

Part 97 of the Federal Aviation Regulations (VOL 60 FR No. 239 Page 63905, dated Wednesday, December 13, 1995) under Section 97.25 effective February 29, 1996 which is hereby rescinded: Blacksburg, VA, Virginia Tech, LOC RWY 12, Amdt 4.

[FR Doc. 96-1739 Filed 1-29-96; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 113, 141, 144 and 181

[T.D. 96-14]

RIN 1515-AB87

North American Free Trade Agreement (NAFTA)—Implementation of Duty-Deferral Program Provisions

AGENCY: Customs Service, Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: In response to comments received on the final rule implementing NAFTA, this document sets forth interim regulations establishing procedural and other requirements that apply to the collection, waiver and reduction of duties under the duty-deferral program provisions of the North American Free Trade Agreement. The document prescribes the documentary and other requirements that must be followed when merchandise is withdrawn from a U.S. duty-deferral program either for exportation to another NAFTA country or for entry into a duty-deferral program of another NAFTA country, the procedures that must be followed in filing a claim for a waiver or reduction of duties collected on such merchandise, and the procedures for finalization of duty collections and duty waiver or reduction claims.

DATES: Interim rule effective January 1, 1996; comments must be submitted by April 1, 1996.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Angela Downey, Office of Field Operations (202-927-1082).

SUPPLEMENTARY INFORMATION:

Background

On September 6, 1995, Customs published in the Federal Register (60 FR 46334) a document which adopted, as a final rule, interim regulations implementing the Customs-related provisions of the North American Free Trade Agreement (NAFTA) which was adopted by the United States with the enactment of the North American Free Trade Agreement Implementation Act (the "Act"), Public Law 103-182, 107 Stat. 2057. The majority of the NAFTA implementing regulations are set forth in Part 181 of the Customs Regulations (19 CFR Part 181) which includes, in Subpart E, regulations implementing the NAFTA drawback (including duty-deferral) provisions of Article 303 of the NAFTA and section 203 of the Act which apply to goods imported into the United States and then subsequently exported from the United States to Canada on or after January 1, 1996, or to Mexico on or after January 1, 2001.

Within Subpart E of Part 181, § 181.53 specifically addresses the provisions concerning the collection, and waiver or reduction, of duty on goods imported into the United States pursuant to a duty-deferral program (that is, imported into a manipulation warehouse, manufacturing warehouse, smelting or refining warehouse or foreign trade zone, or imported under a temporary importation bond) and subsequently exported, or used as a material in the production of another good that is exported, to Canada or Mexico. Paragraph (a)(1) defines the term "duty-deferral program" for purposes of the section. Paragraph (a)(2) provides that the exported good shall be treated as if it had been entered or withdrawn for consumption and thus subject to duty. Paragraph (a)(3) states that Customs shall waive or reduce, in accordance with paragraphs (b) through (f), the duties paid or owed under paragraph (a)(2) provided that evidence of exportation and satisfactory evidence of duties paid in Canada or Mexico are submitted within 60 calendar days of the date of exportation. Paragraphs (b) through (f) set forth the duty assessment and waiver or reduction rules with reference to each type of duty-deferral program, and each of these paragraphs provides that the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable under the section or the total amount of customs duties paid to Canada or Mexico.

In the discussion of public comments submitted on the interim NAFTA implementing regulations, the

September 6, 1995, final rule document noted that a number of commenters raised questions regarding the procedures, including documentary requirements, that would apply for purposes of the collection and waiver or reduction of duty under § 181.53. In responding to these comments, Customs agreed that the regulations should specifically address such procedural issues. Customs further stated that it would be preferable to address these issues in a separate Federal Register document, with a view to having appropriate regulations in place on January 1, 1996, when the Subpart E regulations go into effect (that is, with regard to goods exported to or entered into a duty-deferral program in Canada). The regulatory amendments set forth in this document are intended to accomplish that purpose.

Discussion of Amendments

Section 10.31

In § 10.31, which concerns temporary importations under bond, paragraph (h) is amended by adding at the end a new sentence regarding merchandise imported under subheading 9813.00.05, HTSUS, that is exported to Canada or Mexico, because the entry and bond requirements under amended § 181.53 may apply to such merchandise.

Section 113.62

In § 113.62, which sets forth the basic importation and entry bond conditions, paragraphs (a) and (b) are amended by the addition of references to the withdrawal of merchandise from a duty-deferral program either for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico because such transactions will involve the filing of an entry under amended § 181.53 as discussed below. Paragraph (a) concerns the agreement to pay duties, taxes and fees, and paragraph (b) concerns the agreement to make or complete entry.

Section 141.0a

The definition of "entry" in paragraph (a) and the definition of "entered for consumption" in paragraph (f) have been expanded by the addition of a sentence at the end referring to documentation required under amended § 181.53 as discussed below.

Section 141.68

A new paragraph (i) has been added to § 141.68 (time of entry) regarding merchandise covered by the entry procedures contained in amended § 181.53 as discussed below.

Section 144.38

In § 144.38, which concerns withdrawals for consumption, a new paragraph (b) has been added to cover withdrawals either for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico.

Section 181.53

Section 181.53 is retitled to reflect that the section also covers collection (rather than only waiver or reduction) of duty, and the section text is extensively revised in order to accommodate the necessary documentation and other procedural requirements regarding the collection and waiver or reduction of duty under the NAFTA duty-deferral provisions. In addition to editorial, nonsubstantive changes to enhance the clarity of the text, the revised text incorporates a number of organizational and substantive changes that are outlined below.

Paragraph (a)(1) is retitled as a definitions paragraph and a new definition of "date of exportation" has been added as subparagraph (i) thereof.

Paragraph (a)(2) still concerns the "treatment as entered or withdrawn for consumption" principle but is divided into the following subparagraphs:

1. Subparagraph (i) incorporates the provisions of former paragraph (a)(2) and also includes two new principles stating that the documentation required to be filed under the section shall constitute an entry or withdrawal for consumption for purposes of the Customs Regulations and that any assessment of duty under this section shall include the duties and fees referred to in §§ 181.42 (a)–(c) (that is, antidumping and countervailing duties, premiums on quota, tariff rate quota or tariff preference level goods, and fees under section 22 of the Agricultural Adjustment Act) and the fees provided for in § 24.23 (that is, fees for processing merchandise). Subparagraph (i) refers to goods withdrawn for exportation to Canada or Mexico (subparagraph (i)(A)) and goods withdrawn and entered into a duty-deferral program in Canada or Mexico (subparagraph (i)(B)) because Canada, Mexico and the United States (the three NAFTA Parties) agreed that goods withdrawn from a duty-deferral program in one NAFTA country and entered into a duty-deferral program in another NAFTA country shall be deemed not to have been exported (see section F, article X of the "Regulatory Standards for Implementation of the North American Free Trade Agreement" published in the Federal Register on September 6, 1995, at 60 FR 46464).

2. Subparagraph (ii) is new and provides for application of the bond provisions of § 142.4 to each withdrawal and exportation transaction under § 181.53.

3. Subparagraph (iii) is a new provision covering documentation filing and duty payment procedures. Subparagraph (A) thereunder specifies the persons who must file the documentation required under the section. Subparagraph (B) provides for the filing of a Customs Form 7501 within 10 working days of the date of exportation or within 10 working days after being entered into a duty-deferral program in Canada or Mexico. Subparagraph (C) concerns duty payment and requires that the duty be deposited with Customs at any time prior to, but no later than, 60 calendar days after the date of exportation of the good or 60 calendar days after the date the good is entered into a duty-deferral program in Canada or Mexico, and subparagraph (C) also provides for the calculation of interest from the applicable 60th calendar day.

Paragraph (a)(3) is retitled "waiver or reduction of duties" and is divided into the following subparagraphs:

1. Subparagraph (i) incorporates the provisions of former paragraph (a)(3) but also includes two new substantive provisions. The first of these new provisions consists of an exception clause at the beginning of the subparagraph regarding duties and fees referred to in §§ 181.42 (a)–(c) and fees provided for in § 24.23, because such duties and fees may not be waived or reduced under the NAFTA drawback (including duty-deferral) provisions. The second of these new substantive provisions requires the filing of a "claim" for waiver or reduction of duties and states that the claim shall be "based on" evidence of exportation to Canada or Mexico or of entry into a duty-deferral program in Canada or Mexico and satisfactory evidence of duties paid in Canada or Mexico. The "based on" provision replaces the former requirement of submission of such evidence, is modeled on the approach used for NAFTA preferential duty claims (see § 181.21(a) of the NAFTA regulations), and is intended to reduce the paperwork burden and to facilitate electronic filings.

2. Subparagraph (ii) is a new provision covering the procedures for filing claims and paying reduced duties. This subparagraph requires that the claim be filed on Customs Form 7501 which must include specified Canadian or Mexican import information and provides that any reduced duties must

be deposited with Customs when a claim for reduced duties is filed.

3. Subparagraph (iii) is a new provision which provides for the filing of a drawback claim if goods entered into a Canadian or Mexican duty-deferral program are subsequently withdrawn from that duty-deferral program.

Paragraph (a)(4) is a new provision setting forth procedures regarding the liquidation of entries filed under § 181.53 both if no claim for waiver or reduction of duties is filed (subparagraph (i)) and if a claim is filed (subparagraph (ii)). This paragraph generally reflects existing statutory and regulatory standards regarding liquidations, including notices of liquidation, deemed liquidations, and the time for filing protests after liquidation. In addition, in cases in which a claim is filed, this paragraph provides for an automatic 3-year extension of liquidation, because Customs will require additional time to obtain any information from Canadian or Mexican Customs necessary to verify a claim (see § 181.50(b) which provides for a 3-year delay in liquidation of drawback claims).

Former paragraphs (b) through (f) are redesignated as subparagraphs (1) through (5) under a new paragraph (b) titled "assessment and waiver or reduction of duty". The introductory texts and/or examples in newly designated paragraphs (b) (1)–(5), each of which still deals with a separate type of duty-deferral program, have been modified as follows: (1) by replacing the references to evidence of exportation and payment of duty by references to the filing of a proper claim under paragraph (a)(3) of the section; (2) to refer, where appropriate, to the filing of Customs Form 7501; and (3) by revising the examples to more accurately reflect a NAFTA duty-deferral context. In addition, the example concerning manipulation in warehouse (former paragraph (b), now paragraph (b)(1)) has been removed because it no longer reflects current law as interpreted by the courts (see *Tropicana Products Inc. v. U.S.*, 789 F.Supp. 1154, 16 CIT 155 (1992)). Finally, an exception regarding a good imported from Canada or Mexico for repair or alteration has been added at the beginning of the text covering temporary importation under bond (former paragraph (f), now paragraph (b)(5)), in order to reflect the terms of article 307(2) of the NAFTA.

Paragraph (c) concerns recordkeeping and corresponds to former paragraph (g) but includes a new requirement that evidence of exportation or of entry into a Canadian or Mexican duty-deferral

program and payment of Canadian or Mexican duty be maintained by the person who files a claim for waiver or reduction of duty under the section.

Paragraph (d) corresponds to former paragraph (h) and differs from the former text in referring to a failure to file a proper claim (rather than to a failure to provide evidence of duties paid or owed to Canada or Mexico) and also in referring more specifically to the persons who are liable for the payment of full duties.

Finally, paragraph (e) corresponds to former paragraph (i) but has been modified to refer to reliquidation of the "entry filed under this section pursuant to 19 U.S.C. 1508(b)(2)(B)(iii) even after liquidation of the entry has become final" (see § 181.50(b)).

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

Inapplicability of Notice and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(a), public notice is inapplicable to these interim regulations because they are within the foreign affairs function of the United States. The United States is obligated under Chapter Three of the NAFTA to implement the NAFTA duty-deferral provisions with respect to exportation to Canada on January 1, 1996. Furthermore, for the same reason, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) for dispensing with a delayed effective date.

Executive Order 12866

Because this document involves a foreign affairs function of the United States and implements an international agreement, it is not subject to the provisions of E.O. 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515-0208.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in these regulations is in § 181.53. This information is required in connection with the withdrawal of goods from U.S. duty deferral programs for export to Canada or Mexico and will be used by the U.S. Customs Service both to determine the amount of duty to be collected on the exported goods and to determine eligibility for a waiver or reduction of such duty. The likely respondents are business organizations including importers, exporters and manufacturers.

Estimated total annual reporting and/or recordkeeping burden: 405,070 hours.

Estimated average annual burden per respondent/recordkeeper: 227 hours.

Estimated number of respondents and/or recordkeepers: 1783.

Estimated annual frequency of responses: 1,069,800.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

Drafting Information. The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

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

19 CFR Part 113

Air carriers, Bonds, Customs duties and inspection, Exports, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 141

Bonds, Customs duties and inspection, Entry of merchandise, Invoices, Powers of attorney, Packaging, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 144

Bonds, Customs duties and inspection, Reporting and recordkeeping requirements, Warehouses.

19 CFR Part 181

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

Amendments to the Regulations

Accordingly, parts 10, 113, 141, 144 and 181, Customs Regulations (19 CFR parts 10, 113, 141, 144 and 181), are amended as set forth below.

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

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

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

* * * * *

2. In § 10.31, paragraph (h) is amended by adding a new sentence at the end to read as follows:

§ 10.31 Entry; bond.

* * * * *

(h) * * * However, a TIB importer may be required to file an entry for consumption and pay duties, or pay liquidated damages under its bond for a failure to do so, in the case of

merchandise imported under subheading 9813.00.05, HTSUS, and subsequently exported to Canada or Mexico (see § 181.53 of this chapter).

PART 113—CUSTOMS BONDS

1. The authority citation for part 113 continues to read in part as follows:

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

* * * * *

2. In § 113.62, the introductory texts of paragraphs (a)(1) and (b) are revised to read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(a) *Agreement to Pay Duties, Taxes, and Charges.*

(1) If merchandise is imported and released from Customs custody or withdrawn from a Customs bonded warehouse into the commerce of, or for consumption in, the United States, or under § 181.53 of this chapter is withdrawn from a duty-deferral program for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, the obligors (principal and surety, jointly and severally) agree to:

* * * * *

(b) *Agreement to Make or Complete Entry.* If all or part of imported merchandise is released before entry under the provisions of the special delivery permit procedures under 19 U.S.C. 1448(b), or released before the completion of the entry under 19 U.S.C. 1484(a), or withdrawn from a duty-deferral program for either exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico before the filing of the documentation provided for in § 181.53(a)(2) of this chapter, the principal agrees to file within the time and in the manner prescribed by law and regulation, documentation to enable Customs to:

* * * * *

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for part 141 continues to read in part as follows:

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

* * * * *

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

* * * * *

2. In § 141.0a, paragraphs (a) and (f) are amended by adding a sentence at the end to read as follows:

§ 141.0a Definitions.

* * * * *

(a) *Entry.* * * * “Entry” also means that documentation required by § 181.53 of this chapter to be filed with Customs to withdraw merchandise from a duty-deferral program in the United States for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico.

* * * * *

(f) *Entered for consumption.* * * * “Entered for consumption” also means the necessary documentation has been filed with Customs to withdraw merchandise from a duty-deferral program in the United States for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico (see § 181.53 of this chapter).

* * * * *

3. Section 141.68 is amended by adding a new paragraph (i) to read as follows:

§ 141.68 Time of entry.

* * * * *

(i) *Exportation to Canada or Mexico of goods imported into the United States under a duty-deferral program defined in § 181.53 of this chapter.* When merchandise in a U.S. duty-deferral program is withdrawn for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, the date of entry is the date the entry is required to be filed under § 181.53(a)(2)(iii) of this chapter.

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The authority citation for part 144 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624.

* * * * *

2. Section 144.38 is amended by adding a new paragraph (b) to read as follows:

§ 144.38 Withdrawal for consumption.

* * * * *

(b) *Withdrawal for exportation to Canada or Mexico.* A withdrawal for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico is considered a withdrawal for consumption pursuant to § 181.53 of this chapter.

* * * * *

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

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

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

2. Section 181.53 is revised to read as follows:

§ 181.53 Collection and waiver or reduction of duty under duty-deferral programs.

(a) *General.*

(1) *Definitions.* The following definitions shall apply for purposes of this section:

(i) *Date of exportation.* “Date of exportation” means the date of importation into Canada or Mexico as reflected on the applicable Canadian or Mexican entry document (see § 181.47(c) (1) and (2)).

(ii) *Duty-deferral program.* A “duty-deferral program” means any measure which postpones duty payment upon arrival of a good in the United States until withdrawn or removed for exportation to Canada or Mexico or for entry into a Canadian or Mexican duty-deferral program. Such measures govern manipulation warehouses, manufacturing warehouses, smelting and refining warehouses, foreign trade zones, and those temporary importations under bond that are specified in paragraph (b)(5) of this section.

(2) *Treatment as entered or withdrawn for consumption.*

(i) *General.*

(A) Where a good is imported into the United States pursuant to a duty-deferral program and is subsequently withdrawn from the duty-deferral program for exportation to Canada or Mexico or is used as a material in the production of another good that is subsequently withdrawn from the duty-deferral program for exportation to Canada or Mexico, and provided that the good is a “good subject to NAFTA drawback” within the meaning of 19 U.S.C. 3333 and is not described in § 181.45 of this part, the documentation required to be filed under this section in connection with the exportation of the good shall, for purposes of this chapter, constitute an entry or withdrawal for consumption and the exported good shall be subject to duty which shall be assessed in accordance with paragraph (b) of this section.

(B) Where a good is imported into the United States pursuant to a duty-deferral program and is subsequently withdrawn from the duty-deferral program and entered into a duty-deferral program in Canada or Mexico or is used as a material in the production of another good that is subsequently withdrawn from the duty-deferral program and entered into a duty-

deferral program in Canada or Mexico, and provided that the good is a "good subject to NAFTA drawback" within the meaning of 19 U.S.C. 3333 and is not described in § 181.45, the documentation required to be filed under this section in connection with the withdrawal of the good from the U.S. duty-deferral program shall, for purposes of this chapter, constitute an entry or withdrawal for consumption and the withdrawn good shall be subject to duty which shall be assessed in accordance with paragraph (b) of this section.

(C) Any assessment of duty under this section shall include the duties and fees referred to in § 181.42 (a) through (c) and the fees provided for in § 24.23 of this chapter; these inclusions shall not be subject to refund, waiver, reduction or drawback.

(ii) *Bond requirements.* The provisions of § 142.4 of this chapter shall apply to each withdrawal and exportation transaction described in paragraph (a)(2)(i) of this section. However, in applying the provisions of § 142.4 of this chapter in the context of this section, any reference to release from Customs custody in § 142.4 of this chapter shall be taken to mean exportation to Canada or Mexico.

(iii) *Documentation filing and duty payment procedures.*

(A) *Persons required to file.* In the circumstances described in paragraph (a)(2)(i) of this section, the documentation described in paragraph (a)(2)(iii)(B) of this section must be filed by one of the following persons:

(1) In the case of a withdrawal of the goods from a warehouse, the person who has the right to withdraw the goods;

(2) In the case of a temporary importation under bond (TIB) specified in paragraph (b)(5) of this section, the TIB importer whether or not he sells the goods for export to Canada or Mexico unless § 10.31(h) of this chapter applies; or

(3) In the case of a withdrawal from a foreign trade zone, the person who has the right to make entry. However, if a zone operator is not the person with the right to make entry of the good, the zone operator shall be responsible for the payment of any duty due in the event the zone operator permits such other person to remove the goods from the zone and such other person fails to comply with §§ 146.67 and 146.68 of this chapter.

(B) *Documentation required to be filed and required filing date.* The person required to file shall file Customs Form 7501 no later than 10 working days after the date of

exportation to Canada or Mexico or 10 working days after being entered into a duty-deferral program in Canada or Mexico. Except where the context otherwise requires and except as otherwise specifically provided in this paragraph, the procedures for completing and filing Customs Form 7501 in connection with the entry of merchandise under this chapter shall apply for purposes of this paragraph. For purposes of completing Customs Form 7501 under this paragraph, any reference on the form to the entry date shall be taken to refer to the date of exportation of the good or the date the goods are entered into a duty-deferral program in Canada or Mexico. The Customs Form 7501 required under this paragraph may be transmitted electronically.

(C) *Duty payment.* The duty estimated to be due under paragraph (b) of this section shall be deposited with Customs 60 calendar days after the date of exportation of the good. If a good is entered into a duty-deferral program in Canada or Mexico, the duty estimated to be due under paragraph (b) of this section, but without any waiver or reduction provided for in that paragraph, shall be deposited with Customs 60 calendar days after the date the good is entered into such duty-deferral program. Nothing shall preclude the deposit of such estimated duty at the time of filing the Customs Form 7501 under paragraph (a)(2)(iii)(B) of this section or at any other time within the 60-day period prescribed in this paragraph. However, any interest calculation shall run from the date the duties are required to be deposited.

(3) *Waiver or reduction of duties.*

(i) *General.* Except in the case of duties and fees referred to in §§ 181.42(a) through (c) and fees provided for in § 24.23 of this chapter, Customs shall waive or reduce the duties paid or owed under paragraph (a)(2) of this section by the person who is required to file the Customs Form 7501 (see paragraph (a)(2)(iii)(A) of this section) in accordance with paragraph (b) of this section, provided that a claim for waiver or reduction of the duties is filed with Customs within the appropriate 60-day time frame. The claim shall be based on evidence of exportation or entry into a Canadian or Mexican duty-deferral program and satisfactory evidence of duties paid in Canada or Mexico (see § 181.47(c)).

(ii) *Filing of claim and payment of reduced duties.* A claim for a waiver or reduction of duties under paragraph (a)(3)(i) of this section shall be made on Customs Form 7501 which shall set forth, in addition to the information

required under paragraph (a)(2)(iii)(B) of this section, a description of the good exported to Canada or Mexico and the Canadian or Mexican import entry number, date of importation, tariff classification number, rate of duty and amount of duty paid. If a claim for reduction of duties is filed under this paragraph, the reduced duties shall be deposited with Customs when the claim is filed.

(iii) *Drawback on goods entered into a duty-deferral program in Canada or Mexico.* After goods in a duty-deferral program in the United States which have been sent from the United States and entered into a duty-deferral program in Canada or Mexico are then withdrawn from that Canadian or Mexican duty-deferral program either for entry into Canada or Mexico or for export to a non-NAFTA country, the person who filed the Customs Form 7501 (see paragraph (a)(2)(iii)(A) of this section) may file a claim for drawback if the goods are withdrawn within 5 years from the date of the original importation of the good into the United States. If the goods are entered for consumption in Canada or Mexico, drawback will be calculated in accordance with § 181.44 of this part.

(4) *Liquidation of entry.*

(i) *If no claim is filed.* If no claim for a waiver or reduction of duties is filed in accordance with paragraph (a)(3) of this section, Customs shall determine the final duties due under paragraph (a)(2)(i) of this section and shall post a bulletin notice of liquidation of the entry filed under this section in accordance with § 159.9 of this chapter. Where no claim was filed in accordance with this section and Customs fails to liquidate, or extend liquidation of, the entry filed under this section within 1 year from the date of the entry, upon the date of expiration of that 1-year period the entry shall be deemed liquidated by operation of law in the amount asserted by the exporter on the Customs Form 7501 filed under paragraph (a)(2)(iii)(A) of this section. A protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter shall be filed within 90 days from the date of posting of the notice of liquidation under this section.

(ii) *If a claim is filed.* If a claim for a waiver or reduction of duties is filed in accordance with paragraph (a)(3) of this section, an extension of liquidation of the entry filed under this section shall take effect for a period not to exceed 3 years from the date the entry was filed. Before the close of the extension period, Customs shall liquidate the entry filed under this section and shall post a bulletin notice

of liquidation in accordance with § 159.9 of this chapter. If Customs fails to liquidate the entry filed under this section within 4 years from the date of the entry, upon the date of expiration of that 4-year period the entry shall be deemed liquidated by operation of law in the amount asserted by the exporter on the Customs Form 7501 filed under paragraph (a)(3)(ii) of this section. A protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter shall be filed within 90 days from the date of posting of the notice of liquidation under this section.

(b) *Assessment and waiver or reduction of duty.*

(1) *Manipulation in warehouse.*

Where a good subject to NAFTA drawback under this subpart is withdrawn from a bonded warehouse (19 U.S.C. 1562) after manipulation for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, duty shall be assessed on the good in its condition and quantity, and at its weight, at the time of such withdrawal from the warehouse and with such additions to, or deductions from, the final appraised value as may be necessary by reason of its change in condition. Such duty shall be paid no later than 60 calendar days after the date of exportation or of entry into the duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

(2) *Bonded manufacturing warehouse.*

Where a good is manufactured in a bonded warehouse (19 U.S.C. 1311) with imported materials and is then withdrawn for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, duty shall be assessed on the materials in their condition and quantity, and at their weight, at the time of their importation into the United States. Such duty shall be paid no later than 60 calendar days after either the date of exportation or of entry into a duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the materials under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company N imports tea into the United States and makes a Class 6 warehouse entry. Company N manufactures sweetened ice tea mix by combining the imported tea with refined cane sugar and other flavorings and packaging it in retail size canisters. Upon withdrawal of the ice tea mix from the warehouse for exportation to Canada, a Customs Form 7501 is filed showing \$900 in estimated U.S. duties on the basis of the unmanufactured tea. Upon entry into Canada, the equivalent of US\$800 is assessed on the exported ice tea mix. Company N submits to Customs a proper claim under paragraph (a)(3) of this section showing payment of the US\$800 equivalent in duties to Canada. Company N will only be required to pay \$100 in U.S. duties out of the \$900 amount reflected on the Customs Form 7501.

(3) *Bonded smelting or refining warehouse.* For any qualifying imported metal-bearing materials (19 U.S.C. 1312), duty shall be assessed on the imported materials and the charges against the bond canceled no later than 60 calendar days after either the date of exportation of the treated materials to Canada or Mexico or the date of entry of the treated materials into a duty-deferral program of Canada or Mexico, either from the bonded smelting or refining warehouse or from such other customs bonded warehouse after the transfer of the same quantity of material from a bonded smelting or refining warehouse. However, upon filing of a proper claim under paragraph (a)(3) of this section, the duty on the imported materials shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the imported materials under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company Z imports 47 million pounds of electrolytic zinc which is entered into a bonded smelting and refining warehouse (Class 7) for processing. Thereafter, Company Z withdraws the merchandise for exportation to Canada and files a Customs Form 7501 showing \$90,000 in estimated U.S. duty on the dutiable quantity of metal contained in the imported metal-bearing materials. Upon entry of the processed zinc into Canada, the equivalent of US\$50,000 in duties are assessed. Within 60 days of exportation Company Z files a proper claim under paragraph (a)(3) of this section and Customs liquidates the entry with duty due in the amount of \$40,000.

(4) *Foreign trade zone.* For a good that is manufactured or otherwise changed in condition in a foreign trade zone (19 U.S.C. 81c(a)) and then withdrawn from the zone for exportation to Canada or Mexico or for entry into a Canadian or Mexican duty-deferral program, the duty assessed, as calculated under paragraph (e)(1) or (e)(2) of this section, shall be paid no later than 60 calendar

days after either the date of exportation of the good to Canada or Mexico or the date of entry of the good into a duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

(i) *Nonprivileged foreign status.* In the case of a nonprivileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time of its exportation from the zone to Canada or Mexico or its entry into a duty-deferral program of Canada or Mexico.

Example. CMG imports \$1,000,000 worth of auto parts from Korea and admits them into Foreign-Trade Subzone number 00, claiming nonprivileged foreign status. (If the auto parts had been regularly entered they would have been dutiable at 4 percent, or \$40,000.) CMG manufactures subcompact automobiles. Automobiles are dutiable at 2.5 percent (\$25,000) if entered for consumption in the United States. CMG withdraws the automobiles from the zone and exports them to Mexico. Upon entry of the automobiles in Mexico, CMG pays the equivalent of US\$20,000 in duty. Before the expiration of 60 calendar days from the date of exportation, CMG files a proper claim under paragraph (a)(3) of this section and pays \$5,000 in duty to Customs representing the difference between the \$25,000 which would have been paid if the automobiles had been entered for consumption from the zone and the US\$20,000 equivalent paid to Mexico.

(ii) *Privileged foreign status.* In the case of a privileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time privileged status is granted in the zone.

Example. O&G, Inc. admits Kuwaiti crude petroleum into its zone and requests, one month later, privileged foreign status on the crude before refining the crude into motor gasoline and kerosene. Upon withdrawal of the refined goods from the zone by O&G, Inc. for exportation to Canada, a Customs Form 7501 is filed showing \$700 in estimated duties on the imported crude petroleum (rather than on the refined goods which would have been assessed \$1,200). D&O is the consignee in Canada and pays the Canadian customs duty assessment of the equivalent of US\$1,500 on the goods. O&G, Inc. is entitled to a waiver of the full \$700 in duties upon filing of a proper claim under paragraph (a)(3) of this section.

(5) *Temporary importation under bond.* Except in the case of a good imported from Canada or Mexico for repair or alteration, where a good, regardless of its origin, was imported temporarily free of duty for repair,

alteration or processing (subheading 9813.00.05, Harmonized Tariff Schedule of the United States) and is subsequently exported to Canada or Mexico, duty shall be assessed on the good on the basis of its condition at the time of its importation into the United States. Such duty shall be paid no later than 60 calendar days after either the date of exportation or the date of entry into a duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company A imports glassware under subheading 9813.00.05, HTSUS. The glassware is from France and would be dutiable under a regular consumption entry at \$6,000. Company A alters the glassware by etching hotel logos on the glassware. Two weeks later, Company A sells the glassware to Company B, a Mexican company, and ships the glassware to Mexico. Company B enters the glassware and is assessed duties in an amount equivalent to US\$6,200 and claims NAFTA preferential tariff treatment. Company B provides a copy of the Mexican landing certificate to Company A showing that the US\$6,200 equivalent in duties was assessed but not yet paid to Mexico. If Mexico ultimately denies Company B's NAFTA claim and the Mexican duty payment becomes final, Company A, upon submission to Customs of a proper claim under paragraph (a)(3) of this section, is entitled to a waiver of the full \$6,000 in U.S. duty.

(c) *Recordkeeping requirements.* If a person intends to claim a waiver or reduction of duty on goods under this section, that person shall maintain records concerning the value of all involved goods or materials at the time of their importation into the United States and concerning the value of the goods at the time of their exportation to Canada or Mexico or entry into a duty-deferral program of Canada or Mexico, and if a person files a claim under this section for a waiver or reduction of duty on goods exported to Canada or Mexico or entered into a Canadian or Mexican duty-deferral program, that person shall maintain evidence of exportation or entry into a Canadian or Mexican duty-deferral program and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the good (see § 181.47(c)). Failure to maintain adequate records will result in denial of the claim for waiver or reduction of duty.

(d) *Failure to file proper claim.* If the person identified in paragraph (a)(2)(iii)(A) of this section fails to file

a proper claim within the 60-day period specified in this section, that person, or the FTZ operator pursuant to paragraph (a)(2)(iii)(A)(3) of this section, will be liable for payment of the full duties assessed under this section and without any waiver or reduction thereof.

(e) *Subsequent claims for preferential tariff treatment.* If a claim for a refund of duties is allowed by the Canadian or Mexican customs administration under Article 502(3) of the NAFTA or under any other circumstance after duties have been waived or reduced under this section, Customs may reliquidate the entry filed under this section pursuant to 19 U.S.C. 1508(b)(2)(B)(iii) even after liquidation of the entry has become final.

George J. Weise,

Commissioner of Customs.

Approved: January 24, 1996.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 96-1677 Filed 1-29-96; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Oxytetracycline Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for the use of a generic oxytetracycline hydrochloride soluble powder administered orally in drinking water for either control or control and treatment of certain diseases of chickens, turkeys, swine, cattle, and sheep.

EFFECTIVE DATE: January 30, 1996.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1643.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Ter., P.O. Box 6457, St. Joseph, MO 64506-0457, filed ANADA 200-146 which provides for use of oxytetracycline hydrochloride soluble powder in the

drinking water of chickens, turkeys, swine, cattle, and sheep. The medicated drinking water is used as follows: (1) Chickens for control of infectious synovitis caused by *Mycoplasma synoviae*, chronic respiratory disease and air sac infections caused by *Mycoplasma gallisepticum* and *Escherichia coli*, and fowl cholera caused by *Pasteurella multocida*; (2) turkeys for control of hexamitiasis caused by *Hexamita meleagridis*, infectious synovitis caused by *M. synoviae*, and complicating bacterial organisms associated with blue comb (transmissible enteritis; coronaviral enteritis); (3) swine for control and treatment of bacterial enteritis caused by *E. coli* and *Salmonella choleraesuis* and bacterial pneumonia caused by *P. multocida*; (4) breeding swine for control and treatment of leptospirosis (reducing the incidence of abortions and shedding of leptospira) caused by *Leptospira pomona*; (5) calves, beef cattle, and nonlactating dairy cattle for control and treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia (shipping fever complex) caused by *P. multocida*; and (6) sheep for control and treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia (shipping fever complex) caused by *P. multocida*.

ANADA 200-146 for Phoenix Scientific's oxytetracycline hydrochloride soluble powder is approved as a generic copy of Pfizer's Terramycin® Soluble Powder which is covered by NADA 8-622. The ANADA is approved as of December 7, 1995, and the regulations in 21 CFR 520.1660d are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520
Animal drugs.