DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 113, 181, 190, and 191

[USCBP–2018–0029]

RIN 1515–AE23

Modernized Drawback

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend U.S. Customs and Border Protection (CBP) regulations to implement changes to the drawback regulations as directed by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA). These proposed regulations establish a new process for drawback pursuant to TFTEA which liberalizes the merchandise substitution standard, simplifies recordkeeping requirements, extends and standardizes timelines for filing drawback claims, and requires the electronic filing of drawback claims. TFTEA allows a transition period wherein drawback claimants will have the choice between filing claims under the existing process detailed in the current regulations or filing claims under the proposed new process. This document explains how filings during the transition period will work, discusses the interim policy guidance procedures for filing claims prior to these regulations becoming final, and proposes to make TFTEA-related changes, dealing with bonds, regarding joint and several liability for the importer of the goods and the drawback claimant, and technical corrections and conforming changes to CBP regulations. This document also proposes to clarify the prohibition on the filing of a substitution drawback claim for internal revenue excise tax paid on imported merchandise in situations where no excise tax was paid upon the substituted merchandise; or the substituted merchandise is the subject of a different claim for refund or drawback of tax under any provision of the Internal Revenue Code. CBP is proposing these amendments regarding excise taxes to protect the revenue by clarifying the relationship between drawback claims and Federal excise tax liability. Further, CBP proposes to add a basic importation and entry bond condition to foster compliance.

DATES: Comments must be received on or before September 17, 2018.

ADDRESSES: You may submit comments, identified by docket number USCBP–2018–0029, by *one* of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

Instructions: All submissions received must include the agency name and docket title for this rulemaking, and must reference docket number USCBP–2018–0029 . All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of the document.

Docket: For access to the docket or to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during business days between the hours of 9:00 a.m. and 4:30 p.m. at the Office of Trade, Regulations and Rulings, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Randy Mitchell, U.S. Customs and Border Protection, Office of Trade, Trade Policy and Programs, 202–863–6532, *randy.mitchell@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rulemaking. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rulemaking, explain the reason for any recommended change, and include data, information, or authority to support such recommended change. *See* **ADDRESSES** above for information on how to submit comments.

Background

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[1] For purposes of this document, ''TFTEA-Drawback'' is the term generally used to refer to drawback under section 1313, as amended by the Trade Facilitation and Trade Enforcement Act of 2015.

I. Authority

Drawback, as provided for in section 313 of the Tariff Act of 1930, as amended (19 U.S.C. 1313), is the refund or remission, in whole or in part, of duties, taxes, and fees imposed and paid under Federal law upon importation or entry and due on the imported merchandise. Drawback is a privilege, not a right, subject to compliance with prescribed rules and regulations administered by U.S. Customs and Border Protection (CBP). *See* 19 U.S.C. 1313(l). Currently, the implementing regulations regarding drawback are contained in part 191 of the CBP Regulations (title 19 of the Code of Federal Regulations (CFR) (19 CFR part 191)) and part 181 of the CBP Regulations (19 CFR part 181, subpart E, which pertains to drawback claims under the North American Free Trade Agreement (NAFTA)). Additionally, the Internal Revenue Code (IRC) of 1986, as amended (IRC), codified as title 26 of the United States Code (26 U.S.C.), is the main body of domestic statutory tax law of the United States and includes, *inter alia,* laws covering Federal excise taxes. Federal excise taxes are imposed on the manufacture and distribution of certain consumer goods, such as distilled spirits, wines, beer, tobacco products, imported taxable fuel and petroleum products. These Federal excise taxes, and certain limitations regarding drawback claims, are discussed below in the section titled *Federal Excise Tax and Substitution Drawback Claims.*

In essence, a drawback claim is a request for a refund or remission of certain duties, taxes, and fees imposed upon importation which is filed with CBP after the merchandise or articles have been exported or destroyed. There are three main categories of drawback: Manufacturing drawback, rejected merchandise drawback, and unused merchandise drawback. Each main category of drawback is discussed, in turn, below.

Manufacturing drawback may be claimed on exported articles that have been manufactured or produced in the United States with imported duty-paid merchandise (direct identification manufacturing drawback), as well as on exported articles that have been manufactured or produced in the United States using domestic merchandise substituted for imported duty-paid merchandise meeting the statutory criteria (substitution manufacturing drawback). *See* 19 U.S.C. 1313(a) and (b).

Rejected merchandise drawback may be available upon the exportation or destruction of imported duty-paid merchandise entered or withdrawn for consumption meeting the statutory criteria (*i.e.,* not conforming to sample or specifications, shipped without consent, determined to be defective at the time of import, or ultimately sold at retail and returned). *See* 19 U.S.C. 1313(c).

Unused merchandise drawback may be claimed on imported merchandise that was exported or destroyed without having been used within the United States (direct identification unused merchandise drawback) as well as on goods that were exported or destroyed without being used that were substituted for imported merchandise meeting the appropriate criteria (substitution unused merchandise drawback). *See* 19 U.S.C. 1313(j)(1) and (2).

Originally, as provided for in section 3 of the second Act of Congress, the Tariff Act of July 4, 1789, drawback of 99% of duties paid on imported merchandise (except distilled spirits) was permitted if the merchandise was exported within a year. However, drawback expanded over time to, among other things, provide for refunds of taxes and fees in some situations, allow for merchandise to be destroyed as an alternative to exportation, allow for the substitution of goods on which drawback could be claimed, and provide more than just a single year within which goods must be exported or destroyed.

Historically, drawback claims were submitted entirely on paper. While filing a claim entirely on paper is currently still an option, most drawback claims consist of two portions: The electronic transmission of the entry summary data for the designated imported merchandise via the CBP-authorized electronic data interchange (EDI); and the physical delivery of the CBP Form 7551 (Drawback Entry) and all required documents supporting the claim. For TFTEA-Drawback claims, filers will electronically transmit the drawback entry summary data and the entry summary data for the designated imported merchandise to CBP and will upload all documents required to support the claim. CBP has programmed the Automated Commercial Environment (ACE) for receiving electronic drawback claims.[2] An electronically submitted drawback claim will not be complete until the claim has been successfully transmitted with all required documents uploaded. Information for filing a drawback entry is contained in the relevant CBP and Trade Automated Interface Requirements (CATAIR) document, which is available at: *https://www.cbp.gov/trade/ace/catair.*

Upon receipt of a claim, CBP conducts an initial review, which allows CBP the opportunity to work with claimants to ensure that the claim is complete and timely. Once a complete claim is timely filed, drawback specialists review the supporting documentation to ensure that the claim is properly documented and the amount of the drawback is correctly calculated. In many instances, it is necessary for CBP to contact claimants to obtain additional supporting documentation, such as when there are questions regarding the identity of the merchandise in transfer scenarios or to confirm the actual date and fact of exportation. If additional information is required, CBP will send a request for information (CBP Form 28) to the claimant through the ACE portal or through the end of the transition period by physically transmitting the request, depending upon the method used to file the claim was filed. Claimants generally respond via the method by which they were contacted. The increased use of electronic filing and correspondence will expedite claim processing and payment.

Requests for information do not toll the deadlines for timely filing. In any event, claimants are bound by the deadlines for claims with respect to filing, amending, and perfecting.

II. Modernized Drawback

A. TFTEA-Drawback Overview

On February 24, 2016, the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114–125, 130 Stat. 122, February 24, 2016) was signed into law. Section 906 of TFTEA, *Drawback and Refunds,* made significant changes to the drawback laws which generally liberalize the standards for substituting merchandise, ease documentation requirements, extend and standardize timelines for filing drawback claims, and require electronic filing. However, while the changes are significant, on balance, section 906 of TFTEA left most of 19 U.S.C. 1313 unchanged. In other words, except for the significant changes brought about by Section 906 of TFTEA which are discussed below, most of the underlying processes involved in drawback remain unchanged. CBP also notes that additional steps to further automate or simplify the drawback claims process (which may or may not require regulatory changes) are anticipated to be announced subsequent to the implementation of the changes proposed in this document.

1. Transition Period (February 24, 2018–February 23, 2019)

(a) Claims may be filed under the existing drawback process or the TFTEA-Drawback process during the transition period.

Section 906(q)(3) of TFTEA provides for a transition period, beginning February 24, 2018, and ending February 23, 2019, during which claimants may file claims under the current drawback process and regulations detailed in part 191 (and under section 313 of the Tariff Act of 1930 as in effect on the day before TFTEA was signed into law) or under the amended statute and the implementing regulations (proposed part 190). February 23, 2019, is the last day of the transition period. During the transition period, claimants may choose which process to file on a claim-by-claim basis, meaning that claimants may file some claims under the old drawback process and some claims under the TFTEA-Drawback process throughout the entirety of the transition period. For purposes of this document, ''TFTEA-Drawback'' is the term generally used to refer to drawback under section 1313, as amended by TFTEA, and the implementing regulations contained in proposed Part 190.

While TFTEA-Drawback claims have been accepted in ACE since February 24, 2018, it is not until February 24, 2019, that all claims must be filed in compliance with the amended statute. Section II.B, *Filing a TFTEA-Drawback Claim,* below, contains information on how to file claims, including during the transition period under the interim policy guidance procedures announced February 8, 2018, in anticipation of the delay in finalizing these proposed regulations. Accordingly, the changes proposed in this document have no immediate effect on the drawback processes and requirements contained in part 191 of the CBP regulations. The transition period allows claimants the opportunity to choose which drawback regime to operate under while providing additional time, if needed, to complete any programming requirements for transmitting claims in ACE.

(b) TFTEA-Drawback substitution claims cannot designate imported merchandise if the associated entry summary was included on a drawback claim filed under part 191(and vice versa).

Claimants are precluded from filing TFTEA-Drawback substitution claims for imported merchandise associated with an entry summary if any other merchandise covered on that entry summary has been designated as the basis of a claim under part 191, including during the transition period. Nevertheless, claimants may continue to make claims (including substitution claims) under part 191 for these entries through the end of the transition period on February 23, 2019. Similarly, claimants are precluded from filing any drawback claims under part 191 for imported merchandise associated with an entry summary if any other merchandise covered on that entry summary has been designated as the basis of a TFTEA-Drawback substitution claim, including during the transition period. These limitations exist because drawback refund amounts are claimed at the entry summary header level (*i.e.,* the aggregate of all lines for which drawback was claimed on an entry) for claims under part 191 and CBP is unable to trace whether merchandise from a specific line on an entry summary was designated as the basis for a drawback claim under part 191.

2. New Filing Requirements and Deadline

(a) All TFTEA-Drawback claims are required to be submitted electronically in ACE.

While all TFTEA-Drawback claims must be filed electronically, it is not until February 24, 2019 (the first day after the end of the transition period), that all drawback claims must be filed electronically. *See* 19 U.S.C. 1313(r)(3)(B). Consequently, claims filed under part 191 do not have to be filed electronically. Drawback claims must be filed electronically through a combination of transmitting certain information to the system and uploading supporting documentation.

By moving to a fully electronic environment as of February 24, 2019, CBP will be able to better validate all drawback claims based upon certain criteria specific to the type of drawback claim, including (but not limited to) the timeliness of the claim, the amount of refund claimed, and the suitability of

[2] On February 9, 2018, in anticipation of delays regarding the proposal and finalization of the TFTEA-Drawback regulations, CBP posted interim policy guidance for filing TFTEA-Drawback claims in ACE during the transition period, available at: *https://www.cbp.gov/trade/programs-administration/entry-summary/ace-process-and-policy.* This interim policy guidance is discussed in detail below in section B, Filing a TFTEA-Drawback Claim.

the merchandise involved. As a result, drawback claimants should benefit from expedited processing, review, and payment of claims.

(b) The import entry summary line item must be identified for all imported merchandise for TFTEA-Drawback claims.

Many of the benefits for drawback claim processing noted above are made possible by systematic enhancements in ACE concerning line item reporting. Line item reporting, which is required for all TFTEA-Drawback claims, requires claimants to provide certain relevant information for the designated imported merchandise on a drawback claim associated with the line item on an entry summary, including the tariff classification, quantity, and value, as well as the duties, taxes, and fees assessed thereon. Line item reporting will enable more system validations at the line level and will help ensure that CBP does not overpay refunds.

(c) TFTEA-Drawback claims have a uniform five-year filing deadline from the date of importation of the designated imported merchandise.

All TFTEA-Drawback claims must be filed not later than 5 years after the date the merchandise on which drawback is claimed was imported. *See* 19 U.S.C. 1313(r)(1). Previously, section 1313 provided three-year filing deadlines beginning from different starting points for various types of claims (*e.g.,* three years from the receipt of imported merchandise or three years after the date of importation or withdrawal). This five-year deadline does not apply to claims filed under the existing drawback laws provided for in part 191 during the transition period.

3. HTSUS-Based Substitution Standards

(a) TFTEA-Drawback substitution claims for most manufacturing and unused merchandise have new standards based on HTSUS classification.

Section 906(b) provides a new standard for determining which merchandise may be substituted for imported merchandise as the basis for a substitution claim. This standard generally requires that both the imported merchandise and the exported merchandise be classified or classifiable within the same the 8-digit number in the Harmonized Tariff Schedule of the United States (HTSUS) classification. This standard replaces the ''same kind and quality'' and ''commercially interchangeable'' standards that were applied, respectively, to substitution manufacturing drawback claims (19 U.S.C. 1313(b)) and substitution unused merchandise drawback claims (19 U.S.C. 1313(j)(2)). Prior to TFTEA, determining whether goods were of the same kind and quality or were commercially interchangeable was a commodity-specific question that imposed burdens on claimants (to prove that the merchandise met the applicable standard) and on CBP (to research and rule on the eligibility of the goods to be substituted). The new standards will reduce much of the above-cited burdens by generally eliminating uncertainty as to the whether the standard for substitution has been met.

Substitution under 19 U.S.C. 1313(b), for manufacturing drawback claims, is subject to a new standard that requires the substituted merchandise used in manufacturing to be classifiable under the same 8-digit HTSUS subheading number as the designated imported merchandise. Similarly, substitution under 19 U.S.C. 1313(j)(2), for unused merchandise drawback claims, is subject to a new standard that requires the substituted merchandise to be classifiable under the same 8-digit HTSUS subheading number as the imported merchandise, except that there are restrictions with respect to HTSUS basket provisions (*i.e.,* subheadings with descriptions that begin with the term ''other''). Specifically, and only for unused merchandise drawback claims, merchandise cannot be substituted if the 8-digit HTSUS subheading number begins with the term ''other'', unless the imported merchandise and the substituted merchandise are both classifiable under the same 10-digit HTSUS statistical reporting number and the description for that 10-digit HTSUS statistical reporting number does not begin with the term ''other''. *See* 19 U.S.C. 1313(j)(5). In lieu of the HTSUS classification for unused merchandise drawback claims, substitution may also be based on the first 8 digits of the 10-digit Department of Commerce Schedule B number (the code for exporting goods from the United States). *See* 19 U.S.C. 1313(j)(6).

Under the new substitution standards, the correct HTSUS classification is a critical aspect of the exercise of reasonable care. Accordingly, importers and drawback claimants should take note that prospective rulings on classification may be requested pursuant to 19 CFR 177.1(a)(1).

(b) The new standards do not apply to certain claims if substitution is based upon alternative rules (source material for sought chemical elements, wine, and finished petroleum derivatives) or if pursuant to NAFTA drawback.

Certain types of merchandise are exempt from the new substitution standards discussed above. Substitution manufacturing claims for sought chemical elements have a special rule for source material regardless of the 8-digit HTSUS subheading number. *See* 19 U.S.C. 1313(b)(4) (which defines a sought chemical element as either an element from the Periodic Table of Elements or a chemical compound consisting of such elements). Unused merchandise claims involving wine have a distinct standard involving price variations and color. *See* 19 U.S.C. 1313(j)(2). Both manufacturing and unused merchandise drawback claims for finished petroleum products, if filed under 19 U.S.C. 1313(p), are already subject to more specific HTSUS-based substitution standards. Substitution manufacturing claims for NAFTA drawback remain subject to the ''same kind and quality'' standard in part 181, consistent with 19 U.S.C. 3333(a)(3).

4. ''Lesser of'' Rule for Substitution Claims

(a) TFTEA-Drawback substitution claims are generally subject to a ''lesser of'' rule regarding the amount of duties, taxes, and fees to be refunded where the amount to be refunded will be equal to 99 percent of the lesser of (1) the amount of duties, taxes, and fees paid with respect to the imported merchandise; or (2) the amount of duties, taxes, and fees that would apply to the substituted merchandise if the substituted merchandise were imported.

Section 906(g) of TFTEA provides for a ''lesser of'' rule, as a safeguard, to ensure that the revenue is protected in light of the liberalization and simplification of the standards for substitution drawback claims. The ''lesser of'' rule provides that the refund will be equal to 99 percent of the lesser of the amount of duties, taxes, and fees paid with respect to the imported merchandise and/or that would have been paid on the substituted merchandise had it been imported. In all claims subject to the ''lesser of'' rule, it is incumbent on the claimant to properly calculate the proper amount of the claimed refund.

For manufacturing drawback claims, the substituted merchandise is that which was used in manufacturing, in lieu of the designated imported merchandise, and the ''lesser of'' comparison is based upon the amount of duties, taxes, and fees that would apply to the substituted merchandise if it were imported (with this amount reduced by the value of the materials recovered during destruction, if applicable). *See* 19 U.S.C. 1313(l)(2)(C). For unused merchandise drawback claims, the substituted merchandise is the exported or destroyed merchandise and the ''lesser of'' comparison is based upon the amount of duties, taxes, and fees that would apply to the exported or destroyed merchandise if it were imported (with this amount reduced by the value of the materials recovered during destruction, if applicable). *See* 19 U.S.C. 1313(l)(2)(B). TFTEA-Drawback claimants must provide the comparative value (*i.e.,* the ''lesser of'' comparison for either manufacturing drawback claims or for unused merchandise drawback claims), as part of a substitution claim.

(b) The TFTEA-Drawback ''lesser of'' rule does not apply to certain claims if substitution is based upon alternative rules (wine and finished petroleum derivatives) or if pursuant to NAFTA drawback.

The ''lesser of'' rule does not apply to claims for wine based on 19 U.S.C. 1313(j)(2) or to claims for finished petroleum products under 19 U.S.C. 1313(p). *See* 19 U.S.C. 1313(l)(2)(D). Claims under these provisions are subject to other specific limitations. It is important to note that sought chemical elements are not exempt from the ''lesser of'' rule, even though there is a special rule for the substitution of source material. *See* 19 U.S.C. 1313(b)(4). NAFTA drawback allows for substitution manufacturing claims (under certain conditions) and these claims are not subject to the ''lesser of'' rule discussed herein, but they remain subject to the discrete NAFTA drawback ''lesser of duty'' rule regarding the amount of duty owed as compared between the relevant countries. *See* 19 U.S.C. 3333 and 19 CFR 181.44.

5. Expanded Scope and Calculation Methods for Refunds

(a) The scope of refunds for direct identification and substitution manufacturing drawback claims will be expanded from duties to also include taxes and fees.

Section 906(g) of TFTEA provides for the refund of taxes and fees, along with duties, for manufacturing drawback claims. *See* 19 U.S.C. 1313(l)(2)(C). This is an expansion of the scope of refunds available for manufacturing drawback claims (19 U.S.C. 1313(a) and (b)). Previously, the statutory provisions for direct identification and substitution manufacturing drawback specified only the refund of duties. This expansion is specifically provided for claims with respect to manufactured articles in paragraph (l)(2)(C) of 19 U.S.C. 1313. However, this expansion is not applicable to all drawback claim provisions. Refunds of duties, taxes, and fees were already allowed for in claims involving unused merchandise prior to the new language provided for by TFTEA. *See* 19 U.S.C. 1313(l)(2)(B). In contrast, there was neither any pre-existing authority for refunds of taxes and fees for claims involving rejected merchandise nor did TFTEA otherwise expand the scope of refunds beyond duties by generally referencing 19 U.S.C. 1313(l). The provisions that provide for refunds of duties, taxes, and fees are limited to unused merchandise and manufacturing drawback claims in 19 U.S.C. 1313(l)(2)(B) and (C), respectively.

There is also a noteworthy difference regarding the statutory provisions for substitution manufacturing drawback claims whereby the merchandise must be imported duty-paid. *See* 19 U.S.C. 1313(b)(1). No such requirement exists for direct identification manufacturing claims. *See* 19 U.S.C. 1313(a). The result of this difference is that imported merchandise that is duty-free may be designated as the basis for a direct identification manufacturing drawback claim, but not for a substitution manufacturing drawback claim.

(b) TFTEA-Drawback direct identification claim refunds will be calculated based on the invoice value of the designated imported merchandise, which is unchanged from the current requirements.

CBP currently requires all drawback claimants, regardless of the type of claim, to calculate drawback refunds based on the invoice value of the designated imported merchandise. TFTEA-Drawback direct identification claims will continue to be calculated based on the invoice value of the designated imported merchandise. This includes all drawback claims that are based upon direct identification (*e.g.,* manufacturing, rejected merchandise, and unused merchandise drawback claims). It should also be noted that all NAFTA drawback claims will continue to be calculated based on the invoice value of the designated imported merchandise. *See* 19 U.S.C. 3333 and 19 CFR 181.44.

(c) TFTEA-Drawback substitution claim refunds will be calculated based on the per unit average value reported on the line from the entry summary that covered the designated imported merchandise.

Section 906(g) of TFTEA authorized CBP to calculate refunds based upon the per unit average of the duties, taxes, and fees reported on the entry summary line item that covered the designated imported merchandise if this method would result in simplification of the drawback claims process for CBP without posing a risk to the revenue of the United States. Per unit averaging requires that the drawback claimant calculate the per unit average value of the designated imported merchandise (*i.e.,* the entered value for the applicable entry summary line item apportioned equally over each unit covered by the line item) and request a refund 99% of the amount of duties, taxes and fees applicable thereto. The legislative history for Section 906(g) clarifies that CBP is authorized to utilize per unit averaging solely to allow for the simplification of drawback claims and CBP is not to allow for the ''manipulation of claims in order to maximize refunds to the detriment of the revenue of the United States.'' *See* H.R. Rep. no. 114–376, at 221 (2015). Accordingly, CBP is proposing in these regulations to allow the use of per unit averaging in the context of substitution manufacturing drawback claims (19 U.S.C. 1313(b)) and substitution unused merchandise drawback claims (19 U.S.C. 1313(j)(2)), but not for direct identification manufacturing drawback claims (19 U.S.C. 1313(a)), rejected merchandise drawback claims (19 U.S.C. 1313(c)), or direct identification unused merchandise drawback claims (19 U.S.C. 1313(j)(1)).

This determination was made only after much internal consideration as well as outreach to various trade stakeholders. A significant justification for the use of per unit averaging exclusively for substitution claims is that TFTEA imposed a ''lesser of'' rule for drawback claims involving substitution that safeguards against risks to the revenue. Simply put, by importing high and low value goods together on a single line, the claimant could manipulate the drawback claim through per-unit averaging by strategically exporting or destroying the low value goods, where the per-unit average of duties, taxes, and fees to be refunded was greater than that associated with the low value goods. The lesser of rule prevents this type of manipulation. No ''lesser of'' rule was authorized under TFTEA for direct identification claims.

The application of per unit averaging method of calculating drawback refunds requires the equal apportionment of the amount of duties, taxes, and fees eligible for drawback for all units covered by a single line item on an entry summary to each unit of merchandise (and is required for certain substitution drawback claims). In this method, the ratio of the total value of imported units as reported on a line item divided by the total quantity of imported units reported on a line item is to be multiplied by the quantity of units designated as the basis for the drawback claim to determine the average per unit value. The refund per unit of the designated imported merchandise is to be 99% of the duties, taxes, and fees applicable to the average per unit value and this amount is calculated to two decimal places (and subject to the ''lesser of'' rule).

Example 1. Substitution Unused Merchandise TFTEA-Drawback Claim

A substitution unused merchandise drawback claim is filed for 500 exported articles with a value of $110 per unit. The 500 units of designated imported merchandise were reported on an entry summary line item that covered 1000 units with an entered value of $100,000 and a duty rate of 2.5%. Therefore, regarding the amount of duties to be refunded pursuant to the ''lesser of'' methodology, the calculation of drawback will be based on the per unit value of $100 for the designated imported merchandise rather than the value of $110 for the exported merchandise.

The designated imported merchandise has a per unit value of $100. This applicable duty rate (2.5%) is applied to the average per unit value ($100) to determine the amount of duties apportioned to each unit at $2.50.

The amount available for a drawback refund is 99% of the duties paid per unit ($2.50), which is $2.48. This amount of refundable duties per unit ($2.48) is multiplied by the quantity of designated imported merchandise (500 units) to calculate the total amount available for the drawback refund, which is $1,240. Similar calculations must be completed for applicable taxes and fees as well.

Example 2. Substitution Manufacturing TFTEA-Drawback Claim

A substitution manufacturing drawback claim is filed for 200 exported finished articles with a value of $400 per unit.[3] The designated imported merchandise was reported on an entry summary line item that covered 800 units with an entered value of $160,000 (averaging $200 per unit) and a duty rate of 3.1%. To manufacture the finished articles, the manufacturer actually used 600 units of substituted domestically sourced merchandise that is classifiable under the same 10-digit tariff provision. The domestically sourced merchandise has a substituted value of $180 per unit. Therefore, regarding the amount of duties to be refunded pursuant to the ''lesser of'' methodology, the calculation of drawback will be based on the per unit value of $180 for the substituted merchandise rather than the value of $200 for the designated imported merchandise.

The substituted merchandise has a per unit value of $180. This applicable duty rate (3.1%) is applied to the average per unit value ($180) to determine the amount of duties apportioned to each unit at $5.58.

The amount available for a drawback refund is 99% of the duties paid per unit ($5.58), which is $5.52. This amount of refundable duties per unit ($5.52) is multiplied by the quantity of designated imported merchandise (600 units) to calculate the total amount available for the drawback refund, which is $3,312. Similar calculations must be completed for applicable taxes and fees as well.

Per unit averaging facilitates verification of the amounts of drawback refunds claimed. CBP does not receive invoice data that is usefully searchable electronically. By moving to the per unit averaging calculation methodology for substitution claims that is based on entry summary line data, CBP will gain the ability to automate validations of refund calculations made by the claimant. This should lead to faster and more efficient processing of claims, which will benefit both drawback claimants and CBP. These efficiencies are gained through the use of entry summary line item data, which is required for all TFTEA-Drawback claims, and will enable the per unit averaging calculation to take place as an automated verification rather than a manual process.

(d) The imported merchandise reported on a single entry summary line item may not be the basis of a direct identification and a substitution claim under TFTEA-Drawback.

A consequence of using per unit averaging for substitution claims under TFTEA-Drawback is that a single entry summary line item cannot be used for both direct identification and substitution drawback claims. Consequently, CBP proposes to limit each line on an entry summary to designation as the basis for either direct identification or substitution claims, but never both. Therefore, all associated imported merchandise on that line may only be designated as the basis for either direct identification or substitution claims under TFTEA-Drawback. If both types of claims were allowed on a single line on an entry summary, CBP would be unable to issue full refunds for all drawback claims that could lawfully be made against a specific entry summary line item in some situations. For example, in some situations where substitution claims using the per unit average of the line item were to be claimed prior to a direct identification claim, the total amount of drawback remaining on the line may not be sufficient to pay the proper amount of drawback tied to the high value goods.

CBP has also chosen this proposed policy in expectation of the efficiencies to be gained by both claimants and CBP regarding calculating and verifying refunds. Accordingly, importers and drawback claimants need to be aware of the limitation on line item designations prior to importing merchandise or receiving transferred merchandise, because the first-filed claim on a line will dictate the type of claim available for any remaining merchandise of the same line.

6. Recordkeeping and Proof of Export

(a) Congress, through TFTEA, changed the starting date for the three-year time period for maintaining supporting records for drawback claims from the date of payment to the date of liquidation.

For all TFTEA-Drawback claims, section 906(o) replaced the previous requirement to maintain supporting records for three years from the date of payment of the claim with the new requirement to maintain records for three years from the date of liquidation of the claim. *See* 19 U.S.C. 1508(c)(3). This extension of the recordkeeping time period provides CBP with more time to request documents needed to verify or audit claims. This new timeframe requires claimants with accelerated payment privileges to maintain supporting records longer than before TFTEA (because claims are paid prior to liquidation for claimants that obtain the privilege of accelerated payment).

(b) Claimants for manufacturing drawback must provide a certification that they are in possession of the relevant bill of materials or formula for the manufactured goods, in lieu of actual submission thereof, for each claim filed.

Currently, claimants for manufacturing drawback are required to provide a bill of materials or formula to CBP upon request, for any claim filed. CBP has and will continue to request these records for review in the context of verifications, audits, and other administrative actions. The purpose of this requirement is to ensure that the claims are consistent with the applicable bill(s) of materials or formula(s) that accompanied the

[3] It is noteworthy that the value of the exported (or destroyed) finished article is not germane to the application of the ''lesser of'' rule for substitution manufacturing drawback claims. The comparison in value is between the value of the designated imported merchandise and the substituted merchandise.

claimant's application to operate under the applicable general or specific manufacturing drawback ruling. TFTEA expressly added a requirement for substitution manufacturing drawback claims that the person making the claim must submit the bill of materials or formula identifying the drawback-eligible merchandise and manufactured article(s) by the 8-digit HTSUS subheading numbers and the quantities of merchandise with each claim. *See* 19 U.S.C. 1313(b)(3)(A). For administrative efficiency and consistency with how drawback claims are reviewed and verified, rather than requiring the actual submission of these records with each claim, CBP will require a certification in ACE as to possession of these records. This certification requirement applies to both direct identification and substitution manufacturing claims.

(c) Congress, through TFTEA, permits the future use of an electronic export system as automated proof of export for drawback claims, but no system will be reliable for this purpose on February 24, 2018; and, proof of export must be documented in records that are summarized for the drawback claim.

Claimants whose exported goods are the basis for a claim of drawback must provide proof that establishes fully the date and fact of exportation and the identity of the exporter. These requirements are provided for in proposed § 190.72. Under TFTEA-Drawback, proof of exportation is required in the form of export summary data that is provided as part of a complete drawback claim filed with CBP. However, the underlying supporting records must fully prove the exportation through records kept in the normal course of business. TFTEA also provides for proof of export to be established via an electronic export system of the United States, as determined by the Commissioner of CBP. *See* 19 U.S.C. 1313(i). Currently, the Automated Export System (AES) is not able to fully establish the required elements. Accordingly, until such time as the Commissioner of CBP announces the availability of a capable electronic system through a general notice in the Customs Bulletin, records kept in the normal course of business shall be used to establish fully the date and fact of exportation and the identity of the exporter, and such records must be maintained by claimants whose exported goods are the basis for a claim of drawback.

7. Transfers of Merchandise and Liability

(a) Specific formats for certificates of delivery and specific formats for certificates of manufacture and delivery are no longer required when drawback products or other drawback-eligible goods are transferred between parties, although records of manufacture and transfer must be provided and maintained to support the drawback claim.

Section 906 removed the longstanding requirements for the submission of Certificates of Delivery (CDs) and Certificates of Manufacture and Delivery (CMDs) by stating that no additional certificates of transfer or manufacture shall be required 19 U.S.C. 1313(b), and by stating that no additional certificates of transfer are required in 19 U.S.C. 1313(c), (j), and (p). Section 906(l), *Drawback Certificates,* removed the recordkeeping requirements relating to these certificates for drawback claims by striking 19 U.S.C. 1313(t). Instead of CDs and CMDs, parties involved in transfers of drawback products or other drawback-eligible goods must maintain records, which may include records kept in the normal course of business, to evidence the transfers.

(b) The first drawback claim to be filed that designates any portion of imported merchandise from a given entry summary line item will determine the type of drawback eligibility for all other imported merchandise covered by that entry summary line item.

As previously explained in part 5(d), above, there is a limitation that imported merchandise on a single entry summary line item cannot be designated as the basis for both direct identification and substitution drawback claims under TFTEA, due to the different methods of calculating refund amounts. Because the transferor can transfer the merchandise covered by a specific line item to different transferees, the transferees might unwittingly attempt to file different types of claims, which is not permitted. In an effort to best inform transferees of the possible limitation, if a transferor has already filed a certain type of drawback claim designating a portion of merchandise from an entry summary line item, or otherwise has knowledge of an already-filed claim that does likewise, then the transferor must designate whether the merchandise is eligible for substitution or direct identification claims and notify the transferee of that designation at the time of transfer. This should help transferees to avoid attempting to make drawback claims for the transferred merchandise under the mutually exclusive bases of direct identification and substitution. If, at the time of transfer, the transferor is not aware of a particular type of drawback claim already filed relating to the entry summary line item, then the designation shall so indicate to the transferee. Notification of the designation from the transferor to the transferee must be documented in records, which may include records kept in the normal course of business. Notwithstanding the designation made, however, the type of the first drawback claim to be filed relating to that entry summary line item will dictate the type of any subsequent claims relating to that same entry summary line item.

Because this notification requirement is not effective until February 24, 2018, parties who anticipate making substitution-based claims under TFTEA-Drawback designating imported merchandise that was entered and transferred prior to this date, should consult with the transferor about whether the transferred merchandise potentially is eligible for substitution-based claims under TFTEA-Drawback. Such eligibility only exists if the transferred merchandise was not previously used as the basis for any non-TFTEA drawback claim, because all types of non-TFTEA drawback claims must be calculated based on invoice values, which conflicts with the use of per unit averaging when determining refunds for imported merchandise on a single entry summary line item.

It is important to note, again, that this notification of designation requirement is proposed in an effort to better inform claimants of possible limitations on the type of drawback claim that can be filed in situations involving transferred merchandise. The designation, however, is not a guarantee of the type of claim that can be filed. Drawback claimants must remain aware that the first drawback claim to be filed on a given entry summary line item will control the type of claim that subsequently can be filed in the case of transferred merchandise.

(c) Importers are now jointly and severally liable with drawback claimants for refunds associated with their imported merchandise, when designated on a drawback claim.

Section 906(f) established joint and several liability for the drawback claimant and the importer of the imported merchandise that is designated as the basis of the claim. *See* 19 U.S.C. 1313(k). Accordingly, importers should be aware of this liability when transferring imported merchandise to other parties for purposes of drawback. Therefore, it is proposed to amend § 113.62 to reflect this liability in the import entry bond conditions.

B. Filing a TFTEA-Drawback Claim

TFTEA-Drawback claims must be filed electronically. A complete TFTEA-Drawback claim will consist of the successful transmission of the data required for the TFTEA-Drawback entry and the upload of all required documents supporting the claim. When submitting the claim, the filer must provide, among other things, the drawback entry number, filing port code, claimant ID number, drawback provision, total drawback claim amount requested, the import entry summary(s) and line item number(s) for the designated imported merchandise, other required line item data including the HTSUS subheading number at the 10-digit level, information on exportation or destruction, and, if applicable, the NAFTA coding sheet. Proposed section 190.51 provides detailed information about specific data elements, certifications, and supporting documents that may be required depending on the particular type of drawback claim.

After transmission, the filer will receive an automated message indicating either that the electronic transmission has been accepted or rejected. In the case of a rejection, the automated message will inform the filer regarding the reason(s) for the rejection. Uploads of required forms, and any other supporting documentation should be submitted through ACE, Document Image System, after the successful electronic transmission. Further, related to filing claims electronically, as noted below in the section explaining the proposed regulations, a definition for ''drawback office'' has been added to § 190.2 clarifying that CBP has the authority to share or transfer work between drawback offices at its discretion.

For the interim period between February 24, 2018 and the date on which the new TFTEA-Drawback regulations will become effective, CBP developed interim procedures for accepting electronically filed TFTEA-Drawback claims. Specifically, to enable ACE to recognize and accept such claims, notwithstanding the absence of the necessary regulatory requirements for a complete TFTEA-Drawback claim, ACE was programed with provisional placeholder requirements, modeled on the draft regulatory package then under development. Corresponding provisional Customs and Trade Automated Interface Requirements (CATAIR) Guidelines were provided to enable claimants to program their systems to interface with these provisional placeholder requirements in ACE. And on February 9, 2018, CBP posted on its website a document entitled *Drawback: Interim Guidance for Filing TFTEA Drawback Claims* (*Interim Guidance*), to further inform and provide guidance to the trading community regarding the temporary procedures for electronically filing TFTEA-Drawback claims during the interim period until the implementing regulations are finalized and operational. This *Interim Guidance* was subsequently twice updated, to provide additional clarity.

The *Interim Guidance* explained that the provisional requirements for electronically-filed TFTEA-Drawback claims that are reflected in the provisional CATAIR and described in the *Interim Guidance* document are placeholders only, and will not be used to process the claims beyond their initial acceptance in ACE. The actual final requirements for such claims will be established once the rulemaking process is complete and the new regulations are implemented and effective. To the extent that the final requirements established through rulemaking ultimately differ from the provisional placeholders used to accept TFTEA-Drawback claims in ACE prior to the effective date of the final rule, the *Interim Guidance* explained that claimants will be permitted to perfect their claims in accordance with the new requirements before the claims are processed for payment.

The interim procedures outlined and explained in the *Interim Guidance* will remain in place until this rulemaking is complete and the final rule to implement the regulatory changes pending for TFTEA-Drawback claims is implemented and effective.

The programming specifics for electronic transmission are explained in more detail in the TFTEA-Drawback CATAIR Guidelines, which can be accessed at: *https://www.cbp.gov/trade/ace/catair.* Specific questions related to filing TFTEA-Drawback claims may be directed to a client representative or the ACE Account Service Desk at 1–866–530–4172 or *ACE.Support@cbp.dhs.gov.* Filers should be aware that a delay of more than 24 hours in uploading all required accompanying documentation after the transmission of the claim data will mean that the filing date will be tied to the uploading of documents rather than the date of transmitting the claim data. In some instances, this later official date of filing could affect the timeliness of a claim.

C. Required TFTEA-Drawback Certifications for Existing Manufacturing Rulings and Privileges

While the processes regarding general and specific manufacturing rulings detailed in appendices A and B of the proposed part 190 will be largely unchanged from those described in the appendices of part 191, TFTEA does have some impact on existing rulings. The existing rulings were issued based on the requirements of 19 CFR part 191, which do not comport with the TFTEA-Drawback requirements (*e.g.,* the new substitution standard and timeframes). Accordingly, in order to continue operating under an existing manufacturing ruling, a manufacturer or producer must file a supplemental application for a limited modification to that ruling. To ensure compliance with the TFTEA-Drawback requirements, the limited application must include revised parallel columns and a bill of materials or formula, which must be annotated with the applicable HTSUS subheading numbers. In addition, a certification must be provided to confirm that all TFTEA-Drawback claims made under the subject manufacturing ruling will be in conformity with all of the applicable statutory and regulatory requirements. Any supplemental application to modify a ruling issued under 19 CFR part 191 (so that it remains viable for TFTEA-Drawback claims) must be submitted to CBP no later than February 23, 2019, which is the close of the transition period for drawback claimants. Any ruling issued under 19 CFR part 191 that is not modified by this deadline will not apply to TFTEA-Drawback claims; and, manufacturers and producers would need to apply for a new ruling under 19 CFR part 190.

Similar to manufacturing rulings, drawback privileges granted under 19 CFR part 191 will not comport with TFTEA-Drawback. The privileges are the waiver of prior notice of intent to export or destroy and accelerated payment. With each claim that is filed under 19 CFR part 190, a certification of conformity with TFTEA-Drawback is required for claimants to continue to operate under one or both privileges if granted pursuant to 19 CFR part 191. Unlike for manufacturing rulings, these certifications will be made electronically with each TFTEA-Drawback claim. These certifications are limited to the drawback provisions under which they were originally granted in accordance with 19 CFR part 191, except that privileges granted under 19 U.S.C. 1313(j)(1) and 19 CFR 191 may be applied to TFTEA-Drawback claims made under 1313(j)(1) or 1313(j)(2).

The certification processes described above are designed to ease the administrative burden on CBP while minimizing the disruption to those operating under existing manufacturing rulings and/or privileges. However, claimants are responsible for performing the requisite due diligence prior to filing any TFTEA-Drawback claims; and, the consequences of false or inaccurate claims include, but are not limited to, the denial of drawback refunds and the associated privileges, noted above.

D. Federal Excise Tax and Substitution Drawback Claims

The Internal Revenue Code (IRC) of 1986, as amended, codified as title 26 of the United States Code (26 U.S.C.), is the main body of domestic statutory tax law of the United States and includes laws covering Federal excise taxes. Federal excise taxes are imposed on the manufacture and distribution of certain consumer goods, including upon the importation of distilled spirits, wines, beer, tobacco products, and certain imported taxable fuel and petroleum products. While there are also excise taxes on other products, it is these taxes, because of the structure of the tax and the manner in which they are collected, that are eligible for drawback under 19 U.S.C. 1313.

1. Distilled Spirits, Wines, and Beer: Imposition of Federal Excise Tax and Exemptions

Chapter 51 of the IRC sets forth excise tax collection and related provisions applicable to distilled spirits, wines, and beer. In general, this chapter provides that a Federal excise tax is imposed on all wines, distilled spirits, and beer produced in or imported into the United States. 26 U.S.C. 5001, 5041, 5051.

Statutory exceptions to the required payment of Federal excise tax exist. For example, when wine, distilled spirits, or beer are exported after payment or determination of tax, the IRC provides for ''drawback'' in an amount equal to the tax paid. 26 U.S.C. 5055, 5062. Under these provisions, the excise taxes are refunded upon exportation. Similarly, drawback is also available when wine, distilled spirits, or beer are exported from bonded premises regulated by the Alcohol and Tobacco Tax and Trade Bureau (TTB), where no tax has been paid, although tax liability attached at the time of production or import. While tax must ordinarily be paid upon removal of wine, distilled spirits, or beer from TTB-bonded premises, the removal may occur ''without payment of tax'' for the purpose of export. 26 U.S.C. 5214(a), 5362(c), 5053(a). Although removed from a TTB-bonded facility, the product is still subject to bond and still carries a tax liability until the product is exported. 26 U.S.C. 5053, 5175, 5362. Similarly, Title 19 also provides for ''drawback equal in amount to the tax found to have been paid or determined on . . . bottled spirits and wines manufactured or produced in the United States'' upon exportation. 19 U.S.C. 1313(d). Under these drawback provisions, a refund is made upon exportation if tax has already been paid, or if an unpaid tax liability exists, it is extinguished upon exportation. The net economic effect is identical.

2. Tobacco: Imposition of Federal Excise Tax and Exemptions

Under Chapter 52 of the IRC, a Federal excise tax is imposed on all tobacco products and cigarette papers and tubes manufactured in or imported into the United States. 26 U.S.C. 5701. The tax on domestically-produced tobacco products and cigarette papers and tubes is imposed at the time of manufacture but generally is not paid or determined until the products are removed from TTB-bonded premises. 26 U.S.C. 5702, 5703. Upon exportation of tobacco products and cigarette papers and tubes upon which the tax has been paid, the IRC permits drawback of the tax paid. 26 U.S.C. 5706. In addition, tobacco products and cigarette papers and tubes may be removed from TTB-bonded premises, without the payment of Federal excise tax, for export. 26 U.S.C. 5704. Under these provisions, the excise tax liability is extinguished upon exportation. The net economic effect is identical.

3. Other Excise Taxes

Chapter 32 of the IRC imposes various excise taxes, including taxes on gasoline, diesel fuel, and kerosene (taxable fuel). For example, 26 U.S.C. 4081 imposes tax on the removal of taxable fuel from any refinery or terminal and on entry into the United States for consumption, use, or warehousing. The IRC permits the refund of this tax when taxable fuel is exported. 26 U.S.C. 6416, 6427. When the taxable fuel is imported into an IRS-registered facility, it is taxed upon removal from the facility and is not eligible for drawback under 19 U.S.C. 1313. Some taxable fuel, however, is not imported into an IRS-registered facility, in which case the tax is due upon importation and may be eligible for drawback under 19 U.S.C. 1313.

4. Federal Excise Taxes Have Been Improperly Refunded

Under customs law, a form of drawback known as ''substitution drawback'' also occurs when products are imported into the United States and sufficiently similar products are exported or destroyed. 19 U.S.C. 1313(j)(2). Treasury Department audits and analyses have revealed that for a number of years, CBP has received and approved claims for substitution drawback under 19 U.S.C. 1313(j)(2) for imported bottled and bulk wine, even in circumstances in which no excise tax was paid on the substituted exported merchandise. CBP has not identified a record of the first time it granted a section 1313(j)(2) drawback claim for wine based on exported merchandise on which tax had not been paid—a claim for ''double drawback,'' drawback of the excise tax on both the imported product and the exported product.

An example of a claim for ''double drawback'' of wine proceeds as follows:

A domestic winery imports 100 liters of wine, pays Federal excise tax on the wine, and sells the imported wine in the United States. The domestic winery then exports 100 liters of its domestically-produced wine from TTB-bonded premises without payment of Federal excise tax. The domestic winery files a § 1313(j)(2) drawback claim with CBP on the basis that the 100 liters of domestically-produced wine are commercially interchangeable with the to the 100 liters of imported wine. The domestic winery receives a refund of 99 percent of the Federal excise taxes that it paid on the 100 liters of imported wine.

In this example, imported products are introduced into the U.S. market, in net effect, free of 99 percent of Federal excise tax. As a result, in this example, the U.S. Treasury ultimately receives only one percent of the Federal excise tax on the imported products that are consumed in the United States. By contrast, domestically-produced wine consumed in the United States is fully taxed. This practice results in revenue loss from having untaxed goods circulating in commerce. It also has the effect of giving imported wine a clear tax advantage in the domestic market over domestically produced wine. Because the revenue loss (or tax break) comes in the form of a reduction of tax on imported product, it puts domestically produced products at a disadvantage as compared to imports in the U.S. market.

This result is inconsistent with the broader statutory excise tax regime, which (on net) generally imposes excise taxes on all subject goods consumed in the United States, whether produced domestically or imported for domestic consumption. In the above example, by contrast, the importer/exporter winery has (on net) paid no Federal excise tax on the exported wine and virtually no Federal excise tax on the imported wine. In net effect, the winery has introduced imported wine 99% free of excise tax to compete with domestically produced wine that is fully taxed.

CBP currently permits this practice only with respect to wine. But as explained, the IRC imposes excise tax and provides exemptions from such tax for other goods, including distilled spirits, beer, tobacco products, and certain taxable fuel. Some producers have already requested that CBP extend its current treatment of wine to distilled spirits, and it is possible that firms dealing in these other goods may seek similar treatment.

5. Statutory Prohibition on Double Drawback

The allowance of substitution drawback claims in circumstances where internal revenue taxes have not been paid on the substituted product results in imported product being introduced into commerce with no net payment of excise tax—a ''double drawback'' that is at odds with the broader statutory schemes of both customs drawback and excise taxation.

As noted above, the IRC generally imposes excise taxes upon all covered domestic products and products imported for domestic consumption. The Customs Modernization and Informed Compliance Act (Mod Act), Public Law 103–182, 632, 107 Stat. 2057 (1993) (enacted as Title VI of the North American Free Trade Agreement Implementation Act), added a clause to 19 U.S.C. 1313(v) providing in relevant part that ''[m]erchandise that is exported or destroyed to satisfy any claim for drawback shall not be the basis of any other claim for drawback.'' This provision is best read to preclude, among other things, exported or destroyed merchandise from being used as the basis for *both* a substitution drawback claim and a drawback of internal revenue taxes upon exportation or destruction. In other words, exported merchandise on which excise taxes have been paid *can* form the basis of a substitution drawback claim, but exported products on which *no* excise tax has been paid cannot be used to erase existing tax liability on imported products.

While Congress did not specifically define the term ''drawback'' in § 1313(v), its meaning is clear in context and within the broader statutory scheme governing drawback and excise taxes. In context, drawback encompasses the refund or remission of an excise tax that was paid, determined, or otherwise imposed by Federal law. The term is often used to refer to the refund of taxes that have been paid previously. *See, e.g.,* 19 U.S.C. 1313(a), (c)(1), (j)(1), (j)(2) (providing for taxes to be ''refunded as drawback''). But it is not limited to refunds, as other provisions use the term more broadly to refer to an unpaid tax liability that is extinguished. *See, e.g.,* § 1313(d) (''there shall be allowed . . . a drawback equal in amount to the tax found to have been paid *or determined*'') (emphasis added); sections 1313(n)(2), (n)(4), (o)(3) (using the phrase ''refunded, waived, or reduced'' to refer to the extinguishing of tax liability under subsections (a), (b), (f), (h), (p), and (q), each of which uses the phrase ''drawback''). Nor is section 1313(v)'s use of the term ''drawback'' limited to drawback of taxes imposed upon importation. Section 1313(v) refers to ''any'' claim for drawback. That broad and inclusive language contrasts with the language Congress used when it referred to only specific types of drawback. *See, e.g.,* sections 1313(j), (k)(1), and (l)(2)(A), (B), and (C) (referring to drawback ''under this section''); section 1313(n)(2) (referring to ''NAFTA drawback''); section 1313(n)(4) (referring to ''Chile FTA drawback''). The fact that Congress expressly limited ''drawback'' in certain subsections of section 1313 but did not do so when it referred to ''any'' drawback in subsection (v) indicates that ''drawback'' is not so limited for purposes of this subsection.

Accordingly, when wine, distilled spirits, beer, tobacco products, or other products subject to excise tax are exported from TTB-bonded premises ''without payment of tax,'' pursuant to 26 U.S.C. 5214, 5362, 5053, or 5704, the extinguishment of tax liability upon export is best understood as a form of drawback within the broad prohibition of 19 U.S.C. 1313(v).

This interpretation is further supported by the broader statutory scheme, which operates (in net effect) to subject all wine, distilled spirits, and beer consumed in the United States, whether produced domestically or imported, to an excise tax. The evident purpose of section 1313(v) is to advance that objective by preventing excessive revenue loss through multiple claims for drawback based on a single export. And to the same end, the statutes that govern withdrawal of wine, distilled spirits, beer, or tobacco products from TTB-bonded premises authorize regulations that may be necessary to protect revenue. *See* 26 U.S.C. 5175, 5214(a)(4), 5362(c), 5053(a), and 5704(b).

A contrary interpretation would undermine the statutory scheme of excise taxes that applies to imports and cause undue revenue loss. As just one example, a contrary reading of the statutory scheme would appear to permit an importer of distilled spirits to manufacture inexpensive liquor and destroy it, without having paid the excise tax imposed on domestically-produced liquor under 26 U.S.C. 5001. The importer in this scenario could then use the destruction of that domestically-produced liquor to seek a drawback under 19 U.S.C. 1313(j)(2) of the excise tax on liquor they import. Because the excise tax per gallon may far exceed the marginal cost of production of some types of liquor,[4] these manufacturers would receive a significant economic benefit, despite having never paid excise taxes on the domestically-produced liquor. They would also have avoided excise tax payment not once but twice—on both the domestically produced liquor and the imported liquor—without, on net, increasing domestic production for consumption or export. The statutory framework that imposes excise tax on the domestic consumption of alcohol would have been almost wholly subverted.

A contrary interpretation would also seem to permit the following hypothetical transaction:

> A distilled spirits importer imports 200 gallons of liquor into a TTB-bonded facility. It pays excise tax on 100 gallons and sells those in the United States. It then exports the remaining 100 gallons without payment of Federal excise tax. The importer files a § 1313(j)(2) drawback claim with CBP on the basis that the 100 gallons of imported liquor sold in the United States is commercially interchangeable with the 100 gallons of imported liquor exported without payment of excise tax. The importer receives a refund of 99 percent of the Federal excise taxes that it paid on the 100 imported gallons sold in the United States.

In this hypothetical, too, imported products would be introduced into the U.S. market, in net effect, free of 99 percent of Federal excise tax. As a result, the U.S. Treasury would receive only one percent of the Federal excise tax on the imported products that are consumed in the United States. Such essentially tax-free treatment of domestically-consumed imported

[4] In 2006, the U.S. Department of Agriculture estimated that that the cost of production of neutral grain spirits at about $0.53 per proof gallon. *See* ''Economic Feasibility of Ethanol Production from Sugar in the United States,'' *available at https://www.usda.gov/oce/reports/energy/EthanolSugarFeasibilityReport3.pdf.* The excise tax on distilled spirits is $13.50 per proof gallon (*see* 26 U.S.C. 5001(a)(1)), or more than 25 times the cost of production.

alcohol does not comport with the statutory drawback scheme in the IRC or Title 19.

Because drawback under 19 U.S.C. 1313 does not require CBP to verify whether substitute exported merchandise is tax paid, CBP does not have records that would identify instances of double drawback at issue here. Treasury Department audits and analyses have revealed that CBP began refunding excise taxes on wine under 19 U.S.C. 1313(j)(2) in approximately 2004 when the San Francisco office permitted drawback for such a claim. Some of these drawback claims may have included a double refund. It is possible that this change took place due to a misunderstanding of a 2004 amendment to the drawback statute designed to provide for drawback of the Harbor Maintenance Tax. *See* Miscellaneous Trade and Technical Corrections Act of 2003, Public Law 108–429, 118 Stat. 2433, 2579 at section 1557(a)(1) (2004). CBP has never issued a ruling or regulation authorizing the current treatment with respect to wine. Nevertheless, because CBP has approved substitution unused drawback claims based on wine exports for which no excise tax has been paid, its treatment of this issue must be changed through a notice and comment process. *See* 19 U.S.C. 1625(c).

Because of the concern that the statutory scheme was being subverted and because of concerns with revenue losses both realized and potential, on October 15, 2009, CBP proposed amending title 19 of the Code of Federal Regulations to preclude the filing of substitution drawback claims for internal revenue excise tax paid on imported merchandise in situations where no excise tax was paid upon the substituted merchandise or where the substituted merchandise had been the subject of a different claim for refund or drawback of excise tax under any provision of the IRC. *See* Drawback of Internal Revenue Excise Tax, 74 FR 52928. The Alcohol and Tobacco Tax and Trade Bureau (TTB) within the Department of the Treasury published a related proposed rulemaking in the same October 15, 2009, edition of the **Federal Register** (Drawback of Internal Revenue Taxes, 74 FR 52937). Both notices solicited public comments on the proposed amendments. Subsequently, the notices of proposed rulemaking were withdrawn as announced in the **Federal Register** (75 FR 9359) on March 2, 2010.

A number of importers of distilled spirits have since sought the same treatment for their products that wine currently receives. Consistent with the analysis in this document, CBP has denied these requests, but has not corrected the treatment of wine through a notice and comment process, as required by 19 U.S.C. 1625(c).

6. Impact of Failing To Curtail Double Drawback

For the reasons explained above, CBP believes that the phrase ''any other claim for drawback'' in section 1313(v), read in context of the broader statutory scheme, encompasses the refund or remission of an excise tax that was paid, determined, or otherwise imposed by Federal law. To the extent section 1313(v) can be considered ambiguous, however, CBP has determined that there are compelling economic and fiscal reasons to resolve any ambiguity to preclude substitution drawback claims for excise tax paid on imported merchandise where no excise tax was paid on the substituted merchandise.

As explained below, firms dealing in distilled spirits, beer, tobacco products, and certain taxable fuels have a strong economic incentive to seek the same double drawback treatment currently afforded to wine. If CBP fails to adopt a uniform interpretation and application of section 1313(v), firms dealing in other products subject to Federal excise tax could also pursue substitution drawback claims similar to those that have been made for wine under section 1313(j)(2). The statutory provisions governing excise tax on other goods—beer, distilled spirits, tobacco products, and certain fuels—are substantially similar (and in many material respects, identical) to those governing excise tax on wine. Maintaining the current treatment of drawback claims for wine risks a growth in future revenue loss attributable to double drawback.

While proponents of the double drawback practice argue that it promotes exports, the observed economic effects of the practice do not support the view that it is an effective or efficient export promotion measure. Double drawback also places domestic products made for domestic consumption, which are subject to excise tax across the board, at a relative disadvantage to products imported for domestic consumption, for which 99 percent of the excise tax may be refunded based on a double drawback claim. The interpretation of section 1313(v) reflected in this proposed rule would avoid such market-distorting disparities.

A more detailed analysis follows in two parts. First, the available trade data suggest that double drawback promotes imports. In contrast, the trade data provide little evidence that total wine exports increased in response to double drawback. Second, a revenue analysis elucidates the incentives that double drawback creates for firms that deal in goods other than wine and provides initial projections of U.S. Government revenue loss that could result if these firms were provided the same double drawback treatment currently available only for substituted wine.

7. Analysis of Trade Statistics

Imported wine that benefits from double drawback enters the U.S. market with a substantial tax advantage over domestically produced wine. While this tax advantage exists for all imported wine benefiting from double drawback, it is largest for imported bulk wine. Because the customs value of imported bulk wine is lower than the value for bottled wine, excise tax levied by volume comprises a greater percentage of its average price, meaning that producers have a stronger economic incentive to claim double drawback on bulk wine.[5]

U.S. import statistics are consistent with these incentives. Import volumes of wine have grown rapidly during the period double drawback has been available. In 2004, total U.S. imports of wine, either bottled or bulk, were 576 million liters by volume.[6] *See* Table B. By 2016, that figure had grown to 880 million liters, an increase of over 50 percent. *Id.* Much of this increase in imports has been driven by bulk wine, which has made rapid gains in U.S. market share. In 2004, imported bulk wine accounted for 0.9 percent of domestic wine consumption. By 2016, imported bulk wine accounted for 6.2 percent of domestic wine consumption. *See* Table A. By volume, imports of bulk wine grew by 875 percent over that period. *See* Table B. Of course, other factors affecting wine trade unrelated to drawback may also have affected this growth.

In contrast to the rapid growth of imports, the U.S. trade statistics provide little evidence that total wine exports by volume increased from 2004 to 2016. The total volume of wine exports only grew by 5.5 percent over that period.

[5] For most imported wine, the tax is $0.282 per liter. 26 U.S.C. 5041(b). On a percentage of unit value basis, the tax is larger for bulk wine than for bottled wine, because the average value of bulk wine is less. The average value of imports of bulk wine hovered around $1.10 per liter in the years 2001 to 2016—much less than the average value per liter of imported bottled wines, which was about five times as great during the same period. *See* Table E.

[6] CBP believes the practice of double drawback began in or around 2004. For that reason, this analysis addresses trade statistics beginning in 2004.

See Table B. Disaggregating exports into those eligible for drawback and those ineligible for drawback casts further doubt on the effect of drawback on total exports. Exports from the United States to NAFTA countries, Canada and Mexico, are not eligible for substitution drawback. Therefore, they are not subsidized through the double drawback mechanism. Yet the volume of U.S. wine exports to these countries experienced a compound annual growth rate (CAGR) of 3.3 percent, while export volumes to countries for which substitution drawback was available experienced a 0.01 percent CAGR over the same period. *See* Table D.

Although the value of U.S. bottled wine exports has risen from 2004 to 2016 (from $600 million to $1.05 billion), the average unit value of the exports also increased during that period (from $2.30 to $6.10). *See* Table B and Table E. At the same time, volumes of bottled wine exports fell by a third. *See* Table B. U.S. wine export values grew substantially faster (5.2 percent CAGR) than did export volumes (0.4 percent CAGR) from 2004 to 2016. *See* Table B and Table C. This suggests that the increase in bottled wine exports by value was driven by price increases in the average unit value of the exports, not by an increase in export volumes. Because the excise tax on wine is levied by volume and not by value, this suggests that the increase in the value of exports is not directly connected to the availability of double drawback and is due to other factors.

While U.S. trade statistics do not indicate a significant increase in total wine exports, they do indicate a change in the composition of exports while double drawback has been available. From 2004 to 2016, the share of exported wine in bulk containers rose from 20.8 percent to 50.6 percent by volume, consistent with the shift in composition of imports discussed above. *See* Table B. This growth in the share of bulk exports is only evident for exports to non-NAFTA countries, which rose from 16.2 percent to 55.2 percent. *See* Table D. Exports to NAFTA countries, which are not eligible for double drawback, show no shift toward bulk exports over that period. *See id.* In addition, while U.S. exports of bulk wine have grown during the period from 2004 to 2016, growth in the volume of bulk wine imports has been much greater. Overall, during the same period, there has been an increase in the U.S. trade deficit for wine—including for bulk wine. *See* Table C.

In short, while it is not possible to say that double drawback is the primary driver of the wine trade trends, available trade data are consistent with the view that double drawback may have promoted wine imports but that it has not been an effective export promotion measure.

8. Revenue Loss Analysis

Maintaining the current double drawback treatment of wine and extending that treatment to other products subject to excise tax—distilled spirits, beer, tobacco products, and certain taxable fuels—would cause significant revenue loss to the U.S. Government.

(a) Data

Because drawback claims have not previously captured the tax-paid status on substituted exports, the exact amount of revenue lost to double drawback involving imported wine is not certain. Nevertheless, analysis of CBP import data and individual drawback claims at the firm level permit a reasonable estimate of the historical revenue loss from double drawback treatment of wine imports.[7] Because CBP has not kept drawback summary statistics based on tariff category and type of tax, this estimate with respect to wine is based on an analysis of individual drawback claims made by firms involved in wine trade and comparing the ratios of drawback claimed for duties with those claimed for taxes to differentiate between shipments of bulk and bottled wine. These firm-level data are statutorily-protected from public disclosure. *See* 26 U.S.C. 6103 (confidentiality of tax return information); 18 U.S.C. 1905 (Trade Secrets Act). With respect to other products, Treasury's estimates are based on current excise tax revenue for each product.[8] The estimated rate at which firms are projected to take advantage of double drawback (''takeup rate'') is informed by the economic incentives and data described below—chiefly, excise tax as a share of product value, and the potential growth in exports resulting from the expansion of double drawback treatment.

(b) Theory, Assumptions, and Estimate

Excise taxes on most products addressed in this rule are applied based on volume, not as a percentage of value. For example, the standard excise tax on wine is $1.07 per wine gallon.[9] The greater the ratio of excise tax to product value, the greater the incentive to avoid payment of the tax through means such as double drawback. The historical experience with respect to wine bears this out: Excise tax as a share of customs value has been about 5 percent for bottled wine and 25 percent for bulk wine in recent years. *See* Table E. Based on differences in the tariff rates for bottled and bulk wine that are reflected in the amounts of individual drawback transactions, Treasury estimates the takeup rate for double drawback of wine to be 13 percent for bottled imports and 24 percent for bulk imports. The difference in these rates indicates that tax as a share of value is an important determinant of takeup rate. For some products, such as beer, tax as a share of customs value is similar to that of wine. For other products subject to excise tax, tax as a share of value is much higher than it is for wine—sometimes exceeding 100 percent. Indeed, for some distilled spirits, excise tax can be many multiples the cost of production.[10] Excise tax as a share of tobacco products' value is also much higher than it is as a share of the value of wine.[11] This dynamic creates a strong incentive for firms that deal in these other products to seek double drawback of excise taxes paid on imports by inexpensively manufacturing domestic products for either export or destruction. Because of the strength of this incentive, firms dealing in these products likely would take advantage of double drawback at higher rates than the wine industry has historically if it were available to them.

A second factor of particular concern is the market-distorting incentive for re-routing shipments that an expansion of double drawback would create. Double drawback creates an incentive for firms that both import and export to route a shipment destined for another country through the United States to claim excise tax relief on imports into the United States. Under this approach, first, a firm imports 200 units of, for example, distilled spirits. It removes 100 units from customs custody for domestic sale and pays excise tax for their import. It then imports the second 100 units into TTB bond, without

[7] *See* U.S. International Trade Commission Interactive DataWeb, *available at https://dataweb.usitc.gov/* (trade data by product classification, volume, value, and country of origin, retrieved from the U.S. Census Bureau).

[8] *See* IRS Statistics of Income Tax Stats—Excise Tax Statistics, *available at https://www.irs.gov/statistics/soi-tax-stats-excise-tax-statistics/.*

[9] 26 U.S.C. 5041(b).

[10] For example, the average customs value of exported grain alcohol is $2.78 per proof gallon (USITC DataWeb, *supra* note 7) while the tax is $13.50 per proof gallon (26 U.S.C. 5001(a)(1)). The customs value includes profits and other expenses in addition to the cost of production. In 2006, the U.S. Department of Agriculture estimated the cost of production of neutral grain spirits at about $0.53 per proof gallon. *See* ''Economic Feasibility of Ethanol Production from Sugar in the United States,'' *supra* note 1.

[11] *See* Table E; *infra* note 19.

having paid excise tax on their import and then exports the product from bond, and also uses that exportation to seek drawback under 19 U.S.C. 1313(j)(2) of the import tax paid on the first 100 units. The first 100 units of distilled spirits would then have been consumed domestically at 1 percent of the normal tax rate, without increasing domestic production or net exports. Depending on the cost of shipping, firms would have an incentive to route shipments destined for other countries through the United States—without increasing domestic production or exports—to claim double drawback on their U.S. imports. In the analysis, we assume trade re-routing of all distilled spirits from Canada and Mexico bound for non-NAFTA countries is feasible. We also assume that trade re-routing of gin, vodka, and grain alcohol worldwide is feasible, though the analysis does not rely on substantial rerouting of these products.

The following estimates also assume a 7 percent reduction in revenue loss by comparison to the historical data concerning wine due to the Craft Beverage Modernization Act (CBMA), Public Law 115–97, § 13801–13808 (2017). The CBMA provides lower overall effective tax rates for smaller producers than for larger producers. This assessment of the effects of the CBMA is based on the assumption that most double drawback claims would be taken by large multinational firms paying the full rate on marginal imports above the limit identified in the CBMA. The transaction costs involved in drawback support the view that drawback most benefits larger firms that are involved in both exporting and importing.

The following estimates further assume that double drawback of wine, distilled spirits, and beer would grow with real GDP. That is, Treasury assumes that consumption of excise-taxed beverages, and drawback on those taxes, would grow with the overall economy. Treasury uses the Administration's forecast of taxable fuel and tobacco excise tax revenue to estimate change over time. Both of these forecasts decrease slightly over time, consistent with recent trends in excise revenue.[12]

In total, the incentives for firms that deal in distilled spirits, beer, tobacco products, and certain fuels—in addition to the continued double drawback treatment of wine—could cause a revenue loss of $674 million to $3.3 billion on an average annual basis over the next ten years, if double drawback treatment were extended to commodities other than wine and not eliminated.[13]

(c) Wine

In fiscal year 2015, CBP paid $54.9 million in excise tax refunds and had initial tax collections from wine imports of $335 million, according to CBP data.[14] As noted above, the tax as a share of customs value is 5 percent for bottled wine and 25 percent for bulk wine. The estimated takeup rate—that is, the rate of double drawback claims—is 13 percent for bottled imports and 25 percent for bulk imports, demonstrating that tax as a share of value is an important determinant of the takeup rate. Assuming that double drawback continues to grow with real GDP, the current treatment of wine is estimated to cause between $51 million and $69 million in revenue loss to the U.S. Government annually over the next ten years.[15]

(d) Distilled Spirits

With respect to distilled spirits, fiscal year 2016 excise tax revenue from imports was $1.5 billion, according to TTB collections data. A large portion of imports are, however, imported into TTB bond and then are treated as domestic collections. U.S. Census Bureau data suggest actual import excise tax revenue is closer to $2.6 billion.[16] The tax as a share of customs value for distilled spirits—currently $13.50 per proof gallon [17]—is 5 to 8 times higher than it is for wine, creating a significantly greater incentive to export to take advantage of double drawback. Further, as noted above, the tax is much higher than the cost of production for inexpensive distilled spirits.[18] For this reason, Treasury expects strong behavioral responses to generate substitution drawback claims if distilled spirits become eligible for double drawback, including purposeful destruction of inexpensive distilled spirits and routing of goods destined for other countries through the United States when feasible. We estimate that up to 45 percent of imported spirits would be commercially viable predicates for double drawback claims.[19] Varying the projected takeup rate between 25 percent and 75 percent for these claims, annual U.S. Government revenue loss from allowing double drawback on distilled spirits is estimated to range from $312 million to $937 million annually over ten years.

(e) Beer

With respect to beer, fiscal year 2016 excise tax revenue from imports was $542 million, according to TTB collections data. The tax of $18 per barrel is 12.3 percent of the value of imports and 15.5 percent of the value of exports,[20] suggesting firms have a stronger incentive to claim double drawback on beer than bottled wine. However, qualifying, non-NAFTA exports of beer amount to only 4 percent of imports, suggesting limited scope for

[12] Excise Tax Statistics, *supra* note 8. From 2010 to 2016, excise tax revenue for imported beer, wine, and distilled spirits grew much more quickly than revenue for tobacco products or taxable fuels. *See id.*

[13] These estimates are in nominal U.S. dollars, whereas the figures in the Executive Orders 13563 and 12866 analysis are in undiscounted and discounted 2016 U.S. dollars. Because of this difference, only a rough estimate of the total transfers from the rule and this alternate analysis can be determined. This estimate can be determined by adding the revenue losses of extending double drawback to the rule's undiscounted net transfers from the U.S. Government to trade members.

[14] *See id.* Refunds or drawback paid in any given year may be paid for imports made in previous years. The $54.9 million figure is a summation of individual drawback claims from CBP data that are statutorily-protected from public disclosure. TTB publishes the $335 million figure. *See* TTB Statistical Release, ''Tax Collections Cumulative Summary, FY 2015,'' *available at https://www.ttb.gov/statistics/final15.pdf.*

[15] These estimates are slightly different from the wine double drawback estimates shown in Table 49 of the Executive Orders 13563 and 12866 analysis. This is because these estimates are in nominal U.S. dollars, whereas the figures in Table 49 are in undiscounted 2016 U.S. dollars.

[16] Accessed through the USITC DataWeb, *supra* note 7.

[17] 26 U.S.C. 5001(a)(1). The CBMA reduces the excise tax on a portion of imported goods. The estimates reported in this analysis assume the CBMA is extended indefinitely, reducing the revenue loss by roughly 7 percent.

[18] *See supra* note 10.

[19] For the years 2014–2016, vodka, gin, and grain alcohol imports represented 34% of total spirits imports. Because the cost of production for these spirits is so low relative to the tax, we expect a strong behavioral response, including increased exports, trade re-routing, and destruction, such that all imports could qualify for duty drawback. In contrast, brandy, liqueurs, and cordials are relatively high value spirits, making destruction and increased exports less feasible. For these products, we assume that opportunities to claim double drawback are limited by current exports, which amount to 2 percent of current spirits imports. Finally, we assume that all spirits exports from Canada and Mexico to non-NAFTA countries could be re-routed through the United States to take advantage of double drawback. Using United Nations International Trade Statistics data for 2014–2016, we estimate that, at current trade levels, this re-routing would generate double drawback claims for up to 8 percent of US spirits imports. Adding these shares of imports together, without rounding, sums to 45 percent of US imports.

[20] In 2016, the average customs value of imported beer was $145.98 per barrel while the average free alongside ship (FAS) value of exports was $116.06 per barrel. *See* USITC DataWeb, *supra* note 7. The U.S. Census Bureau defines ''customs value'' and ''FAS export value'' in their Guide to Foreign Trade Statistics, § 8, *available at https://www.census.gov/foreign-trade/guide/sec2.html#customs_value.* Treasury uses customs value and FAS value, because data on cost of production are not available.

takeup of double drawback. Varying the projected takeup rate between 10 percent and 30 percent on existing imports and exports, and varying the increase in qualifying exports between 10 percent and 30 percent, annual U.S. Government revenue loss from extending double drawback to beer is estimated to range from $9 million to $28 million annually over ten years.

(f) Tobacco Products

With respect to tobacco products, fiscal year 2016 excise tax revenue on imports was $829 million according to TTB collections data. The tax incentives to claim double drawback are especially strong for tobacco products. For instance, in 2016, the Federal excise tax on a carton of cigarettes was 199 percent of the average customs value of a carton of imported cigarettes and 408 percent of the average export value of a carton of cigarettes exported from the United States based on U.S. Census Bureau trade data.[21] The tax rate by value is about 40 times larger for cigarettes than that for bottled wine, suggesting the incentive to claim drawback on cigarettes is considerably larger than the incentive to claim drawback on wine. Extending the double drawback treatment to tobacco products would create significant incentives to shift production of tobacco products overseas. It would also create a great incentive for importers to contract with domestic producers to match imports and exports for drawback; the incentive would be to import products for domestic sale and export domestically produced cigarettes. Because domestically produced tobacco products account for 95 percent of domestic tobacco consumption, Treasury assumes that tobacco firms would gradually respond by contracting with importers and setting up foreign production facilities. Accounting for this slow ramp-up in drawback claims, Treasury estimates that between 3 percent and 18 percent of excise revenue on tobacco products would be lost due to an extension of double drawback to tobacco products over the next 10 years, or between $332 million and $2.2 billion annually.[22] In the long run, Treasury estimates that U.S. Government revenue losses would be substantially higher, with increasing shifts of domestic production overseas.

(g) Taxable Fuels

Finally, with respect to taxable fuels, current annual excise tax revenue on imports is roughly $2 billion according to U.S. Census Bureau data on imports of gasoline and diesel fuel.[23] Due to the lack of detailed data on fuel imports, differentiating between those importations eligible for drawback under 19 U.S.C. 1313 and those that are not, it is quite difficult to estimate the takeup rate on substitution drawback for taxable fuels. Even a small takeup rate, however, could have a significant economic impact. Assuming, for example, that 1 percent to 5 percent of imported fuel receives double drawback of excise taxes, the U.S. Government revenue loss would range between $20 million and $98 million annually over ten years.

9. Conclusion

This proposed rule would protect the integrity of excise tax revenue collections by ensuring that 19 U.S.C. 1313(j)(2) substitution drawback is not employed to evade the statutory prohibition on using a single exportation as the basis for two drawback claims. It would preclude the filing of substitution drawback claims for excise tax paid on imported merchandise in situations where no excise tax was paid upon the substituted merchandise or limit the amount of drawback allowable to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise, and thus eliminate double drawback. CBP invites comments from interested members of the public on this proposal.

TABLE A—IMPORT SHARES BY VOLUME OF TOTAL U.S. TABLE WINE CONSUMPTION [1]

Year	Imported wine container size [2]		Imported sum
	Two liters or less (bottles)	Over four liters (bulk) [3]	
2004	26.0	0.9	26.9
2005	26.8	1.8	28.6
2006	26.5	3.6	30.1
2007	27.2	3.8	30.9
2008	25.4	4.6	30.0
2009	24.5	8.7	33.2
2010	25.7	6.5	32.2
2011	24.6	7.7	32.3
2012	22.8	12.7	35.5
2013	23.5	8.9	32.4
2014	21.9	7.3	29.2
2015	22.9	6.6	29.5
2016	21.9	6.2	28.1
2004–2016:			
CAGR [4] (Pct)	−1.4	17.1	0.4
Total growth (Pct)	−15.7	567.2	4.5

Sources:
U.S. International Trade Commission, ''Interactive Tariff and Trade DataWeb,'' accessed February 2, 2018.
Alcohol and Tobacco Tax and Trade Bureau, ''Tax Collections,'' accessed March 2, 2018.
1. Total U.S. wine consumption is estimated using gross excise tax collections and tax rates for wine.
2. The ITC website explains that: ''General Imports measure the total physical arrivals of merchandise from foreign countries, whether such merchandise enters consumption channels immediately or is entered into bonded warehouses under Customs custody or from Foreign Trade Zones.''
3. The amount of imported wine in containers between 2 and 4 liters in size is negligible and is omitted from the table.

[21] In 2016, the average customs value of 1,000 imported cigarettes was $25.335 while the average FAS value of 1,000 exported cigarettes was $12.345. *See* USITC DataWeb, *supra* note 6. The Federal excise tax on 1,000 cigarettes is $50.33. 26 U.S.C. 5701(b)(1).

[22] The range of possible outcomes is large, primarily due to uncertainty in the timing of firm responses rather than the magnitude of response. Specifically, Treasury does not know how quickly tobacco companies might set up new or use existing overseas production operations to serve the U.S. market.

[23] Retrieved from USITC DataWeb, *supra* note 7.

4. CAGR is compound annual growth rate.
Note: Wine trade data in the table include Harmonized Tariff Schedule (HTS) 10-digit imports codes 2204215005, 2204215015, 2204215015, 2204215025, 2204215030, 2204215035, 2204215040, 2204215045, 2204215046, 2204215050, 2204215055, 2204215060, and 2204296000.

TABLE B—VOLUME OF U.S. TOTAL WINE EXPORTS AND GENERAL IMPORTS BY CONTAINER SIZE (ALL COUNTRIES)

[Millions of liters of wine with not over 14 percent alcohol by volume]

Year	Total exports [1]		Exported sum	Pct share in large containers	General imports [2]		Imported sum	Pct share in large containers
	Container	Size			Container	Size		
	Two liters or less (bottles)	Over two liters (bulk)			Two liters or less (bottles)	Over four liters (bulk) [3]		
2004	259	68	327	20.8	556	20	576	3.5
2005	177	100	278	36.2	602	40	642	6.2
2006	189	138	327	42.3	615	84	699	12.0
2007	207	169	376	45.0	661	92	753	12.2
2008	209	201	410	49.0	623	112	735	15.2
2009	177	171	349	49.2	612	218	830	26.3
2010	171	196	368	53.4	658	168	826	20.3
2011	185	190	375	50.8	673	211	884	23.9
2012	196	167	364	46.1	659	365	1024	35.6
2013	207	172	379	45.4	671	255	926	27.5
2014	195	176	371	47.5	655	219	874	25.1
2015	205	180	385	46.7	685	197	882	22.3
2016	171	175	345	50.6	685	195	880	22.2
2004–2016:								
CAGR [4] (Pct)	−3.4	8.2	0.4	7.7	1.8	20.9	3.6	16.7
Total growth (Pct)	−34.1	156.6	5.5	143.2	23.2	875.0	52.8	538.2

Source: U.S. International Trade Commission, ''Interactive Tariff and Trade DataWeb,'' accessed February 2, 2018.
1. The ITC describes total exports as ''Domestic exports plus foreign exports'' on their website.
2. The ITC website explains that ''General Imports measure the total physical arrivals of merchandise from foreign countries, whether such merchandise enters consumption channels immediately or is entered into bonded warehouses under Customs custody or from Foreign Trade Zones.''
3. The amount of imported wine in containers between 2 and 4 liters in size is negligible and is omitted from the table.
4. CAGR is compound annual growth rate.
Note: Wine trade data in the table include Harmonized Tariff Schedule (HTS) 10-digit exports codes 2204214000 and 2204290020. HTS imports codes used include 2204215005, 2204215015, 2204215025, 2204215030, 2204215035, 2204215040, 2204215045, 2204215046, 2204215050, 2204215055, 2204215060, and 2204296000.

TABLE C—VALUE OF U.S. TOTAL WINE EXPORTS AND GENERAL IMPORTS BY CONTAINER SIZE (ALL COUNTRIES)

[Millions of U.S. dollars of wine with not over 14 percent alcohol by volume]

Year	Total exports, free alongside ship (FAS) [1]		Exported sum	Pct share in large containers	General imports, general customs value [2]		Imported sum	Pct share in large containers
	Container	Size			Container	Size		
	Two liters or less (bottles)	Over two liters (bulk)			Two liters or less (bottles)	Over four liters (bulk) [3]		
2004	600	82	682	12.0	2,658	19	2,677	0.7
2005	452	91	543	16.8	2,891	35	2,926	1.2
2006	616	121	737	16.4	3,153	67	3,220	2.1
2007	635	151	786	19.2	3,494	77	3,571	2.2
2008	645	182	827	22.0	3,511	114	3,625	3.1
2009	549	202	751	26.9	3,029	157	3,186	4.9
2010	702	212	914	23.2	3,143	149	3,292	4.5
2011	869	213	1,082	19.7	3,420	225	3,645	6.2
2012	905	199	1,104	18.0	3,458	400	3,858	10.4
2013	1,037	235	1,272	18.5	3,652	281	3,933	7.1
2014	921	240	1,161	20.7	3,708	242	3,950	6.1
2015	1,035	227	1,262	18.0	3,709	202	3,911	5.2
2016	1,050	205	1,255	16.3	3,779	217	3,996	5.4
2004–2016:								
CAGR [4] (Pct)	4.8	7.9	5.2	2.6	3.0	22.5	3.4	18.5
Total growth (Pct)	75.0	150.0	84.0	35.9	42.2	1,042.1	49.3	665.1

Source: U.S. International Trade Commission, ''Interactive Tariff and Trade DataWeb,'' accessed February 15, 2018.
The ITC describes total exports as ''Domestic exports plus foreign exports'' on their website. The U.S. Census Bureau provides definitions of FAS export value and customs value in their Guide to Foreign Trade Statistics, § 8, *available at https://www.census.gov/foreign-trade/guide/sec2.html#customs_value.*
1. The ITC website explains that ''General Imports measure the total physical arrivals of merchandise from foreign countries, whether such merchandise enters consumption channels immediately or is entered into bonded warehouses under Customs custody or from Foreign Trade Zones.''

2. The amount of imported wine in containers between 2 and 4 liters in size is negligible and is omitted from the table.
3. CAGR is compound annual growth rate.
Note: Wine trade data in the table include Harmonized Tariff Schedule (HTS) 10-digit exports codes 2204214000 and 2204290020. HTS imports codes used include 2204215005, 2204215015, 2204215025, 2204215030, 2204215035, 2204215040, 2204215045, 2204215046, 2204215050, 2204215055, 2204215060, and 2204296000.

TABLE D—VOLUME OF U.S. TOTAL WINE EXPORTS [1] BY DESTINATION

[Millions of liters of wine with not over 14 percent alcohol by volume]

Year	Exports to NAFTA countries	Pct share in large containers [2]	Exports to non-NAFTA countries	Pct share in large containers
2004	37	56.7	290	16.2
2005	35	50.7	243	34.1
2006	40	38.0	287	42.9
2007	50	37.2	325	46.2
2008	55	39.8	354	50.5
2009	48	29.4	301	52.3
2010	42	33.3	325	56.0
2011	46	33.4	329	53.2
2012	53	30.9	311	48.6
2013	50	18.0	330	49.6
2014	57	22.6	314	52.0
2015	61	27.0	324	50.4
2016	55	25.6	291	55.2
2004–2016:				
CAGR [3] (Pct)	3.3	−6.4	0.0	10.8
Total growth (Pct)	47.6	−54.8	0.2	240.6

Source: Treasury calculations based on import data from U.S. International Trade Commission, ''Interactive Tariff and Trade DataWeb,'' accessed March 2, 2018.
1. The ITC website describes total exports as ''Domestic exports plus foreign exports.''
2. Large containers is defined here as containers over 2 liters in size.
3. CAGR is compound annual growth rate.
Note: Wine trade data in the table include Harmonized Tariff Schedule (HTS) 10-digit exports codes 2204214000 and 2204290020.

TABLE E—AVERAGE VALUE OF U.S. TOTAL WINE EXPORTS AND GENERAL IMPORTS AND EFFECTIVE TAX RATES BY CONTAINER SIZE (ALL COUNTRIES)

[U.S. dollars per liter of wine with not over 14 percent alcohol by volume]

Year	Average value per liter of total exports [1]				Average value per liter of general imports [2]			
	Two liters or less (bottles)		Over two liters (bulk)		Two liters or less (bottles)		Over four liters (bulk) [3]	
	Value per liter [4]	Tax/value (pct)	Value per liter	Tax/value (pct)	Value per liter	Tax/value (pct)	Value per liter	Tax/value (pct)
2004	2.3	12.2	1.2	23.5	4.8	5.9	1.0	29.8
2005	2.5	11.1	0.9	31.2	4.8	5.9	0.9	32.3
2006	3.3	8.7	0.9	32.2	5.1	5.5	0.8	35.4
2007	3.1	9.2	0.9	31.6	5.3	5.3	0.8	33.8
2008	3.1	9.1	0.9	31.2	5.6	5.0	1.0	27.8
2009	3.1	9.1	1.2	24.0	4.9	5.7	0.7	39.2
2010	4.1	6.9	1.1	26.2	4.8	5.9	0.9	31.9
2011	4.7	6.0	1.1	25.3	5.1	5.6	1.1	26.5
2012	4.6	6.1	1.2	23.8	5.2	5.4	1.1	25.8
2013	5.0	5.6	1.4	20.7	5.4	5.2	1.1	25.7
2014	4.7	6.0	1.4	20.7	5.7	5.0	1.1	25.6
2015	5.0	5.6	1.3	22.4	5.4	5.2	1.0	27.6
2016	6.1	4.6	1.2	24.1	5.5	5.1	1.1	25.4
2004–2016:								
CAGR [5] (Pct)	8.5	−7.8	−0.2	0.2	1.2	−1.2	1.3	−1.3
Total growth (Pct)	165.7	−62.4	−2.6	2.6	15.4	−13.3	17.1	−14.6

Source: U.S. International Trade Commission, ''Interactive Tariff and Trade DataWeb,'' accessed February 2–15, 2018.
1. The ITC describes total exports as ''Domestic exports plus foreign exports'' on their website.
2. The ITC website explains that ''General Imports measure the total physical arrivals of merchandise from foreign countries, whether such merchandise enters consumption channels immediately or is entered into bonded warehouses under Customs custody or from Foreign Trade Zones.''
3. The amount of imported wine in containers between 2 and 4 liters in size is negligible and is omitted from the table.
4. The tax as a share of value is approximated by dividing the most common tax rate (28.266 cents per liter) by the average customs value per liter.
5. CAGR is compound annual growth rate.
Note: Wine trade data in the table include Harmonized Tariff Schedule (HTS) 10-digit exports codes 2204214000 and 2204290020. HTS imports codes used include 2204215005, 2204215015, 2204215025, 2204215030, 2204215035, 2204215040, 2204215045, 2204215046, 2204215050, 2204215055, 2204215060, and 2204296000.

III. Explanation of Proposed Regulations

The following proposed regulatory amendments are generally based on 19 U.S.C. 1313, including the new requirements, timeframes, and related operational decisions necessitated by TFTEA. When proposed regulatory language is based, at least in part, on authority other than 19 U.S.C. 1313, these instances are noted below.

A. Proposed New Part 190

CBP based the regulatory structure of the proposed new part 190 on the current part 191 in order to ease the transition for drawback practitioners by attempting to ensure, wherever possible, that the numerical regulations in each part correspond with each other. In some regulations, while the name of a section has changed, the content of the proposed section generally aligns with the content of the corresponding section in part 191. For example, § 191.10, Certificate of delivery, deals with transfers of merchandise and requirements related to certificates of delivery as evidence of the transfers. However, proposed § 190.10, Transfer of merchandise, also deals with transfers of merchandise but it is not called ''certificate of delivery'' because TFTEA eliminated certificates of delivery (as well as certificates of manufacture and delivery). In other instances, it was necessary to reserve a section (*e.g.,* § 190.76, Landing certificate) if the corresponding section in part 191 was no longer required or to add a new section (*e.g.,* § 190.63, Liability for drawback claims) if there was no corresponding section in part 191. However, for the most part, the regulations in proposed part 190 directly correspond with those in part 191. Accordingly, when describing the proposed regulations, comparisons to the corresponding section in part 191 are included to facilitate the transition to TFTEA-Drawback. Generally, these comparisons will note the major differences between the proposed regulation and the corresponding regulation in part 191 (such as in regulations dealing with substitution which is now generally based on the HTSUS), or, in many cases, will indicate that there are no differences (other than the references being to sections in part 191) or that the differences are minor. These minor differences will usually include grammatical or stylistic edits (for example, changing ''shall'' to ''will'' or ''must'') or nomenclature changes (for example, changing ''Customs'' to ''CBP'' such as in ''CBP custody'' or ''CBP supervision'').

New part 190 is drafted with a scope section and a section regarding claims filed under NAFTA followed by 19 subparts: General Provisions; Manufacturing Drawback; Unused Merchandise Drawback; Rejected Merchandise; Completion of Drawback Claims; Verification of Claims; Exportation and Destruction; Liquidation and Protest of Drawback Entries; Waiver of Prior Notice of Intent to Export; Accelerated Payment of Drawback; Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured From Domestic Tax-Paid Alcohol; Supplies for Certain Vessels and Aircraft; Meats Cured With Imported Salt; Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Ownership and Account; Foreign-Built Jet Aircraft Engines Processed in the United States; Merchandise Exported From Continuous CBP Custody; Distilled Spirits, Wines, or Beer Which Are Unmerchantable or Do Not Conform to Sample or Specifications; Substitution of Finished Petroleum Derivatives; Merchandise Transferred to a Foreign Trade Zone From CBP Custody; Drawback Compliance Program.

Section 190.0 briefly describes the scope of the new proposed part 190 dealing with drawback as amended by TFTEA.

Section 190.0a states that claims involving NAFTA are provided for in part 181. This section contains only grammatical changes from the corresponding section in part 190.

Subpart A—General Provisions

Section 190.1 briefly describes the authority of the Commissioner of CBP to prescribe, and of the Secretary of the Treasury to approve, rules and regulations regarding drawback. It is proposed to amend the corresponding section in part 191 as well as to identify Treasury Department Order Number 100–16 and DHS Delegation Order 7010.3 as sources of authority. *See* 19 CFR part 0.

Section 190.2 lists definitions used throughout the proposed part 190. This section differs from the corresponding section in part 191 in that the definitions for certificate of delivery, certificate of manufacture and delivery, and commercially interchangeable merchandise have been removed and the definitions for the following terms were added: Bill of materials; document; drawback office; formula; intermediate party; per unit averaging; schedule B; sought chemical element; and wine.

Section 190.3 provides information regarding the duties, taxes, and fees subject or not subject to drawback. This proposed regulation differs from the corresponding regulation in part 191 in that it generally provides for refunds of duties, taxes, and fees based on the changes to 19 U.S.C. 1313(l) stemming from TFTEA. This proposed regulation differs from the current corresponding regulation in part 191 by allowing drawback on the merchandise processing fee (MPF) generally, whereas 19 CFR 191.3(a)(4) limits drawback on MPF to situations only involving claims under 19 U.S.C. 1313(j) and 19 U.S.C. 1313(p)(2)(A)(iii) or (iv). Consistent with the Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108–429), which amended 19 U.S.C. 1313 to allow, inter alia, harbor maintenance taxes (HMT) refunds, this proposed regulation also allows drawback on HMT for claims under the provisions which provide for drawback of tax.[24]

Similarly, but subject to the limitations under 19 U.S.C. 1313 prior to being amended by TFTEA, this document proposes to update 19 CFR 191.3 by creating a new paragraph (a)(5) to allow drawback on HMT, but limited to situations involving only claims under 19 U.S.C. 1313(j) and 19 U.S.C. 1313(p)(2)(A)(iii) or (iv). In addition, 19 CFR 191.3(b)(1) is revised to otherwise prohibit HMT refunds except under the provisions specified in proposed new paragraph (a)(5). Relatedly, section 191.3 is retitled as ''duties, taxes, and fees subject or not subject to drawback'' for clarifying purposes.

Section 190.4 provides information regarding drawback and merchandise in which the U.S. Government has an interest. This section replicates the corresponding section in part 191.

Section 190.5 states that drawback is available on goods shipped to Guantanamo Bay and that drawback under 1313(j)(1) is permitted on merchandise shipped to certain insular possessions and trust territories. This section differs from the corresponding section in the current part 191 because the Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108–429), amended 19 U.S.C. 1313 by adding paragraph (y) to allow drawback under 19 U.S.C. 1313(j)(1) on entries shipped from the customs territory of the United States to the U.S. Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, and Palmyra Island.

[24] Title 19 of the Code of Federal Regulations may also refer to the harbor maintenance tax as the harbor maintenance fee (HMF).

Accordingly, while this 2004 change was not previously made in part 191, this document proposes to clarify this modification in proposed § 190.5 and in existing § 191.5. Further, consistent with proposed § 190.5, it is proposed to amend § 191.5 to clarify that drawback is not allowable on merchandise shipped to Puerto Rico from elsewhere in the customs territory of the United States because Puerto Rico is part of the customs territory of the United States (*see* 19 CFR 101.1).

Section 190.6 specifies who has the authority to sign or electronically certify drawback documents. This section differs from the corresponding section in part 191 in that it provides for electronic signatures, removes references to Certificates of Delivery and Certificates of Manufacture and Delivery, and includes additional references to bill of materials and formulas.

Section 190.7 provides information on general manufacturing drawback rulings, states that the process to modify these rulings is the same as provided for in § 190.8, and also clarifies the longstanding CBP procedures for the modification of these rulings. This section differs from the corresponding section in part 191 in that it makes TFTEA-conforming changes, such as adding the requirement to provide the 8-digit HTSUS number, and it contains grammatical and nomenclature changes.

Section 190.8 provides information on specific manufacturing drawback rulings and establishes a process to modify these rulings to comply with TFTEA-Drawback requirements by providing the ability to annotate the ruling with the 8-digit HTSUS numbers for rulings issued prior to February 24, 2018, if accompanied by the relevant certification. This section differs from the corresponding section in part 191 in that it makes TFTEA-conforming changes, such as adding the requirement to provide the 8-digit HTSUS number, and it contains grammatical and nomenclature changes.

Section 190.9 provides information regarding agency relationships detailing how the owner of the identified merchandise, the designated imported merchandise, and/or the substituted merchandise used to produce an exported article may employ another person to do part, or all, of the manufacture or production under 19 U.S.C. 1313(a) or (b). This section is similar to the corresponding section in part 191; however, it updates the language by removing references to Certificates of Delivery and includes the requirement to provide the 10-digit HTSUS number.

Section 190.10 provides information regarding documenting and maintaining records regarding transfers of merchandise. This section contains significant differences specific to TFTEA-Drawback, from the corresponding section in part 191.

Section 190.11 provides information on the valuation of the designated imported merchandise for drawback claims, as well as for the application of the ''lesser of'' rules for substitution claims (*i.e.,* for exported or destroyed merchandise and articles, as well as substituted merchandise used in manufacturing). The corresponding regulation in part 191 deals with tradeoff, which was provided for in 19 U.S.C. 1313(k) prior to the TFTEA amendments. TFTEA deleted the provision that authorized tradeoff in 19 U.S.C. 1313(k) and replaced it with an unrelated new provision establishing joint and several liability for drawback claims.

Section 190.12 provides information regarding situations when a claimant files under an incorrect provision and this section states that the claim may be deemed filed pursuant to any other provision if it is determined that drawback is allowable under that provision but not under the provision as originally filed. With the exception of cross-references, this section is generally unchanged from the corresponding section in part 191.

Section 190.13 states that drawback is available under 19 U.S.C. 1313(q) on imported packaging material when used to package or repackage merchandise or articles exported or destroyed pursuant to certain other provisions. This section differs from the corresponding section in part 191 due to grammatical changes.

Section 190.14 provides for identification of merchandise or articles through accounting methods in situations not involving substitution, which remain the same as in part 191 and are based on a standard of fungibility. This section differs from the corresponding section in part 191 regarding the five-year time period and generally due to minor clarifying edits as well as grammatical and nomenclature changes.

Section 190.15 provides general information regarding recordkeeping requirements. With the exception of the recordkeeping time period, this section is unchanged from the corresponding section in part 191.

Subpart B Contains Requirements Specific to Manufacturing Drawback Claims

Section 190.21 provides the general rule regarding direct identification manufacturing drawback claims. This section differs from the corresponding regulation in part 191 in that it incorporates changes such as the amount of drawback provided for and the limitation of drawback of duties regarding flour or by-products of imported wheat.

Section 190.22 provides the general rule regarding substitution manufacturing drawback claims. This section differs from the corresponding regulation in part 191 in that it incorporates changes to 19 U.S.C. 1313(b) brought about in Section 906 of TFTEA such as the 8-digit HTSUS substitution standard and provides for the ''lesser of'' rule as it applies to TFTEA-Drawback and also contains grammatical and nomenclature changes. This section also includes language regarding the preclusion of claiming Federal excise taxes discussed in detail in the section titled *Federal Excise Tax and Substitution Drawback Claims.*

Section 190.23 details the methods and requirements for claiming drawback specific to manufacturing claims. This section differs significantly from the corresponding section in part 191 in that it is titled differently, it provides for a different methodology for claiming drawback (relative value) and it is slightly reordered.

Section 190.24 directs parties involved in drawback-related transactions to § 190.10, the general section dealing with transfers of merchandise. This section differs from the corresponding section in part 191 by referencing the appropriate section in the proposed part dealing with transfers of merchandise.

Section 190.25 directs parties involved in the destruction of merchandise for drawback-related transactions to § 190.71, which contains the procedures for destroying merchandise under CBP supervision. This section is nearly identical to the corresponding section in part 191.

Section 190.26 provides information regarding recordkeeping requirements generally and specifically requires documents enabling CBP to trace the articles manufactured or produced from importation, through any transfers, to exportation or destruction. This section is substantially similar to the corresponding section in part 191 but it differs due to certain grammatical and nomenclature changes and it contains TFTEA-based modifications such as requiring the 8-digit HTSUS number rather than referencing same kind and quality.

Section 190.27 provides general information on the time limitations regarding manufacturing drawback. This section is substantially similar to the corresponding section in part 191 but it differs in that it contains certain grammatical and nomenclature changes and TFTEA-based modifications such as changing the time period to 5 years after importation, from the 3-year time period after date of receipt by the manufacturer or producer at the factory in § 191.27.

Section 190.28 details the parties entitled to file a claim in situations involving manufacturing drawback. This section differs from the corresponding section in part 191 due only to a few grammatical changes.

Section 190.29 requires a claimant filing a manufacturing drawback claim to make certifications regarding the availability of the applicable bill of materials or formula including the HTSUS subheading number(s) and the quantities of merchandise. This regulation is new and does not have a corresponding regulation in part 191; however, the type of documentation covered by this certification has generally been required by CBP as part of a manufacturing drawback claim.

Subpart C Provides Specific Requirements Dealing With Unused Merchandise Drawback

Section 190.31 provides the general rule regarding direct identification unused merchandise drawback claims. This section differs from the corresponding regulation in part 191 in that it incorporates TFTEA-based changes to 19 U.S.C. 1313(j)(1) such as the 5-year period for filing a claim and it contains grammatical and nomenclature changes.

Section 190.32 provides the general rule regarding substitution unused merchandise drawback claims. This section differs from the corresponding regulation in part 191 in that it incorporates TFTEA-based changes to 19 U.S.C. 1313(j)(2) such as the 5-year period for filing a claim and HTSUS-based substitution determinations, provides for the ''lesser of'' rule regarding allowable refunds, and contains grammatical and nomenclature changes. This section also explains the special substitution rule for wine, which is not provided for in the corresponding section of part 191, and includes language regarding the preclusion of claiming Federal excise taxes discussed in detail in the section titled *Federal Excise Tax and Substitution Drawback Claims.* As discussed further below in the section titled *Amendments Regarding Federal Excise Tax and Substitution Drawback Claims,* this preclusion is also proposed as an amendment to § 191.32.

Section 190.33 details the parties entitled to claim in situations regarding unused merchandise drawback. This section differs from the corresponding regulation in part 191 in that it incorporates TFTEA-based changes such as referencing records kept in the normal course of business; it does not reference terms such as commercially interchangeable and certificate of delivery, which were eliminated for TFTEA-Drawback; and it contains grammatical and nomenclature changes.

Section 190.34 directs parties involved in drawback-related transactions to § 190.10, the general section dealing with transfers of merchandise. This section differs from the corresponding section in part 191 in that it merely directs to the general section dealing with transfers of merchandise rather than detailing specifics.

Section 190.35 contains specific instructions regarding the required notice of intent to export, destroy, or return merchandise, and the process regarding CBP's determination to examine merchandise. The process described in this section replicates the process as laid out in the corresponding section in part 191, with only grammatical and nomenclature changes.

Section 190.36 contains information regarding obtaining a one-time waiver of the requirement to provide notice of intent to export. The process described in this section replicates the process as laid out in the corresponding section in part 191.

Section 190.37 directs parties involved in the destruction of merchandise for drawback claims to § 190.71, which contains the procedures for destroying merchandise under CBP supervision. The process described in this section replicates the process as laid out in the corresponding section in part 191 and contains only one nomenclature change.

Section 190.38 provides information regarding recordkeeping requirements generally and specifically requires documents enabling CBP to trace the merchandise from importation, through any transfers, to exportation or destruction. This section is substantially similar to the process as laid out in the corresponding section in part 191 and contains grammatical and nomenclature changes.

Subpart D Provides Specific Requirements Regarding Rejected Merchandise Drawback Under 19 U.S.C. 1313(c)

Section 190.41 provides for drawback claims under 19 U.S.C. 1313(c) regarding rejected merchandise involving goods that do not conform to sample or specifications, were shipped without consent of the consignee, or determined to be defective at the time of importation. This section differs from the corresponding section in part 191 in that it contains nomenclature changes and includes additional language regarding goods sold at retail and returned, removes certain language regarding satisfactory evidence and includes language regarding the amount of drawback allowable.

Section 190.42 sets forth the general procedures for filing, documenting, and certifying claims under rejected merchandise drawback. This regulation differs from the corresponding regulation in part 191 in that it includes the expanded time frame of 5 years from the date of importation for filing claims and directs claimants to § 190.71 for procedures regarding the destruction of merchandise under CBP supervision. This regulation also differs from the current corresponding regulation in part 191 (at § 191.42(a)), which requires that the merchandise be in CBP custody prior to exportation or destruction. This was rendered obsolete by the Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108–429), which removed the requirement that the merchandise be in CBP custody prior to exportation or destruction. Accordingly, it is proposed to update § 191.42(a) as well.

Section 190.43 informs claimants of the possibility of filing a direct identification unused merchandise claim under 19 U.S.C. 1313(j)(1) in lieu of a rejected merchandise claim, to the extent that the merchandise qualifies. This section replicates the corresponding section in part 191; however, the section title, unused merchandise drawback claim, differs from the corresponding section title in part 191, which is unused merchandise claim.

Section 190.44 is reserved. The corresponding regulation in part 191 directs claimants to § 191.71 for the procedures for destroying merchandise under CBP supervision. This section is unnecessary as a stand-alone regulation because the citation to § 190.71, dealing with destruction under CBP supervision, is included in § 190.42, as discussed above.

Section 190.45 is a new regulation regarding the special rule for substitution for returned retail merchandise, a subset of rejected merchandise provided for in 19 U.S.C. 1313(c). This section includes requirements that have been in effect since 2004, when the Miscellaneous Trade and Technical Corrections Act of

2004 (Pub. L. 108–429), amended 19 U.S.C. 1313(c) regarding drawback on returned items sold at the retail level. Specifically, this regulation provides for a special rule going beyond mere HTSUS interchangeability for substitution involving returned retail merchandise by requiring the specific product identifier to be the same for both the returned retail merchandise and the substituted exported or destroyed merchandise (*e.g.,* SKU or part number). Therefore, it is proposed to add a new § 191.45 as well.

Subpart E Deals With the Completion of Drawback Claims

Section 190.51 provides information regarding what constitutes a complete drawback claim and delineates those supporting documents that must be uploaded to complete a claim. This proposed section explains the requirement that the successful electronic transmission of drawback claims in the CBP-authorized EDI system includes upload of supporting documentation. This section, at 190.51(a)(4), includes the prohibition against designating imported merchandise from a line item on an entry summary as part of a TFTEA-Drawback substitution claim under part 190 if any other merchandise covered on that entry summary has been designated as the basis of a claim under part 191 (and the corresponding regulation in part 191 is similarly amended at 191.51(a)(3)). This section also provides information regarding the official date of filing, calculation of refunds relative to drawback-eligible duties, taxes, and fees, as well as information regarding the reporting of the HTSUS classifications and Department of Commerce Schedule B commodity numbers applicable to imported, substituted, exported, and destroyed merchandise and articles. This section also differs from the corresponding section in part 191 due to corrections of clerical errors in (b)(2)(i) regarding the mathematical calculations included in the example.

Section 190.52 concerns rejecting, perfecting, or amending drawback claims, including the applicable timeframes and limitations. This section differs from the corresponding section in part 191 in that it includes the TFTEA-based 5-year deadline and includes certain grammatical and nomenclature changes.

Section 190.53 details CBP's authority to require claimants to restructure claims if necessary to foster administrative efficiency. This section differs from the corresponding section in part 191 due only to nomenclature changes.

Subpart F Deals With the Verification of Drawback Claims

Section 190.61 provides information regarding the verification of drawback claims, including how verification is done and its impact on liquidation. This section differs from the corresponding section in part 191 slightly due to simplification of the language related to the electronic environment for TFTEA-Drawback claims and grammatical and nomenclature changes.

Section 190.62 provides information regarding criminal and civil penalties related to drawback claims. This section replicates the corresponding section in part 191.

Section 190.63 is a new regulation detailing the joint and several liability of the importer of the merchandise designated as the basis of a drawback claim and the party claiming drawback.

Subpart G Deals With the Exportation and Destruction of Articles Involved in Drawback Claims

Section 190.71 provides procedures and requirements regarding obtaining drawback on articles destroyed under CBP supervision. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes.

Section 190.72 provides requirements regarding proof of export in drawback claims. This section differs from the corresponding section in part 191 in that it lists the required summary data for establishing exportation and references certain supporting documents to prove export.

Section 190.73 states that records kept through an electronic export system of the United States Government may be considered as actual proof of exportation only if CBP has officially approved the use of that electronic export system as proof of compliance. The corresponding regulation in part 191 provided information regarding export summary procedures.

Section 190.74 provides information regarding exportation by mail and how to claim drawback. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes.

Section 190.75 provides information regarding exportation by the U.S. Government and how to claim drawback. This section differs slightly from the corresponding section in part 191 due to grammatical changes and it does not contain the reference to section 191.73, which in part 191 provided detailed information on export summary procedures (the relevant data elements from the export summary are now incorporated into the drawback entry summary, as provided for in 19 CFR 190.51(a)).

Section 190.76 is reserved as corresponding section 191.76 provides information regarding landing certificates, which are now obsolete.

Subpart H Deals With the Liquidation and Protest of Drawback Entries

Section 190.81 provides information regarding the liquidation of drawback claims. The Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108–429), amended 19 U.S.C. 1504 to expressly impose limitations on the liquidation of drawback entries. Pursuant to this 2004 amendment, unless a claim for drawback is extended or suspended, an entry or claim for drawback not liquidated within 1 year from the date of entry or claim will be deemed liquidated at the drawback amount asserted at the time of entry or claim. Accordingly, this document in § 190.81 and in § 191.81 proposes to clarify this 2004 modification regarding drawback claims and deemed liquidations.

Section 190.82 specifies who is entitled to claim drawback. This section differs from the corresponding section in part 191 due only to grammatical changes.

Section 190.83 specifies who is entitled to receive drawback payments. This section replicates the corresponding section in part 191.

Section 190.84 provides information regarding protest procedures involving drawback claims. This section differs from the corresponding section in part 191 due only to a grammatical change.

Subpart I Deals With Applications for Privileges Involving Drawback

Section 190.91 provides procedures regarding applying for and obtaining the privilege of waiver of prior notice of intent to export. This section differs from the corresponding section in part 191 in that it references the need to meet the standard for substitution rather than using the term commercially interchangeable, it discusses grandfathering in existing privilege holders relative to TFTEA-based changes, and it contains grammatical and nomenclature changes.

Section 190.92 provides procedures regarding applying for and obtaining the privilege of accelerated payment in which payment of drawback claims may be obtained prior to liquidation. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes.

Section 190.93 provides for the combined privileges of waiver of prior notice and accelerated payment and states that applications may be for one privilege, both privileges separately, or both privileges in a combined application. This section replicates the corresponding section in part 191.

Subpart J Deals With Internal Revenue Taxes on Flavoring Extracts and Medicinal or Toilet Preparations.

In addition to the proposed regulations described immediately below in subpart J (§§ 190.101—190.106), the Department of the Treasury and CBP are also considering transferring the administration of drawback refunds provided for in subpart J from CBP to the Alcohol and Tobacco Tax and Trade Bureau (TTB). This part of the law solely involves drawback for the export of domestic products, and such a transfer would place with the agency with responsibility for taxation of domestic products. It would also enable exporters of flavoring extracts and medicinal or toilet preparations to claim the full amount of drawback available at a single agency. CBP and TTB would greatly appreciate comments on this proposal.

Section 190.101 states that 19 U.S.C. 1313(d) provides for drawback for the refund 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. This section differs from the corresponding section in part 191 due only to grammatical changes.

Section 190.102 provides that provisions relating to direct identification drawback (contained in subpart B of this part) will apply to claims for drawback filed 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. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes and in paragraph (e), which states that the time period for completing claims is three years from the date of export.

Section 190.103 details additional requirements in situations where a declaration of the manufacturer showing whether a claim has been or will be filed by the manufacturer with the regional Director, National Review Center, TTB, is necessary. TTB was previously referred to as the Bureau of Alcohol, Tobacco and Firearms. This regulation has been updated throughout for accuracy, including updating the statutory citations to 26 U.S.C. 5111–5114, dealing with the Internal Revenue Code. This section also differs from the current corresponding section in part 191 due to grammatical and nomenclature changes. For the same reasons detailed here, it is proposed to update § 191.103 as well.

Section 190.104 provides information regarding required certificates involving drawback and TTB. This regulation has been updated for accuracy because, among other things, the relevant TTB Form (5100.4), was updated in November of 2015. This section also differs from the current corresponding section in part 191 due to grammatical and nomenclature changes. It is proposed to update that section, § 191.104, as well.

Section 190.105 provides that the drawback office must ascertain the final amount of drawback due by reference to the specific manufacturing ruling under which drawback was claimed. This section differs from the corresponding section in part 191, which requires that the final amount be made in reference to the certificate of manufacture and delivery, which is no longer required in TFTEA-Drawback.

Section 190.106 provides for the limitation of drawback available in situations in which the declaration required by § 190.103 of this subpart shows that a claim has been or will be filed and it states that drawback may not be granted absent receipt from TTB of a copy of TTB Form 5100.4 (Certificate of Tax-Paid Alcohol). This section also differs from the current corresponding section in part 191 due to grammatical and nomenclature changes regarding TTB. It is proposed to update that section, § 191.106, as well.

Subpart K Deals With Supplies for Certain Vessels and Aircraft

Section 190.111 states that 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. This section replicates the corresponding section in part 191.

Section 190.112 provides procedures regarding obtaining drawback in situations involving supplies for certain vessels and aircraft and states that the provisions of this subpart will override other conflicting provisions of this part. This section differs from the corresponding section in part 191 due to TFTEA-based changes, such as the 5-year time period for filing claims, and due to grammatical and nomenclature changes.

Subpart L Deals With Meats Cured With Imported Salt

Section 190.121 states that 19 U.S.C. 1313(f) provides for drawback allowance on meats cured with imported salt. This section replicates the corresponding section in part 191.

Section 190.122 provides procedures regarding obtaining drawback in situations involving meats cured with imported salt. This section differs from the corresponding section in part 191 in that the organizational structure was changed because paragraph (b), regarding modifying a paper form, was removed, and grammatical changes have been made.

Section 190.123 provides that drawback will be refunded in aggregate amounts of not less than $100 and will not be subject to the retention of 1 percent of duties paid for claims involving meats cured with imported salt. This section differs from the corresponding section in part 191 due to grammatical changes.

Subpart M Deals With Materials for Construction and Equipment for Vessels and Aircraft for Foreign Ownership and Account

Section 190.131 states that 19 U.S.C. 1313(g) provides for drawback on materials for construction and equipment for vessels and aircraft for foreign ownership and account. This section replicates the corresponding section in part 191.

Section 190.132 states that other provisions of this part relating to direct identification manufacturing drawback will apply to claims for drawback filed under 19 U.S.C. 1313(g) and this subpart insofar as applicable to and not inconsistent with the provisions of this subpart. This section differs from the corresponding section in part 191 due to grammatical changes.

Section 190.133 provides an explanation of terms specific to this subpart dealing with drawback on materials for construction and equipment for vessels and aircraft for foreign ownership and account. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes.

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

Section 190.141 states that 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. This section replicates the corresponding section in part 191.

Section 190.142 states that other provisions of this part relating to direct identification manufacturing drawback will apply to claims for drawback filed under 19 U.S.C. 1313(h) and this subpart insofar as applicable to and not inconsistent with the provisions of this subpart. This section differs from the corresponding section in part 191 due to a grammatical change.

Section 190.143 provides specifics relating to the filing of entry and the contents of the entry regarding claims filed under this subpart. This section differs from the corresponding section in part 191 by removing the reference to CBP Form 7551 (as this data will be submitted through ACE) and due to grammatical changes.

Section 190.144 states that drawback under this subpart will be refunded in aggregate amounts of not less than $100 and will not be subject to the deduction of 1 percent of duties paid. This section differs from the corresponding section in part 191 due to grammatical changes.

Subpart O Deals With Merchandise Exported From Continuous CBP Custody

Section 190.151 states that 19 U.S.C. 1557(a) provides for drawback on merchandise upon which duties have been paid and which has remained continuously in bonded warehouse or otherwise in CBP custody for a specified period of time, when exported to certain locations. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes.

Section 190.152 provides specified exceptions for when drawback will be allowed on merchandise released from CBP custody. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes.

Section 190.153 provides information regarding when merchandise is considered in continuous CBP custody in certain scenarios. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes.

Section 190.154 provides information regarding filing a direct export entry or entry for merchandise transported to another port for exportation. This section differs from the corresponding section in part 191 by not requiring the filing of CBP Form 7551 (as the data will be transmitted through ACE) and due to grammatical and nomenclature changes.

Section 190.155 states that the regulations in 19 CFR part 18 will be followed to the extent possible when merchandise is withdrawn from a warehouse for exportation. This section differs from the corresponding section in part 191 due to grammatical changes.

Section 190.156 provides information regarding the filing of a bill of lading and applicable timeframes. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes.

Section 190.157 is reserved as the corresponding section in part 191 directed readers to section 191.76 regarding landing certificates, which are now obsolete.

Section 190.158 provides for procedures of liquidation for a complete drawback claim in accordance with § 190.81. This section differs from the corresponding section in part 191 due to grammatical changes.

Section 190.159 states that drawback due under this subpart will not be subject to the deduction of 1 percent of duties paid. This section differs from the corresponding section in part 191 due to grammatical changes.

Subpart P Deals With Distilled Spirits, Wines, or Beer Which are Unmerchantable or do not Conform to Sample or Specifications

Section 190.161 provides for the refund, remission, abatement or credit regarding 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 CBP custody. This section differs from the corresponding section in part 191 due to nomenclature changes.

Section 190.162 states that export procedures as provided for at § 190.42 apply, except that the claimant must be the importer. This section differs from the corresponding section in part 191 due to grammatical changes.

Section 190.163 provides for the required documentation in claims 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. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes.

Section 190.164 states that there is no time limit for the return to CBP custody for merchandise covered under this subpart. This section differs from the corresponding section in part 191 due only to nomenclature changes.

Section 190.165 states that exportations by mail are not permitted for merchandise covered in this subpart. This section differs from the corresponding section in part 191 due only to grammatical changes.

Section 190.166 provides information regarding the destruction of merchandise under this subpart. This section differs from the corresponding section in part 191 due only to grammatical and nomenclature changes.

Section 190.167 states that no deduction of 1 percent of the internal revenue taxes paid or determined will be made in allowing entries under 26 U.S.C. 5062(c), as amended. This section differs from the corresponding section in part 191 due only to grammatical changes.

Section 190.168 is reserved because the 90-day time limit for exportation or destruction from the date of notification of acceptance of the drawback entry it is contrary to the statutory requirement that a claim be filed after exportation or destruction. Accordingly, this section differs from the corresponding section in part 191.

Subpart Q Deals With the Substitution of Finished Petroleum Derivatives

Section 190.171 states that 19 U.S.C. 1313(p) provides for drawback on the basis of qualified articles including petroleum derivatives imported or manufactured or produced in the United States (and qualified under 19 U.S.C. 1313(a) or (b)). TFTEA permits MPF refunds for all claims under 19 U.S.C. 1313(p), therefore there is no limitation on MPF refunds as there was in paragraph (c) in part 191. Additionally, there is a new paragraph (c) that explains the calculation of drawback for claims on petroleum derivatives. This paragraph requires per unit averaging for refunds, but clarifies that the refunds are not subject to the ''lesser of'' rule. Finally, this paragraph includes the preclusion of claiming Federal excise taxes discussed in detail in the section titled *Federal Excise Tax and Substitution Drawback Claims.*

Section 190.172 provides relevant definitions for purposes of this subpart. This section replicates the corresponding section in part 191.

Section 190.173 provides specific requirements for drawback when the basis is 19 U.S.C. 1313(p) with no manufacture. This section replicates the corresponding section in part 191.

Section 190.174 provides specific requirements for drawback when the basis is 19 U.S.C. 1313(p) with a manufacture under 19 U.S.C. 1313(a) or (b). This section replicates the corresponding section in part 191.

Section 190.175 provides specific requirements regarding the identity of drawback claimants and maintenance of records under this subpart. This section differs from the corresponding section in part 191 due to TFTEA-based changes removing requirements related to certificates of delivery and certificates of manufacture and delivery.

Section 190.176 states that the general procedures for filing claims are applicable to claims filed under 19 U.S.C. 1313(p) unless otherwise specified in this section. This section differs from the corresponding section in part 191 due to the timeframe for recordkeeping being changed to 3 years from the date of liquidation (rather than from the date of payment) and due to grammatical and nomenclature changes.

Subpart R Deals With Merchandise Transferred to a Foreign Trade Zone From Customs Territory

Section 190.181 states that drawback is provided under 19 U.S.C. 81c for merchandise transferred to a foreign trade zone for the sole purpose of exportation, storage, or destruction, with certain exceptions. This section replicates the corresponding section in part 191.

Section 190.182 states that merchandise in a foreign trade zone for purposes specified in § 190.181 will be given status as zone-restricted merchandise on proper application as provided for in 19 CFR 146.44. This section differs from the corresponding section in part 191 due only to grammatical changes.

Section 190.183 provides filing procedures for certain articles manufactured or produced in the United States, including transfers to a foreign trade zone. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes, and due to changes related to the electronic filing provisions of section 906 of TFTEA.

Section 190.184 states that the procedure described in subpart O of this part will be followed, as applicable, for drawback on merchandise transferred to a foreign trade zone from continuous CBP custody and provides information on the drawback entry, required certifications, modifications, and endorsement. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes, and due to changes related to the electronic filing environment of TFTEA-Drawback.

Section 190.185 states that the procedure described in subparts C and D of this part will be followed, as applicable, for drawback on merchandise under this subpart and provides information on the drawback entry, required certifications, modifications, and endorsement. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes, and to the electronic filing environment provisions of section 906 of TFTEA.

Section 190.186 provides information regarding which person may be considered the transferor and states that drawback may be claimed by, and paid to, the transferor. This section differs from the corresponding section in part 191 due only to grammatical changes.

Subpart S Deals With the Drawback Compliance Program

Section 190.191 provides general information regarding the CBP drawback compliance program. This section differs from the corresponding section in part 191 due only to nomenclature changes.

Section 190.192 provides information regarding obtaining certification for the compliance program. This section differs from the corresponding section in part 191 due only to grammatical and nomenclature changes.

Section 190.193 provides the application procedure for the compliance program. This section differs from the corresponding section in part 191 due only to grammatical and nomenclature changes.

Section 190.194 describes the actions taken on the application to participate in the compliance program. This section differs from the corresponding section in part 191 due only to grammatical and nomenclature changes.

Section 190.195 relates to combined applications for certification in the drawback compliance program and privileges regarding the waiver of prior notice and/or accelerated payment of drawback. This section replicates the corresponding section in Part 191.

Appendices A and B Deal With Manufacturing Drawback Rulings

Appendix A to Part 190 sets forth the general manufacturing drawback rulings, accompanied by instructions for how to submit a letter of notification to operate thereunder. This appendix differs from Appendix A to part 191 due to grammatical and nomenclature changes as well as changes to conform to TFTEA-Drawback requirements.

Appendix B to Part 190 provides the sample formats for applications for specific manufacturing drawback rulings. This appendix differs from Appendix B to part 191 due to grammatical and nomenclature changes as well as changes to conform to TFTEA-Drawback requirements.

B. Other Conforming Amendments

NAFTA drawback, which is separately provided for in subpart E of part 181 of the CBP regulations (19 CFR part 181), provides for special provisions in situations where goods were imported into the United States and then subsequently exported to either Canada or Mexico. While TFTEA left NAFTA drawback unchanged, minor conforming edits to part 181 are necessary to correct certain errors or to allow for interaction with both the proposed part 190 and existing part 191 during the transition period. For example, 19 CFR 181.50(a) includes an inaccurate reference to subpart G of part 191, stating that it is for liquidation procedures. However, it is subpart H of part 191 that deals with liquidation (and protest) procedures while subpart G of part 191 deals with exportation and destruction. Accordingly, it is proposed to amend § 181.50(a) to update the reference so it accurately cites to subpart H of part 191 and to include an accompanying reference to subpart H of part 190. Further, § 181.50(c) includes a specific reference to § 191.92 addressing accelerated payment. Accordingly, it is proposed to amend this regulation to also include a reference to the corresponding section of the proposed new part 190, *i.e.,* § 190.92. CBP is amending sections 181.45, 181.46, 181.47, 181.49, and 181.50 to conform with proposed part 190 and existing part 191.

As stated above, the existing regulations in part 191 are mostly unchanged with this rulemaking. However, it is proposed to amend the scope section of part 191, § 191.0, to make reference to the drawback provisions in proposed part 190 and to note that claims cannot be filed under part 191 on or after February 24, 2019. Additionally, as noted above in the section detailing the differences between the sections in part 190 and the corresponding sections in part 191, some sections in part 191 are outdated for reasons other than TFTEA, such as those affected by the Miscellaneous Trade and Technical Corrections Act of 2004. Therefore, as noted above in the section detailing the proposed changes to part 190, where changes were required due to non-TFTEA reasons, it is proposed to amend §§ 191.0, 191.1, 191.3, 191.5, 191.42, 191.51, 191.81, 191.103, 191.104, and 191.106 and new § 191.45 to address returned retail merchandise.

Finally, it is important to note that it is CBP's intention to remove part 191 at a future date, but not until after the completion of the transition period. The part 191 regulations will continue to be applicable for claims filed under that part before February 24, 2019, but will become increasingly less relevant over time; CBP will assess at what point in time removal will be most appropriate to lessen burdens or confusion. This removal will be announced in the **Federal Register**.

C. Amendments Regarding Federal Excise Tax and Substitution Claims

For the reasons outlined above in the section titled *Federal Excise Tax and Substitution Drawback Claims,* this document proposes to amend: § 191.22 by adding a new last sentence to paragraph (a); § 191.32 by adding a new paragraph (b)(4); and, § 191.171 by adding a new paragraph (d). These amendments preclude drawback of internal revenue tax imposed under the IRC in connection with a substitution drawback claim if no excise tax was paid on the substituted exported merchandise or if that merchandise was subject to a claim for refund or drawback of tax under any provision of the IRC. In addition, this document proposes to amend § 113.62, which sets forth basic importation and entry bond conditions, to add a new condition under which the principal agrees not to file, or transfer the right to file, a substitution drawback claim that would be inconsistent with the terms of new § 191.32(b)(4). The consequences of default specified in newly re-designated paragraph (n) of § 113.62 would apply in the case of a breach of this bond condition.[25]

These changes are intended to preclude the filing of substitution drawback claims under 19 U.S.C. 1313(b), 19 U.S.C. 1313(j)(2), and 19 U.S.C. 1313(p) in circumstances in which internal revenue taxes have not been paid on the substituted domestic product, or where that merchandise is subject to a different claim for refund or drawback of IRC taxes. The proposed amendments still allow for the return of 99 percent of the duties, taxes, and fees paid on the imported merchandise upon export, or when IRC taxes have been paid on substituted domestic product and the substituted merchandise is not the subject of a separate claim for refund or drawback of such taxes.

[25] The amendment referenced here to § 113.62 of this chapter is in addition to the previously discussed proposed amendment to § 113.62, proposing to add a new paragraph (a)(4) regarding the joint and several liability provisions of the importer's bond.

IV. Statutory and Regulatory Requirements

A. Executive Order 13563 (Improving Regulation and Regulatory Review) and Executive Order 12866 (Regulatory Planning and Review)

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is an ''economically significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, this proposed rule has been reviewed by the Office of Management and Budget (''OMB''). CBP and Treasury have prepared an economic analysis of the potential impacts of this rule for public awareness. The analysis can be found in the public docket for this rulemaking at *www.regulations.gov.*

B. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs, and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.'' [26] These requirements only apply to rules designated as ''significant regulatory actions'' under section 3(f) of Executive Order 12866. OMB's implementation guidance explains that ''Federal spending regulatory actions that cause only income transfers between taxpayers and program beneficiaries . . . . are considered 'transfer rules' and are not covered by E.O. [Executive Order] 13771 . . . However . . . such regulatory actions may impose requirements apart from transfers . . . In those cases, the actions would need to be offset to the extent they impose more than de minimis costs.'' [27]

This rule is a significant regulatory action under section 3(f) of Executive Order 12866, and is hence subject to the requirements of Executive Order 13771. Most of the regulatory amendments proposed in this rule are the result of the Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114–125), which amended 19 U.S.C. 1313, the statute guiding CBP drawback regulations, and required CBP to promulgate regulations implementing these changes by February 24, 2018. This rule includes both a regulatory action and a deregulatory action that implement TFTEA's requirements. Because these actions are related to drawback, CBP chose to include both actions in this rule instead of promulgating two separate rules. On net, this rule imposes a regulatory burden (and is thus a regulatory action) because its regulatory impacts exceed its deregulatory impacts. This rule's regulatory impacts (*i.e.,* costs) would measure $8.3 million on an annualized basis, while its deregulatory impacts (*i.e.,* cost savings) would measure $1.3 million on an annualized basis (in 2016 U.S. dollars, using a 7 percent discount rate). Together, these impacts would introduce an annualized net regulatory cost of $7.0 million.

[26] *See* 82 FR 9339 (February 3, 2017).

[27] *See* OMB's memorandum titled, ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017).

C. Regulatory Flexibility Act

This section examines the impact of this proposed rule on small entities per the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*)(RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

Under the RFA and SBREFA, if an agency can certify (typically through a screening analysis) that a rule will not have a ''significant economic impact on a substantial number of small entities,'' a detailed assessment of the rule's impact on small entities is not required. Otherwise, an agency must complete an initial regulatory flexibility analysis (IRFA) exploring the impact of the proposed rulemaking on small entities.

Screening Analysis

The proposed Modernized Drawback rule would fundamentally change the drawback process and consequently affect all trade members eligible for drawback (*i.e.,* drawback claimants).[28]

[28] For more detailed information on the impacts of this rule, see CBP and Treasury's economic

Continued

These trade members can include importers, exporters, manufacturers, producers, and intermediate parties representing a diverse array of industries. CBP does not assess the rule's impact on customs brokers who file claims for trade members eligible for drawback in this RFA analysis because they would presumably charge their clients a fee for any costs introduced with the rule (and thus not be affected themselves).

Because the Small Business Administration's (SBA) guidelines on small entities under the RFA do not explicitly define small entity standards for the importers, exporters, manufacturers, producers, and intermediate parties potentially affected by the rule, CBP used data on the industries in which these parties operate to determine the number of small entities potentially affected by this rule. CBP began by compiling a list of all 9,017 unique drawback claimants who filed claims between 2007 and 2016 and matching the claimant identification number (''claimant ID'') to the operator/owner name and address listed in internal CBP databases. Next, CBP assigned a random number to each of the claimants in that list and sorted the data in ascending order by the random number assigned. Using public and proprietary databases, CBP then pulled information like the entity type (subsidiary or parent company), primary line of business, employee size, and revenue on the claimants in ascending order until the agency had market data for 100 unique entities.[29] [30]

Table 1 shows the industries, according to their North American Industrial Classification System (NAICS) code, in the sample of entities affected by this rule and the SBA's small entity size standards for these industries. For the most part, the SBA's size standards are the average annual receipts or the average employment of a firm.[31] As shown, CBP finds that 69 percent (69) of the drawback claimants sampled are considered ''small'' according to the SBA's size standards, including one non-profit organization. CBP did not identify any small governmental jurisdictions affected by the proposed rule in this sample. According to these findings, CBP assumes that the proposed rule would affect a substantial number of small entities. CBP recognizes that this screening analysis may have excluded some less established, potentially small entities due to market data availability. To the extent that those excluded are small, the portion of small entities affected by the rule would be higher than estimated.

Of the small drawback claimants sampled and included in Table 1, the average number of employees at these entities ranged from 1 to 1,000 and their annual revenue measured from less than $0.5 million to $391.0 million (see Table 2 and Table 3). Table 2 compares the low range average number of employees at the small entities sampled and the overall average for the corresponding NAICS industry. Table 3 shows the average annual revenue of the small entities sampled by NAICS industry using the low range of annual revenue data available as well as the average annual revenue for all U.S. entities in each industry.

TABLE 1—SUMMARY STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE

NAICS code	NAICS description	Number of entities in sample	Percent of entities in sample	SBA size standard	Number of small entities in sample	Percent of small entities in sample
311211	Flour Milling	1	1	1,000 Employees	1	1
311421	Fruit and Vegetable Canning	1	1	1,000 Employees	1	1
312140	Distilleries	1	1	1,000 Employees	1	1
313210	Broadwoven Fabric Mills	1	1	1,000 Employees	0	0
315220	Men's and Boys' Cut and Sew Apparel Manufacturing.	2	2	750 Employees	2	2
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing.	1	1	750 Employees	1	1
321911	Wood Window and Door Manufacturing.	1	1	1,000 Employees	1	1
325180	Other Basic Inorganic Chemical Manufacturing.	2	2	1,000 Employees	2	2
325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing.	1	1	1,250 Employees	1	1
325199	All Other Basic Organic Chemical Manufacturing.	1	1	1,250 Employees	0	0
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.	1	1	500 Employees	1	1
326199	All Other Plastics Product Manufacturing.	1	1	750 Employees	1	1
331410	Nonferrous Metal (except Aluminum) Smelting and Refining.	1	1	1,000 Employees	1	1
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding.	1	1	750 Employees	1	1
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing.	1	1	750 Employees	1	1

analysis in the public docket for this rulemaking at *www.regulations.gov.*

[29] Only 13 of the entities researched (12 percent) did not have market data available.

[30] Out of a total population of 9,017 unique drawback claimants who filed claims between 2007 and 2016, CBP used a sample of 100 claimants with market data to inform this screening analysis. This sample size resulted in a statistically significant sample using a 95 percent confidence level with a 10 percent margin of error.

[31] The SBA's calculation methods for average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

TABLE 1—SUMMARY STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE—Continued

NAICS code	NAICS description	Number of entities in sample	Percent of entities in sample	SBA size standard	Number of small entities in sample	Percent of small entities in sample
334118	Computer Terminal and Other Computer Peripheral Equipment Manufacturing.	1	1	1,000 Employees	0	0
334310	Audio and Video Equipment Manufacturing.	1	1	750 Employees	1	1
334513	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables.	1	1	750 Employees	0	0
335221	Household Cooking Appliance Manufacturing.	1	1	1,500 Employees	1	1
336612	Boat Building	1	1	1,000 Employees	1	1
336991	Motorcycle, Bicycle, and Parts Manufacturing.	1	1	1,000 Employees	0	0
337920	Blind and Shade Manufacturing	1	1	1,000 Employees	0	0
339112	Surgical and Medical Instrument Manufacturing.	2	2	1,000 Employees	1	1
339920	Sporting and Athletic Goods Manufacturing.	1	1	750 Employees	0	0
339992	Musical Instrument Manufacturing	1	1	1,000 Employees	1	1
339999	All Other Miscellaneous Manufacturing.	1	1	500 Employees	1	1
423210	Furniture Merchant Wholesalers	1	1	100 Employees	1	1
423220	Home Furnishing Merchant Wholesalers.	2	2	100 Employees	1	1
423510	Metal Service Centers and Other Metal Merchant Wholesalers.	2	2	200 Employees	2	2
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.	1	1	200 Employees	1	1
423690	Other Electronic Parts and Equipment Merchant Wholesalers.	1	1	250 Employees	0	0
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers.	3	3	100 Employees	3	3
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers.	1	1	150 Employees	1	1
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers.	3	3	100 Employees	3	3
423990	Other Miscellaneous Durable Goods Merchant Wholesalers.	1	1	100 Employees	1	1
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers.	2	2	100 Employees	2	2
424330	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers.	1	1	100 Employees	0	0
424340	Footwear Merchant Wholesalers	3	3	200 Employees	2	2
424490	Other Grocery and Related Products Merchant Wholesalers.	1	1	250 Employees	1	1
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers.	2	2	150 Employees	2	2
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals).	1	1	200 Employees	1	1
424910	Farm Supplies Merchant Wholesalers.	3	3	200 Employees	3	3
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers.	1	1	100 Employees	1	1
441120	Used Car Dealers	1	1	$25.0 Million	1	1
448120	Women's Clothing Stores	2	2	$27.5 Million	2	2
448130	Children's and Infants' Clothing Stores.	1	1	$32.5 Million	0	0
448190	Other Clothing Stores	2	2	$20.5 Million	2	2
451110	Sporting Goods Stores	1	1	$15.0 Million	1	1
451130	Sewing, Needlework, and Piece Goods Stores.	1	1	$27.5 Million	1	1
452112	Discount Department Stores	1	1	$29.5 Million	1	1

TABLE 1—SUMMARY STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE—Continued

NAICS code	NAICS description	Number of entities in sample	Percent of entities in sample	SBA size standard	Number of small entities in sample	Percent of small entities in sample
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores).	1	1	$7.5 Million	1	1
454113	Mail-Order Houses	1	1	$38.5 Million	0	0
483112	Deep Sea Passenger Transportation	1	1	1,500 Employees	0	0
493110	General Warehousing and Storage	1	1	$27.5 Million	1	1
525990	Other Financial Vehicles	1	1	$32.5 Million	1	1
541380	Testing Laboratories	1	1	$15.0 Million	0	0
541690	Other Scientific and Technical Consulting Services.	1	1	$15.0 Million	0	0
541990	All Other Professional, Scientific, and Technical Services.	1	1	$15.0 Million	1	1
561499	All Other Business Support Services	2	2	$15.0 Million	2	2
561621	Security Systems Services (except Locksmiths).	1	1	$20.5 Million	0	0
561990	All Other Support Services	5	5	$11.0 Million	5	5
624110	Child and Youth Services*	1	1	$11.0 Million	1	1
711510	Independent Artists, Writers, and Performers.	1	1	$7.5 Million	1	1
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.	1	1	$7.5 Million	1	1
811490	Other Personal and Household Goods Repair and Maintenance.	1	1	$7.5 Million	1	1
	Foreign Entity	13	13	N/A	N/A	N/A
Total		100	100		69	69

* This sample corresponds to a non-profit organization.

Source of drawback claimants sample: Internal CBP database; gathered through email correspondence with CBP's Office of Trade on March 2, 2017.

Source of descriptive entity information: Hoover's. Online company reports. Available at *http://www.hoovers.com/*. Accessed April 20, 2017 and April 24, 2017; Manta. Online company reports. Available at *http://www.manta.com/*. Accessed April 20, 2017 and April 24, 2017.

Source of SBA size standard information: U.S. Small Business Administration, ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes.'' February 26, 2016. Available at *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*. Accessed April 17, 2017.

TABLE 2—EMPLOYMENT STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE AND INDUSTRY AVERAGES

NAICS code	NAICS description	Number of small entities in sample	Average number of employees at small entities in sample-low range value	Average number of employees at all U.S. entities in industry
311211	Flour Milling	1	20	66
311421	Fruit and Vegetable Canning	1	540	74
312140	Distilleries	1	15	30
315220	Men's and Boys' Cut and Sew Apparel Manufacturing	2	40	31
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing	1	6	15
321911	Wood Window and Door Manufacturing	1	250	46
325180	Other Basic Inorganic Chemical Manufacturing	2	502	100
325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing	1	1,000	92
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	1	3	34
326199	All Other Plastics Product Manufacturing	1	2	60
331410	Nonferrous Metal (except Aluminum) Smelting and Refining	1	700	66
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding.	1	65	69
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing	1	65	20
334310	Audio and Video Equipment Manufacturing	1	350	19
335221	Household Cooking Appliance Manufacturing	1	67	110
336612	Boat Building	1	35	34
339112	Surgical and Medical Instrument Manufacturing	1	52	94
339992	Musical Instrument Manufacturing	1	625	20
339999	All Other Miscellaneous Manufacturing	1	20	10
423210	Furniture Merchant Wholesalers	1	5	12
423220	Home Furnishing Merchant Wholesalers	1	17	14
423510	Metal Service Centers and Other Metal Merchant Wholesalers	2	3	20

TABLE 2—EMPLOYMENT STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE AND INDUSTRY AVERAGES—Continued

NAICS code	NAICS description	Number of small entities in sample	Average number of employees at small entities in sample-low range value	Average number of employees at all U.S. entities in industry
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.	1	80	21
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	3	18	11
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers	1	12	15
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers.	3	7	7
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	1	20	10
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	2	2	9
424340	Footwear Merchant Wholesalers	2	17	17
424490	Other Grocery and Related Products Merchant Wholesalers	1	11	28
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	2	14	13
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals).	1	7	15
424910	Farm Supplies Merchant Wholesalers	3	26	21
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	1	1	7
441120	Used Car Dealers	1	1	6
448120	Women's Clothing Stores	2	12	31
448190	Other Clothing Stores	2	23	14
451110	Sporting Goods Stores	1	1	14
451130	Sewing, Needlework, and Piece Goods Stores	1	7	11
452112	Discount Department Stores	1	20	15,091
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	1	5	6
493110	General Warehousing and Storage	1	20	118
525990	Other Financial Vehicles	1	2	6
541990	All Other Professional, Scientific, and Technical Services	1	2	6
561499	All Other Business Support Services	2	29	17
561990	All Other Support Services	5	3	13
624110	Child and Youth Services *	1	20	21
711510	Independent Artists, Writers, and Performers	1	2	2
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.	1	28	10
811490	Other Personal and Household Goods Repair and Maintenance	1	18	3

* This sample corresponds to a non-profit organization.

Source of drawback claimants sample: Internal CBP database; gathered through email correspondence with CBP's Office of Trade on March 2, 2017.

Source of small entity employment information: Hoover's. Online company reports. Available at *http://www.hoovers.com/.* Accessed April 20, 2017 and April 24, 2017; Manta. Online company reports. Available at *http://www.manta.com/.* Accessed April 20, 2017 and April 24, 2017.

Source of industry employment information: U.S. Census Bureau. 2012 SUSB Annual Data Tables by Establishment Industry, "Number of Firms, Number of Establishments, Employment, Annual Payroll, and Estimated Receipts by Enterprise Employment Size for the United States, All Industries: 2012." June 22, 2015. Available at *https://www.census.gov/data/tables/2012/econ/susb/2012-susb-annual.html.* Accessed May 30, 2018.

TABLE 3—REVENUE STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE AND INDUSTRY AVERAGES

NAICS code	NAICS description	Number of small entities in sample	Average annual revenue of small entities in sample-low range value (in millions)	Average annual revenue of all U.S. entities in industry (in millions)
311211	Flour Milling	1	$5.0	$93.7
311421	Fruit and Vegetable Canning	1	178.1	41.7
312140	Distilleries	1	Unknown	39.6
315220	Men's and Boys' Cut and Sew Apparel Manufacturing	2	6.4	3.8
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing	1	1.1	2.8
321911	Wood Window and Door Manufacturing	1	48.0	9.2
325180	Other Basic Inorganic Chemical Manufacturing	2	90.7	94.2
325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing	1	391.0	161.8
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	1	5.0	22.2
326199	All Other Plastics Product Manufacturing	1	0.3	14.7
331410	Nonferrous Metal (except Aluminum) Smelting and Refining	1	228.9	93.2
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding.	1	17.2	30.9

TABLE 3—REVENUE STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE AND INDUSTRY AVERAGES—Continued

NAICS code	NAICS description	Number of small entities in sample	Average annual revenue of small entities in sample-low range value (in millions)	Average annual revenue of all U.S. entities in industry (in millions)
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing	1	13.5	4.2
334310	Audio and Video Equipment Manufacturing	1	29.0	6.1
335221	Household Cooking Appliance Manufacturing	1	9.4	47.2
336612	Boat Building	1	5.1	8.4
339112	Surgical and Medical Instrument Manufacturing	1	17.0	35.3
339992	Musical Instrument Manufacturing	1	115.1	3.2
339999	All Other Miscellaneous Manufacturing	1	4.3	2.4
423210	Furniture Merchant Wholesalers	1	1.6	7.4
423220	Home Furnishing Merchant Wholesalers	1	4.2	8.1
423510	Metal Service Centers and Other Metal Merchant Wholesalers	2	0.8	27.8
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.	1	23.0	40.2
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	3	3.2	7.3
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers	1	2.9	11.0
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers.	3	1.2	8.3
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	1	50.0	5.1
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	2	1.4	5.0
424340	Footwear Merchant Wholesalers	2	8.0	20.3
424490	Other Grocery and Related Products Merchant Wholesalers	1	14.6	28.4
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	2	7.5	17.2
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals).	1	11.4	289.0
424910	Farm Supplies Merchant Wholesalers	3	49.2	29.2
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	1	0.1	4.1
441120	Used Car Dealers	1	0.1	3.0
448120	Women's Clothing Stores	2	1.9	3.5
448190	Other Clothing Stores	2	7.3	1.8
451110	Sporting Goods Stores	1	0.6	2.5
451130	Sewing, Needlework, and Piece Goods Stores	1	0.6	1.1
452112	Discount Department Stores	1	2.5	2,899.3
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	1	0.5	1.2
493110	General Warehousing and Storage	1	0.5	6.0
525990	Other Financial Vehicles	1	0.2	2.8
541990	All Other Professional, Scientific, and Technical Services	1	0.2	1.0
561499	All Other Business Support Services	2	2.0	2.8
561990	All Other Support Services	5	0.2	1.9
624110	Child and Youth Services *	1	5.3	1.5
711510	Independent Artists, Writers, and Performers	1	0.3	0.7
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.	1	7.4	1.7
811490	Other Personal and Household Goods Repair and Maintenance	1	2.0	0.3

* This sample corresponds to a non-profit organization.

Source of drawback claimants sample: Internal CBP database; gathered through email correspondence with CBP's Office of Trade on March 2, 2017.

Source of small entity revenue information: Hoover's. Online company reports. Available at *http://www.hoovers.com/.* Accessed April 20, 2017 and April 24, 2017; Manta. Online company reports. Available at *http://www.manta.com/.* Accessed April 20, 2017 and April 24, 2017.

Source of industry revenue information: U.S. Census Bureau. 2012 SUSB Annual Data Tables by Establishment Industry, "Number of Firms, Number of Establishments, Employment, Annual Payroll, and Estimated Receipts by Enterprise Employment Size for the United States, All Industries: 2012." June 22, 2015. Available at *https://www.census.gov/data/tables/2012/econ/susb/2012-susb-annual.html.* Accessed May 30, 2018.

Based on the share of drawback claimants sampled, CBP assumes that 69 percent of drawback claimants affected by this rule over the 2018 to 2027 period of analysis, or 6,844 claimants, would be small entities. These drawback claimants would incur costs related to ACE system modifications, electronic claim submission requirements, additional full desk reviews, and expanded recordkeeping requirements; however, these costs would differ depending on their filing preferences and claim review.

Each unique drawback claimant would need to either modify its existing drawback system, acquire add-on drawback software, or hire a customs broker to comply with this rule's new drawback regulations outlined in 19 CFR part 190. CBP estimates that approximately 200 small entity drawback claimants (69 percent of the estimated 290 total claimants) would modify their ACE filing systems in 2018 to comply with all of the new drawback regulations outlined in 19 CFR part 190.[32] These claimants could incur an

[32] CBP based the estimate of drawback claimants required to modify their ACE drawback systems consistent with this rule's changes on the projected number of unique drawback claimants with this rule in 2018 (9,919) minus the 4,129 trade members

estimated one-time cost of $90,000 that would translate to $9,000 per year of the analysis.[33] However, because of the high cost of ACE system modifications, these small claimants are more likely to choose a lower-cost option like purchasing add-on drawback software or hiring a customs broker to meet this rule's requirements while lessening its impact on their revenue. CBP projects that an additional 3,795 small drawback claimants (69 percent of the estimated 5,500 total claimants) would acquire add-on drawback software consistent with all of this rule's requirements for a one-time cost of $1,500, or $150 over the 10-year period of analysis. CBP presumes that rather than acquire and learn the software necessary to file a drawback claim electronically and meet the other submission requirements of this rule, an estimated 2,849 small paper-based drawback claimants (69 percent of the estimated 4,129 total claimants) would hire a customs broker to file their claim as a result of the rule. These claimants would likely file an average of three drawback claims per year, at an annual cost of $921 according to the $307 customs broker filing fee.[34]

All drawback claimants must also retain drawback records for an extended period of time with this rule. CBP finds that all 6,844 small drawback claimants would sustain $59.99 in expenses between 2021 and 2027, or approximately $4 each year over the 10-year period of analysis, to electronically store drawback claim documentation.[35] In addition to these requirements, some drawback claimants may be subject to this rule's additional full desk reviews. CBP estimates that this rule would affect an estimated 355 small drawback claimants (69 percent of the estimated 515 total claimants) over the 10-year period of analysis, introducing an average cost of $18 per year to these claimants. CBP assumes that these 355 claimants would each complete one full desk review over the 10-year period, at a cost of $181 per review (or $18 over 10 years). Besides these monetized costs, this rule would introduce non-monetized, non-quantified costs to trade members, including the possibility of decreased use of the United States as a home base for a distribution facility when coupled with other considerations, less third-party drawback, and less time to file drawback claims as compared to the current process.

Table 4 outlines the rule's different costs to small entities, while Table 5 shows this rule's potential range of costs to small entities. As shown, small entities could incur undiscounted annual costs from this rule as low as $154 if a small claimant only incurs an added recordkeeping cost and add-on drawback software cost and up to $9,022 if a small claimant experiences the rule's high ACE drawback system modification cost, full desk review cost (once over the 10-year analysis), and added recordkeeping cost. About 97 percent of small drawback claimants would likely sustain a cost of $943 (Cost C + Cost D + Cost E in Table 5) or less per year from this rule, while the remaining 3 percent could incur higher annual cost measuring up to $9,022.

TABLE 4—COST OF RULE TO SMALL ENTITIES

[Undiscounted 2016 U.S. dollars]

	Cost category	Number of small entities affected	Share of small entities affected	Annual cost per claimant (undiscounted)
A	ACE Drawback System Modification	200	3	9,000
B	Add-On Drawback Software	3,795	55	150
C	Customs Broker Claim Filing	2,849	42	921
D	Added Recordkeeping	6,844	100	4
E	Full Desk Review	355	5	18

Note: Estimates may not sum to total due to rounding.

TABLE 5—RANGE OF ANNUAL COSTS OF RULE TO SMALL ENTITIES

[Undiscounted 2016 U.S. dollars]

Cost per claimant by category

Cost range	ACE drawback system modification [A]	Add-on drawback software [B]	Customs broker claim filing [C]	Added recordkeeping [D]	Full desk review [E]	Total
Low		$150		$4		$154
Medium			921	4	18	943

estimated to file by paper under the current 19 CFR part 191 regulations in 2018 (and thus exempt from an ACE drawback system modification cost), multiplied by the 5 percent share of claimants anticipated to modify their ACE drawback systems consistent with this rule's changes: (9,919 unique drawback claimants in 2018—4,129 paper-based filers in 2018) x 5 percent anticipated to modify their ACE drawback systems = 290 (rounded) trade members.

[33] Such regulatory changes would include providing line-item drawback claim data at the 10-digit HTSUS subheading level; consistent units of measurement for claimed imports, exports, and destructions; exported, destroyed, or substituted merchandise values for substitution claims filed under 19 U.S.C. 1313(b) and 19 U.S.C. 1313(j)(2); accounting methodologies used for direct identification drawback claims (if applicable); unique identifiers linking imports to exports or destructions on each drawback claim; per-unit averages for substitution claims; and ''lesser of'' rule calculations for substitution claims.

[34] From 2018 to 2027, CBP projects under its primary estimation method that 4,129 unique trade members would file 101,642 drawback claims electronically instead of by paper as a result of this rule, averaging about 3 claims per unique trade member each year over the 10-year period: 101,642 drawback claims filed electronically instead of by paper over 10-year period/4,129 unique trade members = 25 (rounded) claims per unique trade member over the 10-year period; 25 claims over 10-year period/10 years = 3 (rounded) claims per unique trade member each year.

[35] $59.99 electronic recordkeeping cost per year × 7-year period of recordkeeping = $419 (rounded) total electronic recordkeeping cost over 7-year period; $419 storage cost over 7-year period of recordkeeping/10-year period of analysis = $42 (rounded) electronic recordkeeping cost per year of the 10-year period of analysis; $42 (rounded) storage cost per year × 10 percent of unique claimants incurring electronic recordkeeping cost per year = $4 (rounded) electronic recordkeeping cost per unique trade member each year.

TABLE 5—RANGE OF ANNUAL COSTS OF RULE TO SMALL ENTITIES—Continued

[Undiscounted 2016 U.S. dollars]

Cost per claimant by category

Cost range	ACE drawback system modification [A]	Add-on drawback software [B]	Customs broker claim filing [C]	Added recordkeeping [D]	Full desk review [E]	Total
High	9,000			4	18	9,022

Note: Estimates may not sum to total due to rounding.

CBP compares the rule's low ($154), medium ($943), and high ($9,022) range of monetized costs per year to the annual revenue of the small drawback claimants sampled. At the low range, this rule's $154 monetized cost would represent less than 1 percent of annual revenue for 100 percent (68) of the small entities sampled with revenue data available,[36] as shown in Table 6. At the medium range, this rule's $943 monetized cost would represent less than 1 percent of annual revenue for 97 percent (66) of the small entities sampled with revenue data available. This rule's $943 monetized cost would represent between 1 percent and 3 percent of annual revenue for the remaining 3 percent (2) of the small entities, as Table 7 illustrates. Finally, at the high range, this rule's $9,022 monetized cost would represent less than 1 percent of the annual revenue for 66 percent (45) of the small entities sampled with revenue data available (see Table 8). The share of this rule's $9,022 monetized cost on annual revenue would measure between: 1 percent and 3 percent for about 16 percent (11) of the remaining small entities, 3 percent and 5 percent for 4 percent (3) of the small entities sampled, 5 percent and 10 percent for 10 percent (7) percent of small entities sampled, and 10 percent or more for 3 percent (2) of the small entities sampled (see Table 8). Note that because of the high cost of ACE system modifications included in the high range cost estimate, only a nominal number of small claimants would likely incur this rule's high annual cost of $9,022. Instead, most claimants would probably choose lower-cost options like purchasing add-on drawback software or hiring a customs broker to meet this rule's requirements that would have minimal impacts on their annual revenue, as assumed under the low- and medium-cost scenarios shown in Table 6 and Table 7.

Under all three ranges, the share of this rule's costs on the annual revenue of small entities is less than 1 percent for the vast majority of entities sampled. Small entities would experience an impact of 3 percent or more only under the high cost range of $9,022. Assuming that the share of this rule's total annualized cost to small entities is equal to the estimated share of drawback claimants affected by this rule over the 2018 to 2027 period of analysis (69 percent), the total annualized cost of this rule to all small entities would equal $5.0 million under the primary estimation method.

TABLE 6—COST IMPACTS AS A SHARE OF REVENUE FOR SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE—ASSUMING ANNUAL COST OF $154 PER UNIQUE DRAWBACK CLAIMANT

Cost as a share of revenue range	Number of small entities affected	Percent of small entities affected
0% ≤ Impact < 1%	68	100%
1% ≤ Impact < 3%	0	0
3% ≤ Impact < 5%	0	0
5% ≤ Impact < 10%	0	0
10% or More	0	0
Total	68	100

Note: Estimates may not sum to total due to rounding.

TABLE 7—COST IMPACTS AS A SHARE OF REVENUE FOR SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE- ASSUMING ANNUALIZED COST OF $943 PER UNIQUE DRAWBACK CLAIMANT

Cost as a share of revenue range	Number of small entities affected	Percent of small entities affected
0% ≤ Impact < 1%	66	97%
1% ≤ Impact < 3%	2	3
3% ≤ Impact < 5%	0	0
5% ≤ Impact < 10%	0	0
10% or More	0	0

[36] One of the small entities sampled did not have revenue data available, so CBP excluded this entity from the revenue impact calculation.

TABLE 7—COST IMPACTS AS A SHARE OF REVENUE FOR SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE- ASSUMING ANNUALIZED COST OF $943 PER UNIQUE DRAWBACK CLAIMANT—Continued

Cost as a share of revenue range	Number of small entities affected	Percent of small entities affected
Total	68	100

Note: Estimates may not sum to total due to rounding.

TABLE 8—COST IMPACTS AS A SHARE OF REVENUE FOR SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE- ASSUMING ANNUALIZED COST OF $9,022 PER UNIQUE DRAWBACK CLAIMANT

Cost as a share of revenue range	Number of small entities affected	Percent of small entities affected
0% ≤ Impact < 1%	45	66
1% ≤ Impact < 3%	11	16
3% ≤ Impact < 5%	3	4
5% ≤ Impact < 10%	7	10
10% or More	2	3
Total	68	100

Note: Estimates may not sum to total due to rounding.

This rule would also result in benefits as well as net monetary transfers to drawback claimants. This rule would provide time and resource savings from forgone paper-based drawback claims, form submissions, and ruling and predetermination requests that offset some of the rule's costs to small entities. CBP estimates that 2,849 small paper-based drawback claimants (69 percent of the estimated 4,129 total claimants) would enjoy $8 in cost savings for each paper claim avoided. These claimants would likely file an average of three drawback claims per year, at an annual cost saving of $24.[37] CBP finds that all 6,844 small drawback claimants would save $17 in printing and mailing costs related to forgone CBP Form 7552 submissions beginning in 2019. Before 2019, the estimated 2,849 small paper-based claimants would not gain this benefit because they would still submit paper CBP Form 7552s. Based on the total number of CBP Form 7552s avoided over the period of analysis and the total number of unique drawback claimants, CBP estimates that each claimant would forgo about four CBP Form 7552 submissions each year of the analysis, saving a total of $68 per year.[38] Lastly, only a small number of claimants would sustain benefits from forgone ruling and predetermination requests. CBP estimates that 645 requests would be avoided during the period of analysis due to the rule and assumes that each forgone request corresponds to a unique drawback claimant. By applying the previously discussed assumption that 69 percent of drawback claimants affected by this rule over the 2018 to 2027 period of analysis are small entities, CBP finds that 445 small drawback claimants would each save $189 in costs related to ruling and predeterminations requests. This would translate to about $19 per year over the 10-year period of analysis.

This rule's share of net monetary transfers to small entities is unknown. This rule would introduce $35.3 million to $42.4 million in annualized net transfers from the U.S. Government to drawback claimants (using a 7 percent discount rate). These transfers would average between $3,600 and $4,300 per claimant based on the projected 9,919 unique drawback claimants affected by this rule. Some small entities may receive more or less than this average, and potentially even negative net transfers if they make net payments to the U.S. Government.

According to the results from this screening analysis, CBP believes that a substantial number of trade members who could be considered "small" may be affected by this proposed rule.[39] CBP cannot determine whether the economic impact on these entities may be considered significant under the RFA. For these reasons, CBP cannot currently certify that the rule will not have a significant economic impact on a substantial number of small entities. CBP has prepared the following IRFA assessing the rule's potential effect on small entities. CBP welcomes public comments on the data and findings included in this RFA analysis. Comments that will provide the most assistance to CBP will reference a specific portion of the RFA analysis, explain the reason for any recommended change, and include data, information, or authority that supports a recommended change.

Initial Regulatory Flexibility Analysis

This IRFA includes the following:

1. A description of the reasons why the action by the agency is being considered;

2. A succinct statement of the objectives of, and legal basis for, the proposed rule;

[37] From 2018 to 2027, CBP projects under its primary estimation method that 4,129 unique trade members would file 101,642 drawback claims electronically instead of by paper as a result of this rule, averaging about 3 claims per unique trade member each year over the 10-year period: 101,642 drawback claims filed electronically instead of by paper over 10-year period/4,129 unique trade members = 25 (rounded) claims per unique trade member over the 10-year period; 25 claims over 10-year period/10 years = 3 (rounded) claims per unique trade member each year.

[38] From 2018 to 2027, CBP projects under its primary estimation method that 9,919 unique trade members would forgo 392,000 CBP Form 7552 submissions as a result of this rule, averaging about 4 forms per unique trade member each year over the 10-year period: 392,000 CBP Form 7552 submissions forgone over 10-year period/9,919 unique trade members = 40 (rounded) forms per unique trade member over the 10-year period; 40 claims over 10-year period/10 years = 4 (rounded) forms per unique trade member each year.

[39] SBA publishes small business size standards for a variety of, though not all, economic activities and industries. SBA does not explicitly define size standards for the importers, exporters, manufacturers, producers, and intermediate parties potentially affected by this rule. *See* 13 CFR 121.101–13 CFR 121.201 for information on SBA's size standards.

3. A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule would apply;

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that would be subject to the requirement and the types of professional skills necessary for preparation of the report or record;

5. An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule; and

6. A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

1. A description of the reasons why the action by the agency is being considered.

Section 906 of the Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114–125) (TFTEA), signed into law on February 24, 2016, seeks to simplify and modernize the current drawback procedures through amendments to 19 U.S.C. 1313, the statute guiding CBP drawback regulations. Section 906(q) of TFTEA requires CBP to promulgate regulations implementing these changes and allows for a one-year transition period (February 24, 2018–February 23, 2019) in which trade members can follow either the old drawback statute and corresponding regulations as written prior to TFTEA or the amended statute.

To fulfill TFTEA's requirements, CBP, through this rulemaking, proposes to add an entirely new part of drawback regulations in proposed 19 CFR part 190 that would replace the current drawback regulations contained in 19 CFR part 191. Proposed 19 CFR part 190 would directly reflect the following major amendments made by TFTEA, as well as another amendment required to protect U.S. Government revenue: (1) Require the electronic filing of drawback claims; (2) liberalize the standard for substituting merchandise for drawback; (3) generally require per-unit averaging calculation for substitution drawback; (4) generally require substitution drawback claims to be calculated on a ''lesser of'' basis; (5) expand the scope of drawback refunds; (6) establish joint and several liability for drawback claims; (7) modify the rulings process; (8) standardize the timeframe for eligibility to claim drawback; (9) modify recordkeeping requirements; and (10) eliminate ''double drawback'' of excise taxes. The proposed rule would also make minor amendments to the drawback regulations in accordance with TFTEA.

2. A succinct statement of the objectives of, and legal basis for, the proposed rule.

TFTEA requires CBP to prescribe drawback regulations in accordance with the new statute and allows for a one-year transition period in which trade members can follow either the old drawback statute and corresponding regulations as written prior to TFTEA or the amended statute until February 23, 2019. CBP proposes to implement new drawback regulations consistent with TFTEA in 2018. These new regulations aim to modernize the current drawback process.

3. A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule would apply.

As discussed in the screening analysis above, the proposed Modernized Drawback rule would fundamentally change the drawback process and consequently affect all trade members eligible for drawback (*i.e.,* drawback claimants). These trade members can include importers, exporters, manufacturers, producers, and intermediate parties representing a diverse array of industries. CBP estimates that 69 percent of drawback claimants affected by this rule over the 2018 to 2027 period of analysis, or 6,844 claimants, would be small entities.

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that would be subject to the requirement and the types of professional skills necessary for preparation of the report or record.

This rule proposes several new reporting, recordkeeping, and other compliance requirements for all drawback claimants, including those considered small. Among these changes, CBP proposes to require drawback claimants filing under the new drawback regulations outlined in 19 CFR part 190 to:

- Submit new data elements with their claims, including Form 7551: Drawback Entry summary data at the line, rather than header, level; claimed merchandise data at the 10-digit HTSUS subheading level; line designations; and consistent units of measurement for claimed import, export, or destruction data beginning in 2018.
- File their complete drawback claims electronically using ACE and DIS, thus not allowing for manual, paper-based claims.[40]
- Submit additional data, including exported, destroyed, or substituted merchandise values for substitution claims filed under 19 U.S.C. 1313(b) and 19 U.S.C. 1313(j)(2); accounting methodologies used for direct identification drawback claims (if applicable); unique identifiers linking imports to exports or destructions; per-unit averages for substitution claims; and ''lesser of'' rule calculations for substitution claims.

Along with these reporting requirements, CBP would change the recordkeeping standards for all drawback claimants filing under the new regulations in 19 CFR part 190. Consistent with TFTEA, this rule would change the drawback recordkeeping timeframe for all drawback claimants from three years from CBP's date of payment of the drawback claim to three years from the liquidation of the claim. CBP estimates that drawback claimants would generally have to retain records for one extra year with this rule's new recordkeeping requirement than under the current three-year recordkeeping period, though some trade members may need to retain records for up to four more years under this rule.[41]

This rule would also require parties that split entry summary line items when transferring merchandise (transferors) to provide notification to the recipients (transferees) as to whether that merchandise is eligible for substitution or direct identification drawback. Notification of this designation from the transferor to the transferee must be documented in records, which may include records kept in the normal course of business.

Furthermore, this rule would require all drawback claimants filing manufacturing drawback claims under the new regulations in 19 CFR part 190 (which would account for about 20 percent of all claims filed with this rule) to maintain applicable BOMs and/or formula records[42] identifying the imported and/or substituted merchandise and the exported or destroyed article(s) in their normal course of business. When filing a manufacturing drawback claim, trade members must also certify that they have these BOMs and/or formula

[40] Some drawback documentation constituting a complete drawback claim, such as privilege and ruling applications, would remain paper-based.

[41] Based on input from CBP and trade community representative. Sources: Email correspondence with CBP's Office of Field Operations on April 5, 2017 and email correspondence with trade community representative on February 22, 2017.

[42] *See* 19 CFR 190.2.

records by checking a box on their electronic drawback claim, and provide the documentation to CBP upon request.

5. An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.

CBP does not believe that any federal rule duplicates, overlaps, or conflicts with the proposed rule.

6. A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

CBP considered two other alternatives in addition to the proposed rule.

a. Alternative 1

The first regulatory alternative CBP considered would implement all of the proposed rule's changes in 2018 rather than in 2019, offering no transition period. With this alternative, paper-based filers must begin filing their drawback claims electronically in 2018, but they would receive the benefits of drawback modernization in 2018 and beyond. With this alternative, paper-based filers, including those considered small, would begin to incur electronic filing costs in 2018 rather than 2019 like under the rule. This alternative would also lead to relatively more full desk reviews for claimants, including those considering small, than under the rule. Drawback claimants, including those considered small, would sustain an annualized cost of $8.0 million from this alternative under the primary estimation method, which is slightly higher than the proposed rule's $7.6 million annualized cost to trade members (using a 7 percent discount rate). On a per-claimant basis, Alternative 1 would cost $810 annually over the period of analysis compared to the rule's nearly $770 cost per unique claimant.[43] Alternative 1 would also result in an annualized net transfer measuring between $42.8 million and $49.9 million from the U.S. Government to drawback claimants, which would average from $4,300 to $5,000 per unique claimant based on the 9,919 unique drawback claimants projected under this alternative (using a 7 percent discount rate). Like the proposed rule, Alternative 1 would introduce benefits to drawback claimants. These benefits to claimants, including those considered small, would be greater than the rule's cost savings due to the relatively higher number of CBP Form 7552s (and corresponding time, printing, and mailing costs) avoided. CBP did not choose Alternative 1 because TFTEA statutorily allows a one-year transition period (February 24, 2018–February 23, 2019) in which drawback claimants can follow either the old drawback statute and corresponding regulations in 19 CFR part 191 as written prior to TFTEA or the amended statute.[44]

b. Alternative 2

The second regulatory alternative CBP considered would implement all of the proposed rule's changes, except it would not change the current regulatory standard for substituting merchandise for drawback (*i.e.,* no implementation of Major Amendment 2). Under this alternative, CBP estimates that the number of substitution drawback claim submissions and the number of drawback claimants would be lower than under the proposed rule over the period of analysis because this alternative would offer relatively fewer new opportunities to claim drawback. In fact, drawback claims would measure about 548,000 from 2018 to 2027 under Alternative 2's primary estimation method and the number of unique drawback claimants would equal approximately 9,017. Because of its narrower scope, Alternative 2 would introduce slightly lower costs to drawback claimants, including those considered small, than the proposed rule's cost. In particular, claimants would incur relatively fewer full desk reviews and associated costs with this alternative. Drawback claimants, including those considered small, would incur an annualized cost of $7.6 million from this alternative under the primary estimation method, compared to the proposed rule's annualized cost of $7.6 million (using a 7 percent discount rate). On a per-claimant basis, Alternative 2 would cost nearly $840 annually over the period of analysis, while the proposed rule would introduce an average cost of almost $770 cost per unique claimant.[45] Alternative 2 would also result in annualized net transfers between $56.3 million and $63.4 million from drawback claimants to the U.S. Government, which would average $6,200 to $7,000 per unique claimant based on the 9,017 unique drawback claimants projected under this alternative (using a 7 percent discount rate). Like the proposed rule, Alternative 2 would introduce benefits to drawback claimants. These benefits would be slightly lower than the rule's benefits because drawback claimants would continue to submit ruling and predeterminations requests for substitution drawback claims with this alternative. CBP did not choose this Alternative 2 because TFTEA statutorily requires CBP to liberalize the standard for substituting merchandise for drawback by generally basing it on goods classifiable under the same 8-digit HTSUS (or Schedule B) subheading.[46]

Conclusion

In conclusion, because the proposed Modernized Drawback rule would presumably affect all drawback claimants, it would likely impact a substantial number of small entities in each industry submitting such claims. CBP cannot certify whether the rule's (negative) impact on these small entities would be significant. CBP welcomes public comments on the data and findings included in this RFA analysis. Comments that will provide the most assistance to CBP will reference a specific portion of the RFA analysis, explain the reason for any recommended change, and include data, information, or authority that supports a recommended change. If CBP does not receive comments contradicting the RFA analysis findings, CBP may certify that this rule would not have a significant economic impact on a substantial number of small entities at the final rule stage.

D. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct, 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 collections of information for this notice of proposed rulemaking are included in an existing collection for CBP Forms 7551, 7552, and 7553 (OMB control number 1651–0075).

This rule proposes, among other things, to eliminate the submission requirement for CBP Form 7552 for drawback claimants who file electronically under the new, proposed drawback regulations in 19 CFR part 190. Drawback claimants filing by paper under the current drawback regulations in 19 CFR part 191 would still be required to submit the paper CBP Form 7552 until this rule's requirements become mandatory in 2019. Based on this change, CBP estimates a decrease in

[43] $8,000,000/9,919 unique drawback claimants = $810 (rounded); $7,600,000/9,919 unique drawback claimants = $770 (rounded).

[44] *See* Section 906 of the Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114–125).

[45] $7,600,000/9,017 unique drawback claimants = $840 (rounded); $7,600,000/9,919 unique drawback claimants = $770 (rounded).

[46] *See* Section 906 of the Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114–125).

CBP Form 7552 responses and burden hours. Additionally, CBP Form 7551 has a decrease in burden hours based on changes in the agency estimate. CBP will submit to OMB for review the following adjustments to the previously approved Information Collection under OMB control number 1651–0075 to account for the changes proposed in this rule. Furthermore, CBP expects to submit a request to eliminate CBP Form 7552 to OMB in 2019 prior to this rule's mandatory requirement date.

CBP Form 7551, Drawback Entry (reduction in burden hours due to change in agency estimate)

Estimated Number of Respondents: 2,516

Estimated Number of Responses per Respondent: 22.2

Estimated Number of Total Annual Responses: 55,772

Estimated Time per Response: 35 minutes

Estimated Total Annual Burden Hours: 32,532

CBP Form 7552, Delivery Certificate for Drawback (reduction in burden hours due to regulation)

Estimated Number of Respondents: 400

Estimated Number of Responses per Respondent: 20

Estimated Number of Total Annual Responses: 8,000

Estimated Time per Response: 33 minutes

Estimated Total Annual Burden Hours: 4,400

CBP Form 7553, Notice of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback (no change)

Estimated Number of Respondents: 150

Estimated Number of Responses per Respondent: 20

Estimated Number of Total Annual Responses: 3,000

Estimated Time per Response: 33 minutes

Estimated Total Annual Burden Hours: 1,650

V. Proposed Effective/Applicability Dates

To allow stakeholders immediate benefit from these proposed regulations (*see* 5 U.S.C. 553(d) and 808), they are proposed to be effective upon publication of a rule adopting them as final, except that the regulations proposed in §§ 190.22(a)(1)(C), 190.32(b)(3), 191.22(a), 191.32(b)(4), and 191.171(d) regarding the drawback of excise taxes are proposed to become applicable for drawback claims filed on or after 60 days from the date of publication of the final rule.

CBP and Treasury invite interested members of the public to comment on these proposed effective and applicability dates.

VI. Signing Authority

This proposed regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the authority of the Secretary of the Treasury (or that of his or her delegate) to approve regulations pertaining to certain customs revenue functions.

List of Subjects

19 CFR Part 113

Bonds, Copyrights, Counterfeit goods, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures.

19 CFR Part 181

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

19 CFR Part 190

Alcohol and alcoholic beverages, Claims, Customs duties and inspection, Exports, Foreign trade zones, Guantanamo Bay Naval Station, Cuba, Packaging and containers, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 191

Alcohol and alcoholic beverages, Claims, Customs duties and inspection, Exports, Foreign trade zones, Guantanamo Bay Naval Station, Cuba, Packaging and containers, Reporting and recordkeeping requirements, Trade agreements.

Proposed Amendments to the Regulations

For the reasons given above, it is proposed to amend 19 CFR chapter I as set forth below:

PART 113—CUSTOMS BONDS

■ 1. The general authority citations for part 113 continue and the specific authority for § 113.62 is added in numerical order to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

Section 113.62 is also issued under 19 U.S.C. 1313(k).

* * * * *

■ 2. In § 113.62, redesignate paragraphs (m) and (n) as paragraphs (o) and (p) and add paragraphs (a)(4) and (m) to read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(a) * * *

(4) If a person who is not the principal makes a drawback claim with respect to merchandise imported by the principal (see part 190 of this chapter), the principal and surety (jointly and severally) agree to pay, as demanded by CBP, any erroneous drawback payment in an amount not to exceed the lesser of:

(i) The amount of duties, taxes, and fees that the person claimed with respect to the imported merchandise; or

(ii) The amount of duties, taxes, and fees that the importer authorized the other person to claim with respect to the imported merchandise.

(iii) The amount of the erroneous drawback payment.

* * * * *

(m) *Agreement to comply with CBP regulations applicable to substitution drawback claims.* In the case of imported merchandise that is subject to internal revenue tax imposed under the Internal Revenue Code of 1986, as amended (IRC), the principal agrees not to file, or to transfer to a successor the right to file, a substitution drawback claim involving such tax if the substituted merchandise has been, or will be, the subject of a removal from bonded premises without payment of tax, or the subject of a claim for refund or drawback of tax, under any provision of the IRC.

* * * * *

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

■ 3. The general authority citations for part 181 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314;

* * * * *

§§ 181.45, 181.46, 181.47, 181.49, and 181.50 [Amended]

■ 4. In the table below, for each section indicated in the left column, remove the words indicated in the middle column, and add, in their place, the words indicated in the right column.

Section	Remove	Add
181.45(b)(2)(i)(B)	§ 191.14 of this chapter, as provided therein	§§ 190.14 or 191.14 of this chapter, as appropriate.
181.45(c)	Such a good must be returned to Customs custody for exportation under Customs supervision within three years after the release from Customs custody.	Such a good must be exported or destroyed within the statutory 5-year time period and in compliance with the requirements set forth in subpart D of part 190 of this chapter or within the 3-year time period and in compliance with the requirements set forth in subpart D of part 191 of this chapter, as applicable.
181.46(b)	(*see* § 191.141(b)(3) (ii) and (iii) of this chapter)	(*see* §§ 190.35 or 191.35 of this chapter, as appropriate).
181.47(a)	part 191 of this chapter;	part 190 or 191 of this chapter, as appropriate
181.49	(*see* § 191.15 (*see* also §§ 191.26(f), 191.38, 191.175(c)) of this chapter).	(*see* § 190.15 (*see* also §§ 190.26(f), 190.38, 190.175(c)) or § 191.15 (*see* also §§ 191.26(f), 191.38, 191.175(c)) of this chapter, as appropriate)
181.50(a)	subpart G of part 190 of this chapter	subpart H of part 190 or subpart H of part 191 of this chapter, as appropriate
181.50(c)	§ 191.92 of this chapter	§§ 190.92 or 191.92 of this chapter, as appropriate.

■ 5. Add part 190 to read as follows:

PART 190—MODERNIZED DRAWBACK

Sec.

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

Subpart Q—Substitution of Finished Petroleum Derivatives

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

Subpart S—Drawback Compliance Program

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624; §§ 190.2, 190.10, 190.15, 190.23, 190.38, 190.51 issued under 19 U.S.C. 1508; § 190.84 also issued under 19 U.S.C. 1514; §§ 190.111, 190.112 also issued under 19 U.S.C. 1309; §§ 190.151(a)(1), 190.153, 190.157, 190.159 also issued under 19 U.S.C. 1557; §§ 190.182–190.186 also issued under 19 U.S.C. 81c; §§ 190.191–190.195 also issued under 19 U.S.C. 1593a.

§ 190.0 Scope.

This part sets forth general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims filed under 19 U.S.C. 1313, as amended. For drawback claims and specialized provisions applicable to specific types of drawback claims filed pursuant to 19 U.S.C. 1313, as it was in effect on or before February 24, 2016, please see part 191 of this title. Additional drawback provisions relating to the North American Free Trade Agreement (NAFTA) are contained in subpart E of part 181 of this chapter.

§ 190.0a Claims filed under NAFTA.

Claims for drawback filed under the provisions of part 181 of this chapter must be filed separately from claims filed under the provisions of this part.

Subpart A—General Provisions

§ 190.1 Authority of the Commissioner of CBP.

Pursuant to DHS Delegation number 7010.3, the Commissioner of CBP has the authority to prescribe, and pursuant to Treasury Order No. 100–16 (set forth in the appendix to part 0 of this chapter), the Secretary of the Treasury has the sole authority to approve, rules and regulations regarding drawback.

§ 190.2 Definitions.

For the purposes of this part:

Abstract. Abstract means the summary of the actual production records of the manufacturer.

Act. Act, unless indicated otherwise, means the Tariff Act of 1930, as amended.

Bill of materials. Bill of materials refers to a record that identifies each component incorporated into a manufactured or produced article. This may include a record kept in the normal course of business.

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).

Destruction. Destruction means the destruction of articles or merchandise to the extent that they have no commercial value. For purposes of 19 U.S.C. 1313(a), (b), (c), and (j), *destruction* also includes a process by which materials are recovered from imported merchandise or from an article manufactured from imported merchandise, as provided for in 19 U.S.C. 1313(x).

Direct identification drawback. Direct identification drawback includes drawback authorized pursuant to section 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), on imported merchandise exported, or destroyed under CBP supervision, without having been used in the United States (*see* also sections 313(c), (e), (f), (g), (h), and (q)). Direct identification is involved in manufacturing drawback pursuant to section 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. Merchandise or articles may be identified for purposes of direct identification drawback by use of the accounting methods provided for in § 190.14.

Document. In this part, *document* has its normal meaning and includes information input to and contained within an electronic data field, and electronic versions of hard-copy documents.

Drawback. Drawback, as authorized under 19 U.S.C. 1313, means the refund or remission, in whole or in part, of the duties, taxes, and/or fees paid on merchandise which were imposed under Federal law. It includes drawback paid upon the entry or importation of the imported merchandise and the refund or remission of internal revenue taxes paid on domestic alcohol as prescribed in 19 U.S.C. 1313(d) (*see* also § 190.3).

Drawback claim. Drawback claim means the drawback entry and related documents required by regulation which together constitute the request for drawback payment. All drawback claims must be filed electronically through a CBP-authorized EDI system.

Drawback entry. Drawback entry means the document containing a description of, and other required information concerning, the exported or destroyed article upon which a drawback claim is based and the designated imported merchandise for which drawback of the duties, taxes, and fees paid upon importation is claimed. Drawback entries must be filed electronically.

Drawback office. Drawback office means any of the locations where drawback claims and related applications or requests may be submitted. CBP may, in its discretion, transfer or share work between the different drawback offices even though that the submission may have been to a particular office.

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 CBP 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 may 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 requirements of the Act are met. For purposes of section 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* 19 U.S.C. 1313(b)). For a drawback product to be designated as the basis for a drawback claim, any transfer of the product must be properly documented (*see* § 190.24).

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 section 309(b) of the Act, as amended (19 U.S.C. 1309(b)) (*see* §§ 10.59 through 10.65 of this chapter).

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* definition of *exportation* in this section), *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), *exporter* means the party who has the power and responsibility for lading supplies on the qualifying aircraft or vessel.

Filing. Filing means the electronic delivery to CBP of any document or documentation, as provided for in this part.

Formula. Formula refers to records that identify the quantity of each element, material, chemical, mixture, or other substance incorporated into a manufactured article. This includes records kept in the normal course of business.

Fungible merchandise or articles. Fungible merchandise or articles means merchandise or articles which for commercial purposes are identical and interchangeable in all situations.

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* § 190.7).

Intermediate party. Intermediate party means any party in the chain of commerce leading to the exporter from the importer and who has acquired, purchased, or possessed the imported merchandise (or any intermediate or finished article, in the case of manufacturing drawback) as allowed under the applicable regulations for the type of drawback claimed, which authorize the transfer of the imported or other drawback eligible merchandise by that intermediate party to another party.

Manufacture or production. Manufacture or production means a process, including, but not limited to, an assembly, by which merchandise is either made into a new and different article having a distinctive name, character or use; or is made fit for a particular use even though it is not made into a new and different article.

Multiple products. Multiple products mean two or more products produced concurrently by a manufacture or production operation or operations.

Per unit averaging. Per unit averaging means the equal apportionment of the amount of duties, taxes, and fees eligible for drawback for all units covered by a single line item on an entry summary to each unit of merchandise (and is required for certain substitution drawback claims) (*see* § 190.51(b)). The value of the imported merchandise for which a claim is approved may not exceed the total value of the exported merchandise which forms the basis for the claim (''lesser of'' rule) (*see* § 190.22(a)(1)(ii) and 190.32(b)).

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.

Records. Records include, but are not limited to, written or electronic business records, statements, declarations, documents and electronically generated or machine readable data which pertain to 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 may include records normally kept in the ordinary course of business (*see* 19 U.S.C. 1508).

Relative value. Relative value means, except for purposes of § 190.51(b), the value of a product divided by the total value of all products which are necessarily manufactured or produced concurrently in the same operation. Relative value is based on the market value, or other value approved by CBP, 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 must be apportioned to each such product based on its relative value at the time of separation.

Schedule. A *schedule* means a document filed by a drawback claimant, under section 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 that justifies a claim for drawback.

Schedule B. Schedule B means the Department of Commerce Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States.

Sought chemical element. A *sought chemical element,* under section 313(b), means an element listed in the Periodic Table of Elements that is imported into the United States or a chemical compound (a distinct substance formed by a chemical union of two or more elements in definite proportion by weight) consisting of those elements, either separately in elemental form or contained in source material.

Specific manufacturing drawback ruling. A *specific manufacturing drawback ruling* means a letter of approval (or its electronic equivalent) issued by CBP Headquarters in response to an application filed by a manufacturer or producer for a ruling on a specific manufacturing or production operation for drawback, as described in the format in Appendix B of this part. Synopses of approved specific manufacturing drawback rulings are published in the Customs Bulletin with each synopsis being published under an identifying CBP Decision. Specific manufacturing drawback rulings are subject to the provisions in part 177 of this chapter.

Substituted merchandise or articles. Substituted merchandise or articles means merchandise or articles that may be substituted as follows:

(1) For manufacturing drawback pursuant to section 1313(b), substituted merchandise must be classifiable under the same 8-digit HTSUS subheading number as the imported designated merchandise;

(2) For direct identification drawback pursuant to section 1313(c)(2), substituted merchandise must be classifiable under the same 8-digit HTSUS subheading number and have the same specific product identifier (such as part number, SKU, or product code) as the imported designated merchandise;

(3) For direct identification drawback pursuant to section 1313(j)(2), substituted merchandise must be classifiable under the same 8-digit HTSUS subheading number as the imported designated merchandise except for wine which may also qualify pursuant to § 190.32(d), but when the 8-digit HTSUS subheading number under which the imported merchandise is classified begins with the term ''other,'' then the other merchandise may be substituted for imported merchandise for drawback purposes if the other merchandise and such imported merchandise are classifiable under the same 10-digit HTSUS statistical reporting number and the article description for that 10-digit HTSUS statistical reporting number does not begin with the term ''other''; and

(4) For substitution drawback of finished petroleum derivatives pursuant to section 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 subheading number (*see* § 190.172(b)).

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 CBP 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.

Wine. Wine, for purposes of substitution unused merchandise drawback under 19 U.S.C. 1313(j)(2) and pursuant to the alternative standard for substitution (*see* 19 CFR 190.32(d)), refers to table wine. Consistent with Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations, table wine is a ''Class 1 grape wine'' that satisfies the requirements of 27 CFR 4.21(a)(1) and having an alcoholic content not in excess of 14 percent by volume pursuant to 27 CFR 4.21(a)(2)).

§ 190.3 Duties, taxes, and fees subject or not subject to drawback.

(a) Drawback is allowable pursuant to 19 U.S.C. 1313 of on duties, taxes, and fees paid on imported merchandise which were imposed under Federal law upon entry or importation, including:

(1) 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 § 190.81(b); and

(iii) Tenders of duties after liquidation of the entry, or withdrawal from warehouse, for consumption for which the duties are paid, subject to the conditions and requirements of § 190.81(c), 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 § 190.81 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 section 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c));

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

(4) Merchandise processing fees (*see* § 24.23 of this chapter); and

(5) Harbor maintenance taxes (*see* § 24.24 of this chapter).

(b) Drawback is not allowable on antidumping and countervailing duties which were imposed on any merchandise entered, or withdrawn from warehouse, for consumption (*see* 19 U.S.C. 1677h).

(c) Drawback is not allowed when the identified merchandise, the designated imported merchandise, or the substituted 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).

§ 190.4 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 will 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 § 190.82, 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 will be required when a U.S. Government entity claims drawback.

§ 190.5 Guantanamo Bay, insular possessions, trust territories.

Guantanamo Bay Naval Station is considered foreign territory for drawback purposes and, accordingly, drawback may be permitted on articles shipped there from the customs territory of the United States. Drawback is not allowed, except on claims made under 19 U.S.C. 1313(j)(1), on articles shipped from the customs territory of the United States to the U.S. Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island. *See* 19 U.S.C. 1313(y). Puerto Rico, which is part of the customs territory of the United States, is not considered foreign territory for drawback purposes and, accordingly, drawback may not be permitted on articles shipped there from elsewhere in the customs territory of the United States. For refunds of duties, taxes, or fees paid on merchandise imported into Puerto Rico and exported outside of the customs territory of the United States, claims must be filed separately from other claims filed under the provisions of this part.

§ 190.6 Authority to sign or electronically certify drawback documents.

(a) Documents listed in paragraph (b) of this section must be signed or electronically certified 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 to sign the applicable drawback document.

(b) The following documents require execution in accordance with paragraph (a) of this section:

(1) Drawback entries;

(2) Notices of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback;

(3) Certifications of exporters on bills of lading or evidence of exportation (*see* §§ 190.28 and 190.82); and

(4) Abstracts, schedules and extracts from monthly abstracts, and bills of materials and formulas, 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 § 190.7;

(2) An application for a specific manufacturing drawback ruling under § 190.8;

(3) An application for waiver of prior notice under § 190.91;

(4) An application for approval of accelerated payment of drawback under § 190.92; and

(5) An application for certification in the Drawback Compliance Program under § 190.193.

§ 190.7 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* § 190.8). 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 CBP, new general manufacturing drawback rulings will be issued as CBP Decisions and added to the appendix thereafter.

(2) *Submission.* Letters of notification of intent to operate under a general manufacturing drawback ruling must be submitted to any drawback office where drawback entries will be filed, concurrent with or prior to filing a claim, provided that the general manufacturing drawback ruling will be followed without variation. If there is any variation from the general manufacturing drawback ruling, the manufacturer or producer must apply for a specific manufacturing drawback ruling under § 190.8.

(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 § 190.6(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. or CBP Decision 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, and the applicable 8-digit HTSUS subheading number(s);

(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 CBP.* The drawback office to which the letter of notification of intent to operate under a general manufacturing drawback ruling was submitted will review the letter of notification of intent.

(1) *Acknowledgment.* The drawback office will promptly issue a letter 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.,* contains 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 will be followed without variation; and

(iv) The described manufacturing or production process is a manufacture or production as defined in § 190.2 of this subpart.

(2) *Computer-generated number.* With the letter of acknowledgment the drawback office will 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 CBP 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 will 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 to which it was initially submitted with modifications and/or explanations addressing the reasons CBP may have given for non-acknowledgment, or the matter may be referred (by letter from the manufacturer or producer) to CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

(d) *Procedure to modify a general manufacturing drawback ruling.*

Modifications are allowed under the same procedure terms as provided for in § 190.8(g) for specific manufacturing drawback rulings.

(e) *Duration.* Acknowledged letters of notification under this section will remain in effect under the same terms as provided for in § 190.8(h) for specific manufacturing drawback rulings.

§ 190.8 Specific manufacturing drawback ruling.

(a) *Applicant.* Unless operating under a general manufacturing drawback ruling (*see* § 190.7), each manufacturer or producer of articles intended to be claimed for drawback must 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 must 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 is 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 § 190.6(a)(1) through (6) who will sign drawback documents;

(6) Description of the imported merchandise including specifications and applicable 8-digit HTSUS subheading(s);

(7) Description of the exported article and applicable 8-digit HTSUS subheadings;

(8) How manufacturing drawback is calculated;

(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 of Application.* An application for a specific manufacturing drawback ruling must be submitted to CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade). Applications may be physically delivered (in triplicate) or submitted via email. Claimants must indicate if drawback claims are to be filed under the ruling at more than one drawback office.

(e) *Review and action by CBP.* CBP Headquarters will review each application for a specific manufacturing drawback ruling.

(1) *Approval.* If the application is consistent with the drawback law and regulations, CBP Headquarters will issue a letter of approval to the applicant and will 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. Each specific manufacturing drawback ruling will be assigned a unique manufacturing number which will be included in the letter of approval to the applicant from CBP Headquarters, which must be used when filing manufacturing drawback claims.

(2) *Disapproval.* If the application is not consistent with the drawback law and regulations, CBP Headquarters will promptly and in writing inform the applicant that the application cannot be approved and will 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, a disapproval may be appealed to CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

(f) *Schedules and supplemental schedules.* When an application for a specific manufacturing drawback ruling states that drawback is to be based upon a schedule, as defined in 190.2, filed by the manufacturer or producer, the schedule will be reviewed by CBP 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 may submit a supplemental application for such modification to CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade). 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. or CBP Decision number, if applicable, and unique computer-generated number) and include only those paragraphs of the application that are 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 must be submitted to the drawback office where the original claims was 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 § 190.9 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);

(H) An authorization to continue operating under a ruling approved under 19 CFR part 191 (*see* paragraph (g)(2)(iv of this section); or

(I) Any combination of the foregoing changes.

(ii) A limited modification, as provided for in this paragraph (g)(2), must 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 must file with the drawback office(s) where claims were originally filed a letter stating the modifications to be made. The drawback office will promptly acknowledge acceptance of the limited modifications.

(iii) To transfer a claim to another drawback office, the manufacturer or producer must file with the second 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 must provide a copy of the written application to file claims at the new drawback office to the drawback office where claims are currently filed.

(iv) To file a claim under this part based on a ruling approved under 19 CFR part 191, the manufacturer or producer must file a supplemental application for a limited modification no later than February 23, 2019, which provides the following:

(A) Revised parallel columns with the required annotations for the applicable 8-digit HTSUS subheading number(s);

(B) Revised bill of materials or formula with the required annotations for the applicable 8-digit HTSUS subheading number(s); and

(C) A certification of continued compliance, which states: ''The undersigned acknowledges the current statutory requirements under 19 U.S.C. 1313 and the regulatory requirements in 19 CFR part 190, and hereby certifies its continuing eligibility for operating under the manufacturing drawback ruling in compliance therewith.''

(h) *Duration.* Subject to 19 U.S.C. 1625 and part 177 of this chapter, a specific manufacturing drawback ruling under this section will remain in effect indefinitely unless:

(1) No drawback claim 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 CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

§ 190.9 Agency.

(a) *General.* An owner of the identified merchandise, the designated imported merchandise and/or the substituted 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 as defined in § 190.2 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 will 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, § 190.26).

(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 § 190.7 or in any application for a specific manufacturing drawback ruling filed under § 190.8.

(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* § 190.7), for an agent, covering the articles manufactured or produced, or have obtained a specific manufacturing drawback ruling (*see* § 190.8), as appropriate.

(d) *Certificate*—(1) *Contents of certificate.* The principal for whom processing is conducted under this section must file, with any drawback claim, a certificate, subject to the recordkeeping requirements of §§ 190.15 and 190.26, certifying that upon request by CBP it can establish the following:

(i) Quantity 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, description, and 10-digit HTSUS classification of merchandise appearing in or used in manufacturing or production operations performed by the agent;

(v) Total quantity, description, and 10-digit HTSUS classification of articles produced in manufacturing or production operations performed by the agent;

(vi) Quantity and 10-digit HTSUS classification 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 stated period.

§ 190.10 Transfer of merchandise.

(a) *Ability to transfer merchandise.* (1) A party may transfer drawback eligible merchandise or articles to another party, provided that the transferring party:

(i) Imports and pays duties, taxes, and/or fees on such imported merchandise;

(ii) Receives such imported merchandise;

(iii) In the case of 19 U.S.C. 1313(j)(2), receives such imported merchandise, substituted merchandise, or any combination of such imported and substituted merchandise; or

(iv) Receives an article manufactured or produced under 19 U.S.C. 1313(a) and/or (b).

(2) The transferring party must maintain records that:

(i) Document the transfer of that merchandise or article;

(ii) Identify such merchandise or article as being that to which a potential right to drawback exists; and

(iii) Assign such right to the transferee (*see* § 190.82).

(b) *Required records.* The records that support the transfer must include the following information:

(1) The party to whom the merchandise or articles are delivered;

(2) Date of physical delivery;

(3) Import entry number and entry line item number;

(4) Quantity delivered and, for substitution claims, total quantity attributable to the relevant import entry line item number;

(5) Total duties, taxes, and fees paid on, or attributable to, the delivered merchandise, and, for substitution claims, total duties, taxes, and fees paid on, or attributable to, the relevant import entry line item number;

(6) Date of importation;

(7) Port where import entry filed;

(8) Person from whom received;

(9) Description of the merchandise delivered;

(10) The 10-digit HTSUS classification for the designated imported merchandise (such HTSUS number must be from the entry summary line item and other entry documentation for the merchandise); and

(11) If the merchandise transferred is substituted for the designated imported merchandise under 19 U.S.C. 1313(j)(2), the 10-digit HTSUS classification of the substituted merchandise (as if it had been imported).

(c) *Transferor notification for line item designation.* (1) Pursuant to § 190.51(a)(3) and for transfers that do not cover the entire quantity of the merchandise reported on a specific line item from an entry summary, the transferring party (transferor) must provide notice to the transferee(s) of the following:

(i) Whether the transferor has claimed or will claim drawback relating to any merchandise reported on the entry summary line item (specifying either direct identification or substitution as the basis for the claim);

(ii) Whether the transferor has previously transferred any merchandise reported on the entry summary line item and whether the transferor has knowledge regarding a drawback claim being filed relating that transferred merchandise (specifying either direct identification or substitution); and

(iii) Whether the transferor has not previously transferred any merchandise reported on the entry summary line item.

(2) Notification of this designation from the transferor to the transferee(s) must be documented in records.

(3) Notwithstanding the designation made, the basis for the first-filed claim relating to merchandise reported on that entry summary line item (either direct identification or substitution) will be the exclusive basis for any subsequent claims for any other merchandise reported on that same entry summary line item.

(d) *Retention period.* The records listed in paragraph (b) of this section must be retained by the issuing party for 3 years from the date of liquidation of the related claim or longer period if required by law (*see* 19 U.S.C. 1508(c)(3)).

(e) *Submission to CBP.* If the records required under paragraph (b) of this section or additional records requested by CBP are not provided by the claimant, the part of the drawback claim dependent on those records will be denied.

(f) *Warehouse transfer and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse will be considered the importer for drawback purposes. No records are required to document prior transfers of merchandise while in a bonded warehouse.

§ 190.11 Valuation of merchandise.

The values declared to CBP as part of a complete drawback claim pursuant to § 190.51 must be established as provided below. If the drawback eligible merchandise or articles are destroyed, then the value of the imported merchandise and any substituted merchandise must be reduced by the value of materials recovered during destruction in accordance with 19 U.S.C. 1313(x).

(a) *Designated imported merchandise.* The value of the imported merchandise is determined as follows:

(1) *Direct identification claims.* The value of the imported merchandise is the customs value of the imported merchandise upon entry into the United States (see subpart E of part 152 of this chapter); or, if the merchandise is identified pursuant to an approved accounting method, then the value of the imported merchandise is the customs value that is properly attributable to the imported merchandise as identified by the appropriate recordkeeping (see § 190.14, varies by accounting method).

(2) *Substitution claims.* The value of the designated imported merchandise is the per unit average value, which is the entered value for the applicable entry summary line item apportioned equally over each unit covered by the line item.

(b) *Exported merchandise or articles.* The value of the exported merchandise or articles eligible for drawback is the selling price as declared for the Electronic Export Information (EEI), including any adjustments and exclusions required by 15 CFR 30.6(a)). If there is no selling price for the EEI, then the value is the other value as declared for the EEI including any adjustments and exclusions required by 15 CFR 30.6(a) (*e.g.,* the market price, if the goods are shipped on consignment). (For special types of transactions where certain unusual conditions are involved, the value for the EEI is determined pursuant to 15 CFR part 30 subpart C.) If no EEI is required (*see,* 15 CFR part 30 subpart D for a complete list of exemptions), then the claimant must provide the value that would have been set forth on the EEI when the exportation took place, but for the exemption from the requirement for an EEI.

(c) *Destroyed merchandise or articles.* The value of the destroyed merchandise or articles eligible for drawback is the value at the time of destruction, determined as if the merchandise had been exported in its condition at the time of its destruction and an EEI had been required.

(d) *Substituted merchandise for manufacturing drawback claims.* The value of the substituted merchandise for manufacturing drawback claims pursuant to 19 U.S.C. 1313(b) is the cost of acquisition or production for the manufacturer or producer who used the substituted merchandise in manufacturing or production.

§ 190.12 Claim filed under incorrect provision.

A drawback claim filed pursuant to any provision of section 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 and by protest (*see* part 174 of this chapter).

§ 190.13 Packaging materials.

(a) *Imported packaging material.* Drawback of duties is provided in section 313(q)(1) of the Act, as amended (19 U.S.C. 1313(q)(1)), on imported packaging material used to package or repackage merchandise or articles exported or destroyed pursuant to section 313(a), (b), (c), or (j) of the Act, as amended (19 U.S.C. 1313(a), (b), (c), or (j)). The amount of drawback payable on the packaging material is determined pursuant to the particular drawback provision to which the packaged goods themselves are subject. 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 must be provided for the packaging material.

(b) *Packaging material manufactured in United States from imported materials.* Drawback of duties is provided in section 313(q)(2) of the Act, as amended (19 U.S.C. 1313(q)(2)), on packaging material that is manufactured or produced in the United States from imported materials and used to package or repackage articles that are exported or destroyed under section 313(a) or (b) of the Act, as amended (19 U.S.C. 1313(a) or (b)). The amount of drawback payable on the packaging material is determined pursuant to the particular manufacturing drawback provision to which the packaged articles themselves are subject, either 19 U.S.C. 1313(a) or (b), as applicable. The packaging material and the imported merchandise used in the manufacture or production of 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 must be provided for the packaging material as well as the imported merchandise used in its manufacture or production, for purposes of determining the applicable drawback payable.

§ 190.14 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, as defined in § 190.2. 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 as defined in § 190.2;

(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 CBP (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 CBP (*see* § 190.61). If CBP requests such verification, the person using the identification method must be able to demonstrate how, under Generally Accepted Accounting Procedures (GAAP), 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 exclusively, without using other methods for a period of at least one year, unless approval is given by CBP 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. If a claim is eligible for the use of any accounting method, the claimant must indicate on the drawback entry whether an accounting method was used, and if so, which accounting method was used, to identify the merchandise as part of the complete claim (see § 190.51).

(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 before the claimed export, no drawback could be granted).

(ii) *Ordinary Low–to-High*—(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. (1)* 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).

(2) The drawback attributable to the January 15 withdrawal for export is zero (the available receipt with the lowest drawback amount per unit is the January 2 receipt), the drawback attributable to the January 28 withdrawal for domestic shipment (no drawback) is zero (the remainder of the January 2 receipt), the drawback attributable to the February 5 withdrawal for export is $100.50 (the January 5 and January 20 receipts), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 23 withdrawal for domestic shipment (no drawback) is zero (the February 20 receipt), the drawback attributable to the February 28 withdrawal for export is $102.50 (the January 25 and January 31 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), the drawback attributable to the March 21 withdrawal for domestic shipment (no drawback) is $52.50 (the February 25 receipt), and the drawback attributable to the March 31 withdrawal for export is $98.00 (the March 25 and March 5 receipts). Remaining in inventory is the March 20 receipt of 50 units ($1.08 drawback/unit). Total drawback attributable to withdrawals for export in this example would be $391.00.

(iii) *Low-to-high method with established average inventory turn-over period*—(A) *Method.* Under the low-to-high method with established average inventory turn-over period, all receipts into and all withdrawals for export are recorded in the accounting record and accounted for so that each withdrawal is identified by recordkeeping on the basis of the lowest drawback amount per available unit of the merchandise or articles received into the inventory in the established average inventory turn-over period preceding the withdrawal.

(B) *Accounting for withdrawals (for domestic shipments and for export).* Under the low to-high method with established average inventory turn-over period, 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 the low to-high method with established average inventory turn-over period, the 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 based on that rate. To establish an average of this time, at least 1 year, or 3 turn-over periods (if inventory turns over fewer than 3 times per year), must be averaged. The inventory turn-over period must be that for the merchandise or articles to be identified, except that if the person using the method has more than one kind of merchandise or articles with different inventory turn-over periods, the longest average turn-over period established under this section may be used (instead of using a different inventory turn-over period for each kind of merchandise or article).

(D) *Example.* In the example in paragraph (c)(3)(ii)(B) of this section (but, as required for this method, without accounting for domestic withdrawals, and with an established average inventory turn-over period of 30 days), the drawback attributable to the January 15 withdrawal for export is zero (the available receipt in the preceding 30 days with the lowest amount of drawback is the January 2 receipt, of which 50 units will remain after the withdrawal), the drawback attributable to the February 5 withdrawal for export is $101.50 (the January 20 and January 25 receipts), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 28 withdrawal for export is $51.50 (the February 20 and January 31 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), and the drawback attributable to the March 31 withdrawal for export is $98.00 (the March 25 and March 5 receipts). No drawback may be claimed on the basis of the January 5 receipt or the February 25 receipt because in the case of each, there were insufficient withdrawals for export within the established average inventory turn-over period; the 50 units remaining from the January 2 receipt after the January 15 withdrawal are not identified for a withdrawal for export because there is no other withdrawal for export (other than the January 15 withdrawal) within the established average inventory turn-over period; the March 20 receipt (50 units at $1.08) is not yet attributed to withdrawals for export. Total drawback attributable to withdrawals for export in this example would be $341.00.

(iv) *Low-to-high blanket method*—(A) *Method.* Under the low-to-high blanket method, all receipts into and all withdrawals for export are recorded in the accounting record and accounted for. Each withdrawal is identified on the basis of the lowest drawback amount per available unit of the merchandise or articles received into inventory in the applicable statutory period for export preceding the withdrawal (*e.g.,* 180 days under 19 U.S.C. 1313(p) and 5 years for other types of drawback claims pursuant to 19 U.S.C. 1313(r)). Drawback requirements are applicable to withdrawn merchandise or articles as identified (for example, no drawback could be granted generally if the merchandise or articles identified were attributable to an import made more than 5 years before the claimed export; and, for claims pursuant to 19 U.S.C. 1313(p), no drawback could be granted if the merchandise or articles identified were attributable to an import that was entered more than 180 days after the date of the claimed export or if the claimed export was more than 180 days after the close of the manufacturing period attributable to an import).

(B) *Accounting for withdrawals* (*for domestic shipments and for export).* Under the low-to-high blanket method, domestic withdrawals (withdrawals for domestic shipment) are not accounted for and do not affect the available units of merchandise or articles. All withdrawals for export must be accounted for whether or not drawback is available or claimed on the withdrawals. Once a withdrawal for export is made and accounted for under this method, the merchandise or articles withdrawn are no longer available for identification.

(C) *Example.* In the example in paragraph (c)(3)(ii)(B) of this section (but, as required for this method, without accounting for domestic withdrawals), the drawback attributable to the January 15 withdrawal for export is zero (the available receipt in the inventory with the lowest amount of drawback is the January 2 receipt, of which 50 units will remain after the withdrawal), the drawback attributable to the February 5 withdrawal for export is $50.00 (the remainder of the January 2 receipt and the January 5 receipt), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 28 withdrawal for export is $50.50 (the February 20 and January 20 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), and the drawback attributable to the March 31 withdrawal for export is $96.00 (the March 25 and January 25 receipts). Receipts not attributed to withdrawals for export are the January 31 (50 units at $1.03), February 25 (50 units at $1.05), March 5 (50 units at $1.06), and March 20 (50 units at $1.08) receipts. Total drawback attributable to withdrawals for export in this example would be $286.50.

(4) *Average*—(i) *General.* The average method is the method by which fungible merchandise or articles are identified on the basis of the calculation by recordkeeping of the amount of drawback that may be attributed to each unit of merchandise or articles in the inventory. In this method, the ratio of:

(A) The total units of a particular receipt of the fungible merchandise in the inventory at the time of a withdrawal to;

(B) The total units of all receipts of the fungible merchandise (including each receipt into inventory) at the time of the withdrawal;

(C) Is applied to the withdrawal, so that the withdrawal consists of a proportionate quantity of units from each particular receipt and each receipt is correspondingly decreased. Withdrawals and corresponding decreases to receipts are rounded to the nearest whole number.

(ii) *Example.* In the example in paragraph (c)(1)(ii) of this section, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of $133 (50 units from the receipt on the 15th with $2 drawback attributable per unit, 33 units from the receipt on the 2nd with $1 drawback attributable per unit, and 17 units from the receipt on the 5th with $0 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units ($1 drawback/unit) results in a balance of that amount; the receipt of 50 units ($0 drawback/unit) on the 5th results in a balance of 150 units (100 with $1 drawback/unit and 50 with $0 drawback/unit); the withdrawal on the 10th of 75 units (50 with $1 drawback/unit (applying the ratio of 100 units from the receipt on the 2nd to the total of 150 units at the time of withdrawal) and 25 with $0 drawback/unit (applying the ratio of 50 units from the receipt on the 5th to the total of 150 units at the time of withdrawal)) results in a balance of 75 units (with 50 with $1 drawback/unit and 25 with $0 drawback/unit, on the basis of the same ratios); the receipt of 75 units ($2 drawback/unit) on the 15th results in a balance of 150 units (50 with $1 drawback/unit, 25 with $0 drawback/unit, and 75 with $2 drawback/unit); the withdrawal on the 20th of 100 units (50 with $2 drawback/unit (applying the ratio of the 75 units from the receipt on the 15th to the total of 150 units at the time of withdrawal), 33 with $1 drawback/unit (applying the ratio of the 50 units remaining from the receipt on the 2nd to the total of 150 units at the time of withdrawal, and 17 with $0 drawback/unit (applying the ratio of the 25 units remaining from the receipt on the 5th to the total of 150 units at the time of withdrawal)) results in a balance of 50 units (25 with $2 drawback/unit, 17 with $1 drawback/unit, and 8 with $0 drawback/unit, on the basis of the same ratios).

(5) *Inventory turn-over for limited purposes.* A properly established average inventory turn-over period, as provided for in paragraph (c)(3)(iii)(C) of this section, may be used to determine:

(i) The fact and date(s) of use in manufacture or production of the imported designated merchandise and other (substituted) merchandise (*see* 19 U.S.C. 1313(b)); or

(ii) The fact and date(s) of manufacture or production of the exported or destroyed 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 CBP 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 CBP 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 CBP for purposes of this section, it must 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 CBP.

§ 190.15 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 must be retained for 3 years after liquidation 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

§ 190.21 Direct identification manufacturing drawback.

Section 313(a) of the Act, as amended (19 U.S.C. 1313(a)), provides for drawback upon the exportation, or destruction under CBP supervision, of articles manufactured or produced in the United States with the use of imported merchandise, provided that those articles have not been used in the United States prior to such exportation or destruction. The amount of drawback allowable shall not exceed 99 percent of the amount of duties, taxes, and fees paid with respect to the imported merchandise. However, duties may not be refunded upon the exportation or destruction of flour or by-products produced from imported wheat. Where two or more products result, drawback must be distributed among the products in accordance with their relative values, as defined in § 190.2, 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 § 190.14.

§ 190.22 Substitution manufacturing drawback.

(a)(1) *General*—(i) *Substitution standard.* If imported, duty-paid merchandise or merchandise classifiable under the same 8-digit HTSUS subheading number as the imported merchandise is used in the manufacture or production of articles within a period not to exceed 5 years from the date of importation of such imported merchandise, then upon the exportation, or destruction under CBP 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 section 313(b) of the Act, as amended (19 U.S.C. 1313(b)). Drawback is allowable even though none of the imported, duty-paid merchandise may actually have been used in the manufacture or production of the exported or destroyed articles.

(ii) *Allowable refund*—(A) *Exportation.* In the case of an article that is exported, the amount of drawback allowable will not exceed 99 percent of the lesser of:

(*1*) The amount of duties, taxes, and fees paid with respect to the imported merchandise; or

(*2*) The amount of duties, taxes, and fees that would apply to the substituted merchandise if the substituted merchandise were imported.

(B) *Destruction.* In the case of an article that is destroyed, the amount of drawback allowable will not exceed 99 percent of the lesser of:

(*1*) The amount of duties, taxes, and fees paid with respect to the imported merchandise (reduced by the value of materials recovered during destruction as provided in 19 U.S.C. 1313(x)); or

(*2*) The amount of duties, taxes, and fees that would apply to the substituted merchandise if the substituted merchandise were imported (reduced by the value of materials recovered during destruction as provided in 19 U.S.C. 1313(x)).

(C) *Federal excise tax.* For purposes of drawback of internal revenue tax imposed under Chapters 32, 38, 51, and 52 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export or destruction of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

(2) *Special rule for sought chemical elements*—(i) *Substitution standard.* A sought chemical element, as defined in § 190.2, may be considered imported merchandise, or merchandise classifiable under the same 8-digit HTSUS subheading number as such imported merchandise, used in the manufacture or production of an article as described in paragraph (a)(1)(i) of this section, and it may be substituted for source material containing that sought chemical element, without regard to whether the sought chemical element and the source material are classifiable under the same 8-digit HTSUS subheading number, and apportioned quantitatively, as appropriate (*see* § 190.26(b)(4)).

(ii) *Allowable refund.* The amount of drawback allowable will be determined in accordance with paragraph (a)(1)(ii) of this section. The value of the substituted source material must be determined based on the quantity of the sought chemical element present in the source material, as calculated per § 190.26(b)(4).

(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 5 years after the date on which the material was imported 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*—(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 CBP.* 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 liquidation of the related claim and are subject to review by CBP upon request.

(e) *Multiple products*—(1) *General.* Where two or more products are produced concurrently in a substitution manufacturing operation, drawback will be distributed to each product in accordance with its relative value (*see* § 190.2) 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 (as provided for in the definition of relative value in § 190.2). Manufacturing periods in excess of one month may not be used without specific approval of CBP.

(3) *Recordkeeping.* Records must be maintained showing the relative value of each product at the time of separation.

§ 190.23 Methods and requirements for claiming drawback.

Claims must be based on one or more of the methods specified in paragraph (a) of this section and comply with all other requirements specified in this section.

(a) *Method of claiming drawback.*—(1) *Used in.* Drawback may be paid based on the amount of the imported or substituted merchandise used in the manufacture of the exported article, where there is no waste or the waste is valueless or unrecoverable. This method must be used when multiple products also necessarily and concurrently result from the manufacturing process, and there is no valuable waste (*see* paragraph (a)(2) of this section).

(2) *Used in less valuable waste.* Drawback is allowable under this method based on the quantity of merchandise or drawback products used to manufacture the exported or destroyed article, reduced by an amount equal to the quantity of this merchandise that the value of the waste would replace. This method must be used when multiple products also necessarily and concurrently result from the manufacturing process, and there is valuable waste.

(3) *Relative value.* Drawback is also allowable under this method when two or more products result from manufacturing or production. The relative value method must be used when multiple products also necessarily and concurrently result from the manufacturing process, and drawback must be distributed among the products in accordance with their relative values (as defined in § 190.2) at the time of separation.

(4) *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. The appearing in method may not be used if there are multiple products also necessarily and concurrently resulting from the manufacturing process.

(b) *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 actually 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* § 190.7) and applicants for approval of specific manufacturing drawback rulings (*see* § 190.8) must state whether the abstract or schedule method is used; if no such statement is made, drawback claims must be based upon the abstract method.

(c) *Claim for waste.*—(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 must 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 (as provided for in the definition of relative value in § 190.2).

(2) *If claim for waste is waived.* If claim for waste is waived, only the ''appearing in'' basis may be used (*see* paragraph (a)(4) 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.

§ 190.24 Transfer of merchandise.

Evidence of any transfers of merchandise (*see* § 190.10) must be evidenced by records, as defined in § 190.2.

§ 190.25 Destruction under CBP supervision.

A claimant may destroy merchandise and obtain drawback by complying with the procedures set forth in § 190.71 relating to destruction.

§ 190.26 Recordkeeping.

(a) *Direct identification.* (1) *Records required.* Each manufacturer or producer under 19 U.S.C. 1313(a) must keep records to allow the verifying CBP official to trace all articles manufactured or produced for exportation or destruction with drawback, from importation, through manufacture or production, to exportation or destruction. To this end, these records must specifically establish:

(i) The date or inclusive dates of manufacture or production;

(ii) The quantity, identity, and 8-digit HTSUS subheading number(s) of the imported duty-paid merchandise or drawback products used in or appearing in (*see* § 190.23) the articles manufactured or produced;

(iii) The quantity, if any, of the non-drawback merchandise used, when these records are necessary to determine the quantity of imported duty-paid merchandise or drawback product used in the manufacture or production of the exported or destroyed articles or appearing in them;

(iv) The quantity and description of the articles manufactured or produced;

(v) The quantity of waste incurred, if applicable; and

(vi) That the 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 articles were commingled after manufacture or production, their identity may be maintained in the manner prescribed in § 190.14.)

(2) *Accounting.* The merchandise and articles to be exported or destroyed will be accounted for in a manner which will enable the manufacturer, producer, or claimant:

(i) To determine, and the CBP official to verify, the applicable import entry and any transfers of the merchandise associated with the claim; and

(ii) To identify with respect to that import entry, and any transfers of the merchandise, the imported merchandise or drawback products used in manufacture or production.

(b) *Substitution.* The records of the manufacturer or producer of articles manufactured or produced in accordance with 19 U.S.C. 1313(b) must 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 the substituted merchandise before its use to manufacture or produce (or appearing in) the exported or destroyed articles;

(3) That, within 5 years after the date of importation of the imported duty-paid merchandise, the manufacturer or producer used the designated merchandise in manufacturing or production and that during the same 5-year period it manufactured or produced the exported or destroyed articles; and

(4) If the designated merchandise is a sought chemical element, as defined in § 190.2, that was contained in imported material and a substitution drawback claim is made based on that chemical element:

(i) The duty paid on the imported material must be apportioned among its constituent components. The claim on the chemical element that is the designated merchandise must be limited to the duty apportioned to that element on a unit-for-unit attribution using the unit of measure set forth in the HTSUS that is applicable to the imported material. If the material is a compound with other constituents, including impurities, and the purity of the compound in the imported material is shown by satisfactory analysis, that purity, converted to a decimal equivalent of the percentage, is multiplied against the entered amount of the material to establish the amount of pure compound. The amount of the element in the pure compound is to be determined by use of the atomic weights of the constituent elements and converting to the decimal equivalent of their respective percentages and multiplying that decimal equivalent against the above-determined amount of pure compound.

(ii) The amount claimed as drawback based on the sought chemical element must be deducted from the duty paid on the imported material that may be claimed on any other drawback claim.

Example to paragraph (b)(4): Synthetic rutile that is shown by appropriate analysis in the entry papers to be 91.7% pure titanium dioxide is imported and dutiable at a 5% ad valorem duty rate. The amount of imported synthetic rutile is 30,000 pounds with an entered value of $12,000. The total duty paid is $600. Titanium in the synthetic rutile is designated as the basis for a drawback claim under 19 U.S.C. 1313(b). The amount of titanium dioxide in the synthetic rutile is determined by converting the purity percentage (91.7%) to its decimal equivalent (.917) and multiplying the entered amount of synthetic rutile (30,000 pounds) by that decimal equivalent (.917 × 30,000 = 27,510 pounds of titanium dioxide contained in the 30,000 pounds of imported synthetic rutile). The titanium, based on atomic weight, represents 59.93% of the constituents in titanium dioxide. Multiplying that percentage, converted to its decimal equivalent, by the amount of titanium dioxide determines the titanium content of the imported synthetic rutile (.5993 × 27,510 pounds of titanium dioxide = 16,486.7 pounds of titanium contained in the imported synthetic rutile). Therefore, up to 16,486.7 pounds of titanium is available to be designated as the basis for drawback. As the per unit duty paid on the synthetic rutile is calculated by dividing the duty paid ($600) by the amount of imported synthetic rutile (30,000 pounds), the per unit duty is two cents of duty per pound of the imported synthetic rutile ($600 ÷ 30,000 = $0.02). The duty on the titanium is calculated by multiplying the amount of titanium contained in the imported synthetic rutile by two cents of duty per pound (16,486.7 × $0.02 = $329.73 duty apportioned to the titanium). The product is then multiplied by 99% to determine the maximum amount of drawback available ($329.73 × .99 = $326.44). If an exported titanium alloy ingot weighs 17,000 pounds, in which 16,000 pounds of titanium was used to make the ingot, drawback is determined by multiplying the duty per pound ($0.02) by the weight of the titanium contained in the ingot (16,000 pounds) to calculate the duty available for drawback ($0.02 × 16,000 = $320.00). Because only 99% of the duty can be claimed, drawback is determined by multiplying this available duty amount by 99% (.99 × $320.00 = $316.80). As the oxygen content of the titanium dioxide is 45% of the synthetic rutile, if oxygen is the designated merchandise on another drawback claim, 45% of the duty claimed on the synthetic rutile would be available for drawback based on the substitution of oxygen.

(c) *Valuable waste records.* When waste has a value and the manufacturer, producer, or claimant, has not limited the claims based on the quantity of imported or substituted merchandise appearing in the articles exported or destroyed, the manufacturer or producer must 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 (as provided for in the definition of relative value in § 190.2). In such records, the quantity of merchandise identified or designated for drawback, under 19 U.S.C. 1313(a) or 1313(b), respectively, must 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 by the amount of merchandise which the value of the waste would replace.

(d) *Purchase of manufactured or produced articles for exportation.* Where the claimant purchases articles from the manufacturer or producer and exports them, the claimant must maintain records to document the manufacture or production and transfer of those articles (*see* § 190.51(a)(1)).

(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 § 190.82).

(2) *Procedures*—(i) *Submission of letter.* Each drawback claimant must 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 must show the name of the claimant and bear a statement that the claim will be limited to its respective component article. The exporter must 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.

(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 must be retained for 3 years after the date of liquidation of the related claims (under 19 U.S.C. 1508, the same records may be subject to a different retention period for different purposes).

§ 190.27 Time limitations for manufacturing drawback.

(a) *Direct identification.* Drawback will be allowed on imported merchandise used to manufacture or produce articles that are exported or destroyed under CBP supervision within 5 years after importation of the merchandise identified to support the claim.

(b) *Substitution.* Drawback will be allowed on the imported merchandise if the following conditions are met:

(1) The designated merchandise is used in manufacture or production within 5 years after importation;

(2) Within the 5-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 CBP 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 (§ 190.7), or before the specific manufacturing drawback ruling covering the claims is approved (§ 190.8), but no drawback will be paid until such acknowledgement or approval, as appropriate.

§ 190.28 Person entitled to claim manufacturing drawback.

The exporter (or destroyer) will 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 must 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 (or destroyer).

§ 190.29 Certification of bill of materials or formula.

At the time of filing a claim under 19 U.S.C. 1313(a) or (b), the claimant must certify the following:

(a) The claimant is in possession of the applicable bill of materials or formula for the exported or destroyed article(s), which will be promptly provided upon request;

(b) The bill of materials or formula identifies the imported and/or substituted merchandise and the exported or destroyed article(s) by their 8-digit HTSUS subheading numbers; and

(c) The bill of materials or formula identifies the manufactured quantities of the imported and/or substituted merchandise and the exported or destroyed article(s).

Subpart C—Unused Merchandise Drawback

§ 190.31 Direct identification unused merchandise drawback.

(a) *General.* Section 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), provides for drawback upon the exportation or destruction under CBP supervision of imported merchandise upon which was paid any duty, tax, or fee imposed under Federal law upon entry or importation, if the merchandise has not been used within the United States before such exportation or destruction. The total amount of drawback allowable will not exceed 99 percent of the amount of duties, taxes, and fees paid with respect to the imported merchandise.

(b) *Time of exportation or destruction.* Drawback will be allowable on imported merchandise if, before the close of the 5-year period beginning on the date of importation and before the drawback claim is filed, the merchandise is exported from the United States or destroyed under CBP supervision.

(c) *Operations performed on 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 as provided for in 19 U.S.C. 1313(j)(3)(A), on imported merchandise is not a use of that merchandise for purposes of this section.

§ 190.32 Substitution unused merchandise drawback.

(a) *General.* Section 313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2)), provides for drawback of duties, taxes, and fees paid on imported merchandise based on the export or destruction under CBP supervision of substituted merchandise (as defined in § 190.2, pursuant to 19 U.S.C. 1313(j)(2)), before the close of the 5-year period beginning on the date of importation of the imported merchandise and before the drawback claim is filed, and before such exportation or destruction the substituted 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) *Allowable refund.* (1) *Exportation.* In the case of an article that is exported, subject to paragraph (3) below, the total amount of drawback allowable will not exceed 99 percent of the lesser of:

(i) The amount of duties, taxes, and fees paid with respect to the imported merchandise; or

(ii) The amount of duties, taxes, and fees that would apply to the exported article if the exported article were imported.

(2) *Destruction.* In the case of an article that is destroyed, subject to paragraph (3) below, the total amount of drawback allowable will not exceed 99 percent of the lesser of:

(i) The amount of duties, taxes, and fees paid with respect to the imported merchandise (reduced by the value of materials recovered during destruction as provided in 19 U.S.C. 1313(x)); or

(ii) The amount of duties, taxes, and fees that would apply to the destroyed article if the destroyed article had been imported (reduced by the value of materials recovered during destruction as provided in 19 U.S.C. 1313(x)).

(3) *Federal excise tax.* For purposes of drawback of internal revenue tax imposed under Chapters 32, 38, 51, and 52 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export or destruction of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

(c) *Determination of HTSUS classification for substituted merchandise.* Requests for binding rulings on the classification of imported, substituted, or exported merchandise may be submitted to CBP pursuant to the procedures set forth in part 177.

(d) *Claims for wine.* (1) *Alternative substitution standard.* In addition to 8-digit HTSUS substitution standard in § 190.2, drawback of duties, taxes, and fees, paid on imported wine as defined in § 190.2 may be allowable under 19 U.S.C. 1313(j)(2) with respect to wine if the imported wine and the exported wine are of the same color and the price variation between the imported wine and the exported wine does not exceed 50 percent.

(2) *Allowable refund.* For any drawback claim for wine (as defined in § 190.2) based on subsection (j)(2), the total amount of drawback allowable will be equal to 99 percent of the duties, taxes, and fees paid with respect to the imported merchandise, without regard to the limitations in paragraph (b).

(3) *Required certification.* When the basis for substitution for wine drawback claims under 19 U.S.C. 1313(j)(2) is the alternative substitution standard rule set forth in (d)(1), claims under this subpart may be paid and liquidated if:

(i) The claimant specifies on the drawback entry that the basis for substitution is the alternative substitution standard for wine; and

(ii) The claimant provides a certification, as part of the complete claim (see 190.51(a)), stating that:

(A) The imported wine and the exported wine are a Class 1 grape wine (as defined in 27 CFR 4.21(a)(1)) of the same color (*i.e.,* red, white, or rosé);

(B) The imported wine and the exported wine are table wines (as defined in 27 CFR 4.21(a)(2)) and the alcoholic content does not exceed 14 percent by volume; and

(C) The price variation between the imported wine and the exported wine does not exceed 50 percent.

(e) *Operations performed on substituted merchandise.* The performing of any operation or combination of operations, not amounting to manufacture or production as provided for in 19 U.S.C. 1313(j)(3)(B), on the 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 substituted merchandise that was transferred to the predecessor 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, 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 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 substituted 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 substituted 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 CBP.* 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(s) for 3 years from the date of liquidation of the related claim and are subject to review by CBP upon request.

§ 190.33 Person entitled to claim unused merchandise drawback.

(a) *Direct identification.* (1) Under 19 U.S.C. 1313(j)(1), as amended, the exporter or destroyer will 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 must secure and retain a certification signed by the exporter or destroyer waiving the right to claim drawback, and did not and will not authorize any other party to claim the exportation or destruction for drawback (*see* § 190.82 of this part). The certification provided for under this section may be a blanket certification for a stated period. The claimant must 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), as amended, 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 will be entitled to claim drawback.

(ii) In situations where the person who imported and paid the duty on the imported merchandise transfers the imported merchandise, substituted merchandise, or any combination of imported and substituted merchandise to the person who exports or destroys that merchandise, the exporter or destroyer will be entitled to claim drawback. (Any such transferred merchandise, regardless of its origin, will be treated as imported merchandise for purposes of drawback under 19 U.S.C. 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) must be documented by records, including records kept in the normal course of business, and the exporter or destroyer will 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 must 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* § 190.82). The certification provided for under this section may be a blanket certification for a stated period. The claimant must file such certification at the time of, or prior to, the filing of the claim(s) covered by the certification.

§ 190.34 Transfer of merchandise.

Any transfer of merchandise (*see* § 190.10) must be recorded in records, which may include records kept in the normal course of business, as defined in § 190.2.

§ 190.35 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 CBP to give CBP 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 CBP Form 7553 at least 2 working days prior to the date of intended exportation unless CBP approves another filing period or the claimant has been granted a waiver of prior notice (*see* § 190.91).

(b) *Required information.* The notice must certify that the merchandise has not been used in the United States before exportation. In addition, the notice must provide the bill of lading number, if known, the name and telephone number, mailing address, and, if available, fax number and email address of a contact person, and the location of the merchandise.

(c) *Decision to examine or to waive examination.* Within 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), CBP will notify the party designated on the Notice in writing of CBP's decision to either examine the merchandise to be exported, or to waive examination. If CBP 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 CBP for examination, any drawback claim, or part thereof, based on the Notice will be denied. If CBP notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by CBP to examine or to waive examination has not been received, the merchandise may be exported without delay.

(d) *Time and place of examination.* If CBP gives timely notice of its decision to examine the export merchandise, the merchandise to be examined must be promptly presented to CBP. CBP must examine the merchandise within 5 working days after presentation of the merchandise. The merchandise may be exported without examination if CBP fails to timely examine the merchandise after presentation to CBP. If the examination is completed at a port other than the port of actual exportation, the merchandise must be transported in-bond to the port of exportation.

(e) *Extent of examination.* The appropriate CBP office may permit release of merchandise without examination, or may examine, to the extent determined to be necessary, the items exported or destroyed.

§ 190.36 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 § 190.35(a) or § 190.91 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 must include the following:

(i) Required information.

(A) Name, address, and Internal Revenue Service (IRS) number (with suffix) of applicant;

(B) Name, address, and IRS number(s) (with suffix(es)) 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 (and the applicable HTSUS numbers);

(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 claims to be covered in this application;

(J) The relationship between the parties involved in the import and export transactions; and

(K) Provision(s) of drawback covered under the application;

(ii) Written declarations regarding:

(A) The reason(s) that CBP 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 CBP to 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 satisfied the requirements for substitution with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)), and, as applicable:

(*1*) Records;

(*2*) Any 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 CBP.

(b) *CBP action.* In order for CBP to evaluate the application under this section, CBP may request, and the applicant must 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, CBP 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 paragraphs (a)(1)(iii)(A)(1) through (3) of this section and requested by CBP under paragraph (b); and

(3) The applicant's prior record with CBP.

(c) *Time for CBP action.* CBP 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 CBP's inability to approve, deny or act on the application and the reason therefor.

(d) *Appeal of denial of application.* If CBP 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 CBP denies this initial appeal, the applicant may file a further written appeal with CBP Headquarters, Office of Trade, Trade Policy and Programs, provided that the applicant files this further appeal within 30 days of the denial date of the initial appeal. CBP may extend the 30-day period for appeal to the drawback office or to CBP 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* § 190.91). If the applicant seeks waiver of prior notice under § 190.91, any documentation submitted to CBP to comply with this section will be included in the request under § 190.91. An applicant that 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 must notify CBP of its intent to export prior to each such exportation, in accordance with § 190.35.

§ 190.37 Destruction under CBP supervision.

A claimant may destroy merchandise and obtain unused merchandise drawback by complying with the procedures set forth in § 190.71 relating to destruction.

§ 190.38 Recordkeeping.

(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, must be retained for 3 years after liquidation 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) must be accounted for in a manner which will enable the claimant:

(1) To determine, and CBP to verify, the applicable import entry or transfer(s) of drawback-eligible merchandise;

(2) To determine, and CBP to verify, the applicable exportation or destruction; and

(3) To identify, with respect to the import entry or any transfer(s) of drawback-eligible merchandise, the imported merchandise designated as the basis for the drawback claim.

Subpart D—Rejected Merchandise

§ 190.41 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 CBP 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; or ultimately sold at retail by the importer or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer or the person who received the merchandise from the importer. The total amount of drawback allowable will be 99 percent of the amount of duties paid with respect to the imported, duty-paid merchandise. See subpart P for drawback of internal revenue taxes for unmerchantable or nonconforming distilled spirits, wines, or beer.

§ 190.42 Procedures and supporting documentation.

(a) *Time limit for exportation or destruction.* Drawback will be denied on merchandise that is exported or destroyed after the statutory 5-year time period.

(b) *Required documentation.* The claimant must submit documentation to CBP as part of the complete drawback claim (*see* § 190.51) 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 (*see* § 190.45 for additional requirements for claims made on rejected retail merchandise under 19 U.S.C. 1313(c)(1)(C)(ii)). If the claimant was not the importer, the claimant must also:

(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 CBP to give CBP the opportunity to examine the merchandise. The claimant, or the exporter (for destruction under CBP supervision, see § 190.71), must file at the port of intended redelivery to CBP custody a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553 at least 5 working days prior to the date of intended return to CBP custody. Waiver of prior notice for exportations under 19 U.S.C. 1313(j) (*see* § 190.91) is inapplicable to exportations under 19 U.S.C. 1313(c).

(d) *Required information.* The notice must provide the bill of lading number, if known, the name and telephone number, mailing address, and, if available, fax number and email address of a contact person, and the location of the merchandise.

(e) *Decision to waive examination.* Within 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), CBP will notify, in writing, the party designated on the Notice of CBP's decision to either examine the merchandise to be exported or destroyed, or to waive examination. If CBP 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 CBP 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, must be denied. If CBP notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by CBP to examine or to waive examination is absent, the merchandise may be exported or destroyed without delay and will be deemed to have been returned to CBP custody.

(f) *Time and place of examination.* If CBP gives timely notice of its decision to examine the merchandise to be exported or destroyed, the merchandise to be examined must be promptly presented to CBP. CBP must examine the merchandise within 5 working days after presentation of the merchandise. The merchandise may be exported or destroyed without examination if CBP fails to timely examine the merchandise after presentation to CBP, and in such case the merchandise will be deemed to have been returned to CBP custody. If the examination is completed at a port other than the port of actual exportation or destruction, the merchandise must be transported in-bond to the port of exportation or destruction.

(g) *Extent of examination.* The appropriate CBP 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* § 190.51(b)). The procedures for restructuring a claim (*see* § 190.53) apply to rejected merchandise drawback if the claimant has an ongoing export program which qualifies for this type of drawback.

(i) *Exportation.* Claimants must provide documentary evidence of exportation (*see* subpart G of this part). The claimant may establish exportation by mail as set out in § 190.74o.

§ 190.43 Unused merchandise drawback 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.

§ 190.44 [Reserved]

§ 190.45 Returned retail merchandise.

(a) *Special rule for substitution.* Section 313(c)(1)(C)(ii) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(c)(1)(C)(ii)), provides for drawback upon the exportation or destruction under CBP supervision of imported merchandise which has been entered, or withdrawn from warehouse, for consumption, duty-paid and ultimately sold at retail by the importer, or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer, or the person who received the merchandise from the importer.

(b) *Eligibility requirements.* (1) Drawback is allowable pursuant to compliance with all requirements set forth in this subpart; and

(2) The claimant must also show by evidence satisfactory to CBP that drawback may be claimed by—

(i) Designating an entry of merchandise that was imported within 1 year before the date of exportation or destruction of the merchandise described in paragraph (a) under CBP supervision.

(ii) Certifying that the same 8-digit HTSUS subheading number and specific product identifier (such as part number, SKU, or product code) apply to both the merchandise designated for drawback (in the import documentation) and the returned merchandise.

(c) *Allowable refund.* The total amount of drawback allowable will not exceed 99 percent of the amount of duties paid with respect to the imported merchandise.

(d) *Denial of claims.* No drawback will be refunded if CBP is not satisfied that the claimant has provided, upon request, the documentation necessary to support the certification required in paragraph (b)(2)(ii).

Subpart E—Completion of Drawback Claims

§ 190.51 Completion of drawback claims.

(a) *General*—(1) *Complete claim.* Unless otherwise specified, a complete drawback claim under this part will consist of the successful electronic transmission to CBP of the drawback entry (as described in subparagraph (2)), applicable Notice(s) of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553, applicable import entry data, and evidence of exportation or destruction as provided for under subpart G of this part.

(2) *Drawback entry.* The drawback entry is to be filed through a CBP-authorized electronic system and must include the following:

(i) Claimant identification number, name, and address;

(ii) Broker identification number, name, and address (if applicable);

(iii) Surety code, bond type, and amount of bond;

(iv) Port code for the drawback office that will review the claim;

(v) Drawback entry number and provision(s) under which drawback is claimed;

(vi) Statement of eligibility for applicable privileges (as provided for in subpart I of this part);

(vii) Amount of refund claimed for each of relevant duties, taxes, and fees (calculated to two decimal places);

(viii) For each designated import entry line item, the entry number and the line item number designating the merchandise, a description of the merchandise, a unique import tracing identification number(s) (ITIN) (used to associate the imported merchandise and any substituted merchandise with any intermediate products (if applicable) and the drawback-eligible exported or destroyed merchandise or finished article(s)), as well as the following information for the merchandise designated as the basis for the drawback claim: The 10-digit HTSUS classification and associated duty rate(s), amount of duties paid, applicable entered value (*see* 19 CFR 190.11(a)), quantity and unit of measure (using the unit(s) of measure required under the HTSUS, if applicable), as well as the types, rates, and amounts of any other duties, taxes, or fees for which a refund is requested;

(ix) For manufacturing claims under 19 U.S.C. 1313(a) or (b), the basis of the claim (as provided for in § 190.23), the ruling number, the factory location, the date(s) of use of the imported and/or substituted merchandise in manufacturing/processing, the 10-digit HTSUS classification for the imported merchandise and/or which would have been applicable to the substituted merchandise had it been imported, the quantity and unit of measure (using the unit(s) of measure required under the HTSUS, if applicable) of the imported and/or substituted merchandise in manufacturing/processing, unique manufacture tracing identification number(s) (MTIN) (used to associate the manufactured merchandise, including any intermediate products, with the drawback-eligible exported or destroyed finished article(s)), and a certification from the claimant that provides as follows: ''The article(s) described above were manufactured or produced and disposed of as stated herein in accordance with the drawback ruling on file with CBP and in compliance with applicable laws and regulations.'';

(x) Indicate whether the designated imported merchandise, other substituted merchandise, or finished article (for manufacturing claims) was transferred to the drawback claimant prior to the exportation or destruction of the eligible merchandise, and for unused merchandise drawback claims under 19 U.S.C. 1313(j), provide a certification from the client that provides as follows: ''The undersigned hereby certifies that the merchandise herein described is unused in the United States and further certifies that this merchandise was not subjected to any process of manufacture or other operation except the allowable operations as provided for by regulation.'';

(xi) Indicate whether the eligible merchandise was exported or destroyed and provide the applicable 10-digit HTSUS or Department of Commerce Schedule B classification, quantity, and unit of measure (the unit of measure specified must be the same as that which was required under the HTSUS for the designated imported merchandise) and, for claims under 19 U.S.C. 1313(c), specify the basis as one of the following:

(A) Merchandise does not conform to sample or specifications;

(B) Merchandise was defective at time of importation;

(C) Merchandise was shipped without consent of the consignee; or

(D) Merchandise sold at retail and returned to the importer or the person who received the merchandise from the importer;

(xii) For eligible merchandise that was exported, the unique export identifier (the number used to associate the export transaction with the appropriate documentary evidence of exportation), bill of lading number, export destination, name of exporter, the applicable comparative value pursuant to 19 CFR 190.11(b) (*see* § 190.22(a)(1)(ii), § 190.22(a)(2)(ii), or § 190.32(b)) for substitution claims, and a certification from the claimant that provides as follows: ''I declare, to the best of my knowledge and belief, that all of the statements in this document are correct and that the exported article is not to be relanded in the United States or any of its possessions without paying duty.'';

(xiii) For eligible merchandise that was destroyed, the name of the destroyer and, if substituted, the applicable comparative value pursuant to 19 CFR 190.11(c) (*see* § 190.22(a)(1)(ii), § 190.22(a)(2)(ii), or § 190.32(b)), and a certification from the claimant, if applicable, that provides as follows: ''The undersigned hereby certifies that, for the destroyed merchandise herein described, the value of recovered materials (including the value of any tax benefit or royalty payment) that accrues to the drawback claimant has been deducted from the value of the imported (or substituted) merchandise designated by the claimant, in accordance with 19 U.S.C. 1313(x).'';

(xiv) For substitution unused merchandise drawback claims under 19 U.S.C. 1313(j)(2), a certification from the claimant that provides as follows: ''The undersigned hereby certifies that the substituted merchandise is unused in the United States and that the substituted merchandise was in our possession prior to exportation or destruction.'';

(xv) For NAFTA drawback claims provided for in subpart E of part 181, the foreign entry number and date of entry, the HTSUS classification for the foreign entry, the amount of duties paid for the foreign entry and the applicable exchange rate, and, if applicable, a certification from the claimant that provides as follows: ''Same condition to NAFTA countries—The undersigned certifies that the merchandise herein described is in the same condition as when it was imported under the above import entry(s) and further certifies that this merchandise was not subjected to any process of manufacture or other operation except the allowable operations as provided for by regulation.''; and

(xvi) All certifications required in this part and as otherwise deemed necessary by CBP to establish compliance with the applicable laws and regulations, as well as the following declaration: ''The undersigned acknowledges statutory requirements that all records supporting the information on this document are to be retained by the issuing party for a period of 3 years from the date of liquidation of the drawback claim. All required documentation that must be uploaded in accordance with 19 CFR 190.51 will be provided to CBP within 24 hours of the filing of the drawback claim. The undersigned acknowledges that a false certification of the foregoing renders the drawback claim incomplete and subject to denial. The undersigned is fully aware of the sanctions provided in 18 U.S.C. 1001, and 18 U.S.C. 550, and 19 U.S.C. 1593a.''

(3) *Election of line item designation for imported merchandise.* Merchandise on a specific line on an entry summary may be designated for either direct identification or substitution claims but a single line on an entry summary may not be split for purposes of claiming drawback under both direct identification and substitution claims. The first complete drawback claim accepted by CBP which designates merchandise on a line on an entry summary establishes this designation for any remaining merchandise on that same line. For claims involving transferred merchandise, please see § 190.10(c) regarding required notifications concerning whether the merchandise should be eligible for direct identification or substitution claims.

(4) *Limitation on line item eligibility for imported merchandise.* Claimants are prohibited from filing substitution drawback claims under part 190 for imported merchandise associated with a line item on an entry summary if any other merchandise covered on that entry summary has been designated as the basis of a claim under part 191.

(b) *Drawback due*—(1) *Claimant required to calculate drawback.* Drawback claimants are required to correctly calculate the amount of drawback due. The amount of drawback requested on the drawback entry is generally to be 99 percent of the duties, taxes, and fees 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 § 190.52(c). The amount of duties, taxes, and fees eligible for drawback is determined by whether a claim is based upon direct identification or substitution, as provided for below:

(i) *Direct identification.* The amounts eligible for drawback for a unit of merchandise consists of those duties, taxes, and fees that were paid for that unit of the designated imported merchandise. This may be the amount of duties, taxes, and fees actually tendered on that unit or those attributable to that unit, if identified pursuant to an approved accounting method (*see* 19 CFR 190.14).

(ii) *Substitution.* The amount of duties, taxes, and fees eligible for drawback pursuant to 19 U.S.C. 1313(b) or 19 U.S.C. 1313(j)(2) is determined by per unit averaging, as defined in 19 CFR 190.2. The amount that may be refunded is also subject to the limitations set forth in 19 CFR 190.22(a)(1)(ii) (manufacturing claims) and 19 CFR 190.32(b) (unused merchandise claims), as applicable.

(2) *Merchandise processing fee apportionment calculation.* Where a drawback claimant requests a refund of a merchandise processing fee paid pursuant to 19 U.S.C. 58c(a)(9)(A), the claimant is required to correctly apportion the fee to that imported merchandise for which drawback is claimed when calculating the amount of drawback requested on the drawback entry. This is determined as follows:

(i) Relative value ratio for each line item. The value of each line item of entered merchandise subject to a merchandise processing fee is calculated (to four decimal places) by dividing the value of the line item subject to the fee by the total value of entered merchandise subject to the fee. The result is the relative value ratio.

(ii) Merchandise processing fee apportioned to each line item. To apportion the merchandise processing fee to each line item, the relative value ratio for each line item is multiplied by the merchandise processing fee paid.

(iii) Amount of merchandise processing fee eligible for drawback per line item. The amount of merchandise processing fee apportioned to each line item is multiplied by 99 percent to calculate that portion of the fee attributable to each line item that is eligible for drawback.

(iv) Amount of merchandise processing fee eligible for drawback per unit of merchandise. To calculate the amount of a merchandise processing fee eligible for drawback per unit of merchandise, the line item amount that is eligible for drawback is divided by the number of units covered by that line item (to two decimal places).

(v) Limitation on amount of merchandise processing fee eligible for drawback for substitution claims. The amount of a merchandise processing fee eligible for drawback per unit of merchandise for drawback claims based upon substitution is subject to the limitations set forth in §§ 190.22(a)(1)(ii) (manufacturing claims) and 190.32(b) (unused merchandise claims), as applicable.

(vi)(A) *Example 1:*

(1) Line item 1—5,000 articles valued at $10 each total $50,000
(2) Line item 2—6,000 articles valued at $15 each total $90,000
(3) Line item 3—10,000 articles valued at $20 each total $200,000
(4) Total units = 21,000
(5) Total value = $340,000
(6) Merchandise processing fee = $485 (for purposes of this example, the fee cap of $485 is assumed; see 19 CFR 24.23 for the current amount consistent with 19 U.S.C. 58c(a)(9)(B)(i))

(i) Line item relative value ratios. The relative value ratio for line item 1 is calculated by dividing the value of that line item by the total value ($50,000 ÷ 340,000 = .1471). The relative value ratio for line item 2 is .2647. The relative value ratio for line item 3 is .5882.

(ii) Merchandise processing fee apportioned to each line item. The amount of fee attributable to each line item is calculated by multiplying $485 by the applicable relative value ratio. The amount of the $485 fee attributable to line item 1 is $71.3435 (.1471 × $485 = $71.3435). The amount of the fee attributable to line item 2 is $128.3795 (.2647 × $485 = $128.3795). The amount of the fee attributable to line item 3 is $285.2770 (.5882 × $485 = $285.2770).

(iii) Amount of merchandise processing fee eligible for drawback per line item. The amount of merchandise processing fee eligible for drawback for line item 1 is $70.6301 (.99 × $71.3435). The amount of fee eligible for drawback for line item 2 is $127.0957 (.99 × $128.3795). The amount of fee eligible for drawback for line item 3 is $282.4242 (.99 × $285.2770).

(iv) Amount of merchandise processing fee eligible for drawback per unit of merchandise. The amount of merchandise processing fee eligible for drawback per unit of merchandise is calculated by dividing the amount of fee eligible for drawback for the line item by the number of units in the line item. For line item 1, the amount of merchandise processing fee eligible for drawback per unit is $.0141 ($70.6301 ÷ 5,000 = $.0141). If 1,000 widgets form the basis of a claim for drawback under 19 U.S.C. 1313(j), the total amount of drawback attributable to the merchandise processing fee is $14.10 (1,000 × .0141 = $14.10). For line item 2, the amount of fee eligible for drawback per unit is $.0212 ($127.0957 ÷ 6,000 = $.0212). For line item 3, the amount of fee eligible for drawback per unit is $.0282 ($282.4242 ÷ 10,000 = $.0282).

(B) *Example 2.* This example illustrates the treatment of dutiable merchandise that is exempt from the merchandise processing fee and duty-free merchandise that is subject to the merchandise processing fee.

(1)(i) Line item 1—700 meters of printed cloth valued at $10 per meter (total value $7,000) that is exempt from the merchandise processing fee under 19 U.S.C. 58c(b)(8)(B)(iii)

(ii) Line item 2—15,000 articles valued at $100 each (total value $1,500,000)

(iii) Line item 3—10,000 duty-free articles valued at $50 each (total value $500,000)

(iv) The relative value ratios are calculated using line items 2 and 3 only, as there is no merchandise processing fee imposed by reason of importation on line item 1.

(2)*(i)* Line item 2—1,500,000 ÷ 2,000,000 = .75 (line items 2 and 3 form the total value of the merchandise subject to the merchandise processing fee).

(ii) Line item 3—500,000 ÷ 2,000,000 = .25.

(iii) If the total merchandise processing fee paid was $485, the amount of the fee attributable to line item 2 is $363.75 (.75 × $485 = $363.75). The amount of the fee attributable to line item 3 is $121.25 (.25 × $485 = $121.25).

(iv) The amount of merchandise processing fee eligible for drawback for line item 2 is $360.1125 (.99 × $363.75). The amount of fee eligible for line item 3 is $120.0375 (.99 × $121.25).

(v) The amount of drawback on the merchandise processing fee attributable to each unit of line item 2 is $.0240 ($360.1125 ÷ 15,000 = $.0240). The amount of drawback on the merchandise processing fee attributable to each unit of line item 3 is $.0120 ($120.0375 ÷ 10,000 = $.0120).

(vi) If 1,000 units of line item 2 were exported, the drawback attributable to the merchandise processing fee is $24.00 ($.0240 × 1,000 = $24.00).

(3) *Calculations for all other duties, taxes, and fees.*

(i) *General.* Where a drawback claimant requests a refund of any other duties, taxes, and fees allowable in accordance with § 190.3, the claimant is required to accurately calculate (including apportionment using per unit averaging or inventory management methods, as appropriate) the duties, taxes, and fees attributable to the designated imported merchandise for which drawback is being claimed when calculating the amount of drawback requested on the drawback entry (generally 99% of the duties, taxes, and fees paid on the imported merchandise).

(ii) Examples. As illustrated in the examples in this paragraph, in the case of customs duties, the type of calculation required to determine the amount of duties available for refund (generally 99% of the duties paid on the imported merchandise) will vary depending on whether the duty involved is ad valorem, specific, or compound.

(1) Example 1: Ad valorem duty rate. Apportionment of the duties paid (and available for refund) will be based on the application of the duty rates to the per unit values of the imported merchandise. The per unit values are based on the invoice values unless the method of refund calculation is per unit averaging, which would require equal apportionment of the duties paid over the quantity of imported merchandise covered by the line item upon which the imported merchandise was reported on the import entry summary. As a result, the amount of duties available for refund will vary depending on the method used to calculate refunds.

(2) Example 2: Specific duty rate. No apportionment of the duties paid is required to determine the amount available for refund. A fixed duty rate is applicable to each unit of the imported merchandise based on quantity. This fixed rate will not vary based on the per unit values of the imported merchandise and, as a result, there is no impact on the amount of duties available for refunds (regardless of whether the refunds are calculated based on invoice values or per unit averaging).

(3) Example 3: Compound duty rate. A compound duty rate is a combination of an ad valorem duty rate and a specific duty rate, with both rates applied to the same imported merchandise. As a result, a combination of the calculations discussed in paragraphs (a) and (b) of this section will apply when calculating the amount of duties paid that are available for refund.

(b) *Limitation.* The amount of duties, taxes, and fees eligible for drawback per unit of merchandise for drawback claims based upon substituted merchandise is subject to the limitations set forth in 19 CFR 190.22(a)(1)(ii) (manufacturing claims) and 19 CFR 190.32(b) (unused merchandise claims), as applicable.

(c) *HTSUS classification or Schedule B commodity number(s)*—(1) *General.* Drawback claimants are required to provide, on all drawback claims they submit, the 10-digit HTSUS classification or the Schedule B commodity number(s), for the following:

(i) *Designated imported merchandise.* For imported merchandise designated on drawback claims, the HTSUS classification applicable at the time of entry (*e.g.,* as required to be reported on the applicable entry summary(s) and other entry documentation).

(ii) *Substituted merchandise on manufacturing claims.* For merchandise substituted on manufacturing drawback claims, the HTSUS classification numbers provided must be the same as either—

(A) if the substituted merchandise was imported, the HTSUS classification applicable at the time of entry (*e.g.,* as required to be reported on the applicable entry summary(s) and other entry documentation); or,

(B) if the substituted merchandise was not imported, the HTSUS classification that would have been reported to CBP for the applicable entry summary(s) and other entry documentation, for the domestically produced substituted merchandise, at the time of entry of the designated imported merchandise.

(iii) *Exported merchandise or articles.* For exported merchandise or articles, the HTSUS classification or Schedule B commodity number(s) must be from the Electronic Export Information (EEI), when required. If no EEI is required (*see,* 15 CFR part 30 subpart D for a complete list of exemptions), then the claimant must provide the Schedule B commodity number(s) or HTSUS number(s) that the exporter would have set forth on the EEI when the exportation took place, but for the exemption from the requirement for an EEI.

(iv) *Destroyed merchandise or articles.* For destroyed merchandise or articles, the HTSUS classification or Schedule B commodity number(s) must be reported, subject to the following:

(A) if the HTSUS classification is reported, then it must be the HTSUS classification that would have been applicable to the destroyed merchandise or articles if they had been entered for consumption at the time of destruction; or

(B) if the Schedule B commodity number is reported, then it must be the Schedule B commodity number that would have been reported for the destroyed merchandise or articles if the EEI had been required for an exportation at the time of destruction.

(2) *Changes to classification.* If the 10-digit HTSUS classification or the Schedule B commodity number(s) reported to CBP for the drawback claim are determined to be incorrect or otherwise in controversy after the filing of the drawback entry, then the claimant must notify the drawback office where the drawback claim was filed of the correct HTSUS classification or Schedule B commodity number or the nature of the controversy before the liquidation of the drawback entry.

(d) *Method of filing.* All drawback claims must be submitted through a CBP-authorized system.

(e) *Time of filing*—(1) *General.* A complete drawback claim is timely filed if it is successfully transmitted not later than 5 years after the date on which the merchandise designated as the basis for the drawback claim was imported and in compliance with all other applicable deadlines under this part.

(i) *Official date of filing.* The official date of filing is the date upon which CBP receives a complete claim, as provided in paragraph (a) of this section, via transmission through a CBP-authorized system, including the uploading of all required supporting documentation.

(ii) *Abandonment.* Claims not completed within the 5-year period after the date on which the merchandise designated as the basis for the drawback claim was imported will be considered abandoned. Except as provided in paragraph (e)(2) of this section, no extension will be granted unless it is established that CBP was responsible for the untimely filing; and

(iii) *Special timeframes.* For substitution claims, the exportation or destruction of merchandise shall not have preceded the date of importation of the designated imported merchandise, and/or the exportation or destruction of merchandise shall not otherwise be outside of the timeframes specified in 19 U.S.C. 1313(c)(2)(C) and 19 U.S.C. 1313(p)(2), if applicable.

(2) *Major disaster.* The 5-year period for filing a complete 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 CBP 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 CBP no later than 1 year from the last day of the 5-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) will be extended for an additional 18 months.

§ 190.52 Rejecting, perfecting or amending claims.

(a) *Rejecting the claim.* Upon review of a drawback claim, if the claim is determined to be incomplete (*see* § 190.51(a)(1)) or untimely (*see* § 190.51(e)), the claim will be rejected and CBP will notify the filer. The filer will then have the opportunity to complete the claim subject to the requirement for filing a complete claim within 5 years of the date of importation of the merchandise designated as the basis for the drawback claim.

(b) *Perfecting the claim; additional evidence required.* If CBP determines that the claim is complete according to the requirements of § 190.51(a)(1), but that additional evidence or information is required, CBP will notify the filer. The claimant must furnish, or have the appropriate party furnish, the evidence or information requested within 30 days of the date of notification by CBP. CBP may extend this 30-day period if the claimant files a written request for such extension within the 30-day period and provides good cause. The evidence or information required under this paragraph may be filed more than 5 years after the date of importation of the merchandise designated as the basis for the drawback claim. Such additional evidence or information may include, but is not limited to:

(1) Records or other documentary evidence of exportation, as provided for in § 190.72, which shows that the articles were shipped by the person filing the drawback entry, or a letter of endorsement from exporter which must be attached to such bill of lading, showing that the party filing the entry is authorized to claim drawback and receive payment (the claimant must have on file and make available to CBP 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) Records documenting the transfer of the merchandise including records kept in the normal course of business upon which the claim is based (*see* § 190.10).

(c) *Amending the claim; supplemental filing.* Amendments to claims for which the drawback entries have not been liquidated must be made within 5 years of the date of importation of the merchandise designated as the basis for the drawback claim. Liquidated drawback entries may not be amended; however, they may be protested as provided for in § 190.84 and part 174 of this chapter.

§ 190.53 Restructuring of claims.

(a) *General.* CBP may require claimants to restructure their drawback claims in such a manner as to foster administrative efficiency. In making this determination, CBP 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 CBP 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

§ 190.61 Verification of drawback claims.

(a) *Authority.* All claims are subject to verification by CBP.

(b) *Method.* CBP personnel will 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 entry for the claim selected for verification. Postponement will continue in effect until the verification has been completed and a report is issued, subject to the limitation in 19 CFR 159.12(f). In the event that a substantial error is revealed during the verification, CBP may postpone liquidation of all related product line claims, or, in CBP's discretion, all claims made by that claimant.

(d) *Errors in specific or general manufacturing drawback rulings*—(1) *Specific manufacturing drawback ruling; action by CBP.* If verification of a drawback claim filed under a specific manufacturing drawback ruling (*see* § 190.8) reveals errors or deficiencies in the drawback ruling or application therefor, the verifying CBP official will promptly inform CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

(2) *General manufacturing drawback ruling.* If verification of a drawback claim filed under a general manufacturing drawback ruling (*see* § 190.7) 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 verifying CBP official will promptly inform CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

(3) *Action by CBP Headquarters.* CBP Headquarters will review the stated errors or deficiencies and take appropriate action (*see* 19 U.S.C. 1625; 19 CFR part 177).

§ 190.62 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 or destruction 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 or destruction of merchandise greater than that legally due, will 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.

§ 190.63 Liability for drawback claims.

(a) *Liability of claimants.* Any person making a claim for drawback will be liable for the full amount of the drawback claimed.

(b) *Liability of importers.* An importer will be liable for any drawback claim made by another person with respect to merchandise imported by the importer in an amount equal to the lesser of:

(1) The amount of duties, taxes, and fees that the person claimed with respect to the imported merchandise; or

(2) The amount of duties, taxes, and fees that the importer authorized the other person to claim with respect to the imported merchandise.

(c) *Joint and several liability.* Persons described in paragraphs (a) and (b) will be jointly and severally liable for the amount described in paragraph (b).

Subpart G—Exportation and Destruction

§ 190.71 Drawback on articles destroyed under CBP 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 CBP Form 7553 must be filed by the claimant with the CBP 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 CBP Form 7553, CBP will 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 CBP supervision. Unless CBP determines to witness the destruction, the destruction of the articles following timely notification on CBP Form 7553 will be deemed to have occurred under CBP supervision. If CBP attends the destruction, CBP will certify on CBP Form 7553.

(b) *Evidence of destruction.* When CBP does not attend the destruction, the claimant must submit evidence that destruction took place in accordance with the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553. 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 § 190.2.

(c) *Completion of drawback entry.* After destruction, the claimant must provide CBP Form 7553, certified by the CBP official witnessing the destruction in accordance with paragraph (a) of this section, to CBP as part of the completed drawback claim based on the destruction (*see* § 190.51(a)). If CBP has not attended the destruction, the claimant must provide the evidence that destruction took place in accordance with the approved CBP Form 7553, as provided for in paragraph (b) of this section, as part of the completed drawback claim based on the destruction (*see* § 190.51(a)).

§ 190.72 Proof of Exportation.

(a) *Required export data.* Proof of exportation of articles for drawback purposes must establish fully the date and fact of exportation and the identity of the exporter by providing the following summary data as part of a complete claim (*see* § 190.51) (in addition to providing prior notice of intent to export if applicable (*see* §§ 190.35, 190.36, 190.42, and 190.91)):

(1) Date of export;

(2) Name of exporter;

(3) Description of the goods;

(4) Quantity and unit of measure;

(5) Schedule B number or HTSUS number; and

(6) Country of ultimate destination.

(b) *Supporting documentary evidence.* Exportation may be established by providing the following:

(1) Records or other documentary evidence of exportation (originals or copies) issued by the exporting carrier, such as a bill of lading, air waybill, freight waybill, Canadian Customs manifest, and/or cargo manifest;

(2) Records from a CBP-approved electronic export system of the United States Government (§ 190.73);

(3) Official postal records (originals or copies) which evidence exportation by mail (§ 190.74);

(4) Notice of lading for supplies on certain vessels or aircraft (§ 190.112); or

(5) Notice of transfer for articles manufactured or produced in the United States which are transferred to a foreign trade zone (§ 190.183).

§ 190.73 Electronic proof of exportation.

Records kept through an electronic export system of the United States Government may be considered as actual proof of exportation only if CBP has officially approved the use of that electronic export system as proof of compliance for drawback claims. Official approval will be published as a general notice in the Customs Bulletin.

§ 190.74 Exportation by mail.

If the merchandise on which drawback is to be claimed is exported by mail or parcel post, the official postal records (original or copies) which describe the mail shipment will be sufficient to prove exportation. The postal record must be identified on the drawback entry, and must be retained by the claimant and submitted as part of the drawback claim (*see* § 190.51(a)).

§ 190.75 Exportation by the Government.

(a) *Claim by U.S. Government.* When a department, branch, agency, or instrumentality of the U.S. Government exports products with the intention of claiming drawback, it may establish the exportation in the manner provided in § 190.72 of this subpart (*see* § 190.4).

(b) *Claim by supplier.* When a supplier of merchandise to the Government or any of the parties specified in § 190.82 claims drawback, exportation must be established under § 190.72 of this subpart.

§ 190.76 [Reserved]

Subpart H—Liquidation and Protest of Drawback Entries

§ 190.81 Liquidation.

(a) *Time of liquidation.* Drawback entries may be liquidated after:

(1) Liquidation of the designated import entry or entries becomes final pursuant to paragraph (e); or

(2) Deposit of estimated duties on the imported merchandise and before liquidation of the designated import entry or entries.

(b) *Claims based on estimated duties.* (1) Drawback may be paid upon liquidation of a claim based on estimated duties if one or more of the designated import entries have not been liquidated, or the liquidation has not become final (because of a protest being filed) (*see* also § 173.4(c) of this chapter), only if the drawback claimant and any other party responsible for the payment of liquidated import duties each files a written request for payment of each drawback claim, waiving any right to payment or refund under other provisions of law, to the extent that the estimated duties on the unliquidated import entry are included in the drawback claim for which drawback on estimated duties is requested under this paragraph. The drawback claimant must, to the best of its knowledge, identify each import entry that has been protested and that is included in the drawback claim. A drawback entry, once finally liquidated on the basis of estimated duties pursuant to paragraph (e)(2), will 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, will:

(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 have been paid as estimated duties 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 (2) of this section, drawback may be paid upon liquidation of a claim based 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* § 190.3(a)(1)(iii)), provided that:

(i) The tender or payment is specifically identified as duty on a specifically identified entry, or withdrawal from warehouse, for consumption;

(ii) Liquidation of the specifically identified entry, or withdrawal from warehouse, for consumption became final prior to such tender or payment; and

(iii) Liquidation of the drawback entry in which that specifically identified import entry, or withdrawal from warehouse, for consumption is designated has not become final.

(2) *Written request and waiver.* Drawback may be paid on claims based on voluntary tenders or other payments of duties under this subsection only if the drawback claimant and any other party responsible for the payment of the voluntary tenders or other payments of duties each files a written request for payment of each drawback claim based on such voluntary tenders or other payments of duties, waiving any claim to payment or refund under other provisions of law, to the extent that the voluntary tenders or other payment of duties under this paragraph are included in the drawback claim for which drawback on the voluntary tenders or other payment of duties is requested under this paragraph.

(d) *Claims based on liquidated duties.* Drawback will 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.* (1) *General.* When the drawback claim has been completed by the filing of the entry and other required documents, and exportation (or destruction) of the merchandise or articles has been established, CBP will 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. Notice of liquidation will be given electronically as provided in §§ 159.9 and 159.10(c)(3).

(2) *Liquidation by operation of law.* (i) *Liquidated import entries.* A drawback claim that satisfies the requirements of paragraph (d) that is not liquidated within one year from the date of the drawback claim (*see* § 190.51(e)(1)(i)) will be deemed liquidated for the purpose of the drawback claim at the drawback amount asserted by the claimant or claim, unless the time for liquidation is extended in accordance with § 159.12 or if liquidation is suspended as required by statute or court order.

(ii) *Unliquidated import entries.* A drawback claim that satisfies the requirements of paragraphs (b) or (c) of this section will be deemed liquidated upon the deposit of estimated duties on the unliquidated imported merchandise (*see* § 190.81(b)).

(f) *Relative value; multiple products*—(1) *Distribution.* Where two or more products result from the manufacture or production of merchandise, drawback will be distributed to the several products in accordance with their relative values at the time of separation.

(2) *Values.* The values 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 must be the market value (as provided for in the definition of relative value in § 190.2), unless other values are approved by CBP.

(g) *Payment.* CBP will authorize the amount of the refund due as drawback to the claimant.

§ 190.82 Person entitled to claim drawback.

Unless otherwise provided in this part (*see* §§ 190.42(b), 190.162, 190.175(a), 190.186), the exporter (or destroyer) will 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 § 190.33(a) and (b)). Such certification must 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.

§ 190.83 Person entitled to receive payment.

Drawback is paid to the claimant (*see* § 190.82).

§ 190.84 Protests.

Procedures to protest the denial, in whole or in part, of a drawback entry must 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

§ 190.91 Waiver of prior notice of intent to export.

(a) *General*—(1) *Scope.* The requirement in § 190.35 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 before February 24, 2019, and under 19 CFR 191, such approval of waiver of prior notice will remain in effect, but only if the claimant provides the following certification as part of each complete claim filed on or after that date, pursuant to 19 CFR 190.51(a)(2)(xvi): ''The undersigned acknowledges the current statutory requirements under 19 U.S.C. 1313 and the regulatory requirements in 19 CFR part 190, and hereby certifies continuing eligibility for the waiver of prior notice (granted prior to February 24, 2019) in compliance therewith.'' This certification may only be made for waiver of prior notice for the specific type of drawback claim for which the application was previously approved under 19 CFR 191, except that applications approved under 19 U.S.C. 1313(j)(1) will also be applicable to claims for the same type of merchandise if made under 19 U.S.C. 1313(j)(2).

(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 will remain in

effect for a period of 1 year after such transfer. The approval of waiver of prior notice will 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 CBP 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 (which may be physically delivered or delivered via email) with the drawback office where the claims will be filed. Such application must 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;

(I) The relationship between the parties involved in the import and export transactions; and

(J) Provision(s) of drawback covered by the application.

(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 § 190.36, and whether such request was approved or denied; and

(iii) A certification that the following documentary evidence will be made available for CBP 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 satisfies the requirements for substitution with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)), and, as applicable:

(1) Records;

(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 CBP's 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, CBP Form 7501, or its electronic equivalent), 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 CBP upon request).

(c) *Action on application*—(1) *CBP review.* The drawback office will review and verify the information submitted on and with the application. CBP 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 CBP's inability to approve, deny, or act on the application and the reason therefor. In order for CBP to evaluate the application, CBP 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 CBP, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with CBP include, but are not limited to:

(i) The presence or absence of unresolved CBP charges (duties, taxes, or other debts owed CBP);

(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 CBP for examination after CBP had timely notified the party filing a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553 of CBP's intent to examine the merchandise (*see* § 190.35).

(2) *Approval.* The approval of an application for waiver of prior notice of intent to export, under this section, will operate prospectively, applying only to those export shipments occurring after the date of the waiver. It will 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 will 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 CBP desire for any reason to examine the merchandise being exported with drawback prior to its exportation for purposes of verification. CBP will provide written notice, by registered or certified mail, of such a stay to the person for whom waiver of prior notice was approved. CBP will specify the reason(s) for the stay in such written notice. The stay will take effect 2 working days after the date the person signs the return post office receipt for the registered or certified mail. The stay will remain in effect for the period specified in the written notice, or until such earlier date as CBP 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.* CBP may propose to revoke the approval of an application for waiver of prior notice of intent to export, under this section, for good cause (such as, noncompliance with the drawback law and/or regulations). CBP will give written notice of the proposed revocation of a waiver of prior notice of intent to export. The notice will specify the reasons for CBP's proposed action and provide information regarding the procedures for challenging CBP's 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 will 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 drawback office to approve, deny, stay, or revoke waiver of prior notice of intent to export, unless reversed by CBP Headquarters, will govern the applicant's eligibility for this procedure in all CBP drawback offices. If the application for waiver of prior notice of intent to export is approved, the claimant must refer to such approval in the first drawback claim filed after such approval in the drawback office approving waiver of prior notice and must 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 CBP Headquarters, Office of Trade, Trade Policy and Programs, 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 CBP 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.

§ 190.92 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 CBP's 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 190 (*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 before February 24, 2019, and under 19 CFR part 191, such approval of accelerated payment will remain in effect, but only if the claimant provides the following certification as part of each complete claim filed after that date, pursuant to 19 CFR 190.51(a)(2)(xvi): ''The undersigned acknowledges the current statutory requirements under 19 U.S.C. 1313 and the regulatory requirements in 19 CFR part 190, and hereby certifies continuing eligibility for accelerated payment (granted prior to February 24, 2019) in compliance therewith.'' This certification may only be made for accelerated payment for the specific type of drawback claim for which the application was previously approved under 19 CFR 191, except that applications approved under 19 U.S.C. 1313(j)(1) will also be applicable to claims for the same type of merchandise if made under 19 U.S.C. 1313(j)(2).

(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 will remain in effect for a period of 1 year after such transfer. The approval of accelerated payment of drawback will 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 CBP 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 (which may be physically delivered or delivered via email) 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) Provision(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 recordkeeping 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 CBP 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 CBP is notified of any modifications from the procedures described in this application.

(c) *Sample application.* The drawback office, upon request, will 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) *CBP review.* The drawback office will review and verify the information submitted in and with the application. In order for CBP to evaluate the application, CBP 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 CBP, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with CBP include, but are not limited to (as applicable):

(i) The presence or absence of unresolved CBP charges (duties, taxes, fees, or other debts owed CBP);

(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.* CBP 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 CBP's 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, will be effective as of the date of CBP's written notification of approval under paragraph (e)(2) of this section. Accelerated payment of drawback will 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 will 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 will 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.* CBP may propose to revoke the approval of an application for accelerated payment of drawback under this section, for good cause (such as, noncompliance with the drawback law and/or regulations). In case of such proposed revocation, CBP will give written notice, by registered or certified mail, of the proposed revocation of the approval of accelerated payment. The notice will specify the reasons for CBP's proposed action and the procedures for challenging CBP's proposed revocation action as prescribed in paragraph (h) of this section. The revocation will 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 drawback office to approve, deny, or revoke accelerated payment of drawback will govern the applicant's eligibility for this procedure in all CBP drawback offices. If the application for accelerated payment of drawback is approved, the claimant must refer to such approval in the first drawback claim filed after such approval in the drawback office approving accelerated payment of drawback and must 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 CBP Headquarters, Office of Trade, Trade Policy and Programs, and must be filed within 30 days. The 30-day period for appeal or challenge to the drawback office or to CBP 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 will certify the drawback claim for payment. After liquidation, the drawback office will certify the claim for 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 repaid to CBP within 30 days after the date of liquidation of the related drawback entry will be considered delinquent (*see* §§ 24.3a and 113.65(b) of this chapter).

§ 190.93 Combined applications.

An applicant for the procedures provided for in §§ 190.91 and 190.92 of this subpart may apply for only one procedure, both procedures separately, or both procedures in one application package (*see* also § 190.195 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

§ 190.101 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 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 will be allowed in accordance with section 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.

§ 190.102 Procedure.

(a) *General.* Other provisions of this part relating to direct identification drawback (*see* subpart B of this part) will 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 will record the products manufactured, the quantity of waste, if any, and a full description of the alcohol. These records must be available at all times for inspection by CBP 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 § 190.8, must 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 an exported medicinal preparation, flavoring extract or toilet preparation varies by more than 5 percent from the percentage of alcohol in the total volume of the product as stated in a previously approved application for a specific manufacturing drawback ruling, the manufacturer must apply for a new specific manufacturing drawback ruling pursuant to § 190.8. If the variation differs from a previously filed schedule, the manufacturer must 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 must be reported to the drawback office where the drawback entries are liquidated. In such cases, the drawback office may allow drawback without specific authorization from CBP Headquarters.

(e) *Time period for completing claims.* Drawback claims under this subpart must be completed within 3 years after the date of exportation of the articles upon which drawback is claimed.

(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 must 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 that is the subject of the drawback entry may be obtained from the description on the package containing the tax-paid alcohol.

§ 190.103 Additional requirements.

(a) *Manufacturer claims domestic drawback.* In the case of medicinal preparations and flavoring extracts, the claimant must file with the drawback entry, a declaration of the manufacturer stating whether a claim has been or will be filed by the manufacturer with the Alcohol and Tobacco Tax and Trade Bureau (TTB) for domestic drawback on alcohol under §§ 5111, 5112, 5113, and 5114, Internal Revenue Code, as amended (26 U.S.C. 5111, 5112, 5113, and 5114).

(b) *Manufacturer does not claim domestic drawback*—(1) *Submission of statement.* If no claim has been or will be filed with TTB for domestic drawback on medicinal preparations or flavoring extracts, the manufacturer must submit a statement, in duplicate, setting forth that fact to the Director, National Revenue Center, TTB.

(2) *Contents of the statement.* The statement must 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 distilled spirits plant from which the alcohol was withdrawn;

(iv) Date of withdrawal;

(v) Serial number of the applicable record of tax determination (*see* 27 CFR 17.163(a) and 27 CFR 19.626(c)(7); and

(vi) Drawback office where the claim will be filed.

(3) *Verification of receipt of the statement.* The Director, National Revenue Center, TTB, will verify receipt of this statement, and transmit a verification of receipt of the statement with a copy of that document to the drawback office designated.

§ 190.104 Alcohol and Tobacco Tax and Trade Bureau (TTB) certificates.

(a) *Request.* The drawback claimant or manufacturer must request the Director, National Revenue Center, TTB, to provide the CBP office where the drawback claim will be processed with a tax-paid certificate on TTB Form 5100.4 (Certificate of Tax-Paid Alcohol).

(b) *Contents.* The request must state the:

(1) Quantity of alcohol in proof gallons;

(2) Serial number of each package;

(3) Amount of tax paid on the alcohol;

(4) Name, registry number, and location of the distilled spirits plant;

(5) Date of withdrawal;

(6) Name of the manufacturer using the alcohol in producing the exported articles;

(7) Address of the manufacturer and its manufacturing plant; and

(8) Customs drawback office where the drawback claim will be processed.

(c) *Extract of TTB certificate.* If a certification of any portion of the alcohol described in the TTB 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, will transmit a copy of the extract from the certificate for use at that drawback office. The drawback office will note that the copy of the extract was prepared and transmitted.

§ 190.105 Liquidation.

The drawback office will ascertain the final amount of drawback due by reference to the specific manufacturing drawback ruling under which the drawback claimed is allowable.

§ 190.106 Amount of drawback.

(a) *Claim filed with TTB.* If the declaration required by § 190.103(a) of this subpart shows that a claim has been or will be filed with TTB for domestic drawback, drawback under § 313(d) of the Act, as amended (19 U.S.C. 1313(d)), will be limited to the difference between the amount of tax paid and the amount of domestic drawback claimed.

(b) *Claim not filed with TTB.* If the declaration and statement required by § 190.103(a) and (b) show that no claim has been or will be filed by the manufacturer with TTB for domestic drawback, the drawback will be the full amount of the tax on the alcohol used. Drawback under this provision may not be granted absent receipt from TTB of a copy of TTB Form 5100.4 (Certificate of Tax-Paid Alcohol) indicating that taxes have been paid on the exported product for which drawback is claimed.

(c) *No deduction of 1 percent.* No deduction of 1 percent may be made in drawback claims under § 313(d) of the Act, as amended (19 U.S.C. 1313(d)).

(d) *Payment.* The drawback due will be paid in accordance with § 190.81(f).

Subpart K—Supplies for Certain Vessels and Aircraft

§ 190.111 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.

§ 190.112 Procedure.

(a) *General.* The provisions of this subpart will override conflicting provisions of this part, such as the export procedures in § 190.72.

(b) *Notice of lading.* The drawback claimant must file with the drawback office a notice of lading.

(c) *Time of filing notice of lading.* In the case of drawback in connection with 19 U.S.C. 1309(b), the notice of lading must be filed within 5 years after the date of importation of the imported merchandise.

(d) *Contents of notice.* The notice of lading must 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) *Declaration of Master or other officer*—(1) *Requirement.* The master or an authorized representative of the vessel or aircraft having knowledge of the facts must provide the following declaration on the notice of lading ''I declare that the information given above is true and correct to the best of my knowledge and belief; that I have knowledge of the facts set forth herein; that the articles described in this notice of lading were received in the quantities stated, from the person, and on the date, indicated above; that said articles were laden on the vessel (or aircraft) named above for use on said vessel (or aircraft) as supplies (or equipment), except as noted below; and that at the time of lading of the articles, the said vessel (or aircraft) was engaged in the business or trade checked below: (It is not necessary for a foreign vessel to show its class of trade.).''

(2) *Filing.* The drawback claimant must file with the drawback office both the drawback entry and the notice of lading or separate document containing the declaration of the master or other officer or representative.

(f) *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.

(g) *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 will 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.

(h) *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 for each calendar month. The composite notice of lading must 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 United States and Hawaii, Alaska, or any U.S. possessions (*see* § 10.59 of this chapter).

(2) *Contents of composite notice.* Composite notice must show for each voyage or flight:

(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 must complete the ''Declaration of Master or other officer''(see paragraph (e) of this section).

(i) *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 must apply for a permit to land those articles under CBP supervision. All articles landed, except those transferred under the original notice of lading to another vessel or aircraft entitled to drawback, will 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

§ 190.121 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.

§ 190.122 Procedure.

Other provisions of this part relating to direct identification manufacturing drawback will apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 190.123 Refund of duties.

Drawback allowed under this subpart will be refunded in aggregate amounts of not less than $100 and will 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 Account and Ownership

§ 190.131 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.

§ 190.132 Procedure.

Other provisions of this part relating to direct identification manufacturing drawback will apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 190.133 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, will 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 CBP (*see* 46 U.S.C. 2101(14a)).

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

§ 190.141 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.

§ 190.142 Procedure.

Other provisions of this part will apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 190.143 Drawback entry.

(a) *Filing of entry.* Drawback entries covering these foreign-built jet aircraft engines must 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 drawback entry must indicate the country in which each engine was manufactured and describe the processing performed thereon in the United States.

§ 190.144 Refund of duties.

Drawback allowed under this subpart will be refunded in aggregate amounts of not less than $100, and will not be subject to the deduction of 1 percent of duties paid.

Subpart O—Merchandise Exported From Continuous CBP Custody

§ 190.151 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 CBP 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, will not satisfy any requirement for use, importation, exportation or destruction, and will 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 will 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 CBP custody since importation is not entitled to drawback of duty when shipped to Puerto Rico, Canton Island, Enderbury Island, or Palmyra Island.

§ 190.152 Merchandise released from CBP custody.

No remission, refund, abatement, or drawback of duty will 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 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 CBP (*see* § 190.71), in which case any accrued duties will be remitted or refunded and any condition in the bond that the articles must be exported will be deemed satisfied (*see* 19 U.S.C. 1558).

§ 190.153 Continuous CBP 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 CBP office will not be deemed to be in the continuous custody of CBP 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), will not be deemed to be in the continuous custody of CBP officers.

(c) *Merchandise released from warehouse.* For the purpose of this subpart, in the case of merchandise entered for warehouse, CBP custody will be deemed to cease when estimated duty has been deposited and the appropriate CBP 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, will be considered released from CBP custody upon completion of final examination for appraisement.

(2) *Merchandise upon the wharf.* Merchandise which remains on the wharf by permission of the appropriate CBP office will be considered to be in CBP custody, but this custody will be deemed to cease when the CBP officer in charge accepts the permit and has no other duties to perform relating to the merchandise, such as measuring, weighing, or gauging.

§ 190.154 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 or her in writing must file a direct export drawback entry.

(b) *Merchandise transported to another port for exportation.* The importer of merchandise to be transported to another port for exportation must file an entry naming the transporting conveyance, route, and port of exit. The drawback office will certify one copy and forward it to the CBP office at the port of exit. A bonded carrier must transport the merchandise in accordance with the applicable regulations. Manifests must be prepared and filed in the manner prescribed in § 144.37 of this chapter.

§ 190.155 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 will be followed to the extent applicable.

§ 190.156 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 must be filed within 2 years after the merchandise is exported.

(b) *Contents.* The bill of lading must 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 that person's right to make the drawback entry as may be available. The request will 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 will transmit the request and its accompanying evidence to the Office of Trade, CBP Headquarters, for final determination.

(e) *Extracts of bills of lading.* Drawback offices may issue extracts of bills of lading filed with drawback claims.

§ 190.157 [Reserved]

§ 190.158 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 will 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 will be liquidated in accordance with the provisions of § 190.81.

§ 190.159 Amount of drawback.

Drawback due under this subpart will 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

§ 190.161 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 CBP 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 CBP custody.

§ 190.162 Procedure.

The export procedure will be the same as that provided in § 190.42 for rejected merchandise, except that the claimant must be the importer and must comply with all other provisions in this subpart.

§ 190.163 Documentation.

(a) *Entry.* A drawback entry must be filed to claim drawback under this subpart.

(b) *Documentation.* The drawback entry for unmerchantable merchandise must 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.

§ 190.164 Return to CBP custody.

There is no time limit for the return to CBP custody of distilled spirits, wine, or beer subject to refund of taxes under the provisions of this subpart. The claimant must return the merchandise to CBP custody prior to exportation or destruction and claims are subject to the filing deadline set forth in 19 U.S.C. 1313(r)(1).

§ 190.165 No exportation by mail.

Merchandise covered by this subpart must not be exported by mail.

§ 190.166 Destruction of merchandise.

(a) *Action by the importer.* A drawback claimant who proposes to destroy rather than export the distilled spirits, wine, or beer must state that fact on the drawback entry.

(b) *Action by CBP.* Distilled spirits, wine, or beer returned to CBP custody at the place approved by the drawback office where the drawback entry was filed must be destroyed under the supervision of the CBP officer who will certify the destruction on CBP Form 7553.

§ 190.167 Liquidation.

No deduction of 1 percent of the internal revenue taxes paid or determined will be made in allowing entries under § 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)).

§ 190.168 [Reserved]

Subpart Q—Substitution of Finished Petroleum Derivatives

§ 190.171 General; drawback allowance.

(a) *General.* Section 313(p) of the Act, as amended (19 U.S.C. 1313(p)), provides for drawback for duties, taxes, and fees paid on qualified articles (see definition below) which consist of either petroleum derivatives that are imported, duty-paid, and qualified for drawback under the unused merchandise drawback law (19 U.S.C. 1313(j)(1)), or petroleum derivatives that are manufactured or produced in the United States, and qualified for drawback under the manufacturing drawback law (19 U.S.C. 1313(a) or (b)).

(b) *Allowance of drawback.* Drawback may be granted under 19 U.S.C. 1313(p):

(1) In cases where there is no manufacture, upon exportation of the imported article, an article of the same kind and quality, or any combination thereof; or

(2) In cases where there is a manufacture or production, upon

exportation of the manufactured or produced article, an article of the same kind and quality, or any combination thereof.

(c) *Calculation of drawback.* For drawback of finished petroleum derivatives pursuant to § 1313(p), the claimant is required to calculate the total amount of drawback due, for purposes of 190.51(b), which will not exceed 99 percent of the allowable duties, taxes, and fees, subject to the following:

(1) *Per unit averaging calculation.* The amount of duties, taxes, and fees eligible for drawback is determined by per unit averaging, as defined in 19 CFR 190.2, for any drawback claim based on 19 U.S.C. 1313(p) pursuant to the standards set forth in 19 CFR 190.172(b) and without respect to the limitations set forth in subparagraphs (B) and (C) of 19 U.S.C. 1313(l).

(2) *Limitations.* The amount of duties, taxes, and fees eligible for drawback is not subject to the limitations set out in 19 U.S.C. 1313(p)(4) for unused merchandise claims (no manufacture) and manufacturing claims (see 190.173(e) and 190.174(f)).

(3) *Federal excise tax.* For purposes of drawback of internal revenue tax imposed under Chapters 32 and 38 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

§ 190.172 Definitions.

The following are definitions for purposes of this subpart only:

(a) *Qualified article. Qualified article* means an article described in headings 2707, 2708, 2710 through 2715, 2901, 2902, 2909.19.14, or 3901 through 3914 of the Harmonized Tariff Schedule of the United States (HTSUS). In the case of an article described in headings 3901 through 3914, the definition covers the article in its primary forms as provided in Note 6 to chapter 39 of the HTSUS.

(b) *Same kind and quality article. Same kind and quality article* means an article which is referred to under the same 8-digit classification of the HTSUS as the article to which it is compared.

(c) *Exported article. Exported article* means an article which has been exported and is a qualified article, an article of the same kind and quality as the qualified article, or any combination thereof.

§ 190.173 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 § 190.172(a) of this subpart;

(b) *Exported article.* The exported article on which drawback is claimed must be an ''exported article'' as defined in § 190.172(c) of this subpart;

(c) *Exporter.* The exporter of the exported article must have either:

(1) Imported the qualified article in at least the quantity of the exported article; or

(2) Purchased or exchanged (directly or indirectly) from an importer an imported qualified article in at least the quantity of the exported article;

(d) *Time of export.* The exported article must be exported within 180 days after the date of entry of the designated imported duty-paid merchandise; and

(e) *Amount of drawback.* The amount of drawback payable may not exceed the amount of drawback which would be attributable to the imported qualified article under 19 U.S.C. 1313(j)(1) which serves as the basis for drawback.

§ 190.174 Derivatives manufactured under 19 U.S.C. 1313(a) or (b).

When the exported article which is the basis for a drawback claim 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 § 190.172(a) of this subpart;

(b) *Exported article.* The exported article on which drawback is claimed must be an ''exported article'' as defined in § 190.172(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* § 190.8) 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.

§ 190.175 Drawback claimant; maintenance of records.

(a) *Drawback claimant.* A drawback claimant under 19 U.S.C. 1313(p) must be the exporter of the exported article, or the refiner, producer, or importer of either the qualified article or the exported article. Any of these persons may designate another person to file the drawback claim.

(b) *Transfer of merchandise*—(1) *General.* A drawback claimant under 19 U.S.C. 1313(p) must maintain records (which may be records kept in the normal cause of business) to support the receipt of transferred merchandise and the party transferring the merchandise must maintain records to demonstrate the transfer.

(2) *Article substituted for the qualified article.* (i) Subject to paragraph (b)(2)(iii) of this section, the manufacturer, producer, or importer of a qualified article may transfer to the exporter an article of the same kind and quality as the qualified article in a quantity not greater than the quantity of the qualified article.

(ii) Subject to paragraph (b)(2)(iii) of this section, any intermediate party in the chain of commerce leading to the exporter from the manufacturer, producer, or importer of a qualified article may also transfer to the exporter or to another intermediate party an article of the same kind and quality as the article purchased or exchanged from the prior transferor (whether the manufacturer, producer, importer, or another intermediate transferor) in a quantity not greater than the quantity of the article purchased or exchanged.

(iii) Under either paragraph (b)(2)(i) or (b)(2)(ii) of this section, the article transferred, regardless of its origin (imported, manufactured, substituted, or any combination thereof), will be the qualified article eligible for drawback for purposes of section 1313(p).

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

§ 190.176 Procedures for claims filed under 19 U.S.C. 1313(p).

(a) *Applicability.* The general procedures for filing drawback claims will 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 § 190.53) will 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 the drawback entry; 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 subheading number;

(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 liquidation of the claim; and

(v) Such evidence will be available for verification by CBP.

(d) *Derivatives manufactured under 19 U.S.C. 1313*(*a*) *or* (*b*). When the basis for a claim 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 the drawback entry;

(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 classifiable under the same 8-digit HTSUS subheading number;

(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 liquidation of the claim; and

(v) Such evidence will be available for verification by CBP.

Subpart R—Merchandise Transferred to a Foreign Trade Zone from Customs Territory

§ 190.181 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 that 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), will be considered to be exported for the purpose of drawback, provided there is compliance with the regulations of this subpart.

§ 190.182 Zone-restricted merchandise.

Merchandise in a foreign trade zone for the purposes specified in § 190.181 will be given status as zone-restricted merchandise on proper application (*see* § 146.44 of this chapter).

§ 190.183 Articles manufactured or produced in the United States.

(a) *Procedure for filing documents.* Except as otherwise provided, the drawback procedures prescribed in this part must be followed when claiming 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 CBP Form 214 (Application for Foreign-Trade Zone Admission and/or Status Designation) or its electronic equivalent will be in place of the documents under subpart G of this part to establish the exportation.

(2) *Filing procedures.* The notice of transfer (CBP Form 214) will be filed not later than 3 years after the transfer of the articles to the zone. A notice filed after the transfer will state the foreign trade zone lot number.

(3) *Contents of notice.* Each notice of transfer must 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 must certify on a copy of the notice of transfer (CBP Form 214) the receipt of the articles (*see* § 190.184(d)(2)) and forward the notice to the transferor or the person designated by the transferor. The transferor must verify that the notice has been certified before filing it with the drawback claim.

(d) *Drawback entries.* Drawback entries must indicate that the merchandise was transferred to a foreign trade zone. The "Declaration of Exportation" must 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

§ 190.184 Merchandise transferred from continuous CBP custody.

(a) *Procedure for filing claims.* The procedure described in subpart O of this part will be followed as applicable, for drawback on merchandise transferred to a foreign trade zone from continuous CBP custody.

(b) *Drawback entry.* Before the transfer of merchandise from continuous CBP custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose must file with the drawback office a direct export drawback entry. CBP will notify the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator must certify the receipt of the merchandise (*see* paragraph (d)(2) of this section) and notify the transferor or the person designated by the transferor. After executing the declaration provided for in paragraph (d)(3) of this section, the transferor must resubmit the drawback entry to the drawback office in place of the bill of lading required by § 190.156.

(d) *Modification of drawback entry*—(1) *Indication of transfer.* The drawback entry must include a certification to indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor and the foreign trade zone operator must certify transfer to the foreign trade zone, with respect to the drawback entry, as follows:

Certification by Foreign Trade Zone Operator

The merchandise described in the entry was received from ____________ on ________; 20____; in Foreign Trade Zone No. ____, (City and State)

Exceptions ______________________________

(Name and title)

By ______________________________

(Name of operator)

(3) *Transferor's declaration.* The transferor must declare, with respect to the drawback entry, 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

§ 190.185 Unused merchandise drawback and merchandise not conforming to sample or specification, shipped without consent of the consignee, found to be defective as of the time of importation, or returned after retail sale.

(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, must be followed with respect 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 must file the drawback entry. CBP will notify 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 must certify, with respect to the drawback entry, the receipt of the merchandise and notify the transferor or the person designated by the transferor. After executing the declaration provided for in paragraph (d)(3) of this section, the transferor must resubmit the drawback entry in place of the bill of lading required by § 190.156.

(d) *Modification of drawback entry*—(1) *Indication of transfer.* The drawback entry must indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor and the foreign trade zone operator must certify transfer to the foreign trade zone, with respect to the drawback entry, as follows:

Certification by Foreign Trade Zone Operator

The merchandise described in this entry was received from ____________on ________, 20 ____, in Foreign Trade Zone No. ____, ________(City and State).

Exceptions: ______________________________

____

(Name of operator)

By ______________________________

(Name and title)

(3) *Transferor's declaration.* The transferor must certify, with respect to the drawback entry, 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

§ 190.186 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, will be considered to be the transferor. Drawback may be claimed by, and paid to, the transferor.

Subpart S—Drawback Compliance Program

§ 190.191 Purpose.

This subpart sets forth the requirements for the drawback compliance program in which claimants and other parties in interest, including customs brokers, may participate after being certified by CBP. Participation in the program is voluntary. Under the program, CBP 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.

§ 190.192 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 CBP. Certification requirements will 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 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 CBP 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 CBP;

(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 CBP regarding original records, or if approved by CBP, alternative records or recordkeeping formats for other than the original records; and

(6) Has procedures for notifying CBP of variances in, or violations of, the drawback compliance program or other alternative negotiated drawback compliance program, and for taking corrective action when notified by CBP 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* § 190.194(b)). To do so, a customs broker who assists 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 must 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.

§ 190.193 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 may be submitted to any drawback office.

(c) *Letter of application; contents.* A party requesting certification to become a participant in the drawback compliance program must file with the drawback office a written application, signed by an authorized individual (*see* § 190.6(c) of this part). The detail required in the application must 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 must 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 email 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* §§ 190.7 and 190.8), as appropriate;

(3) A description of the applicant's drawback record-keeping program, including the retention period and method (for example, paper, and electronic.);

(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 CBP 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 CBP 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 CBP is notified of any modifications from the procedures described in this application.

§ 190.194 Action on application to participate in compliance program.

(a) *Review by drawback office*—(1) *General.* It is the responsibility of the drawback office to coordinate its decision making on the package with CBP Headquarters and other CBP offices as appropriate. CBP 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 CBP review.* The drawback office will review and verify the information submitted in and with the application. In order for CBP to evaluate the application, CBP may request additional information (including additional sample documents) and/or explanations of any of the information provided for in § 190.193(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 CBP, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with CBP will include (as applicable):

(i) The presence or absence of unresolved customs charges (duties, taxes, fees, or other debts owed CBP);

(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 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* § 190.62(b)), CBP will, 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 CBP, is taken.

(d) *Denial.* If certification as a participant in the drawback compliance program is denied, the applicant will be given written notice by the 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 drawback office that issued the notice of denial and then appealed to CBP Headquarters.

(e) *Certification removal*—(1) *Grounds for removal.* The certification for participation in the drawback compliance program by a party may be removed when any of the following conditions are discovered:

(i) The certification privilege was obtained through fraud or mistake of fact;

(ii) The program participant is no longer in compliance with the customs laws and CBP regulations, including the requirements set forth in § 190.192;

(iii) The program participant has repeatedly filed false drawback claims or false or misleading documentation or other information relating to such claims; or

(iv) The program participant is convicted of any felony or has committed acts which would constitute a misdemeanor or felony involving theft, smuggling, or any theft-connected crime.

(2) *Removal procedure.* If CBP determines that the certification of a program participant should be removed, the drawback office will send the program participant a written notice of the removal. Such notice will inform the program participant of the grounds for the removal and will advise the program participant of its right to file an appeal of the removal in accordance with paragraph (f) of this section.

(3) *Effect of removal.* The removal of certification will be effective immediately in cases of willfulness on the part of the program participant or when required by public health, interest, or safety. In all other cases, the removal of certification will be effective when the program participant has received notice under paragraph (e)(2) of this section and either no appeal has been filed within the time limit prescribed in paragraph (f)(2) of this section or all appeal procedures have been concluded by a decision that upholds the removal action. Removal of certification may subject the affected person to penalties.

(f) *Appeal of certification denial or removal*—(1) *Appeal of certification denial.* A party may challenge a denial of an application for certification as a participant in the drawback compliance program by filing a written appeal, within 30 days of issuance of the notice of denial, with the drawback office. A denial of an appeal may itself be appealed to CBP Headquarters, Trade Policy and Programs, Office of Trade, within 30 days after issuance of the drawback office's appeal decision. This office will review the appeal and will respond with a written decision within 30 days after receipt of the appeal unless circumstances require a delay in issuance of the decision. If the decision cannot be issued within the 30-day period, the officewill advise the appellant of the reasons for the delay and of any further actions which will be carried out to complete the appeal review and of the anticipated date for issuance of the appeal decision.

(2) *Appeal of certification removal.* A party who has received a CBP notice of removal of certification for participation in the drawback compliance program may challenge the removal by filing a written appeal, within 30 days after issuance of the notice of removal, with the drawback office. A denial of an appeal may itself be appealed to CBP Headquarters, Trade Policy and Programs, Office of Trade, within 30 days after issuance of the drawback office's appeal decision. This office will consider the allegations upon which the removal was based and the responses made to those allegations by the appellant and will render a written decision on the appeal within 30 days after receipt of the appeal.

§ 190.195 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 with the application).

Appendix A to Part 190—General Manufacturing Drawback Rulings

Table of Contents

I. General Instructions

A. There follow various general manufacturing drawback rulings which have been designed to simplify drawback procedures. Any person that can comply with the conditions of any one of these rulings may notify a CBP drawback office in writing of its intention to operate under the ruling (*see* § 190.7). Such a letter of notification must 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* § 190.6);
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, and 8-digit HTSUS subheading number, and the quantity of the merchandise;
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 § 190.2, the manufacturer or producer will be asked to provide details of the operation purported to be a manufacture or production.

10. For the General Manufacturing Drawback Ruling where substituted merchandise will be used, the bill of materials and/or formulas annotated with the 8-digit HTSUS classifications.

B. These general manufacturing drawback rulings supersede general ‘‘contracts’’ previously published under the following Treasury Decisions (T.D.s): 81–74, 81–92, 81–181, 81–234, 81–300, 83–53, 83–59, 83–73, 83–77, 83–80, 83–84, 83–123, 84–49, and 85–110. Anyone currently operating under any of the above-listed Treasury Decisions will automatically be covered by the superseding general ruling, including all privileges of the previous ‘‘contract’’.

II. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) (T.D. 81–234; T.D. 83–123)

A. Imported Merchandise or Drawback Products[1] *Used*

Imported merchandise or drawback products are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 190.2.

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, which may include records kept in the normal course of business, 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, which may include records kept in the normal course of business, 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. [Reserved]

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, which may include records kept in the normal course of business, will be maintained to establish:

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

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 must be available for audit by CBP during business hours. Drawback is not payable without proof of compliance).

K. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP 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 full quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. A drawback claim may be based 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 must:

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 liquidation 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 10) 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 190 of the CBP Regulations and this general ruling.

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

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) and 55207(1), and 19 U.S.C. 1313(b), if applicable, as well as 19 CFR part 190 (*see* particularly, § 190.9).

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 § 190.2.

C. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. Quantity, kind, quality, and 8-digit HTSUS subheading number 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 (including 8-digit HTSUS subheading number) appearing in or used in manufacturing or production operations performed by the agent;

5. Total quantity and description of articles (including 8-digit HTSUS subheading number) produced in manufacturing or production operations performed by the agent;

6. Quantity, kind, quality, and 8-digit HTSUS subheading number 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 liquidation 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 10) 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 help ensure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

IV. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Burlap or Other Textile Material (T.D. 83–53)

Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of bags or meat wrappers manufactured with the use of imported burlap or other textile material, subject to the following special requirements:

A. Imported Merchandise or Drawback Products [1] Used

Imported merchandise or drawback products (burlap or other textile material) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another, or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 190.2.

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, which may include records kept in the normal course of business, 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

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

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 CBP during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish compliance with those legal requirements, drawback cannot be paid. Each lot of imported material received by a manufacturer or producer must be given a lot number and kept separate from other lots until used. The records of the manufacturer or producer must show, as to each manufacturing lot or period of manufacture, the 8-digit HTSUS classification, the quantity of material used from each imported lot and the number of each kind and size of bags or meat wrappers obtained.

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. All exported bags or meat wrappers must be identified by the exporter.

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 must:

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 liquidation 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 10) 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 help ensure proper compliance with 19, United States Code, § 1313, part 190 of the CBP 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 8-Digit HTSUS Classification (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 classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products
Component parts identified by individual part numbers and 8-digit HTSUS subheading number.	Component parts classifiable under the same 8-digit HTSUS subheading number and identified with the same individual part numbers as those in the column immediately to the left hereof.

The designated components will have been manufactured in accordance with the same specifications and from the same materials, and identified by the same 8-digit HTSUS classification, and 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 CBP officers. 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* § 190.9).

D. Process of Manufacture or Production

The components described in the parallel columns will be used to manufacture or produce articles in accordance with § 190.2.

E. Multiple Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of components appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

G. [Reserved]

H. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity, specifications, and 8-digit HTSUS classification of the designated merchandise;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise [2] used to produce the exported articles;

3. That, within 5 years after the date of importation of the designated merchandise, the manufacturer or producer used the merchandise to produce articles. During the same 5-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 CBP during business hours. Drawback is not payable without proof of compliance.

[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. 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] 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.

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP 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 liquidation 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 10) 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 190 of the CBP 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* § 190.9).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 190.2.

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* §§ 190.2, 190.22(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, which may include records kept in the normal course of business, 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 CBP during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP 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 will show the inclusive dates of manufacture; the quantity, identity, value, and 8-digit HTSUS classification of the imported flaxseed or screenings, scalpings, chaff, or scourings used; the quantity by actual weight and value, if any, of the material removed from the foregoing by screening prior to crushing; the quantity and kind of domestic merchandise added, if any; the quantity by actual weight or gauge and value of the oil, cake, and meal obtained; and the quantity and value, if any, of the waste incurred. The quantity of imported flaxseed, screenings, scalpings, chaff, or scourings used or of material removed will not be estimated nor computed on the basis of the quantity of finished products obtained, but will 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 CBP 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 will 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 will 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 must 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 must be maintained showing the quantity, identity, kind, and 8-digit HTSUS classification of oil so intermixed. Identity of merchandise or articles in either instance must be in accordance with § 190.14.

[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.''

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 liquidation 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 10) 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 190 of the CBP 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* § 190.9).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 190.2.

Drawback will 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, which may include records kept in the normal course of business, 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 CBP during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP 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 must 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, description, and 8-digit HTSUS classification of the imported merchandise used, the condition in which imported, the process or processes applied thereto, the quantity, description, and 8-digit HTSUS classification of the finished articles obtained, and the quantity of imported pieces rejected, if any, or spoiled in manufacture or production.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace. (If rejects and/or spoilage are incurred, the quantity of imported merchandise used will 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 liquidation 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 10) 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,

[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.''

§ 1313, part 190 of the CBP 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 8-Digit HTSUS Classification (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 classifiable under the same 8-digit HTSUS subheading number 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.

The imported merchandise designated on drawback claims must be classifiable under the same 8-digit HTSUS classification as the merchandise used in producing the exported articles on which drawback is claimed. 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* § 190.9).

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. [Reserved]

G. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The 8-digit HTSUS classification, identity, and specifications of the designated merchandise;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise [2] used to produce the exported articles;

3. That, within 5 years after the date of importation of the designated merchandise, the manufacturer or producer used the designated merchandise to produce articles. During the same 5-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 must be available for audit by CBP during business hours. No drawback is payable without proof of compliance.

H. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP 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 liquidation 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 10) 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 190 of the CBP 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. Same 8-Digit HTSUS Classification (Parallel Columns)

[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] 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.

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 classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products.

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* § 190.9).

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 as the time of separation. The value per unit of each product will 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 must 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. Exchange

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.

I. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity, specifications, and 8-digit HTSUS classification of the merchandise designated;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise used to produce the exported articles.

3. That, within 5 years after importation, the manufacturer or producer used the designated merchandise to produce articles. During the same 5-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 the material introduced into the manufacturing process during that monthly period. (Select (a) or (b), and state which is selected in the application, and, if (b) is selected, specify the length of the particular abstract period chosen (not to exceed 1 year (*see* General Instruction I.A.7.)).)

5. On each abstract of production the manufacturer or producer agrees to show the value per barrel to five decimal places.

6. The manufacturer or producer agrees to file claims in the format set forth in exhibits A through F which are attached to this general manufacturing drawback ruling. The manufacturer or producer realizes that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP 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 will be deemed waived. The procedure the manufacturer or producer must 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 must 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

[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] 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 CBP in order for those proposed standards to be verified in accordance with T.D. 84–49.

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 will be computed by multiplying the quantity of each product exported by the drawback factor for that product. The amount 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 must 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 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 liquidation 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 10) 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 190 of the CBP Regulations and this general ruling.

Exhibit A

ABSTRACT OF MANUFACTURING RECORDS
ABC OIL CO. – BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

Material Used (in Bbls. At 60°)

		CRUDES				DERIVATIVES	
	TOTALS	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, 2019 TO JANUARY 31, 2019

(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	0.68712
5. Kerosine and Range Oil	321,263	4.69857	1,509,477	0.81590
6. Distillate Oils	2,567,975	4.45713	11,445,798	0.77398
7. Residual Oils	308,002	2.51322	774,077	0.43642
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	0.21583
11. Asphalt	75,231	3.59105	270,158	0.62358
12. Road Oil	- 0 -	- 0 -	- 0 -	- 0 -
13. Still Gas	245,784	1.00530	247,087	0.17457
14. Liquified Refinery Gas	524,423	2.23013	1,169,531	0.38726
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 products. (Formula for obtaining drawback factors: $44,844,327 ÷ 7,787,165 bbls. = $5.75875 divided into product values per barrel equals drawback factor.)

EXHIBIT C—INVENTORY CONTROL SHEET: ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY, PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

[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	11,218 176	1.00126 1.01300	21,221 104,397	.45962 .43642	8,774	4.52178	195	1.00244
(13) Drawback Deliveries	....	....	....	....	....	....	696 319	1.00244 1.07895
(14) Domestic Shipments	97,863	1.01300	180,957	.43642	468 278,286	4.52178 4.64041	6,867	1.07895
(15) Closing Inventory	10,230	1.01300	22,648	.43642	14,206	4.64041	810	1.07895

Line (10)—Opening inventory from previous period's closing inventory.
Line (11)—From production period under consideration.
Line (11–A)—Product received from other sources.
Line (12)—From earliest on hand (inventory or production). Totals from drawback entry or entries recapitulated (*see* column 18).
Line (13)—Deliveries for export or for designation against further manufacture—earliest on hand after exports are deducted.
Line (14)—From earliest on hand after lines (12) and (13) are deducted.
Line (15)—Balance on hand.

EXHIBIT D
RECAPITULATION OF DRAWBACK ENTRY
ABC OIL CO., INC - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

(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	11,216	1.00126	11,232	
		176	1.01300	176	
Residual Oils	125,618	21,221	0.45962	9,754	
		104,397	0.43642	45,561	
Lubricating Oils	8,875	8,774	4.52178	36,674	
Petrochemicals – Other	195	696	1.00244	195	698
		319	1.07895		344
		195	1.00244		
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 material (crude or derivatives) allowable, determined by multiplying column 18 by 19.

Col (20a) Raw material (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, 2019 TO JANUARY 31, 2019

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, 2019 to January 31, 2019 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, 2019 TO JANUARY 31, 2019

Type and Class of Raw Material Designated - Crude, Class III

(21)	(22)	(23)	(24)			(19)	(20)
Product	Quantity in Barrels	Industry Standard	Quantity of Raw Material of Type & Class Designated Needed to Produce Product		Covered by: 1. Period 2. Refinery	Drawback Factor per Barrel	Crude allowed for drawback
			Separate	Combined			
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. 2019	0.45962	9,754
						0.43642	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. 2019	4.59006	881
Petrochemicals, other	96	29%	331	4,503	2. Tulsa	1.12412108	108
Distillate Oils	3,807	89%	4,278	4,278		0.76624	2917
	151,347					Subtotal	4165
						Total	110759

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

$432.96

the domestic industry, the exported articles (including drawback deliveries) in the quantities exported or delivered):

E - Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable):

Drawback Computation

4,165* bbls. @ 10% = $437.33

Less 1% 4.37

Amount of Drawback

Claim - Net

See subtotal, col. 20, for Residual Rights above

151,347

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, 2019 to January 31, 2019 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, 2019 to January 31, 2019, filed by the Beaumont, Texas refinery 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, 2019 TO JANUARY 31, 2019

[Type and Class of Raw Material Designated—Crude, Class III]

Product (21)	Quantity in barrels (22)	Industry standard (%) (23)	Quantity of raw material of type and class designated needed to produce product per barrel (24)	Drawback factor (19)	Crude allowed for drawback (20)
Aviation Gasoline [1]	[1] 11,218	40	28,045	1.00126	11,232
	[1] 176	40	440	1.01300	178
Residual Oils [1]	[1] 21,221	83	25,567	.45962	9,754
	[1] 104,397	83	125,780	.43642	45,561
Lubricating Oils [1]	[1] 8,774	50	17,548	4.52178	39,674
Petrochemicals, Other [1]	[1] 195	29	672	1.00244	195
Petrochemicals, Other [2]	[2] 696	29	2,400	1.00244	698
Petrochemicals, Other [2]	[2] *319*	29	1,100	1.07895	344
Total	146,996				107,636

[1] Exports.
[2] Drawback deliveries.

A—Crude allowed (column 20: 107,636 bbls. (106,594 for export, plus 1,042 for drawback deliveries)).

B—Total quantity exported (including drawback deliveries) (column 22): 146,996.

C—Largest quantity of raw material needed to produce an individual exported product (*see* column 24): 151,347.

D—The excess of raw material over the largest of lines A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered): None.

E—Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): 151,347 bbs.

I hereby certify that all the above drawback deliveries and products exported by the Beaumont refinery of ABC Oil Co., Inc. during the period from January 1, 1995 to January 31, 1995, could have been produced concurrently on a practical operating basis from 151,347 barrels of imported Class III crude against which drawback is claimed.

The attached sample, **EXHIBIT E (COMBINATION)**, illustrates the procedures to be followed when two classes or types of raw material are designated on a given abstract. For purposes of illustration it is assumed that the refiner has only 100,000 barrels of Class III crude to designate, but adequate supplies of Class II to designate.

In addition, please note that the computation of drawback on **EXHIBIT D** will be as follows:

Duty paid on raw material selected for designation:

$.1050 per barrel (Class III crude)
$.0525 per barrel (Class II crude)

Amount of drawback claimed- gross: 81,638 x .1050=$8,571.99
24,956 x .0525= $1,310.19
$9,882.18
(Rounded Off) 9,882
Less 1% -99

Amount of drawback claimed- net: $9,783

EXHIBIT F—DESIGNATIONS FOR DRAWBACK CLAIM, ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY

[Period From January 1, 2019 to January 31, 2019]

Entry No.	Date of importation	Kind of materials	Quantity of materials in barrels	Date received	Date consumed	Rate of duty
26192	04/13/17	Class III Crude	75,125	04/13/17	May 2017	$.1050
23990	08/04/18	......do	37,240	08/04/18	Oct. 2018	.1050
22517	10/05/18	......do	38,982	10/05/18	Nov. 2018	.1050

X. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Piece Goods (T.D. 83–73)

A. Same 8-Digit HTSUS Classification (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 classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products
Piece goods.	Piece goods.

The piece goods used in manufacture will be classifiable under the same 8-digit HTSUS classification 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 classifiable under the same 8-digit HTSUS classification 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. 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.

[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.

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* § 190.9).

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 must 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. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such waste records must also be kept.

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 must show the yardage lost by shrinkage or gained by stretching during manufacture or production, and the quantity of remnants resulting and of spoilage incurred, if any. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such records for shrinkage, gain and spoilage will also be kept.

H. [Reserved]

I. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity, specifications, and 8-digit HTSUS classification of the designated merchandise;
2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise [2] used to produce the exported articles;
3. That, within 5 years after the date of importation of the designated merchandise, the manufacturer or producer used the merchandise to produce articles. During the same 5-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 CBP during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP 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.

[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.

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 liquidation 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 10) 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 190 of the CBP 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 must not exceed an amount calculated pursuant to regulations prescribed by the Secretary of the Treasury, of the duties, taxes, and fees 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 must have been manufactured with the use of duty-paid, duty-free, or domestic sugar, or combinations thereof, within 5 years after the date of importation, and must 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 [degrees] and over will be deemed hard refined sugar. All refined sugar testing by the polariscope less than 99.5 [degrees] will be deemed soft refined sugar. All ''blackstrap,'' ''unfiltered sirup,'' and ''final molasses'' will be deemed sirup.

D. The imported duty-paid sugar selected by the refiner as the basis for the drawback claim (designated sugar) must be classifiable under the same 8-digit HTSUS classification as that used in the manufacture of the exported refined sugar or sirup and must have been used within 5 years after the date of importation. Duty-paid sugar which has been used at a plant of a refiner within 5 years after the date on which it was imported 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 must 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 will 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, will 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, will 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 must show the refiner's raw lot number, the number and character of the packages, the settlement weight in pounds, the settlement polarization, and the 8-digit HTSUS classification. Such records covering imported sugar must 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 must show the date of melting, the number of pounds of each lot of raw sugar melted, and the full analysis at melting.

J. There must 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 must 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 must 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 must 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, must 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 will 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 must be marked with the marks which appeared on the original containers and a revised statement covering such repacking and remarking must be filed with the drawback office. If sirups from more than one lot are stored in the same tank, the refinery records must 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 will have been authorized, must be filed when drawback is to be claimed on any part of the refined sugar or sirup manufactured during such period. Such abstract must be filed by each refiner with the drawback office where drawback claims are filed on the basis of this general ruling. Such abstract must 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 190 and which are at all times open to the inspection of CBP.

Date ______________________________

Signature ______________________________

O. The refiner must 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 must 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 will be in accordance with the example set forth in Treasury Decision 83–59.

R. [Reserved.]

S. Drawback entries under this general ruling must state the polarization in degrees and the sucrose in pounds for the designated imported sugar. Drawback claims under this general ruling must 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 ______ 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 CBP. 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. ____, CBP 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* § 190.9).

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. [Reserved]

X. Procedures and Records Maintained.

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity, specifications, and 8-digit HTSUS classification of the designated merchandise;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise [1] used to produce the exported articles; and

3. That, within 5 years of the date of importation of the designated merchandise, the refiner used the designated merchandise to produce articles. During the same 5-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 CBP 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 liquidation 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 10) 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 190 of the CBP 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 8-Digit HTSUS Classification (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 classifiable under the same 8-digit HTSUS subheading number 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 on 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. 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 4, infra, insofar as the coating or plating is concerned.

3. Any fluctuation in market value caused by a factor other than quality does not affect drawback.

4. 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 an SAE, AISI, ASTM specification, then any duty-paid, duty-free, or domestic coated or plated steel must be covered by the same specification and grade (if two or more grades are in the specification).

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

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

[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).

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* § 190.9).

D. Process of Manufacture or Production

The steel described in the parallel columns will be used to manufacture or produce articles in accordance with § 190.2.

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. [Reserved]

I. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity, specifications, and 8-digit HTSUS classification of the designated merchandise;
2. The quantity of merchandise of the designated merchandise [3] used to produce the exported articles;
3. That, within 5 years of the date of importation of the designated merchandise, the manufacturer or producer used the merchandise to produce articles. During the same 5-year period, the manufacturer or producer produced [4] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP 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 liquidation 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 10) 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 190 of the CBP 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 8-Digit HTSUS Classification (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 classifiable under the same 8-digit HTSUS subheading number 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 less than 99.5 sugar degrees.
2. 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.

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 classifiable under the same 8-digit HTSUS classification. 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* § 190.9).

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,

[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.

[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.

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. [Reserved]

I. Procedures And Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity, specifications, and 8-digit HTSUS classification of the designated merchandise;
2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise [2] used to produce the exported articles;
3. That, within 5 years of the date of importation of the designated merchandise, the manufacturer or producer used the merchandise to produce articles. During the same 5-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 CBP 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 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of sugar used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible sugar that appears in the exported articles regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles less the amount of that sugar which the value of the waste would replace.

L. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation 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 10) 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 190 of the CBP 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* § 190.9).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 190.2.

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 will 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 must 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. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such waste records will also be kept.

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 must show the yardage lost by shrinkage or gained by stretching during manufacture, and the quantity of remnants resulting and of spoilage incurred, if any. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such records for shrinkage, gain, and spoilage will also be kept.

H. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, 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

[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.''

requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP 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 must 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, value, and 8-digit HTSUS classification 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 must 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 will 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 will 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 liquidation 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 10) 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 190 of the CBP Regulations and this general ruling.

Appendix B to Part 190—Sample Formats for Applications for Specific Manufacturing Drawback Rulings

Table of Contents

I. General

Applications for specific manufacturing drawback rulings using these sample formats must be submitted to and reviewed and approved by CBP Headquarters. *See* 19 CFR 190.8. A specific manufacturing drawback ruling consists of the letter of approval that CBP issues to the applicant. 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 and Border Protection, Entry Process and Duty Refunds, Regulations and Rulings, Office of Trade, 90 K Street NE—10th Floor (Mail Stop 1177), Washington, DC 20229–1177.

Dear Sir or Madam: 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 190 of the CBP Regulations. We request that CBP authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 190.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback must apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 190.7 of the CBP Regulations. CBP will not approve an application which shows an unincorporated division or company as the applicant (*see* § 190.8(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 190.6 of the CBP 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).)

CBP OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The four offices where drawback claims can be filed are located at: New York, NY; Houston, TX; 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 maintain records to support the transfer under § 190.10, and its liability under § 190.63?)

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 § 190.9, 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* § 190.7 and Appendix A) or an application for a specific manufacturing drawback ruling (*see* § 190.8 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 190.82).)

PROCEDURES UNDER SECTION 1313(b) (PARALLEL COLUMNS—''SAME 8-DIGIT CLASSIFICATION'')

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 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products
1.	1.
2.	2.
3.	3.

(Following the items listed in the parallel columns, a statement will be made, by the applicant, that affirms the same 8-digit HTSUS classification of the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise which we will designate in our claims will be classifiable under the same 8-digit HTSUS classification as the merchandise used in producing the exported articles on which we claim drawback.

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 ''classifiable under the same 8-digit HTSUS classification''. In order to enable CBP to rule on ''the same 8-digit HTSUS classification'', 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, as well as provide the Bill of Materials and/or formulas annotated with the HTSUS classifications.)

(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 ''the same 8-digit HTSUS classification'' 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 CBP 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 8-digit HTSUS subheading number'' 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 ''the same 8-digit HTSUS subheading number'' 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, specifications, and 8-digit HTSUS subheading number for the duty-paid, duty-free or domestic merchandise under the heading set forth above. Amendments to rulings will be required if any changes to the HTSUS classifications occur.)

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 § 190.2. 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.)

[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. 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.)

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, specifications, and 8-digit HTSUS subheading number of the merchandise we designate;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS subheading number as the designated merchandise [2] we used to produce the exported articles;

3. That, within 5 years after the date of importation, we used the designated merchandise to produce articles. During the same 5-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 CBP during business hours. We understand that drawback is not payable without proof of compliance.

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

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

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 190 of the CBP 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 8-DIGIT HTSUS SUBHEADING NUMBER WITHIN 5 YEARS AFTER THE DATE OF IMPORTATION

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 best 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 judgment 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 in 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 duties, taxes, and fees 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 duties, taxes, and fees 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 duties, taxes, and fees 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 in 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 in less valuable waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duties, taxes, and fees 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 190.26(c) of the CBP 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 duties, taxes, and fees 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 shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a period of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back at how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base its claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by Schedule follows:)

We will claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below. (Section 190.8(f) of the CBP 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 date of importation 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 liquidation 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 § 190.9 or the identity of an agent under that section, or the corporate organization by succession or reincorporation;

[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. Keep this application current by reporting promptly to CBP Headquarters all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by CBP 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 190 of the CBP 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 ________ 20__, 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 and Border Protection, Entry Process and Duty Refunds Branch, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of Trade, 90 K Street NE—10th Floor (Mail Stop 1177), Washington, DC 20229–1177.

Dear Sir or Madam: 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 190 of the CBP Regulations. We request that CBP authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 190.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback will apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 190.7 of the CBP Regulations. CBP will not approve an application which shows an unincorporated division or company as the applicant (*see* § 190.8(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 190.6 of the CBP 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).)

CBP OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The four offices where drawback claims can be filed are located at: New York, NY; Houston, TX; 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 maintain records to support the transfer under § 190.10, and its liability under § 190.63?)

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 § 190.9, 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* § 190.7 and Appendix A), or an application for a specific manufacturing drawback ruling (*see* § 190.8 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 190.82).)

PARALLEL COLUMNS—''SAME 8-DIGIT HTSUS CLASSIFICATION'')

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 8-Digit HTSUS Subheading Number as that Designated Which Will be Used in the Production of the Exported Products
1.	1.
2.	2.
3.	3.

(Following the items listed in the parallel columns, a statement will be made, by the applicant, that affirms the ''same 8-digit HTSUS subheading number'' 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 classifiable under the same 8-digit HTSUS subheading number as to the merchandise used in producing the exported articles on which we claim drawback, such 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 ''classifiable under the same 8-digit HTSUS subheading number''. In order to enable CBP to rule on ''same 8-digit HTSUS subheading number'', the application must include a detailed description of the designated imported merchandise and of the

[5] Section 190.6(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 CBP 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 CBP port your customs power(s) of attorney is/are filed.

[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.

substituted duty-paid, duty-free or domestic merchandise to be used to produce the exported articles, as well as provide the Bill of Materials and/or formulas annotated with the HTSUS classification.)

(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 8-digit HTSUS subheading number'' 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 CBP 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 8-digit HTSUS subheading number'' 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 8-digit HTSUS subheading number'' 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, specifications, and 8-digit HTSUS subheading number for the duty-paid, duty-free or domestic merchandise under the heading set forth above. Amendments to rulings will be required if any changes to the HTSUS classifications occur.)

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 § 190.2. 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 $\frac{1}{5}$. 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 waste. 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.)

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, specifications, and 8-digit HTSUS subheading number of the merchandise we designate;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS subheading number as the designated merchandise [2] we used to produce the exported articles;

3. That, within 5 years after the date of importation, we used the designated merchandise to produce articles. During the same 5-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 CBP 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 190 of the CBP Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To help ensure 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 8-DIGIT HTSUS SUBHEADING WITHIN 5 YEARS AFTER IMPORTATION 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 better 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 judgment 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 in 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 duties, taxes, and fees 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 duties, taxes, and fees 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 duties, taxes, and fees 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 in 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 in less valuable waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duties, taxes, and fees 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 190.26(c) of the CBP 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

[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.

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 duties, taxes, and fees 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 shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a period of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back at how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base its claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

We will claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 190.8(f) of the CBP 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 liquidation 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 § 190.9 or the identity of an agent under that section, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to CBP Headquarters, all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by CBP 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 190 of the CBP 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 ____ 20__, 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 and Border Protection, Entry Process and Duty Refunds Branch, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of Trade, 90 K Street NE—10th Floor (Mail Stop 1177), Washington, DC 20229–1177.

Dear Sir or Madam: 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 190 of the CBP Regulations. We request that CBP authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 190.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback must apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 190.7 of the CBP Regulations. CBP will not approve an application which shows an unincorporated division or company as the applicant (*see* § 190.8(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 190.6 of the CBP 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).

CBP OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The four offices where drawback claims can be filed are located at: New York, NY; Houston, TX; 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 its 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 its

[4] Section 190.6(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 CBP 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 CBP port your customs power(s) of attorney is/are filed.

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 § 190.9, 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* § 190.7 and Appendix A), or an application for a specific manufacturing drawback ruling (*see* § 190.8 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.)

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 § 190.2. In order to obtain drawback under § 1313(d), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. Describe how the tax-paid material is processed into the export article.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.) (If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of domestic tax-paid alcohol used in manufacturing. If the claim is based upon the quantity of domestic tax-paid alcohol appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation, does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what ''Basis'' you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of domestic tax-paid alcohol used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See ''Basis of Claim for Drawback'' section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process may exist when residual material resulting from a manufacturing or processing operation is reintroduced into a subsequent manufacturing or processing operation; *e.g.,* trim pieces from a cast article. The effect of stock in process on a drawback claim is that the amount of drawback for the period in which the stock in process was withdrawn from the manufacturing or processing operation (or the manufactured article, if manufacturing or processing periods are not used) is reduced by the quantity of merchandise or drawback products used to produce the stock in process if the ''used in'' or ''used in less valuable waste'' methods are used (if the ''appearing in'' method is used, there will be no effect on the amount of drawback), and the quantity of merchandise or drawback products used to produce the stock in process is added to the merchandise or drawback products used in the subsequent manufacturing or production period (or the subsequently produced article)).

(If stock in process occurs and claims are to be based on stock in process, the application must include a statement to that effect. The application must also include a statement that the domestic tax-paid alcohol is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the domestic tax-paid alcohol used to manufacture the finished articles on which drawback is claimed.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported articles on which drawback is claimed were produced with the use of a particular lot (or lots) of domestic tax-paid alcohol, and

2. The quantity of domestic tax-paid alcohol[1] we used in producing the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the tax has been paid on the domestic alcohol. Our records establishing our compliance with these requirements will be available for audit by CBP 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 190 of the CBP Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To help ensure 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 in 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

[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.''

domestic alcohol which actually went into the exported product (appearing in) rather than the 100 gallons used in as set forth previously.)

(The ''used in 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 in 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 shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a period of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back at how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base its claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by schedule follows:)

We will claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 190.8(f) of the CBP 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 liquidation 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 § 190.9 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 CBP Headquarters, all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by CBP 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 190 of the CBP 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 ________ 20 __, 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 and Border Protection, Entry Process and Duty Refunds Branch, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of Trade, 90 K Street NE—10th Floor (Mail Stop 1177), Washington, DC 20229–1177.

Dear Sir or Madam: 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 190 of the CBP Regulations. We request that CBP authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 190.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback must apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 190.7 of the CBP Regulations. CBP will not approve an application which shows an unincorporated division or company as the applicant (*see* § 190.8(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 190.6 of the CBP 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).)

CBP OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The four offices where drawback claims can be filed are located at: New York, NY;

[2] Section 190.6(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 CBP 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 CBP port your customs power(s) of attorney is/are filed.

Houston, TX; 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 maintain records to support the transfer under 19 CFR 190.10, and its liability under 19 CFR 190.63?)

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 § 190.9, 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* § 190.7 and Appendix A), or an application for a specific manufacturing drawback ruling (*see* § 190.8 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 must be included under this heading the following statement:

We are particularly aware of the terms of § 190.76(a)(1) of and subpart M of part 190 of the CBP Regulations, and will comply with these sections where appropriate.)

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS USED

(Describe the imported merchandise or drawback products.)

ARTICLES CONSTRUCTED AND EQUIPPED FOR EXPORT

(Name the vessel or vessels to be made with imported merchandise or drawback products.)

PROCESS OF CONSTRUCTION AND EQUIPMENT

(What is required here is a clear, concise description of the process of construction and equipment involved. The description should also trace the flow of materials through the manufacturing process for the purpose of establishing physical identification of the imported merchandise or drawback products and of the articles resulting from the processing.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.)

(If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what ''Basis'' you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See ''Basis of Claim for Drawback'' section below.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported article on which drawback is claimed was constructed and equipped with the use of a particular lot (or lots) of imported material; and

2. The quantity of imported merchandise [1] we used in producing the exported article.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by CBP 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 190 of the CBP Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To help ensure 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 in 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 duties, taxes, and fees 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 duties, taxes, and fees paid on the 100 pounds of imported material used in constructing and equipping the exported articles.)

(The ''appearing in'' basis may be used regardless of whether there is waste. If the ''appearing in'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''appearing in'' basis. Drawback is payable on 99 percent of the duties, taxes, and fees 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 in 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 in less

[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.''

valuable waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duties, taxes, and fees 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 190.26(c) of the CBP 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 duties, taxes, and fees paid on the 95 pounds of imported material rather than on the 100 pounds ''used in'' or the 90 pounds ''appearing in'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production.)

(An ''abstract'' is the summary of the records which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a period of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back at how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base its claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

We will claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 190.8(f) of the CBP 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 liquidation 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 § 190.9 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 CBP Headquarters, all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by CBP 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 help ensure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP 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 ________ 20 __, makes this application binding on

____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By[2] ______________________________

(Signature and Title)

____

PART 191—DRAWBACK

■ 6. The general authority citations for part 191 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624;

* * * * *

■ 7. Revise § 191.0 to read as follows:

§ 191.0 Scope.

This part sets forth general provisions applicable to drawback claims and specialized provisions applicable to specific types of drawback claims filed under 19 U.S.C. 1313, prior to the February 24, 2016, amendments to the U.S. drawback law. Drawback claims may not be filed under this part after February 23, 2019. For drawback claims filed under 19 U.S.C. 1313, as amended, see part 190. Additional drawback provisions relating to the North American Free Trade Agreement (NAFTA) are contained in subpart E of part 181 of this chapter.

■ 8. Revise § 191.1 to read as follows:

§ 191.1 Authority of the Commissioner of CBP.

Pursuant to DHS Delegation number 7010.3, the Commissioner of CBP has the authority to prescribe, and pursuant to Treasury Department Order No. 100–16 (set forth in the appendix to part 0 of this chapter), the Secretary of the Treasury has the sole authority to approve, rules and regulations regarding drawback.

■ 9. In § 191.3:

■ a. Revise the section heading;

■ b. Amend paragraph (a)(3) by removing the word ''and'' at the end of the paragraph;

■ c. Amend paragraph (a)(4) by removing the ''(iv).'' and adding in its place the words ''(iv); and'';

■ d. Add paragraph (a)(5).

■ e. Revise paragraph (b).

The revisions and additions read as follows:

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

(a) * * *

(5) Harbor maintenance taxes (*see* § 24.24 of this chapter) for unused merchandise drawback pursuant to 19 U.S.C. 1313(j), and drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv).

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

[2] Section 190.6(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 CBP 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 CBP port your customs power(s) of attorney is/are filed.

(1) Harbor maintenance taxes (see § 24.24 of this chapter) except where unused merchandise drawback pursuant to 19 U.S.C. 1313(j) or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv) is claimed;

(2) Merchandise processing fees (see § 24.23 of this chapter), except where unused merchandise drawback pursuant to 19 U.S.C. 1313(j) or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv) is claimed; and

(3) Antidumping and countervailing duties on merchandise entered, or withdrawn from warehouse, for consumption on or after August 23, 1988.

* * * * *

■ 10. Section 191.5 is revised to read as follows:

§ 191.5 Guantanamo Bay, insular possessions, trust territories.

Guantanamo Bay Naval Station is considered foreign territory for drawback purposes and, accordingly, drawback may be permitted on articles shipped there. Drawback is not allowed, except on claims made under 19 U.S.C. 1313(j)(1), on articles shipped to the U.S. Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island. Puerto Rico is not considered foreign territory for drawback purposes and, accordingly, drawback may not be permitted on articles shipped there from elsewhere in the customs territory of the United States.

■ 11. In § 191.22, paragraph (a) is amended by adding a new sentence to the end of the paragraph to read as follows:

§ 191.22 Substitution drawback.

(a) * * * For purposes of drawback of internal revenue tax imposed under Chapters 32, 38, 51, and 52 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export or destruction of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

* * * * *

■ 12. In § 191.32:

■ a. Remove the word ‘‘and’’ at the end of paragraph (b)(2);

■ b. Remove ‘‘.’’ and adding, in its place, ‘‘; and’’; at the end of paragraph (b)(3) and;

■ c. Add paragraph (b)(4) to read as follows:

§ 191.32 Substitution drawback.

* * * * *

(b) * * *

(4) For purposes of drawback of internal revenue tax imposed under Chapters 32, 38, 51, and 52 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export or destruction of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

* * * * *

■ 13. Section 191.42 is revised to read as follows:

§ 191.42 Procedures and supporting documentation.

(a) *Time limit for exportation or destruction.* Drawback will be denied on merchandise that is exported or destroyed after the statutory 3-year time period.

(b) *Required documentation.* The claimant must submit documentation to CBP as part of the complete drawback claim (*see* § 191.51) 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 (*see* § 191.45 for additional requirements for claims made with respect to rejected retail merchandise under 19 U.S.C. 1313(c)(1)(C)(ii)). If the claimant was not the importer, the claimant must also:

(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 CBP to give CBP the opportunity to examine the merchandise. The claimant, or the exporter (for destruction under CBP supervision, see § 191.71), must file at the port of intended redelivery to CBP custody a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553 at least 5 working days prior to the date of intended return to CBP custody. Waiver of prior notice for exportations under 19 U.S.C. 1313(j) (*see* § 191.91) is inapplicable to exportations under 19 U.S.C. 1313(c).

(d) *Required information.* The notice must provide the bill of lading number, if known, the name and telephone number, mailing address, and, if available, fax number and email address of a contact person, and the location of the merchandise.

(e) *Decision to waive examination.* Within 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), CBP will notify, in writing, the party designated on the Notice of CBP's decision to either examine the merchandise to be exported or destroyed, or to waive examination. If CBP 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 CBP 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, must be denied. If CBP notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by CBP to examine or to waive examination is absent, the merchandise may be exported or destroyed without delay and will be deemed to have been returned to CBP custody.

(f) *Time and place of examination.* If CBP gives timely notice of its decision to examine the merchandise to be exported or destroyed, the merchandise to be examined must be promptly presented to CBP. CBP must examine the merchandise within 5 working days after presentation of the merchandise. The merchandise may be exported or destroyed without examination if CBP fails to timely examine the merchandise after presentation to CBP, and in such case the merchandise will be deemed to have been returned to CBP custody. If the examination is completed at a port other than the port of actual exportation or destruction, the merchandise must be transported in-bond to the port of exportation or destruction.

(g) *Extent of examination.* The appropriate CBP 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)). The procedures for restructuring a claim (*see* § 191.53) apply to rejected merchandise drawback if the claimant has an ongoing export program which qualifies for this type of drawback.

(i) *Exportation.* Claimants must 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.

■ 14. Section 191.45 is added to read as follows:

§ 191.45 Returned retail merchandise.

(a) *Special rule for substitution.* Section 313(c)(1)(C)(ii) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(c)(1)(C)(ii)), provides for drawback upon the exportation or destruction under CBP supervision of imported merchandise which has been entered, or withdrawn from warehouse, for consumption, duty-paid and ultimately sold at retail by the importer, or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer, or the person who received the merchandise from the importer.

(b) *Eligibility requirements.* (1) Drawback is allowable, subject to compliance with all requirements set forth in this subpart; and

(2) The claimant must also show by evidence satisfactory to CBP that drawback may be claimed by—

(i) Designating an entry of merchandise that was imported within 1 year before the date of exportation or destruction of the merchandise described in paragraph (a) of this section under CBP supervision.

(ii) Certifying that the same 8-digit HTSUS subheading number and specific product identifier (such as part number, SKU, or product code) apply to both the merchandise designated for drawback (in the import documentation) and the returned merchandise.

(c) *Allowable refund.* The amount of drawback allowable will be equal to 99 percent of the amount of duties, taxes, and fees paid with respect to the imported merchandise.

(d) *Denial of claims.* No drawback will be refunded if CBP is not satisfied that the claimant has provided, upon request, the documentation necessary to support the certification required in paragraph (b)(2)(ii) of this section.

■ 15. Amend § 191.51 by adding a new paragraph (a)(3) to read as follows:

§ 191.51 Completion of drawback claims.

(a) * * *

(3) *Limitation on eligibility for imported merchandise.* Claimants are prohibited from filing any drawback claims under part 191 for imported merchandise associated with an entry summary if any other merchandise covered on that entry summary has been designated as the basis of a drawback substitution claim under part 190.

* * * * *

■ 16. Section 191.81 is revised to read as follows:

§ 191.81 Liquidation.

(a) *Time of liquidation.* Drawback entries may be liquidated after:

(1) Liquidation of the designated import entry or entries becomes final pursuant to paragraph (e) of this section; or

(2) Deposit of estimated duties on the imported merchandise and before liquidation of the designated import entry or entries.

(b) *Claims based on estimated duties.* (1) Drawback may be paid upon liquidation of a claim based on estimated duties if one or more of the designated import entries have not been liquidated, or the liquidation has not become final (because of a protest being filed) (*see* also § 173.4(c) of this chapter), only if the drawback claimant and any other party responsible for the payment of liquidated import duties each files a written request for payment of each drawback claim, waiving any right to payment or refund under other provisions of law, to the extent that the estimated duties on the unliquidated import entry are included in the drawback claim for which drawback on estimated duties is requested under this paragraph. The drawback claimant must, to the best of its knowledge, identify each import entry that has been protested and that is included in the drawback claim. A drawback entry, once finally liquidated on the basis of estimated duties pursuant to paragraph (e)(2), will 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, will:

(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 have been paid as estimated duties 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 upon liquidation of a claim based 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)), provided that:

(i) The tender or payment is specifically identified as duty on a specifically identified entry, or withdrawal from warehouse, for consumption;

(ii) Liquidation of the specifically identified entry, or withdrawal from warehouse, for consumption became final prior to such tender or payment; and

(iii) Liquidation of the drawback entry in which that specifically identified import entry, or withdrawal from warehouse, for consumption is designated has not become final.

(2) *Written request and waiver.* Drawback may be paid on claims based on voluntary tenders or other payments of duties under this subsection only if the drawback claimant and any other party responsible for the payment of the voluntary tenders or other payments of duties each files a written request for payment of each drawback claim based on such voluntary tenders or other payments of duties, waiving any claim to payment or refund under other provisions of law, to the extent that the voluntary tenders or other payment of duties under this paragraph are included in the drawback claim for which drawback on the voluntary tenders or other payment of duties is requested under this paragraph.

(d) *Claims based on liquidated duties.* Drawback will 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.* (1) *General.* When the drawback claim has been completed by the filing of the entry and other required documents, and exportation (or destruction) of the merchandise or articles has been established, CBP will 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. Notice of liquidation will be given electronically as provided in §§ 159.9 and 159.10(c)(3).

(2) *Liquidation by operation of law.* (i) *Liquidated import entries.* A drawback claim that satisfies the requirements of

paragraph (d) that is not liquidated within one year from the date of the drawback claim (*see* § 190.51(e)(1)(i)) will be deemed liquidated for the purposes of the drawback claim at the drawback amount asserted by the claimant or claim, unless the time for liquidation is extended in accordance with § 159.12 or if liquidation is suspended as required by statute or court order.

(ii) *Unliquidated import entries.* A drawback claim that satisfies the requirements of paragraphs (b) or (c) of this section will be deemed liquidated upon the deposit of estimated duties on the unliquidated imported merchandise (*see* § 191.81(b)).

(iii) *Applicability.* The provisions of paragraphs (e)(2)(i) of this section will apply to drawback entries made on or after December 3, 2004. An entry or claim for drawback filed before December 3, 2004, the liquidation of which was not final as of December 3, 2004, will be deemed liquidated on the date that is 1 year after December 3, 2004, at the drawback amount asserted by the claimant at the time of the entry or claim.

(f) *Relative value; multiple products*—(1) *Distribution.* Where two or more products result from the manufacture or production of merchandise, drawback will be distributed to the several products in accordance with their relative values at the time of separation.

(2) *Values.* The values 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 must be the market value (as provided for in the definition of relative value in § 191.2(u)), unless other values are approved by CBP.

(g) *Payment.* CBP will authorize payment of the amount of the refund due as drawback to the claimant.

■ 17. Section 191.103 is revised to read as follows:

§ 191.103 Additional requirements.

(a) *Manufacturer claims domestic drawback.* In the case of medicinal preparations and flavoring extracts, the claimant must 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 Alcohol and Tobacco Tax and Trade Bureau (TTB) for domestic drawback on alcohol under §§ 5111, 5112, 5113, and 5114, Internal Revenue Code, as amended (26 U.S.C. 5111, 5112, 5113, and 5114).

(b) *Manufacturer does not claim domestic drawback*—(1) *Submission of statement.* If no claim has been or will be filed with TTB for domestic drawback on medicinal preparations or flavoring extracts, the manufacturer must submit a statement setting forth that fact to the Director, National Revenue Center, TTB.

(2) *Contents of the statement.* The statement must 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 distilled spirits plant from which the alcohol was withdrawn;

(iv) Date of withdrawal;

(v) Serial number of the applicable record of tax determination (*see* 27 CFR 17.163(a) and 27 CFR 19.626(c)(7); and

(vi) CBP office where the claim will be filed.

(3) *Verification of the statement.* The Director, National Revenue Center, TTB, will verify receipt of this statement, forward the original of the document to the drawback office designated, and retain the copy.

■ 18. Section 191.104 is revised to read as follows:

§ 191.104 Alcohol and Tobacco Tax and Trade Bureau (TTB) certificates.

(a) *Request.* The drawback claimant or manufacturer must request the Director, National Revenue Center, TTB, provide the CBP office where the drawback claim will be processed with a tax-paid certificate on TTB Form 5100.4 (Certificate of Tax-Paid Alcohol).

(b) *Contents.* The request must state the:

(1) Quantity of alcohol in proof gallons;

(2) Serial number of each package;

(3) Amount of tax paid on the alcohol;

(4) Name, registry number, and location of the distilled spirits plant;

(5) Date of withdrawal;

(6) Name of the manufacturer using the alcohol in producing the exported articles;

(7) Address of the manufacturer and its manufacturing plant; and

(8) CBP drawback office where the drawback claim will be processed.

(c) *Extract of TTB certificate.* If a certification of any portion of the alcohol described in the TTB 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, will transmit a copy of the extract from the certificate for use at that drawback office. The drawback office will note that the copy of the extract was prepared and transmitted.

■ 19. Section 191.103 is revised to read as follows:

§ 191.106 Amount of drawback.

(a) *Claim filed with TTB.* If the declaration required by § 191.103 of this subpart shows that a claim has been or will be filed with TTB for domestic drawback, drawback under § 313(d) of the Act, as amended (19 U.S.C. 1313(d)), will be limited to the difference between the amount of tax paid and the amount of domestic drawback claimed.

(b) *Claim not filed with TTB.* If the declaration and verified statement required by § 191.103 show that no claim has been or will be filed by the manufacturer with TTB for domestic drawback, the drawback will be the full amount of the tax on the alcohol used. Drawback under this provision may not be granted absent receipt from TTB of a copy of TTB Form 5100.4 (Certificate of Tax-Paid Alcohol) indicating that taxes have been paid on the exported product for which drawback is claimed.

(c) *No deduction of 1 percent.* No deduction of 1 percent will be made in drawback claims under § 313(d) of the Act, as amended (19 U.S.C. 1313(d)).

(d) *Payment.* The drawback due will be paid in accordance with § 191.81(f).

■ 20. In § 191.171, add paragraph (d) to read as follows:

§ 191.171 General; drawback allowance.

* * * * *

(d) *Federal excise tax.* For purposes of drawback of internal revenue tax imposed under Chapters 32 and 38 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

Kevin K. McAleenan,

Commissioner, U.S. Customs and Border Protection.

Approved:

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

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