**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loss of pitch trim command during the takeoff and climb phase of flight due to improper set point of the actuator clutches of the horizontal stabilizer, which could result in high pitch control forces and consequent reduced controllability of the airplane, accomplish the following:

**Requirements of AD 2002–08–18, Amendment 39–12739**

*Repetitive Inspectors (Tests)/Replacement*

(a) For airplanes subject to the requirements of AD 2002–08–18, within 800 flight hours after May 16, 2002 (the effective date of AD 2002–08–18): Do an inspection (test) of the actuator clutches of both the primary and backup pitch trim systems of the horizontal stabilizer for proper pitch trim indications per EMBRAER Service Bulletin 145–27–0082, dated September 18, 2001, or Change No. 01, dated December 13, 2001. Repeat the test after that every 2,000 flight hours.

(1) If either test indicates that the clutch is slipping (no PIT TRIM 1 INOP or PIT TRIM 2 INOP message appears, and the measured voltage during trim attempts is greater than 1 volt), before further flight, replace the applicable actuator with an improved actuator and before further flight, repeat the test.

(2) If both tests indicate that the clutch is acceptable (PIT TRIM 1 INOP or PIT TRIM 2 INOP message appears), repeat the test at the time specified in paragraph (a) of this AD.

**New Requirements of This AD**

(b) For airplanes other than those identified in paragraph (a) of this AD, within 800 flight hours after the effective date of this AD: Do an inspection (test) of the actuator clutches of both the primary and backup pitch trim systems of the horizontal stabilizer for proper pitch trim indications per EMBRAER Service Bulletin 145–27–0082, dated September 18, 2001, or Change No. 01, dated December 13, 2001. Repeat the test their that every 2,000 flight hours.

(1) If either test indicates that the clutch is slipping (no PIT TRIM 1 INOP or PIT TRIM 2 INOP message appears, and the measured voltage during trim attempts is greater than 1 volt), before further flight, replace the applicable actuator with an improved actuator per the service bulletin, and before further flight, repeat the test.

(2) If both tests indicate that the clutch is acceptable (PIT TRIM 1 INOP or PIT TRIM 2 INOP message appears), repeat the test at the time specified in paragraph (a) of this AD.

*Spares*

(c) As of the effective date of this AD, no person shall install an actuator having part number 362200–1007, –1009, –1011, or –1013 on any airplane, unless the actuator clutch is inspected as required by paragraph (a) of this AD.

*Alternative Methods of Compliance*

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously per AD 2002–08–18, amendment 39–12730, are approved as alternative methods of compliance with this AD.

**Note 2:** Information concerning the existing of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

*Special Flight Permits*

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

*Incorporation by Reference*

(f) Except as provided by paragraph (a)(1) of this AD, the actions shall be done in accordance with EMBRAER Service Bulletin 145–27–0082, dated September 18, 2001; or EMBRAER Service Bulletin 145–27–0082, Change No. 01, dated December 13, 2001.

(1) The incorporation by reference of EMBRAER Service Bulletin 145–27–0082, Change No. 01, dated December 13, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of EMBRAER Service Bulletin 145–27–0082, dated September 18, 2001, was approved previously by the Director of the Federal Register as of May 16, 2002 (67 FR 21567, May 1, 2002.)

(3) Copies may be obtained from Empresa Brasileira de Aeronautics S.A. (EMBRAER), P.O. Box 343–CEP 12.225, San Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Brazilian airworthiness directive 2001–10–02R2, dated May 6, 2002.

*Effective Date*

(g) This amendment becomes effective on August 8, 2002.

Issued in Renton, Washington, on July 11, 2002.

**Michael J. Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 02–18028 Filed 7–23–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF THE TREASURY

## Customs Service

## 19 CFR Part 191

**[T.D. 02–38]**

**RIN 1515–AD02**

## Manufacturing Substitution Drawback: Duty Apportionment

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

**ACTION:** Interim rule; solicitation of comments.

**SUMMARY:** This document amends the Customs Regulations on an interim basis to provide the method for calculating manufacturing substitution drawback where imported merchandise, which is dutiable on its value, contains a chemical element and amounts of that chemical element are used in the manufacture or production of articles which are either exported or destroyed under Customs supervision. Recent court decisions have held that a chemical element that is contained in an imported material that is subject to an *ad valorem* rate of duty may be designated as same kind and quality merchandise for drawback purposes. This amendment provides the method by which the duty attributable to the chemical element can be apportioned. This amendment requires a drawback claimant, where applicable, to make this apportionment calculation.

**DATES:** This interim rule is effective July 24, 2002. Comments must be received on or before September 23, 2002.

**ADDRESSES:** Written comments (preferably in triplicate) may be submitted to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at the U.S. Customs Service, 799 9th Street, NW., Washington, DC, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

**FOR FURTHER INFORMATION CONTACT:** William G. Rosoff, Chief, Duty and Refund Determinations Branch, Office of Regulations and Rulings, U.S. Customs Service, Tel. (202) 572–8807.

**SUPPLEMENTARY INFORMATION:**

## Background

*Drawback—19 U.S.C. 1313*

Section 313 of the Tariff Act of 1930, as amended, (19 U.S.C. 1313), concerns drawback and refunds. Drawback is a refund of certain duties, taxes and fees paid by the importer of record and granted to a drawback claimant upon the exportation, or destruction under Customs supervision, of eligible articles. The purpose of drawback is to place U.S. exporters on equal footing with foreign competitors by refunding most of the duties paid on imports used in domestic manufactures intended for export.

*Substitution for drawback purposes—19 U.S.C. 1313(b)*

There are several types of drawback. Under section 1313(b), a manufacturer can recoup duties paid for imported merchandise if it uses merchandise of the same kind and quality to produce exported articles pursuant to the terms of the statute. Section 1313(b) reads, in pertinent part, as follows:

> (b) *Substitution for drawback purposes* If imported duty-paid merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation, or destruction under customs supervision, of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported or destroyed articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported. * * *''

Manufacturing substitution drawback is intended to alleviate some of the difficulties in accounting for whether imported merchandise has, in fact, been used in a domestic manufacture. Section 1313(b) permits domestic or other imported merchandise to be used as the basis for drawback, instead of the actual imported merchandise, so long as the domestic merchandise is of the ''same kind and quality'' as the actual imported merchandise.

Several recent court cases have examined the scope of the term ''same kind and quality'' as used in 19 U.S.C. 1313(b). *See E.I. DuPont De Nemours and Co.* v. *United States,* 116 F. Supp. 2d 1343 (Ct. Int'l Trade 2000). *See also International Light Metals* v. *United States,* 194 F.3d 1355 (Fed. Cir. 1999). In these cases, the courts held that a chemical element that is contained in an imported material that is dutiable on its value may be designated as same kind and quality merchandise for purposes of manufacturing substitution drawback pursuant to 19 U.S.C. 1313(b).

In *DuPont,* the court held that apportionment is a feasible method of claiming a drawback entitlement. *DuPont,* 116 F. Supp. 2d at 1348–49. Under these regulations, therefore, a substitution drawback claimant must apportion the duty attributable to a chemical element contained in an *ad valorem* duty-paid imported material if it is claimed that a chemical element was used in the domestic production of articles that were exported or destroyed under Customs supervision within the prescribed time period. The drawback claim on the chemical element that is the designated merchandise must be limited to the duty apportioned to that chemical element on a unit-for-unit attribution using the unit of measure set forth in the Harmonized Tariff Schedule of the United States that is applicable to the imported material. The apportionment is necessary to avoid overpayment of drawback.

*Amendment to § 191.26(b) of the Customs Regulations*

Section 191.26 of the Customs Regulations (19 CFR 191.26) sets forth the recordkeeping requirements for manufacturing drawback. Paragraph (b) of this section describes the recordkeeping requirements for substitution drawback.

To implement the courts' interpretation of 19 U.S.C. 1313(b), this document amends § 191.26(b) by adding language that explains how to apportion the duty attributable to same kind and quality chemical elements contained in *ad valorem* duty-paid imported materials for purposes of manufacturing substitution drawback. This document also amends § 191.26(b) to provide an example of apportionment calculations.

*Duty Apportionment Calculation*

In order for a drawback claimant to be able to ascertain what portion of the *ad valorem* duty paid on imported merchandise is attributable to a chemical element contained in the merchandise, an apportionment calculation is necessary. First, if the imported duty-paid 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, converting to the decimal equivalent of their respective percentages, and multiplying that decimal equivalent against the above-determined amount of pure compound. Second, the amount claimed as drawback based on a contained element must be taken into account and deducted from the duty paid on the imported material that may be claimed on any other drawback claim.

## Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the 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, 799 9th Street, NW., Washington, DC.

## Inapplicability of Prior Public Notice and Comment Procedures

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on this regulation are unnecessary and contrary to public interest. The regulatory changes to the Customs Regulations add language necessitated by recent decisions of the Court of International Trade and the Court of Appeals for the Federal Circuit. The regulatory changes benefit the public by providing specific information as to how a drawback claimant is to correctly make the requisite duty apportionment calculations when claiming manufacturing substitution drawback for a chemical element contained in *ad valorem* duty-paid imported merchandise. For these reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date.

**Executive Order 12866**

This document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

**Drafting Information**

The principal author of this document was Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 191**

Claims, Commerce, Customs duties and inspection, Drawback.

**Amendment to the Regulations**

For the reason stated above, part 191 of the Customs Regulations (19 CFR part 191), is amended as set forth below.

## PART 191—DRAWBACK

1. The general authority citation for part 191 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

1. Section 191.26 is amended:

a. In paragraph (b)(2) by removing the word ''and'' after the semi-colon;

b. At the end of paragraph (b)(3) by removing the period and adding ''; and''; and

c. By adding a new paragraph (b)(4) to read as follows:

**§ 191.26 Recordkeeping for manufacturing drawback.**

* * * * *

(b) *Substitution manufacturing.* * * *

(4) If the designated merchandise is a chemical element that was contained in imported material that was subject to an *ad valorem* rate of duty, and a substitution drawback claim is made based on that chemical element:

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

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

*Example* to paragraph (b)(4)

Synthetic rutile that is shown by appropriate analysis in the entry papers to be 91.7% pure titanium dioxide is imported and dutiable at a 5% *ad valorem* duty rate. The amount of imported synthetic rutile is 30,000 pounds with an entered value of $12,000. The total duty paid is $600. Titanium in the synthetic rutile is designated as the basis for a drawback claim under 19 U.S.C. 1313(b). The amount of titanium dioxide in the synthetic rutile is determined by converting the 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). 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 = 16,486.7 pounds). Therefore, up to 16,486.7 pounds of titanium is available to be designated as the basis for drawback. The ratio between the amount of titanium and the total amount of imported synthetic rutile is determined by dividing the weight of the titanium by the weight of the synthetic rutile (16,486.7 ÷ 30,000 = .550) or 55%. Accordingly, 55% of the duty is apportioned to the titanium content which is the designated merchandise of the imported synthetic rutile. As the per-unit duty paid on the synthetic rutile is calculated by dividing the duty ($600) by the amount of the imported synthetic rutile (30,000), the per-unit duty is two cents of duty per pound ($600 ÷ 30,000 = $0.02). The per pound duty on the titanium is calculated by multiplying the factor of 55% (.55 × $0.02 = $0.011 per pound). 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 factor ($0.011 per pound) by the weight of the titanium contained in the ingot (16,000 pounds) to calculate the duty available for drawback ($0.011 × 16,000 = $176). Because only 99% of the duty can be claimed, drawback is determined by multiplying the available duty amount by 99% (.99 × $176 = $174.24). As the oxygen content of the titanium dioxide is 45% of the synthetic rutile, if oxygen is the designated merchandise on another drawback claim, that factor would be used to determine the duty available for drawback based on the substitution of oxygen.

**Robert C. Bonner,**

*Commissioner of Customs.*

Approved: July 18, 2002.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 02–18609 Filed 7–23–02; 8:45 am]

**BILLING CODE 4820–02–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 2

**[Docket No. 97N–0023]**

**RIN 0910–AA99**

## Use of Ozone-Depleting Substances; Essential-Use Determinations

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:**

**SUMMARY:** The Food and Drug Administration (FDA) is amending its regulation on the use of chlorofluorocarbon (CFC) propellants in self-pressurized containers to make it consistent with other laws. FDA is setting the standard it will use to determine which FDA-regulated products that utilize an ozone-depleting substance (ODS) are essential under the Clean Air Act. Under the Clean Air Act, FDA, in consultation with the Environmental Protection Agency (EPA), is required to determine whether an FDA-regulated product that utilizes an ODS is essential. FDA is also removing current essential-use designations for products no longer marketed and for metered-dose steroid human drugs for nasal inhalation. FDA will add or remove specific essential-use designations for other products by