the previous 'contract' '', is deleted from the last sentence of ''I.B.'' of the General Instructions in Appendix A.

The comment on Ruling ''III.'' (agent's general ruling) is addressed by changes to § 191.9, making clear that principal-agency drawback principles may be used for both 19 U.S.C. 1313(a) and 1313(b), and are not limited to situations with multiple manufacturers or producers The introductory sentence for ''III.'' is changed to read: ''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).''). Also, a new paragraph ''C.'' (General Statement) concerning principal-agency is added to Ruling ''II.'', and the succeeding paragraphs are redesignated accordingly.

Comment: The following was also stated with respect to ''I.A.'' and ''I.B.'' of the General Instructions to proposed Appendix A: the IRS number with suffix should be included; the General Instructions should not omit any information, or applicants should be directed to § 191.7 for complete information; and in ''I.B.'', the list of general Treasury Decisions appeared to omit T.D. 84–49, and T.D. 83–123 for Relative Values was not described in full, even though listed.

Customs Response: The IRS number with suffix is added in ''I.A.''; the general requirements are changed to require all necessary information, and reference to § 191.7 is added.

T.D. 83–123 is combined with T.D. 81–234 to cover manufacturing or producing under 19 U.S.C. 1313(a), with or without multiple products. It is Customs position that all necessary components from these T.D.s were included (except for the sentences in the Procedures and Records Maintained section that ''The records of the manufacturer or producer establishing compliance with these requirements will be available for audit by Customs during business hours.'', and ''Drawback is not payable without proof of compliance.'', both of which are now added to that section, consistent with the other general manufacturing drawback rulings).

Although included in the specific rulings in proposed Appendix B (consistent with current practice), T.D. 84–49 is now added to Appendix A as a general manufacturing drawback ruling.

Comment: It was suggested that the passage under ''II.C.'' of Appendix A should instead read: ''The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with 19 CFR 191.2(p)''. Similar changes in all of the general rulings.

Customs Response: This comment has merit and is adopted, although proposed ''II.C'' is redesignated as ''II.D.'', and proposed § 191.2(p) is redesignated as § 191.2(q). Similar changes as requested by the comment are made throughout the Appendices.

Comment: The suggestion was made that ''II.D.1.'' and ''II.D.2.'' should use the term ''multiple products'' instead of ''by products'', and that similar changes should be made to all of the general rulings.

Customs Response: This comment has merit and is adopted. Similar changes are made throughout the Appendices. It is noted that ''II.D.'' is redesignated as ''II.E.''.

Comment: It is asserted, with respect to ''II.F.'', that the term ''operator'' should be replaced by ''manufacturer or producer'', and that similar changes should be made to all of the general and specific rulings.

Customs Response: This comment has merit and is adopted. Similar changes are made throughout the Appendices. It is noted that ''II.F.'' is redesignated as ''II.G.''.

Comment: A comment was made that, in ''II.L.4.'', the phrase, ''or other persons legally authorized to bind the corporation'', should be added after ''corporate officers'' to be consistent with ''I.A.3.'' (General Instructions).

Customs Response: This comment has merit; the provision is changed to be consistent with the cited reference and §§ 191.6 and 191.7; further, in the interest of simplicity, the provision is changed to require the reporting of any changes in the information required in the letter of notification, as well as any changes in the corporate name or corporate organization by succession or reincorporation. It is also noted that proposed ''II.L.'' is redesignated as ''II.M.''.

Comment: The general ruling for agents in ''III.'', it was noted, did not include provision for ''Waste'' or ''Stock in Process''. It was further noted that proposed paragraph ''D.'' thereof appeared to imply that only agents performing operations under proposed § 191.2(p)(1) could use the general agents' ruling (and not those performing operations under proposed § 191.2(p)(2)). With reference to proposed paragraph ''E.'' thereof providing that records would be maintained to establish certain dates, it was believed that the ''month'' was sufficient for this purpose, but that this was not clear from this general ruling.

Customs Response: ''Waste'' and ''Stock in Process'' sections are not required in this general manufacturing drawback ruling; if applicable, such sections would be included in the principal's manufacturing drawback ruling.

The change to manufacturing or production (referring to proposed § 191.2(p), now redesignated as § 191.2(q)), addresses this issue; actual dates of receipt of merchandise, dates of use in manufacture or production, and dates of return to the principal are required (except that manufacturing or production periods (for a period of a month unless Customs specifically approves a different period) may be used). If a manufacturing period is used, receipt of all of the merchandise must be before the beginning of the month and the date of return to the principal must be after the end of the month.

It is also noted that proposed paragraphs ''B.'' and ''C.'' of ''III.'' (general ruling for agents) are deleted, with the succeeding paragraphs thereof redesignated accordingly. To this end, paragraphs ''D.'' and ''E.'' thereof, as proposed, are redesignated as paragraphs ''B.'' and ''C.'', respectively. In addition, the section on procedures and records maintained of this general ruling for agents (paragraph ''E.'', now redesignated as paragraph ''C.'', as indicated) is modified to be consistent with § 191.10(e), in requiring the same information provided for in that section.

Comment: An editorial point was raised in the proposed component parts general ruling, ''IV.'', paragraph ''J.'', that ''Eligible components that appears in'' should be ''Eligible components that appear in''.

Customs Response: This comment has merit and is adopted. It is also noted that this general ruling is redesignated as ''V.'' in Appendix A., due to the addition of the other general rulings, and the repositioning thereof in alphabetical order, as already mentioned.

Comment: In proposed ''V.'', the general ruling for orange juice, it was stated that proposed paragraph ''G.'' appeared twice, once for ''Procedures and Records Maintained'' and again for ''Inventory''.

Customs Response: This comment is incorrect, due probably to an error in the electronic version not occurring in the **Federal Register** version. It is also noted that this general ruling is redesignated as ''VIII.''.

Comment: It was also advised that the general ruling for orange juice in proposed paragraph ''H.'' should not, as it did, omit the wording ''and will show what components were blended with concentrated orange juice for manufacturing'', which was important for liquidation and compliance purposes (to know what components were utilized).

Customs Response: This comment has merit and is adopted.

Comment: It was observed that the general ruling for piece goods in proposed ''VI.'' deviated from T.D. 83–73 in that ''appearing in'' and ''used in'' were permitted as a basis of claim. The ''appearing in'' basis, it was said, appeared to conflict with the paragraphs on Waste and Shrinkage, Gain and Spoilage, in terms of recordkeeping.

Customs Response: This comment raises a valid concern. The paragraphs on Waste and Shrinkage, and Gain and Spoilage in this general ruling, now redesignated as ''X.'', are modified to provide that records thereof need not be kept if the appearing in method is used (if necessary to establish the quantity of merchandise eligible piece goods appearing in the exported articles, of course, such records would have to be kept).

Comment: The paragraphs ''N.'', ''O.'', ''R.'', and ''S.'' in the proposed general ruling for raw sugar (''IX.'') referred specifically to the forms in the previous T.D. 83–59; it was recommended that these forms should be reproduced and made part of the Appendix.

Customs Response: The comment suggesting inclusion in the general ruling of the forms in T.D. 83–59 is adopted (by, as appropriate, a description of the forms or a sample form). This general ruling is redesignated as ''XIII.''.

Appendix B

Comment: In Appendix B, it was suggested that provision be made for review of proposals for specific manufacturing drawback rulings by the appropriate regulatory audit office of Customs, if requested by a claimant.

Customs Response: Customs disagrees. The matter commented on is a matter for Customs internal administration of the drawback program.

Comment: It was recommended, with respect to the sample formats for the specific rulings under 19 U.S.C. 1313(a) and (b) (combination), and for 19 U.S.C. 1313(b), that, under the respective sections on Process of Manufacture or Production, the reference to the court cases was unnecessary, that the ''new and different article'' language should be removed, and a reference to the definition of manufacture or production in proposed § 191.2(p) should be added.

Customs Response: This recommendation is adopted, except the ''new and different article'' language is not removed, as it is part of the definition in § 191.2(q), as thus redesignated, which reflects long-standing administration of manufacturing drawback.

Comment: Under the format for the specific ruling for 19 U.S.C. 1313(b), in the Waste section, it was disagreed that the determination of whether waste was valuable should be based on industry practice.

Customs Response: The treatment of waste described is consistent with Customs current practice.

Comment: It was suggested that the Inventory Procedures section for the formats for specific rulings under 19 U.S.C. 1313(a) and (b) (combination), and 19 U.S.C. 1313(b), be modified as concerns the maintenance of waste records thereunder.

Customs Response: The second sentence under Inventory Procedures is modified by the insertion after the words ''following areas'' of the phrase '', as applicable,''.

Comment: The Stock In Process sections in the formats for specific rulings under 19 U.S.C. 1313(a) and (b) (combination), and 19 U.S.C. 1313(b), were said to need clarification.

Customs Response: Customs finds that the Stock In Process sections in both Appendices A and B are confusing. The Stock In Process paragraphs are modified.

Comment: It was advocated that the petroleum general ruling be treated like all other general rulings, in that applications for general rulings for petroleum drawback should be filed with a local drawback office and moved from Appendix B to Appendix A. In Exhibit C, the labels for the columns were said to be transposed. It was suggested that Exhibits D and E be changed to reflect that all petroleum claims were now filed preliminarily in the form of certificates of manufacture (CM) (*i.e.*, instead of ''amount of drawback claim'' in Exhibit D, the reference should be to ''amount of CM''; Exhibit E was always a combination of drawback deliveries and exported quantities; the quantities indicated on Exhibit E combination did not reflect the numbers within Exhibit C, as it related to exports (*i.e.*, residual oils category)—these Exhibits should be changed to reflect this practice)).

Customs Response: The comment that the petroleum general ruling should be treated like all other general manufacturing drawback rulings and should be acknowledged by field drawback offices has merit and is adopted. The petroleum general manufacturing drawback ruling (T.D. 84–49) is added to Appendix A. As already noted, language is added to § 191.7 and the General Instructions for Appendix A making clear that applications to operate under one of the general manufacturing drawback rulings in Appendix A are to be made to the field drawback offices and be acknowledged by those offices, provided that the letter of notification of intent to operate under the general manufacturing drawback ruling is complete, the general manufacturing drawback ruling is applicable, the general manufacturing drawback ruling is followed without variation, and the manufacturing or production process described meets the definition of a manufacture or production.

If there is any deviation from the general manufacturing drawback ruling, the procedures for specific manufacturing drawback rulings are applicable. Regarding the Exhibits for this general ruling, the comment about the transposition of columns in Exhibit C is correct; the columns are re-transposed; Exhibits D and E are modified to state the ''amount of drawback claimed'' instead of ''amount of drawback claim''; and the comments are correct that the numbers in Exhibit E (Combination) for the quantity in barrels of Residual Oils, and reflected therefrom in other calculations, are inconsistent with the other Exhibits.

As such, Exhibit E and Exhibit E (Combination) are modified to be consistent with the other exhibits, and the descriptions of the products in the exhibits are modified to specify whether the product is an export or a drawback delivery.

Comment: In the Inventory Procedures sections of the formats under both 19 U.S.C. 1313(a) and (b) (combination), and 19 U.S.C. 1313(b), a question was raised about the statement that accelerated payment would be denied, pending an audit, if records failed to establish drawback requirements. The deletion of this statement was recommended.

Customs Response: The described sentence is deleted, as not appropriate where stated. Accelerated payment of drawback is governed by the regulation applicable thereto (19 CFR 191.92).

Conclusion

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, Customs has concluded

that the proposed amendments with the modifications above should be adopted.

Furthermore, in Appendix B, the format for a 19 U.S.C. 1313(d) specific ruling is modified by the addition of the material on principal-agent operations, as done in the formats for 19 U.S.C. 1313(a) and (b) (combination), and 19 U.S.C. 1313(b).

Regulatory Flexibility Act and Executive Order 12866

This final rule document amends the Customs drawback regulations principally to reflect changes to the law occasioned by the Customs modernization portion of the NAFTA Implementation Act. The final rule also makes certain administrative changes to the existing regulations which are essentially intended to simplify and expedite the filing and processing of claims for the payment of drawback, and it generally revises and rearranges these regulations to improve their editorial clarity. As such, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that this rule does not have a significant economic impact on a substantial number of small entities. Thus, it is not subject to the requirements of 5 U.S.C. 603 or 604, nor would it result in a ''significant regulatory action'' under E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1505–0213. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in this final rule is in §§ 191.0–191.195. This information is necessary and will be used to enforce the requirements of the drawback law and protect the revenue. The likely respondents and/or recordkeepers are business and other for-profit institutions.

The estimated average burden associated with the collection of information in this final rule per respondent/recordkeeper is 2 hours for filing drawback-related entry documents, and 60 hours for Drawback Compliance Program participation.

Customs has submitted a copy of the revised information collection contained in 19 CFR part 191, and previously approved under OMB control number 1515–0213, and requested approval for the revision.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229 and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

PARALLEL REFERENCE TABLE

[This table shows the relation of sections in the proposed revision of part 191 to existing part 191]

Revised section	Old section
191.0	191.0.
191.0a	New.
191.1	191.1.
191.2(a)	191.2(p).
191.2(b)	New.
191.2(c)	New.
191.2(d)	New.
191.2(e)	New.
191.2(f)	191.2(b).
191.2(g)	New.
191.2(h)	191.2(j).
191.2(i)	191.2(a).
191.2(j)	191.2(i).
191.2(k)	191.2(h).
191.2(l)	191.2(g).
191.2(m)	New.
191.2(n)	New.
191.2(o)	191.2(l).
191.2(p)	191.2(f).
191.2(q)	New.
191.2(r)	New.
191.2(s)	New.
191.2(t)	New.
191.2(u)	New.
191.2(v)	191.2(n).
191.2(w)	191.2(e).
191.2(x), (x)(2), (x)(3)	New.
191.2(x)(1)	191.2(m).
191.2(y)	191.2(o).
191.3	191.3.
191.4	191.11.
191.5	191.13.
191.6	191.6.
191.7(a)	191.41.
191.7(b)(1)	191.42(a).
191.7(b)(2)	191.42(b).
191.7(c)	191.43.
191.7(d)	191.44.
191.8(a)	191.21(a).
191.8(b)	191.21(c).

PARALLEL REFERENCE TABLE—Continued

[This table shows the relation of sections in the proposed revision of part 191 to existing part 191]

Revised section	Old section
191.8(c)	191.21(b).
191.8(d)	191.21(d); 191.23(a).
191.8(e)	191.23(b).
191.8(f)	191.24.
191.8(g)(1)	191.25(a) & (b)(1).
191.8(g)(2)	191.25(b)(2).
191.8(g)(3)	191.25(c).
191.8(h)	191.26.
191.9	191.21(a)(2); 191.34; 191.66(b), (f).
191.10(a)	191.65(a).
191.10(b)	191.22(e).
191.10(c)(1)	191.65(b).
191.10(c)(2)	191.66(d).
191.10(d)	191.5; 191.22(e).
191.10(e)	New.
191.10(f)	191.65(d).
191.11	191.27.
191.12	New.
191.13	191.4(a)(11).
191.14	191.22(c).
191.15	191.5.
191.21	191.4(a)(1).
191.22(a)	191.4(a)(2).
191.22(b)	191.32(c).
191.22(c)	191.32(d).
191.22(d)	New.
191.22(e)	191.22(a)(5) & 191.33.
191.23(a)–(d)	New.
191.23(e)(1)	191.22(a)(2) & 191.32(b).
191.23(e)(2)	191.22(a)(1)(iv).
191.24(a)	191.66(a).
191.24(b)	New.
191.24(c)	191.22(a)(4); 191.62(a)(2)(i).
191.24(d)	New.
191.25	New.
191.26(a)(1)	191.22(a)(1).
191.26(a)(1)(iii)	191.22(a)(3).
191.26(a)(2)	191.22(b).
191.26(b)	191.32(a).
191.26(c)	191.22(a)(2) & 191.32(b).
191.26(d)	191.62(a)(2)(ii).
191.26(e)	191.62(c).
191.26(f)	191.5.
191.27(a)	191.8(a); 191.22(a)(1)(v).
191.27(b)	191.32(a).
191.27(c)	191.23(c).
191.28	New.
191.31(a)	191.4(a)(9); 191.141(a)(1).
191.31(b)	191.8(b); 191.141(a)(2).
191.31(c)	191.141(a)(3).
191.32(a)	191.141(a)(10).
191.32(b)	191.141(h).
191.32(c)	New.
191.32(d)	191.141(h).
191.32(e) & (f)	New.
191.33	New.
191.34(a)	191.65(a); 191.141(b) & (e).
191.34(b)	New.
191.34(c)	191.65(d).
191.35	191.141(b).
191.36	New.
191.37	New.
191.38(a)	191.5
191.38(b)	191.22(b).
191.41	191.142(a)(1).
191.42	191.142(b).
191.43	191.142(a)(2).
191.44	New.
191.51(a)	191.62(a) & (b).
191.51(b), (c) & (d)	New.
191.52(a)	191.61.

PARALLEL REFERENCE TABLE—Continued

[This table shows the relation of sections in the proposed revision of part 191 to existing part 191]

Revised section	Old section
191.52(b) & (c)	191.64.
191.53	New.
191.61	191.10.
191.62(a)	191.9.
191.62(b)	New.
191.71	191.141(f).
191.72	191.51.
191.73	191.53.
191.74	191.54.
191.75	191.55.
191.76	191.67.
191.81	191.71.
191.82	191.73(a).
191.83	191.73(b).
191.84	191.7.
191.91	191.141(b)(2)(ii).
191.92	191.72.
191.93	New.
191.101	191.81.
191.102	191.82.
191.103	191.83.
191.104	191.84.
191.105	191.85.
191.106	191.86.
191.111	191.91.
191.112	191.92; 191.93.
191.121	191.101.
191.122	191.102.
191.123	191.103.
191.131	191.111.
191.132	191.112.
191.133	191.113.
191.141	191.121.
191.142	191.122.
191.143	191.123.
191.144	191.124.
191.151	191.131.
191.151(a)(1)	191.8(c).
191.152	191.132.
191.153	191.133.
191.154	191.134.
191.155	191.135.
191.156	191.136.
191.157	191.137.
191.158	191.138.
191.159	191.139.
191.161	191.151.
191.162	191.152.
191.163	191.153.
191.164	191.154.
191.165	191.155.
191.166	191.156.
191.167	191.157.
191.168	191.158.
191.171	New.
191.172	New.
191.173	New.
191.174	New.
191.175	New.
191.176	New.
191.181	191.161.
191.182	191.162.
191.183	191.163.
191.184	191.164.
191.185	191.165.
191.186	191.166.
191.191	New.
191.192	New.
191.193	New.
191.194	New.

PARALLEL REFERENCE TABLE—Continued

[This table shows the relation of sections in the proposed revision of part 191 to existing part 191]

Revised section	Old section
191.195	New.

PARALLEL REFERENCE TABLE

[This table shows the relation between the sections in existing part 191 to those in the proposed revision of part 191]

Old section	Revised section
191.0	191.0.
191.1	191.1.
191.2(a)	191.2(i).
191.2(b)	191.2(f).
191.2(c)	Deleted.
191.2(d)	Deleted.
191.2(e)	191.2(w).
191.2(f)	191.2(p).
191.2(g)	191.2(l).
191.2(h)	191.2(k).
191.2(i)	191.2(j).
191.2(j)	191.2(h).
191.2(k)	Deleted.
191.2(l)	191.2(o).
191.2(m)	191.2(x)(1).
191.2(n)	191.2(v).
191.2(o)	191.2(y).
191.2(p)	191.2(a).
191.3	191.3.
191.4(a)(1)	191.21.
191.4(a)(2)	191.22(a).
191.4(a)(3)–(8)	Deleted.
191.4(a)(9)	191.31(a).
191.4(a)(10)	191.32(a).
191.4(a)(11)	191.13.
191.4(a)(12)–(14)	Deleted.
191.4(b)	Deleted.
191.5	191.10(d); 191.15; 191.26(f); 191.38(a).
191.6	191.6.
191.7	191.84.
191.8(a)	191.27(a).
191.8(b)	191.31(b).
191.8(c)	191.151(a)(1).
191.9	191.62(a).
191.10	191.61.
191.11	191.4.
191.12	Deleted.
191.13	191.5.
191.21(a)	191.8(a).
191.21(a)(1)	Deleted.
191.21(a)(2)	191.9.
191.21(b)	191.8(c).
191.21(c)	191.8(b).
191.21(d)	191.8(d).
191.21(e)	Deleted.
191.22(a)(1)	191.26(a)(1).
191.22(a)(1)(iv)	191.23(e)(2).
191.22(a)(1)(v)	191.27(a).
191.22(a)(2)	191.23(e)(1); 191.26(c).
191.22(a)(3)	191.26(a)(1)(iii).
191.22(a)(4)	191.24(c).
191.22(a)(5)	191.22(e).
191.22(b)	191.26(a)(2); 191.38(b).
191.22(c)	191.14.
191.22(d)	Deleted.
191.22(e)	191.10(b) & (d).
191.23(a)	191.8(d).
191.23(b)	191.8(e).
191.23(c)	191.27(c).
191.23(d)	Deleted.
191.24	191.8(f).

PARALLEL REFERENCE TABLE—Continued

[This table shows the relation between the sections in existing part 191 to those in the proposed revision of part 191]

Old section	Revised section
191.25(a)	191.8(g)(1).
191.25(b)(1)	191.8(g)(1).
191.25(b)(2)	191.8(g)(2).
191.25(c)	191.8(g)(3).
191.26	191.8(h).
191.27	191.11.
191.31	Deleted.
191.32(a)	191.26(b); 191.27(b).
191.32(b)	191.26(c); 191.23(e)(1).
191.32(c)	191.22(b).
191.32(d)	191.22(c).
191.33	191.22(e).
191.34	191.9.
191.41	191.7(a).
191.42(a)	191.7(b)(1).
191.42(b)	191.7(b)(2).
191.43	191.7(c).
191.44	191.7(d).
191.45	Deleted.
191.51	191.72.
191.52	Deleted.
191.53	191.73.
191.54	191.74.
191.55	191.75.
191.56	Deleted.
191.57	Deleted.
191.61	191.52(a).
191.62(a)	191.51(a).
191.62(a)(2)(ii)	191.26(d).
191.62(b)	191.51(a).
191.62(c)	191.26(e).
191.62(d)	Deleted.
191.63	Deleted.
191.64	191.52(b) & (c).
191.65(a)	191.10(a).
191.65(b)	191.10(c)(1).
191.65(c)	Deleted.
191.65(d)	191.10(f); 191.34(c).
191.66(a)	191.24(a).
191.66(b)	191.9.
191.66(c)	Deleted.
191.66(d)	191.10(c)(2).
191.66(e)	Deleted.
191.66(f)	191.9.
191.67	191.76.
191.71	191.81.
191.72	191.92.
191.73(a)	191.82.
191.73(b)	191.83.
191.81	191.101.
191.82	191.102.
191.83	191.103.
191.84	191.104.
191.85	191.105.
191.86	191.106.
191.91	191.111.
191.92, 191.93	191.112.
191.101	191.121.
191.102	191.122.
191.103	191.123.
191.111	191.131.
191.112	191.132.
191.113	191.133.
191.121	191.141.
191.122	191.142.
191.123	191.143.
191.124	191.144.
191.131	191.151.
191.132	191.152.
191.133	191.153.
191.134	191.154.

PARALLEL REFERENCE TABLE—Continued

[This table shows the relation between the sections in existing part 191 to those in the proposed revision of part 191]

Old section	Revised section
191.135	191.155.
191.136	191.156.
191.137	191.157.
191.138	191.158.
191.139	191.159.
191.141(a)(1)	191.31(a).
191.141(a)(2)	191.31(b).
191.141(a)(3)	191.31(c).
191.141(b)	191.34(a); 191.35.
191.141(b)(2)(ii)	191.91.
191.141(c)	191.51.
191.141(d)	191.73.
191.141(e)	Deleted.
191.141(f)	191.71.
191.141(g)	191.51; 191.52.
191.141(h)	191.32(b) & (d).
191.142(a)(1)	191.41.
191.142(a)(2)	191.43.
191.142(b)	191.42.
191.151	191.161.
191.152	191.162.
191.153	191.163.
191.154	191.164.
191.155	191.165.
191.156	191.166.
191.157	191.167.
191.158	191.168.
191.161	191.181.
191.162	191.182.
191.163	191.183.
191.164	191.184.
191.165	191.185.
191.166	191.186.

List of Subjects

19 CFR Part 7

Customs duties and inspection, Exports, Imports.

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 145

Customs duties and inspection, Imports, Postal Service.

19 CFR Part 173

Administrative practice and procedure, Customs duties and inspection.

19 CFR Part 174

Administrative practice and procedure, Customs duties and inspection, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

19 CFR Part 181

Administrative practice and procedure, Canada, Customs duties and inspection, Exports, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements (North American Free Trade Agreement).

19 CFR Part 191

Canada, Commerce, Customs duties and inspection, Drawback, Mexico, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the Regulations

Parts 7, 10, 145, 173, 174, 181 and 191, Customs Regulations (19 CFR parts 7, 10, 145, 173, 174, 181 and 191) are amended as set forth below.

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

1. The general authority citation for part 7 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

§ 7.1 [Amended]

2. Section 7.1(a) is amended by removing the reference to ''§§ 191.85 and 191.86'' where appearing therein, and by adding in place thereof, ''§§ 191.105 and 191.106''.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

§ 10.38 [Amended]

2. Section 10.38(f) is amended by removing the reference to ''§ 191.10'' where appearing therein, and by adding in place thereof, ''§ 191.61''.

PART 145—MAIL IMPORTATIONS

1. The general authority citation for part 145 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

§ 145.72 [Amended]

2. Section 145.72(e) is amended by removing the reference to ''Section 191.142'' where appearing therein, and by adding in place thereof, ''Section 191.42''.

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

1. The general authority citation for part 173 continues to read as follows:

Authority: 19 U.S.C. 66, 1501, 1520, 1624.

2. Section 173.4 is amended by adding a sentence at the end of paragraph (c) to read as follows:

§ 173.4 Correction of clerical error, mistake of fact, or inadvertence.

* * * * *

(c) * * * 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).

* * * * *

PART 174—PROTESTS

1. The general authority citation for part 174 continues to read as follows:

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

2. Section 174.13 is amended by adding a new paragraph (a)(9) to read as follows:

§ 174.13 Contents of protest.

(a) *Contents, in general.* * * *

(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).

* * * * *

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by removing the listings, respectively, for ''§§ 191.0–191.166'' and for ''§ 191.53'' together with the corresponding descriptions and OMB control numbers therefor; and by adding, in place thereof, a new listing to the table in numerical order to read as follows:

§ 178.2 Listing of OMB Control Numbers.

19 CFR section	Description	OMB control No.
*	*	*
§§ 191.0–191.195	Recordkeeping and reporting requirements relating to drawback	1515–0213
*	*	*

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

1. The general authority citation for part 181 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 3314.

§ 181.44 [Amended]

2. Section 181.44(d) is amended by removing the reference to ''§ 191.2(m)'' where appearing therein, and by adding in place thereof, ''§ 191.2(x)(1)''.

3. The ''Example'' in § 181.44(f) is amended by removing the reference to ''Customs Form 7575–A'' where appearing therein, and by adding in its place, ''Customs Form 7551''.

§ 181.45 [Amended]

§ 181.45 Goods eligible for full drawback.

4. Section 181.45 is amended by revising paragraph (b)(2)(i) to read:

* * * * *

(b) * * *

(2) * * *

(i) *General.* (A) *Inventory of other than all non-originating goods.* Commingling of fungible originating and non-originating goods in inventory is permissible 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.

§ 181.46 [Amended]

5. Section 181.46(b) is amended by removing the term ''port(s)'' where appearing in the first sentence, and adding in place thereof, ''drawback office(s)''.

§ 181.47 [Amended]

6. Section 181.47(b)(2)(i)(C) is amended by removing the words ''Exporter's'' and ''exporter's'' where appearing therein, and by adding in place thereof, ''Export'' and ''export'', respectively.

7. Section 181.47(b)(2)(ii)(A) is amended by removing ''Customs Form 7539J'', and adding in place thereof, ''Customs Form 7551''.

8. Section 181.47(b)(2)(ii)(D) is amended by removing the phrase ''The certificate of delivery portion of Customs Form 331'' where appearing therein, and adding in place thereof, ''A certificate of delivery on Customs Form 7552''.

9. Section 181.47(b)(2)(ii)(G) is amended by revising the first two sentences to read:

§ 181.47 Completion of claim for drawback.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(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. * * *.

10. Section 181.47(b)(2)(iii)(A) is amended by removing ''Customs Form 7539C'' where appearing therein, and by

adding in place thereof, ''Customs Form 7551''.

11. Section 181.47(b)(2)(v) is amended by removing the reference to ''subpart L'' where appearing therein, and by adding in place thereof, ''subpart N''.

§ 181.49 [Amended]

12. Section 181.49 is amended by removing the reference to ''§ 191.5'' where appearing therein, and by adding in place thereof, ''§ 191.15 (see also §§ 191.26(f), 191.38, 191.175(c))''.

§ 181.50 [Amended]

13. Section 181.50(c) is amended by removing the reference to ''§ 191.72'' where appearing therein, and by adding in place thereof, ''191.92''.

1. Part 191 is revised to read as follows:

PART 191—DRAWBACK

Sec.
191.0 Scope.
191.0a Claims filed under NAFTA.

Subpart A—General Provisions

191.1 Authority of the Commissioner of Customs.
191.2 Definitions.
191.3 Duties and fees subject or not subject to drawback.
191.4 Merchandise in which a U.S. Government interest exists.
191.5 Guantanamo Bay, insular possessions, trust territories.
191.6 Authority to sign drawback documents.
191.7 General manufacturing drawback ruling.
191.8 Specific manufacturing drawback ruling.
191.9 Agency.
191.10 Certificate of delivery.
191.11 Tradeoff.
191.12 Claim filed under incorrect provision.
191.13 Packaging materials.
191.14 Identification of merchandise or articles by accounting method.
191.15 Recordkeeping.

Subpart B—Manufacturing drawback

191.21 Direct identification drawback.
191.22 Substitution drawback.
191.23 Methods of claiming drawback.
191.24 Certificate of manufacture and delivery.
191.25 Destruction under Customs supervision.
191.26 Recordkeeping for manufacturing drawback.
191.27 Time limitations.
191.28 Person entitled to claim drawback.

Subpart C—Unused Merchandise Drawback

191.31 Direct identification.
191.32 Substitution drawback.
191.33 Person entitled to claim drawback.
191.34 Certificate of delivery required.
191.35 Notice of intent to export; examination of merchandise.
191.36 Failure to file Notice of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback.
191.37 Destruction under Customs supervision.
191.38 Records.

Subpart D—Rejected Merchandise

191.41 Rejected merchandise drawback.
191.42 Procedure.
191.43 Unused merchandise claim.
191.44 Destruction under Customs supervision.

Subpart E—Completion of Drawback Claims

191.51 Completion of drawback claims.
191.52 Rejecting, perfecting or amending claims.
191.53 Restructuring of claims.

Subpart F—Verification of Claims

191.61 Verification of drawback claims.
191.62 Penalties.

Subpart G—Exportation and Destruction

191.71 Drawback on articles destroyed under Customs supervision.
191.72 Exportation procedures.
191.73 Export summary procedure.
191.74 Certification of exportation by mail.
191.75 Exportation by the Government.
191.76 Landing certificate.

Subpart H—Liquidation and Protest of Drawback Entries

191.81 Liquidation.
191.82 Person entitled to claim drawback.
191.83 Person entitled to receive payment.
191.84 Protests.

Subpart I—Waiver of Prior Notice of Intent to Export; Accelerated Payment of Drawback

191.91 Waiver of notice of intent to export.
191.92 Accelerated payment.
191.93 Combined applications.

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.
191.102 Procedure.
191.103 Additional requirements.
191.104 Alcohol, Tobacco and Firearms certificates.
191.105 Liquidation.
191.106 Amount of drawback.

Subpart K—Supplies for Certain Vessels and Aircraft

191.111 Drawback allowance.
191.112 Procedure.

Subpart L—Meats Cured With Imported Salt

191.121 Drawback allowance.
191.122 Procedure.
191.123 Refund of duties.

Subpart M—Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Ownership and Account

191.131 Drawback allowance.
191.132 Procedure.
191.133 Explanation of terms.

Subpart N—Foreign-Built Jet Aircraft Engines Processed in the United States

191.141 Drawback allowance.
191.142 Procedure.
191.143 Drawback entry.
191.144 Refund of duties.

Subpart O—Merchandise Exported From Continuous Customs Custody

191.151 Drawback allowance.
191.152 Merchandise released from Customs custody.
191.153 Continuous Customs custody.
191.154 Filing the entry.
191.155 Merchandise withdrawn from warehouse for exportation.
191.156 Bill of lading.
191.157 Landing certificates.
191.158 Procedures.
191.159 Amount of drawback.

Subpart P—Distilled Spirits, Wines, or Beer Which Are Unmerchantable or Do Not Conform to Sample or Specifications

191.161 Refund of taxes.
191.162 Procedure.
191.163 Documentation.
191.164 Return to Customs custody.
191.165 No exportation by mail.
191.166 Destruction of merchandise.
191.167 Liquidation.
191.168 Time limit for exportation or destruction.

Subpart Q—Substitution of Finished Petroleum Derivatives

191.171 General; Drawback allowance.
191.172 Definitions.
191.173 Imported duty-paid derivatives (no manufacture).
191.174 Derivatives manufactured under 19 U.S.C. 1313(a) or (b).
191.175 Drawback claimant; maintenance of records.
191.176 Procedures for claims filed under 19 U.S.C. 1313(p).

Subpart R—Merchandise Transferred to a Foreign Trade Zone From Customs Custody

191.181 Drawback allowance.
191.182 Zone-restricted merchandise.
191.183 Articles manufactured or produced in the United States.
191.184 Merchandise transferred from continuous Customs custody.
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.
191.186 Person entitled to claim drawback.

Subpart S—Drawback Compliance Program

191.191 Purpose.
191.192 Certification for compliance program.
191.193 Application procedure for compliance program.
191.194 Action on application to participate in compliance program.
191.195 Combined application for Certification in Drawback Compliance Program and waiver of prior notice and/or approval of accelerated payment of drawback.

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 20, Harmonized Tariff Schedule of the United States), 1313, 1624.

§ 191.62 also issued under 18 U.S.C. 550, 19 U.S.C. 1593a;

§ 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.

§ 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.

§ 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 (p)(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 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.

§ 191.3 Duties and fees subject or not subject to drawback.

(a) Duties 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;

(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)); and,

(3) Internal revenue taxes which attach upon importation (see § 101.1(i) of this chapter).

(b) Duties and fees not subject to drawback include:

(1) Harbor maintenance fee (see § 24.24 of this chapter);

(2) Merchandise processing fee (see § 24.23 of this chapter); 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).

§ 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)(2) 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 § 191.93 of this part.

§ 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, appears 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, International Trade Compliance 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.

§ 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(s) 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 the request should be made by a separate letter.

§ 191.12 Claim filed under incorrect provision.

A drawback claim filed pursuant to any provision of a general manufacturing drawback ruling (§ 191.7), § 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.

§ 191.13 Packaging materials.

Drawback of duties is provided for in § 313(q) of the Act, as amended (19 U.S.C. 1313(q)), 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.

§ 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).
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 $381.00.

(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. Total drawback attributable to withdrawals for export in this example would be $331.00.

(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 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), and March 20 (50 units at $1.08) receipts. Total drawback attributable to withdrawals for export in this example would be $276.50.

(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.

§ 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 byproducts 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 byproducts 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 byproducts 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.

§ 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 nondrawback 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; and

(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.

(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).

§ 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 1313(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.

§ 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, within 3 years after the 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.

§ 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 or destroyer, 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.

§ 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.* 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).

(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.

§ 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.* (i) *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 therefore, 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).

§ 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)

AAAA[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.

§ 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 § 191.10(e).

§ 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 file 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 file 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.

§ 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, stay, 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.)

§ 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.* The composite 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 imported duty-paid petroleum derivatives, or petroleum derivatives 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.

§ 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, or 3901 through 3914 of the Harmonized Tariff Schedule of the United States (HTSUS). In the case of headings 3901 through 3914, the definition is limited as those headings apply to liquids, pastes, powders, granules and flakes.

(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.

§ 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 which serves as the basis for drawback. Drawback due under this paragraph shall not be subject to the deduction of 1 percent.

§ 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 that article. Any of these persons may designate another person to file the drawback claim.

(b) *Certificate of manufacture and delivery or delivery.* 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.

(c) *Maintenance of records.* The manufacturer, producer, importer, exporter and drawback claimant of the qualified article and the exported article must all maintain their appropriate records required by this part.

§ 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

§ 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) *Revocation.* If the participant commits repeated violations of its drawback compliance program or negotiated alternative drawback compliance program, the applicable drawback office, by written notice, may propose to revoke certification from the participant, until corrective action, satisfactory to Customs, is taken to prevent such violations. The written notice will describe the cause for the proposed revocation and the corrective actions required. The revocation shall take effect 30 days after the date of the proposed revocation if not timely challenged under paragraph (f) of this section. If timely challenged, the revocation will take effect after completion of the challenge procedures in paragraph (f) of this section unless the challenge is successful.

(f) *Appeal of denial or challenge to proposed revocation.* A party may appeal a denial or challenge a proposed revocation of certification as a participant in the drawback compliance program by filing a written appeal, within 30 days of the date of such denial or proposed revocation, with the applicable drawback office. A denial of an appeal or challenge to a proposed

revocation may itself be appealed to Customs Headquarters, Office of Field Operations, Office of Trade Operations, within 30 days of receipt of the applicable drawback office's decision. The 30-day period for appeal or challenge with the applicable drawback office and/or with Customs Headquarters may be extended for good cause, upon written request by the applicant for such extension filed with the applicable drawback office or with Customs Headquarters, as the case may be, within the 30-day period.

§ 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).

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XIII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Sugar (T.D. 81–92)
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, 83–123, 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.

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,

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

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) 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 burlap or other textile material 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

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

or producer 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

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.
Component parts identified identified by individual part numbers. ...	Component parts 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.

E. Multiple Products

Not applicable.

F. Waste

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

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 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.

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.

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

[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.

[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.'' 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.

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 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 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

[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.''

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

[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.

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.

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 at 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

[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.

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, 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.

BILLING CODE 4820–02–P

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.)

BILLING CODE 4820–02–C

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.

BILLING CODE 4820–02–M

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	11,218 176	1.00126 1.01300	11,232 178	
Residual Oils	125,618	21,221 104,397	.45962 .43642	9,754 45,561	
Lubricating Oils	8,875	8,774	4.52178	39,674	
Petrochemicals - Other	195	696 319 195	1.00244 1.07895 1.00244	195	698 344
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): 151,347

Drawback Computation

4,165*bbls. @10½ = $437.33

Less 1% 4.37

Amount of Drawback Claim - Net $432.96

See subtotal, col.20, for Residual Rights above

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	28,485	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.

BILLING CODE 4820–02–M

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

BILLING CODE 4820–02–C

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. 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.

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

[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.

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) 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(b), 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.

3. That, within 3 years after receiving the designated merchandise at its factory, the refiner used the designated merchandise to

[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.'';

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;

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.

[2] The date of production is the date an article is completed.

[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. 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(b), part 191 of the Customs Regulations and this general ruling.

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-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

[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.

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(b), 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.

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 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.

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 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

[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.''

6. Issue instructions to insure proper compliance with 19, United States Code, § 1313, part 191 of the Customs Regulations and this general ruling.

Appendix B to Part 191—Sample Formats for Applications for Specific Manufacturing Drawback Rulings

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I. General.
II. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) and 1313(b) (Combination).
III. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b).
IV. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(d).
V. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(g).

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 $\frac{1}{5}$. The relative value of B is $\frac{2}{15}$ and of product C is $\frac{2}{3}$, calculated in the same manner. This means that $\frac{1}{5}$ of the drawback product payments will be distributed to product A, $\frac{2}{15}$ to product B, and $\frac{2}{3}$ 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 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 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

[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.

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. 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

[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.''

[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.

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(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.)

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

[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.

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.)

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

[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.

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 ''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

[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.''

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 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?

(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

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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 or drawback merchandise 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. It 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

[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.''

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(g), 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)

_____

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: February 5, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–5045 Filed 3–4–98; 8:45 am]

BILLING CODE 4820–02–P

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