DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 181, 190, and 191

[CBP Dec. 18–15; USCBP–2018–0029]

RIN 1515–AE23

Modernized Drawback

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

ACTION: Final rule.

SUMMARY: This document adopts as final, with changes, proposed amendments to the U.S. Customs and Border Protection (CBP) regulations implementing changes to the drawback regulations, as directed by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA). These regulations establish new processes for drawback pursuant to TFTEA, which liberalize the merchandise substitution standard, simplify recordkeeping requirements, extend and standardize timelines for filing drawback claims, and require the electronic filing of drawback claims. This document also provides details with respect to the process required to perfect TFTEA-based claims filed under CBP's Interim Guidance procedures. Further, this document also finalizes regulations clarifying the prohibition on the filing of a substitution drawback claim for internal revenue excise tax in situations where no excise tax was paid upon the substituted merchandise or where the substituted merchandise is the subject of a different claim for refund or drawback of tax.

DATES: This final rule, with the exception discussed below, is effective on December 17, 2018. The effective date for amendments regarding the drawback of excise taxes (§§ 190.22(a)(1)(ii)(C), 190.32(b)(3), 190.171(c)(3), 191.22(a), 191.32(b)(4), and 191.171(d)) is February 19, 2019.

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I. TFTEA-Drawback

A. Section 906 and the Trade Facilitation and Trade Enforcement Act

Section 313 of the Tariff Act of 1930, as amended (19 U.S.C. 1313), authorizes U.S. Customs and Border Protection (CBP) to refund, in whole or in part, duties, taxes, and fees imposed under Federal law upon entry or importation of merchandise (and paid on the imported merchandise), and to refund or remit internal revenue tax paid on domestic alcohol, as prescribed in 19 U.S.C. 1313(d), as drawback. Drawback more broadly includes the refund or remission of excise taxes pursuant to other provisions of law. Drawback for payment by CBP is a privilege, not a right, subject to compliance with prescribed rules and regulations administered by CBP. *See* 19 U.S.C. 1313(l).

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.

B. Transition Period and Interim Guidance

Section 906(q)(3) of TFTEA provided for a one-year transition period, to begin on February 24, 2018, wherein drawback claimants would have the choice between filing claims under pre-TFTEA law and the existing process detailed in the current regulations (part 191) or filing TFTEA-Drawback claims under the amended statute. However, because the implementing regulations were not going to be in place in time for the beginning of the transition period, CBP developed interim procedures for accepting TFTEA-Drawback claims. Specifically, to enable the Automated Commercial Environment (ACE) to recognize and accept TFTEA-Drawback claims, ACE was programmed 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 by CBP to enable claimants to program their systems to interface with these provisional placeholder requirements in ACE. On February 9, 2018, CBP posted these provisional guidelines on CBP's website in a document entitled *Drawback: Interim Guidance for Filing TFTEA Drawback Claims* (*Interim Guidance*).[2] CBP has been accepting TFTEA-Drawback claims submitted

[1] For purposes of this document, ''TFTEA-Drawback'' is the term generally used to refer to drawback under section 313 of the Tariff Act of 1930, as amended by the Trade Facilitation and Trade Enforcement Act of 2015.

[2] The document is available at: *https://www.cbp.gov/document/guidance/ace-drawback-guidance.* Since initially publishing the Interim Guidance, CBP has published two subsequent versions, with Version 3 being the current version. These versions clarify the guidance set forth in the original document, and do not reflect any substantive changes to CBP's policy or systems.

under the Interim Guidance since February 24, 2018. The Interim Guidance is effective until the Final Rule is in effect and official guidance will be provided consistent with the TFTEA-Drawback regulations.

C. Proposed Rulemaking

On August 2, 2018, CBP published a notice of proposed rulemaking (NPRM) in the **Federal Register** (83 FR 37886) announcing proposed regulations to implement TFTEA-Drawback. The proposal also included such things as clarifying the prohibition on double drawback with respect to Federal excise taxes [3] and making technical corrections and conforming changes to parts 113 (dealing with bonds), 181 (dealing with the North American Free Trade Agreement (NAFTA)) and 191 (dealing with drawback for non-TFTEA-Drawback claims during the transition year). The NPRM provided for a 45-day comment period, through September 17, 2018. On August 20, 2018, CBP published a correction document in the **Federal Register** (83 FR 42062) that clarified the references in proposed section 190.32(d). Specifically, the reference in paragraph (d) should have been only to paragraphs (b)(1) and (b)(2), the specific paragraphs regarding the ''lesser of'' rule, rather than to the entirety of paragraph (b), which included the prohibition on double drawback in paragraph (b)(3). As evidenced by reading the entire preamble of the proposed rule, it is clear that the prohibition on double drawback applies to all drawback claims, including those for wine.

D. Difference Between the Interim Guidance and the NPRM

Although the Interim Guidance allowed for ''mixed'' claims—*i.e.,* making a substitution-based drawback claim under the new law as amended by TFTEA for imported merchandise associated with an entry summary where the entry summary had previously been designated as the basis of a claim under the old law—to be submitted without receiving a rejection message in ACE, the August 2, 2018 notice of proposed rulemaking expressly prohibited such claims. *See* 83 FR 37886 at 37888. Upon further consideration, and as detailed in the Discussion of Comments section below pertaining to mixed claims, CBP has decided not to adopt in this final rule the proposed restriction in the NPRM concerning mixed claims; rather, CBP has decided in this final rule to permit the filing of mixed claims.

E. Perfection of Previously Filed Claims

As also explained in the proposed rule, the Interim Guidance provided provisional placeholder requirements for electronically-filed TFTEA-Drawback claims, as reflected in the provisional CATAIR. These requirements were designed to be placeholders only, and were never intended to be used to process TFTEA-Drawback claims beyond initial acceptance in ACE. The procedures outlined and explained in the Interim Guidance remain in place until this final rule is implemented and effective.

Members of the trade should direct questions related to the process of perfecting TFTEA-Drawback claims filed prior to this final rule's effective date to one of the drawback offices listed here: *https://www.cbp.gov/trade/entry-summary/drawback/locations.* Electronic mailbox information for each of the drawback offices (also called drawback centers) is provided in the Interim Guidance. In addition, questions related to the Interim Guidance may be sent to the Drawback and Revenue Branch in the Commercial Operations Division by emailing: *otdrawback@cbp.dhs.gov.* Members of the trade should notify CBP of their request to perfect a claim in writing via mail or email. The notification should be sent directly to the appropriate drawback office for further guidance on processing the claim. Contact information for each drawback office is provided in the Interim Guidance and found here: *https://www.cbp.gov/document/guidance/ace-drawback-guidance.*

II. Discussion of Comments

CBP received 92 documents in response to the notice of proposed rulemaking.[4] For the most part, the documents received contained comments on multiple topics. The majority of comments received focused on specific regulations in proposed new part 190. Multiple comments were received regarding the proposed amendments to part 113 dealing with bonds, as well as on the technical corrections and conforming changes proposed to parts 181 and 191.

Multiple comments were also received regarding the economic analysis included with the notice of proposed rulemaking. The comments have been grouped together below based on the general topic of the comment.

A. General Matters

1. Proposed Regulations

Comment: One commenter stated that moving forward with the proposed regulations in part 190 will put an extreme hardship on drawback claimants. Another commenter stated that, as an alternative to the proposed document requirements, the submission and approval process from the NPRM should be revised to require first-time drawback claimants to submit a letter of certification with their first drawback claim through the CBP portal. The commenter stated that document submissions could include a certification of commercial records being maintained to support drawback and acknowledgement of the recordkeeping requirements of part 190. The commenter stated that this alternative procedure would still provide CBP with visibility regarding drawback claims, claimants, and records but would eliminate the excessive paperwork and approval process that are time consuming and duplicative of the statutory requirements. The commenter stated that, as proposed, part 190 imposes more administrative, time-consuming requirements on all parties and should be eliminated or substantially modified to streamline and simplify the drawback process as TFTEA requires.

Response: CBP disagrees with these comments. In some cases, TFTEA imposed additional requirements on both CBP and the trade. CBP has endeavored to provide guidance to the public through the CATAIR, public policy, and the proposed regulations, to facilitate compliance. Additionally, CBP has conducted many outreach efforts to alleviate the hardships for the trade with respect to the transition to TFTEA-Drawback. CBP notes that the modernization of drawback, which results from TFTEA, ultimately streamlines claims and creates significant efficiencies for both the trade and CBP.

Comment: Multiple commenters noted that CBP neglected to add section 190.29 to the table of contents in subpart B.

Response: CBP will correct this oversight in this final rule by adding section 190.29 to the Table of Contents

[3] 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, *inter alia,* laws covering Federal excise taxes. Federal excise taxes are imposed on the manufacture, importation, and/or distribution of certain consumer goods, such as distilled spirits, wines, beer, tobacco products, imported taxable fuel, and petroleum products.

[4] While many commenters distinguished CBP from the Department of the Treasury (Treasury) in their submissions, the responses throughout this section, as with the entirety of this rulemaking, are the result of collaboration between CBP and Treasury.

for Part 190. Additionally, CBP has made additional technical corrections to ensure that the title of the regulation in the Table of Contents for Part 190 matches the actual regulation itself for sections 190.26, 190.38, and 190.72.

Comment: One commenter noted that the proposed 60-day delayed effective dates for the regulations to prohibit double drawback contained a drafting error of omission. Specifically, the commenter identified the omission as section 190.171(c)(3), which implements the prohibition on double drawback for finished petroleum derivatives for which substitution drawback is claimed pursuant to 19 U.S.C. 1313(p).

Response: CBP agrees that the 60-day delayed effective date for the prohibition on double drawback should apply to double drawback for finished petroleum derivatives for which substitution drawback is claimed pursuant to 19 U.S.C. 1313(p). Accordingly, the 60-day delayed effective date is modified to include section 190.171(c)(3).

Comment: CBP received multiple requests to extend the comment period for the proposed rule.

Response: Since the passage of TFTEA, CBP has worked aggressively towards modernizing the regulatory process for the drawback program to have final regulations in place by February 23, 2019. CBP has engaged extensively with stakeholders during this time period so as to receive input parallel in time to CBP's regulatory drafting. Further, the Interim Guidance, which has been in place since February 24, 2018, provided drawback claimants with actual experience in filing TFTEA-Drawback claims and with the opportunity to work with CBP in perfecting the filing process. CBP determined that the 45-day comment period struck a balance between allowing for substantive public comments while ensuring adequate time for CBP to publish a final rule so that claimants may obtain the benefits associated with modernized drawback. Based on the volume of insightful comments received, CBP disagrees that the comment period should be extended.

2. TFTEA-Drawback Definitions

In developing a list of terms and their definitions in section 190.2, CBP proposed definitions for new terms relating to TFTEA-Drawback (*e.g., document* and *sought chemical element*), as well as incorporating definitions for terms already in part 191 (*e.g., abstract, manufacture or production, specific manufacturing drawback ruling,* and *substituted merchandise or articles*). CBP received many comments requesting modifications to the definitions in part 190.

Comment: Multiple commenters asked that a reference allowing records kept in the normal course of business be added to the definition for *abstract* in section 190.2. Another commenter asked that the phrase ''records kept in the normal course of business'' be added to the definition.

Response: CBP disagrees with the commenters regarding the need for edits to the term *abstract.* The term means that the actual production records of the manufacturer are required. The abstract should be supported by records kept in the normal course of business, but the abstract itself may be documentation that is generated specifically to support the drawback claim and the manufacturer or producer agrees to maintain this record (or, alternately, a schedule) when applying for a general or specific manufacturing ruling. Accordingly, the term *abstract* will remain as proposed.

Comment: CBP proposed definitions for the terms *bill of materials* and *formula* in section 190.2. One commenter suggested adding language to the definitions to include components that are used but drop out of the manufacturing process or are consumed in the process without becoming a part of the manufactured article.

Response: CBP agrees with this comment. The definitions for *bill of materials* and *formula* in section 190.2 have been clarified accordingly in this final rule.

Comment: In section 190.2, CBP proposed a definition of *document.* Multiple comments were received. One comment, noting that many records are not produced, endorsed, or maintained electronically, asked that CBP replace a term used in the originally proposed definition (''normal meaning'') with suggested language (''written, printed, or electronic matter''). Other comments asked that a reference to records kept in the normal course of business be added to the definition.

Response: CBP disagrees with the comments regarding the term *document.* The suggestion to add the reference to records kept in the normal course is unnecessary precisely because the term ''normal meaning'' is useful and appropriate. Accordingly, the definition will remain as proposed.

Comment: One commenter requested that CBP modify the term *drawback* in section 190.2 to better match the statute.

Response: CBP notes that the statute provides no definition of drawback, per se. CBP has defined drawback, in regulations in the context of its authority to pay, as 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, and the definition specifically provides that this includes drawback paid upon the entry or importation of the imported merchandise, and the refund or remission of internal revenue tax paid on domestic alcohol as prescribed in 19 U.S.C. 1313(d). The definition cross-references section 190.3, which speaks more broadly to the types of duties, taxes, and fees that are refundable as drawback. CBP disagrees with the commenter, and finds that the definition is consistent with the statutory requirements in 19 U.S.C. 1313, which identify for each type of drawback identified thereunder, the types of duties, taxes, and fees that are eligible for refund. CBP has, however, changed the text of the definition of drawback in section 190.2 to clarify that this regulatory definition is limited to CBP's payment of drawback and does not purport to define drawback for all purposes of 19 U.S.C. 1313, such as 19 U.S.C. 1313(v)'s broad prohibition of multiple drawback claims, including those pursuant to the Internal Revenue Code.

Comment: CBP proposed a definition for the term *drawback product* in section 190.2. One commenter suggested adding language to section 190.2 to provide more clarity.

Response: CBP disagrees with the comment. The definition for *drawback product* in section 190.2 mirrors the definition provided under 19 CFR 191.2 and this term was not affected by TFTEA. Accordingly, the definition will remain as it was proposed in the NPRM.

Comment: One commenter requested that CBP modify the definition for *intermediate party* in section 190.2 to note that a party can also receive and possess substituted merchandise. This commenter provided suggested language.

Response: CBP agrees with the comment. CBP is amending the definition of *intermediate party* in section 190.2 to clarify that the intermediate party may also be in possession of substituted merchandise, subject to the applicable statutory limitations. Relatedly, CBP has also amended the definition to clarify that there may be destruction (in lieu of exportation) to qualify merchandise for drawback in certain cases.

Comment: One commenter asked CBP to remove the more flexible phrase in section 190.2 regarding what is a *manufacture or production,* ''including, but not limited to, an assembly, . . .'' and replace it with suggested language (''a process, whether mechanical, chemical, or otherwise stated whether from the direct action of the human hand, from chemical processes devised and directed by human skill, or by the employment of machinery . . .'').

Response: CBP disagrees with the commenter's suggestions to amend the definition of *manufacture or production,* which was taken from current 19 CFR 191.2. This definition has proven flexible and useful as written, providing adequate guidance while still allowing for claimants to request rulings regarding whether a process amounts to a manufacture or production.

Comment: Regarding the definition of *per unit averaging,* one commenter stated that the last sentence referencing the applicability of the ''lesser of'' rules does not belong in this definition. This commenter stated that the regulation incorrectly states that the value of the imported merchandise may not exceed the total value of the exported merchandise and recommends removing the last sentence from the definition.

Response: CBP agrees, in part, with the comment. The definition of *per unit averaging* in section 190.2 is modified by removing the phrase regarding the value upon which the refund is calculated not being able to exceed the value of the imported merchandise and making minor edits regarding the ''lesser of'' rule. The ''lesser of'' rule is applicable to certain substitution drawback claims and so the per unit averaging claim calculations are subject to this limitation, except where specifically exempted therefrom.

Comment: In section 190.2, CBP proposed a definition of *sought chemical element.* Multiple commenters suggested that the definition in the regulations should restate the definition provided in the statute at 19 U.S.C. 1313(b)(4)(B) and that the parenthetical phrase should be removed, and one commenter suggested adding ''isotopes'' to the definition.

Response: CBP disagrees with the commenters' suggestions regarding the term *sought chemical element.* The term is defined consistently with 19 U.S.C. 1313(b)(4)(b), except that a parenthetical clarification is included to specify that a ''compound'' is considered ''a distinct substance formed by a chemical union of two or more elements in definite proportion by weight.'' The commenters did not disagree with the correctness of the parenthetical clarification, which will remain as proposed because it provides additional specificity for members of the public who may not have the same level of familiarity as the commenters do with respect to sought chemical elements. As the definition is drafted consistently with the statute, except for the parenthetical clarification, the suggestion to add isotopes is not accepted. Accordingly, the definition for *sought chemical elements* will remain as it was proposed.

Comment: In section 190.2, CBP proposed a definition of *specific manufacturing drawback rulings.* One commenter requested that CBP remove the requirement that a synopsis of approved specific manufacturing drawback rulings will be published in the Customs Bulletin.

Response: CBP agrees with this commenter. Based upon comments received and its own internal review, CBP has determined that there is no longer sufficient benefit to the trade or to CBP to support the publication of synopses of specific manufacturing rulings. As such, the definition is modified accordingly in this final rule.

Comment: Multiple commenters suggested edits for the definition of *substituted merchandise or articles,* noting that, in paragraphs (2) and (3), the term ''direct identification'' should be replaced with the term ''unused merchandise'' and requested that CBP modify paragraph (3) by inserting a reference to Schedule B.

Response: Regarding the term *substituted merchandise or articles,* CBP is accepting the recommendations to remove the term ''direct identification'' in paragraph (3) of the definition and replaced with the term ''unused merchandise'' for drawback under 19 U.S.C. 1313(j)(2); and, CBP is also accepting the recommendation to include a reference to the allowance in 19 U.S.C. 1313(j)(6) for the use of Schedule B numbers for substitution in paragraph (3). However, regarding substitution under 19 U.S.C. 1313(c)(2), CBP is accepting the recommendation to remove the term ''direct identification'' from the definition for *substituted merchandise or articles* but is not accepting the recommendation to replace the term with ''unused merchandise'' because 19 U.S.C. 1313(c) more specifically deals with merchandise not conforming to sample or specifications, *i.e.,* rejected merchandise. Accordingly, CBP is replacing the term ''direct identification'' with the term ''rejected merchandise'' in section 190.2 of the final rule describing 19 U.S.C. 1313(c)(2).

Comment: For substitution of finished petroleum derivatives claims, CBP proposed a definition for *qualified article* in section 190.172(a). Multiple commenters noted that not all HTSUS numbers which were provided in the definition for *qualified article* in 19 U.S.C. 1313(p)(3)(A)(i)(I) were listed in proposed section 190.172(a).

Response: CBP agrees with the commenters and section 190.172(a) is modified accordingly in the final rule.

Comment: CBP proposed a definition for wine in section 190.2 requiring an alcoholic content not in excess of 14 percent by volume with reference to the relevant Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations (27 CFR 4.21(a)(1) and (2)). One commenter requested that the specific percentage be removed so that the section include only the citation to the authority for the percentage of alcohol to avoid issues related to percentage changes, such as those contained in section 13805 of the Tax Cuts and Jobs Act (Pub. L. 115–97, 131 Stat. 2054, December 22, 2017), which amended 26 U.S.C. 5041(b) by adjusting the alcohol content level for application of excise tax rates on wine from 14% to 16% (in the case of wine removed after December 31, 2017 and before January 1, 2020). The commenter also requested that a similar change be made at section 190.32(d)(3)(b).

Response: CBP disagrees with this commenter's suggestion. While section 13805 of the Tax Cuts and Jobs Act, contained in part IX, subpart A, Craft Beverage Modernization and Tax Reform (CBMTRA), changed the wine tax classification cut-off from 14% to 16%, it did not amend the Federal Alcohol Administration (FAA) Act and thus CBMTRA does not require the Alcohol and Tobacco Tax and Trade Bureau to change its regulatory interpretation of which wines are considered ''table wine'' under the FAA Act, in 27 CFR 4.21(a)(1) and (2). Accordingly, CBP will continue to interpret the alternative rule for wine substitution for 19 U.S.C. 1313(j)(2) standard in light of its past practice, providing for substitution unused merchandise drawback for ''table wine'' containing not more than 14% alcohol.

3. Economic Analysis

Comment: One commenter questioned the estimated economic impact of the rule cited in the NPRM's Regulatory Impact Analysis (RIA). The commenter stated that the RIA understated the cost of implementation of drawback filing by all parties involved with the drawback process, including importers,

manufacturers, exporters and brokers. Additionally, the commenter claimed that the rule's costs to small entities are significantly understated in the NPRM's Regulatory Flexibility Act (RFA) analysis. The commenter asserted that CBP's analysis underestimated the costs of ACE drawback system modification, add-on drawback software, and broker fees to trade members due to recent changes in ACE programming and new regulatory requirements.

Response: Unfortunately, the commenter did not include any data to support the claims or propose alternative costs that CBP could incorporate into the analysis. CBP based its estimates on the best data available. Therefore, CBP has no basis for changing its estimates.

Comment: One commenter stated that CBP understated the costs of added recordkeeping in the NPRM's RIA, arguing that the rule's costs to trade members are higher than estimated due to the variety of documentation that CBP could require for drawback verification under the rule and increased record retention periods.

Response: CBP disagrees with this comment. TFTEA, and the corresponding drawback regulations proposed in 19 CFR part 190, largely reduce the recordkeeping burden for trade members by allowing them to verify claims using records maintained in the normal course of business. For example, TFTEA and the proposed drawback regulations in 19 CFR part 190 will completely eliminate CBP Form 7552: Delivery Certificate for Purposes of Drawback, allowing trade members to instead keep evidence of transfers in their records kept in the normal course of business, and provide such evidence to CBP upon request. This change will result in savings to trade members rather than costs. In regards to TFTEA and the rule's longer record retention period, CBP captured the cost of extended recordkeeping in the Major Amendment 9 section of the NPRM's RIA and in this document. CBP developed the extended recordkeeping cost estimates in consultation with various members of the trade community and subject matter experts. Unfortunately, the commenter did not include any data to support the claims that CBP understated recordkeeping costs, and the commenter did not propose alternative costs that CBP could incorporate into the analysis. For this reason, CBP chooses to maintain its recordkeeping estimates.

Comment: One commenter questioned CBP's RFA conclusion that the agency cannot determine whether the (negative) economic impact of the rule on small entities may be considered significant under the RFA. The commenter claimed that CBP did not adequately evaluate the new electronic filing costs and data element submissions of TFTEA and the expanded recordkeeping and data retention requirements of the statute. The commenter also suggested that CBP should acknowledge the ''significant cost impact to small business of the NPRM and work to simplify the operation requirements of Part 190 to minimize the impact of TFTEA on small business.''

Response: CBP disagrees with these statements. CBP developed a comprehensive analysis examining the impacts of TFTEA and the proposed Modernized Drawback rule. The analysis evaluates new filing costs and data element submissions under the Major Amendment 1 section of the RIA as well as Major Amendment 7. The RIA also includes an assessment of the costs of TFTEA's expanded recordkeeping and data retention requirements in the Major Amendment 9 section of the RIA. The RFA accounts for these costs, analyzing their impacts on small entities. This document continues to include a full assessment of TFTEA's drawback amendments and the Modernized Drawback rule's corresponding changes. CBP worked in consultation with various members of the trade community representing a wide range of industries involved in drawback and subject matter experts to inform many of the estimates in the RIA and RFA, as cited throughout the document. Moreover, CBP has worked to craft a regulation to minimize the impact on small entities while still meeting TFTEA and other legal requirements and protecting U.S. Government revenue. For instance, CBP eliminated the proposed requirement in section 190.26(d) for trade members to maintain manufacturing or production records for articles purchased from a manufacturer or producer and claimed for drawback. CBP made this change based on a public comment explaining that the requirement could harm businesses. Unfortunately, the commenter did not include any data or justification to support the claims that the RIA and RFA did not adequately evaluate the impact of the rule on trade members, including those considered small under the RFA. The commenter also did not provide evidence to support its statement that CBP should certify that this rule has a significant economic impact on a substantial number of small entities. To further assess the impacts of the rule on small entities, CBP has expanded its RFA sample from 100 entities to 375 entities, leading to a 95 percent confidence level with a 5 percent margin of error. For these reasons, CBP continues to conclude that the agency cannot determine whether the economic impact of the rule on small entities may be considered significant under the RFA.

B. Filing Requirements

1. Complete Claim

CBP proposed procedures in subpart E, which provides for completion of drawback claims, in sections 190.51, 190.52, and 190.53, and provides guidance on the requirements to submit a drawback claim, electronically, to CBP. These provisions are similar to the provisions in current part 191, except where it was necessary to outline all of the data elements for a complete claim (previously contained on the CBP Form 7551, Drawback Entry) and modify those requirements to comply with TFTEA-Drawback. CBP received several comments described below involving the parameters on what should be included in a complete claim and concerns over the submission and processing of those claims.

Comment: One commenter requested clarification on how to file certain documents, for which the commenter is unaware of a way to file electronically, citing as an example the requirement to file the notice of intent to export at the port of intended examination in section 190.35.

Response: CBP appreciates the opportunity to clarify. There are certain forms and documents which may be originally filed in forms that are not electronic (and not as part of drawback claims), and it is possible that such forms will later be filed as supporting documentation for drawback claims for upload through the Document Imaging Service (DIS) or manual submission. Please see the CATAIR guidance on programming as well as the Interim Guidance on how to file TFTEA-Drawback claims. Accordingly, CBP will not be amending the definition for *filing* in section 190.2.

Comment: Regarding section 190.51(e)(1)(i), official date of filing, several commenters requested that this section be revised to clarify the deficiencies, computer errors, and unresolved filing issues involved with ACE electronic drawback claim filings that occurred at the beginning of the TFTEA filing period on February 24, 2018. One commenter stated that drawback claimants and brokers should not be penalized for the inadequate electronic environment for filing of drawback claims when CBP's

programming deficiencies and issues raised by claimants and brokers remain unresolved beyond the filing timeline deadlines of the statute.

Response: CBP disagrees with the commenters' request. CBP understood that system issues could occur during deployment and the transition year, therefore, CBP published procedures to account for such issues in the Interim Guidance. The guidance establishes procedures that protect the original claim date, and inform claimants and brokers to whom questions should be directed for additional assistance.

Comment: Several commenters requested clarification for section 190.51(e)(1) regarding the date of filing and the impact on this date of subsequent required document uploads (which are not always completed on the date of filing).

Response: Regarding the submission of supporting documentation, while CBP will not be amending section 190.51(e)(1), to have the date of claim submission be the official date of filing, the claimant has a 24-hour window from the time of claim submission to upload required documentation via the Document Image System (DIS) in ACE. This 24-hour window is part of the certification contained in section 190.51(a)(2)(xvi). Otherwise, for required documentation uploaded beyond this 24-hour window, the official date of filing is the date that the DIS upload is complete.

Comment: Regarding section 190.51(e)(1)(ii), abandonment, one commenter stated that this section should be modified to account for CBP deficiencies in the ACE electronic drawback environment and no claim can be considered abandoned until all electronic filing issues have been resolved. The commenter stated that drawback claimants and brokers should not be denied recovery of legally authorized refunds under the statute because of CBP errors or electronic filing deficiencies.

Response: CBP disagrees with the comment. Pursuant to 19 U.S.C. 1313(r)(1), a drawback entry shall be filed or applied for, as applicable, not later than five years after the date on which merchandise on which drawback is claimed was imported. Claims not completed within the five-year period shall be considered abandoned. No extension will be granted unless it is established that U.S. Customs and Border Protection was responsible for the untimely filing. The statute clearly does not provide CBP with the authority to extend the time period for abandonment in this context, although there is a singular exception carved out for an event declared by the President to be a major disaster (*see* 19 U.S.C. 1313(r)(3)).

Comment: Regarding section 190.52(a), regarding the rejection of incomplete drawback claims, one commenter stated that this section must be modified to prohibit CBP's ability to reject a claim within five years of the date of importation when the reason for the untimely completion of a claim is the result of deficiencies in CBP's electronic filing environment for drawback and issues raised in filing rejections remain unresolved and/or uncorrected by CBP.

Response: CBP disagrees with the commenter. Section 190.52(a) specifically identifies the reasons for which CBP may reject a claim, which must be complete (pursuant to section 190.51(a)(1)) and timely (pursuant to 190.52(e)). CBP's automated validations facilitate the prompt acceptance or rejection of claims and a filer will be aware if there is a known issue immediately after the attempted filing of a claim. This efficiency reduces the administrative burden on CBP and enables the filer to immediately take remedial steps. Further, and pursuant to policy, CBP collaborates with filers who encounter electronic filing issues to timely resolve them. However, CBP has clarified in section 190.52 that, subsequent to claim acceptance in ACE, if it is determined by CBP that the claim was incomplete or untimely, then it may be denied.

Comment: Several commenters stated that CBP failed to provide for situations where HTSUS classification changes after importation, such as when an incorrect HTSUS number was provided on entry and subsequently corrected. One commenter expressed concern that erroneous HTSUS classifications could be granted drawback. Another commenter stated that it was essential that ACE account for situations where a change in HTSUS occurs, where the correct classification is in dispute, or when the ACE record does not match the proper classification. Some commenters noted that working with a CBP Import Specialist to correct an import entry is cumbersome and requested that CBP establish a process for situations involving a mismatch of HTSUS classification numbers. Similarly, one commenter requested that CBP establish a process for situations involving reconciliation and adjusted fees or values. Another commenter requested a clear policy and guidance in situations where ACE rejects drawback claims for rounding errors and the claimant does not have to manually adjust until the system accepts the claim.

Response: While CBP agrees with the commenters that situations may arise where the HTSUS classification changes after importation, CBP does not agree that any changes to the regulations are necessary. The commenters appear to be seeking policy guidance in specific situations, which is outside the scope of this rulemaking. Instead, a drawback claimant should coordinate with importers to ensure that import entries are properly and timely corrected such that ACE will reflect the correct import data. Drawback policy guidance issued by CBP provides additional instructions on how to facilitate the correction of import data in the other scenarios raised by the commenters, and claimants are encouraged to coordinate with CBP Drawback Specialists and other CBP personnel to ensure the correctness of their claims.

Comment: One commenter observed that proposed § 190.51(a)(2) covering drawback entry requirements would require a surety code, bond type, and amount of bond for all drawback entries. The commenter noted that the bond requirement only applies when a claimant is requesting accelerated payment of drawback. The commenter referenced the ''31-Record'' of the ACE ABI CATAIR for drawback and stated that the NPRM does not accurately reflect the ''31-Record'' requirements. The commenter suggested that § 190.51(a)(2)(iii) be modified.

Response: CBP agrees that proposed section 190.51(a)(2)(iii) needs clarification. Accordingly, CBP has amended section 190.51(a)(2)(iii) to require the following information, only if the claimant is requesting accelerated payment of drawback under section 190.92: Surety code and bond type for all bonds and, additionally, the bond number and amount of bond for single transaction bonds.

Comment: Several commenters suggested removing the requirement to provide ''factory location'' in section 190.51(a)(2)(ix) for manufacturing drawback claims.

Response: CBP disagrees with the commenter's suggestion regarding factory location. The ''factory location'' in section 190.51(a)(2)(ix) is necessary to verify compliance with the terms of the manufacturing ruling to ensure that the party identified as the manufacturer or producer is, in fact, the manufacturer or producer who obtained the manufacturing drawback ruling. The ''factory location'' is also part of the tracing of the imported merchandise or other substituted merchandise through the manufacturing or production

operations to ensure that the finished article is eligible for drawback upon exportation or destruction.

Comment: Several commenters suggested amending section 190.51(a)(2)(x) to state that the certification that the imported or designated merchandise is unused applies to 19 U.S.C. 1313(j)(1) only.

Response: The ''certification'' referred to in section 190.51(a)(2)(x) ensures that the merchandise that was exported or destroyed was unused per the requirements of 19 U.S.C 1313(j). However, CBP agrees that clarification is needed to reflect that this is not a reference to the imported merchandise, which would too narrowly limit the certification to claims under 19 U.S.C. 1313(j)(1). With this clarification, it is now evident that the certification applies to both claims under 19 U.S.C. 1313(j)(1) and (j)(2) .

Comment: One commenter suggested that the certification in section 190.51(a)(2)(xii), regarding the correctness of the drawback claim, is gratuitous and should be removed because it is included in the electronic signature requirements under the CATAIR, for the electronic submission of drawback claims.

Response: CBP disagrees with the comment. The reason why the certification is included in the electronic signature is because it is required as part of a drawback claim. This certification was also required for drawback claims filed manually before TFTEA-Drawback, as it was contained on the CBP Form 7551, Drawback Entry.

Comment: One commenter suggested that the certification in section 190.51(a)(2)(xiii), regarding the proper calculation of the drawback claim amounts when a destruction is incomplete, pursuant to 19 U.S.C. 1313(x), is gratuitous and should be removed because it is included in the electronic signature requirements under the CATAIR, for the electronic submission of drawback claims.

Response: CBP disagrees with the comment. The reason why the certification is included in the electronic signature is because it is required as part of a drawback claim. This certification is important because TFTEA further expanded the types of drawback claims for which exported merchandise could be the basis when the destruction was incomplete and requiring the certification safeguards the revenue, given that the failure to make the proper deductions for recovered merchandise would result in excessive drawback refunds.

Comment: One commenter suggested that the certification in section 190.51(a)(2)(xiv), regarding the possession of the merchandise that is the basis for a substitution manufacturing drawback claim, pursuant to 19 U.S.C. 1313(j)(2), is gratuitous and should be removed because it is included in the electronic signature requirements under the CATAIR, for the electronic submission of drawback claims.

Response: CBP disagrees with the comment. The reason why the certification is included in the electronic signature is because it is required as part of a drawback claim. This certification was also required for drawback claims filed manually before TFTEA-Drawback, as it was contained on the CBP Form 7551, Drawback Entry.

2. Filing Deadline

Comment: In section 190.27(a), CBP proposed that manufacturing drawback claims will be allowed within five years after importation of the merchandise used to manufacture or produce articles. One commenter requested that this section be clarified to state that the five-year period to file claims runs to the date of filing.

Response: CBP disagrees with the commenter's suggestion to amend section 190.27(a). The deadline for filing drawback claims, as set forth in 19 U.S.C. 1313(r), is provided for, in general, in section 190.51(e), regarding the time of filing. Section 190.51 is the provision on completion of drawback claims, and it is critical for all drawback claims. Accordingly, CBP believes that specification of the timeframe for filing in paragraph (e) clearly puts potential drawback claimants on notice of the statutory filing deadline.

Comment: CBP proposed that drawback claims under subpart J, titled Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured From Domestic Tax-Paid Alcohol, must be completed within three years after the date of exportation of the articles upon which drawback is claimed in section 190.102(e). One commenter suggested part 190.102(e) should be amended to provide for five years after the date of exportation.

Response: CBP disagrees with this comment. Claims subject to 19 U.S.C. 1313(d), for internal revenue tax refunds on flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured from domestic tax-paid alcohol, do not designate imported merchandise because there is no imported merchandise involved in the manufacturing operations. Accordingly, the new timeframe for the filing of drawback claims for TFTEA, which is triggered by the date of importation, does not apply to these claims. In the absence of any explicit statutory language regarding these filing deadlines, it will remain three years from the date of exportation, as was previously allowed prior to TFTEA.

3. Recordkeeping

Comment: In several places, CBP proposed to require the maintenance of records involving, for example, bills of materials or formulas, exportations, and transfers of merchandise. Two commenters stated, with respect to proposed sections 190.9(a), 190.10, 190.23, and 190.26, that CBP failed to add the phrase ''kept in the normal course of business'' in all relevant locations and requested that this phrase be added for consistency.

Response: CBP disagrees with the commenters' suggestion. It may be that records kept in the normal course are suitable for the purposes referred to in the comment. However, in some cases, as the records must establish certain dates and facts, it is not always the case that records kept in the normal course will meet the burden required for drawback purposes. Therefore, rather than create the impression that records kept in the normal course would be suitable in all situations, CBP will maintain the proposed language in these regulations to require the necessary information, whether or not the particular record is kept in the normal course of business in all cases.

Comment: CBP proposed in section 190.10(b)(2), the requirement that a record of the date of physical delivery of merchandise in a transfer be maintained. One commenter noted this requirement was not in the statute and requested that this section be modified to allow for evidence through the normal course of business without providing the specific date.

Response: CBP disagrees with the comment. Transfers involve physical delivery and a date is necessary to support transfers from and into inventories. The date of physical delivery must be documented in the records that support the transfer. These may be records that are kept in the normal course of business, but the specific date must be identifiable in order for CBP to verify that merchandise can be traced through any transfers between parties.

Comment: CBP proposed certain requirements regarding recordkeeping involving transfers of merchandise, including maintaining the record of the person from whom the transfer was received in proposed section

190.10(b)(8). One commenter suggested removing this requirement.

Response: CBP disagrees with the commenter to remove the requirement that those records specifically identify the person from whom transferred, as provided in section 190.10(b)(8), as it is necessary to establish the parties to the transfer of merchandise and the person from whom the merchandise was received is the transferor.

Comment: In section 190.10(c), CBP proposed requirements on the transferor of merchandise to notify the transferee(s) when the transfer does not cover the entire quantity of merchandise reported on a specific line item from an entry summary. One commenter claimed that CBP's requirement to evidence transfers by notification amounts to a new certification requirement (which the commenter claims is contrary to the statutory mandate that eliminated certificates of delivery). The commenter suggests that the transferor or transferee should be allowed to prove this information through business records kept in the normal course of business as required by the statute.

Response: CBP agrees with the comment. CBP has revised section 190.10(c) in this final rule to indicate that while parties to a transfer are required to maintain documentation sufficient to demonstrate their drawback eligibility, the first filed claim will determine the eligibility of merchandise for specific types of drawback regardless of what may be indicated in any notice shared between the transferor and transferee. CBP declines to police the nature of the notice shared between the parties. However, CBP cautions that parties who do not share sufficient and accurate information may not be exercising their due diligence in transfers, which creates potential liability not just for the importer and drawback claimant pursuant to 19 U.S.C. 1313(k), but also for all parties in intermediate transfers pursuant to 19 U.S.C. 1593a.

Comment: CBP proposed regulations regarding submission of documents and records on transfers of merchandise in proposed section 190.10(e). One commenter stated that this section should specifically state that submission of transfer documentation shall only be made upon specific request by CBP. The statute clearly states that transfer of drawback rights is a private transaction between parties. The NPRM should clearly state that fact and not present a possible regulatory delay in drawback refunds not contemplated by the statute.

Response: CBP agrees with the commenter and section 190.10(e) is clarified in this final rule to indicate that the required records must be provided upon request by CBP.

Comment: CBP proposed requirements that manufacturing drawback claimants must maintain records regarding the transfer of goods. In situations where the claimant purchased the articles, CBP proposed in section 190.26(d) that the claimant must maintain records regarding the manufacture of the articles received from the manufacturer or producer. One commenter explained how this could prove difficult, as in some situations the claimant and the manufacturer or producer could be competitors, so sharing manufacturing records would not be feasible. The commenter suggested changing the wording to provide that the manufacturer or producer be required to maintain records (kept in the normal course of business) documenting the manufacture or production of articles, and that the claimant must maintain records supporting the transfer.

Response: CBP agrees with this commenter. Understanding that the certificate of manufacture and delivery was the document establishing the record of manufacture under the old law, each party should maintain its own records under TFTEA. The manufacturer or producer is responsible for maintaining the documentation to support the actual manufacture or production. However, a claimant who is not a manufacturer or producer will not have access to these records in many instances. Accordingly, CBP has revised section 190.26(d) in the final rule to reflect that the claimant who purchases the articles is responsible for maintaining records to document the transfer of articles received. CBP has also further clarified that section 190.26(d) applies not just to transferred merchandise purchased for exportation, but also for destruction. Moreover, CBP notes that the limitations on who may claim manufacturing drawback under section 190.28 remain applicable notwithstanding the liberalization of this provision to remove the requirement for the certificate of manufacture and delivery.

4. Protests

Comment: CBP received multiple comments regarding drawback and the right to protest. One commenter stated that there was no way to officially protest a rejected or incomplete claim because it is not a successful electronic transmission. The commenter requested that CBP address this situation in the final rule, suggesting a mechanism to allow a claim that might otherwise be rejected to be filed in order to permit a protest. Another commenter, citing the joint and several liability provisions of TFTEA, stated that 19 CFR 174.12(a), the provision regarding who may file a protest, should be amended to permit the importer of the merchandise and its import bond surety the right to file a protest with respect to drawback entries that give rise to their liability.

Response: CBP disagrees with these comments. The requirements for a valid protest, which were not modified by TFTEA in any way, are set forth in 19 U.S.C. 1514. Consistent with that section, a protest may be filed, with respect to any of the decisions listed in 19 U.S.C. 1514(a), by any person specified in 19 U.S.C. 1514(c)(2), consistent with the overall requirements of 19 U.S.C. 1514 generally, and 19 U.S.C. 1514(c) in particular. Because TFTEA did not amend or otherwise speak to the statutory requirements governing the protestability of CBP's drawback decisions, CBP will not be modifying the regulations in part 174.

5. Proof of Export

Comment: CBP proposed requirements regarding proof of export in drawback claims and provided a list of documents that could be submitted as proof of export in proposed section 190.72. Multiples commenters, citing similar language in 19 CFR 191.72 regarding proof of exportation, suggested that proposed section 190.72(b) be modified to include the phrases ''in the normal course of business'' and ''including, but not limited to'' to provide flexibility in situations where the normal course of business (and the associated records) may include other methods than those currently provided for in proposed section 190.72(b). Several commenters also provided suggested language to be added to section 190.72(b)(1) to specifically include tracking identification statements for express consignment as proof of export.

Response: CBP agrees in part with the commenters. CBP reviews the totality of evidence presented when determining proof of export for drawback purposes. Accordingly, in the final rule, CBP is amending section 190.72(b) by including the phrase ''including, but not limited to'' to better align with the language in the corresponding regulation in part 191. Regarding the requests to add the phrase ''in the normal course of business'' to section 190.72(b), CBP also agrees with the commenters. The statute as amended by TFTEA allows, in 19 U.S.C. 1313(i)(2), for the possibility that drawback claimants may rely on records kept in

the normal course of business. However, CBP notes that, pursuant to 19 U.S.C. 1313(i)(1), such records must also establish fully the date and fact of exportation and the identity of the exporter. CBP therefore disagrees with the commenters' recommendations to insert tracking identification statements for express consignment in the list of specific supporting documentary evidence for proof of export in section 190.72(b)(1). It is not apparent that tracking identification statements for express consignment would constitute proof of export for drawback purposes in every case. A claimant would need to demonstrate how these statements fully establish the date and fact of exportation on their own and, if not, then the totality of the evidence would include these documents along with other supporting documents.

Comment: One commenter noted that bills of lading, while useful for supporting proof of exportation, should not be considered by CBP as the only source of such proof. The commenter requested that CBP modify section 190.52(b)(1) to state that letters of endorsement could be attached to export records kept in the normal course of business, rather than be attached to only bills of ladings.

Response: CBP disagrees, in part, with this commenter's suggestion. Records kept in the normal course of business may not always establish the date and fact of export and the identity of the exporter. However, while the commenter's suggested language is not accepted, CBP will modify section 190.52(b)(1) to state that letters of endorsement from the exporter may be attached to records or other documentary evidence of exportation, as provided for in section 190.72.

Comment: CBP proposed section 190.73, which states that an electronic export system of the United States Government may be actual proof of exportation only if CBP has officially approved the use of that electronic export system as proof of compliance for drawback claims. One commenter requested that this regulation be modified so that the records kept through the electronic export system may be ''presented as sole proof'' (rather than ''considered as actual proof''). The commenter notes that the records will be business records and can offer proof of some portion of the requirements for proving export as provided for in section 190.72(a). Another commenter requested that CBP indicate when an electronic export system will be approved and requested an explanation as to why no electronic system, such as the Automated Export System, can be approved currently. That commenter also noted that approving an electronic export system concurrently with or prior to eliminating export summary procedure from drawback regulations would be beneficial.

Response: CBP agrees with the commenters, in part, and section 190.73 is revised to state that the records may be presented as actual proof of export. However, CBP notes that section 190.73 provides that electronic proof of export will be allowed when CBP officially approves an electronic export system for this purpose and that notice of this approval will be published in the Customs Bulletin. At this time, CBP has determined that there is not an electronic export system that establishes the date and fact of exportation, as well as the identity of the exporter, which can be relied upon to demonstrate drawback eligibility. CBP also notes that the current export system, Automated Export System (AES), is largely a pre-departure filing system and therefore does not necessarily provide proof of exportation.

Comment: CBP proposed requirements regarding proof of export for drawback claims in section 190.72 and required that a notice of lading be filed under section 190.112. One commenter, noting that notice of lading is not a document that is kept in the normal course of business, requested that the requirement to file the notice of lading be eliminated and that the requirements of section 190.72 regarding proof of export be those required in section 190.112.

Response: CBP disagrees with this comment. The notice of lading certifies that merchandise was indeed laden, and lists the class of the vessel and nationality, as this information is essential to establish drawback eligibility under 19 U.S.C. 1309(b). CBP allows for a composite notice for repetitive shipments, which alleviates the burden to some extent. Section 190.72 is limited to documents that establish proof of an actual exportation for drawback claims in general. While 19 U.S.C. 1309(b) states that lading upon a vessel or aircraft may be considered an exportation under certain limited circumstances, such lading does not generally constitute proof of exportation for drawback claims and, accordingly, notice of lading is not listed as proof of exportation in section 190.72.

Comment: CBP proposed in section 190.112(e) to require the submission of notices of lading to support drawback claims made pursuant to 19 U.S.C. 1309(b). One commenter proposed that section 190.112(e) be modified to require a certification of possession of all required notices of lading and other supporting documents, rather than the actual submission of the documents.

Response: CBP disagrees with the comment. It is the act of lading on a qualified vessel or aircraft that constitutes the deemed exportation under 19 U.S.C. 1309(b). Because deemed exportation is a limited exception to the ordinary standard for proof of exportation, the documentation in support of eligibility is required for submission at the time of filing of the claim in order to protect the revenue.

Comment: For drawback claims for articles laden as supplies pursuant to 19 U.S.C. 1309(b), a notice of lading is required. Specifically, for fuel laden on vessels or aircraft as supplies, a composite notice of lading is authorized under section 190.112(h), which covers all deliveries of fuel during one calendar month at a single port or airport to all vessels or airplanes of one vessel owner or operator or airline. One commenter proposed that this composite notice of lading should not be restricted to a single port or airport.

Response: CBP disagrees with this comment. When reviewing the correctness of these claims, CBP evaluates them by analyzing their lading data based on specific ports. Accordingly, notices of lading should remain as is for purposes of administrative efficiency.

C. Refund Amount

1. Refund Methodology

Comment: CBP proposed the per unit average methodology for the calculation of claims for TFTEA-Drawback claims involving substitution. Several commenters expressed support for the per unit average method as a means of simplifying drawback claims under TFTEA.

Response: CBP appreciates the commenters' support. CBP has determined, based on the rationale set forth in the NPRM, that this method of calculation simplifies the calculation of substitution drawback claims, enabling validation of their correctness in ACE.

Comment: CBP proposed a regulation stating which duties, taxes, and fees are subject or not subject to drawback in section 190.3. One commenter requested that the regulations explicitly state which fees are drawback eligible, specifically citing agricultural fees as a point of past contention. A second commenter noted a typographical error and suggested taking the word ''of'' out of section 190.3(a).

Response: CBP agrees with the comment regarding the clerical error

and corrected section 190.3(a) in the final rule. However, CBP disagrees with the suggestion of explicitly stating what fees are eligible for drawback. The list of duties, taxes, and fees eligible for drawback in section 190.3(a) is not exhaustive. The fees that are eligible for refund are those that were imposed under Federal law, upon entry or importation, and paid on the imported merchandise. Agricultural fees that satisfy the legal requirements for drawback eligibility could be refunded, assuming that the claimant can trace them to the specific import entries upon which they were paid. However, not all agricultural fees will be eligible for drawback and CBP declines to list them as generally eligible in section 190.3(a). If a claimant needs to clarify whether a particular agricultural fee is eligible for drawback, a ruling could be requested under 19 CFR part 177.

Comment: CBP proposed that the amount of drawback allowable would ''not exceed'' 99 percent in multiple locations throughout the regulations such as in sections 190.22 and 190.32. Multiple comments were received on this language, and some comments requested that these references be amended to better align with the statutory language from 19 U.S.C. 1313(l) and state that the amount of drawback allowable ''be equal to'' 99 percent. One commenter questioned the justification for the ''lesser of'' rule, stating that the scenarios CBP cites where manufacturers manipulate drawback and lower their taxes by manufacturing cheaper products for the sole purpose of destroying them or re-routing them are not realistic.

Response: CBP disagrees with the comments suggesting that changes be made to the regulations for the purpose of selective alignment with the statutory language. For substitution manufacturing and substitution unused merchandise drawback claims, in section 190.22(a)(1)(ii) (in paragraphs (A) and (B)) and in section 190.32(b) (in paragraphs (1) and (2)), respectively, the regulations state that the drawback allowable, which is calculated using per unit averaging, will not exceed 99 percent of the lesser of the duties, taxes, and fees paid on the imported or substituted merchandise (*i.e.,* the ''lesser of'' rule). While the statutory language in 19 U.S.C. 1313(l) states that refunds will be equal to 99 percent of the duties, taxes, and fees paid on the imported merchandise, this language is subject to an explicit limitation. The limitation is expressed, for both substitution manufacturing and substitution unused merchandise drawback claims, by an exception for the ''lesser of'' rule, as indicated by the statutory language in 19 U.S.C. 1313(l), which provides that where merchandise is substituted for the imported merchandise, drawback is limited to the ''lesser of'' the amount of duties, taxes, and fees paid on the imported merchandise and the amount that would apply to the subtituted merchandise if the substituted merchandise were imported. Moreover, there are other limitations on the amounts of both types of drawback claims, including the statutory language in 19 U.S.C. 1313(x), which effectively precludes the payment of a refund equal to 99 percent of the duties, taxes, and fees paid on the imported merchandise in situations involving recovered materials. Accordingly, it would be inaccurate for the regulations to state, categorically, that drawback claimants are entitled to a refund equal to 99% of the duties, taxes, and fees paid on the imported merchandise. Relatedly, CBP has made conforming changes in this final rule to section 190.32(d)(2) (as wine claims under the alternate rule in 19 U.S.C. 1313(j)(2) are also subject to certain limitations that could impact the amount of the allowable refund, including 19 U.S.C. 1313(x)) and to 19 CFR 191.45(c) (as rejected merchandise drawback claims are also subject to the limitation in 19 U.S.C. 1313(x)). CBP has also added a new paragraph (d) to section 190.71 restating the statutory requirements for deductions for the value of recovered materials when drawback eligible merchandise is destroyed. Regarding the justification for the ''lesser of'' rule, CBP recognizes that the vast majority of drawback claimants do not attempt to manipulate the drawback program. However, there are reasonable concerns regarding the protection of the revenue given the significant expansion of the substitution standards, and the statutory language in 19 U.S.C. 1313(l) clearly directs that the ''lesser of'' rule shall be applied to substitution manufacturing and substitution unused merchandise drawback claims (except where specifically exempted).

Comment: CBP provided examples regarding the ad valorem duty rate in section 190.51(b)(ii)(3)(ii)(1). One commenter stated that these calculations did not properly address scenarios where the imported merchandise was classified under both a 10-digit HTSUS subheading number from Chapters 1–97 of the HTSUS and a separate subheading from Chapter 98, specifically within heading 9802, which provides for articles exported or returned and advanced or improved abroad.

Response: CBP agrees with the commenter that the value of the goods that is relevant for calculation of the drawback refund is not the value that is associated with the 10-digit HTSUS subheading within heading 9802 (the non-dutiable value); but, rather, it is the value that is associated with the 10-digit HTSUS subheading number from chapters 1–97 of the HTSUS (the dutiable value). CBP confirms that while these values are required to be reported for purposes of Subchapter II to Chapter 98 of the HTSUS (which applies to heading 9802 and the subheadings thereunder), the applicable dutiable value for drawback purposes is the value upon which the duties, taxes, and fees were assessed (*i.e.,* the value that is associated with the 10-digit HTSUS subheading number from chapters 1–97 of the HTSUS). Prior to the publication of the NPRM, CBP had issued both policy and programming guidance to clarify these issues for the trade. CBP also notes that, in contrast to the commenter's scenario, and as also addressed in CBP's guidance, there will be other instances where multiple HTSUS provisions and associated values may be required to be reported to CBP for drawback claims in order to obtain all refunds associated with specific imported merchandise (*e.g.,* the 8-digit HTSUS provisions from Chapter 99 of the HTSUS, which provide for temporary duties, that would need to be reported in addition to the 10-digit HTSUS subheading number from chapters 1–97 of the HTSUS, which provides for general customs, duties, taxes, and fees).

2. Valuation

Comment: CBP proposed regulations on the valuation of merchandise for direct identification claims in section 190.11(a)(1) by providing two options for valuing imported merchandise. One commenter stated that the language after the semicolon, regarding merchandise identified pursuant to an approved accounting method, is unnecessary, redundant, and confusing and provided suggested language for proposed section 190.11(a).

Response: CBP disagrees with the comment. This language provides claimants greater flexibility by allowing claimants the option of declaring the value of imported merchandise by one of two methods—either the value of the merchandise upon entry (invoice value) or if the merchandise is identified by an approved accounting method.

Comment: CBP proposed a new regulation, section 190.11(c), regarding

the valuation of destroyed merchandise to be the value of the merchandise at the time of destruction, determined as if the merchandise had been exported in its condition at the time of destruction and an Electronic Export Information (EEI) had been required. One commenter noted that it can take significant time before a manufacturer determines merchandise is defective (sometimes after a portion of the merchandise has been used in the manufacturing process or when performing quality control on finished articles) and that the value at the time of destruction can be significantly less than the amount paid for the merchandise. This commenter requested that CBP change proposed section 190.11(c), regarding the valuation of the destroyed merchandise or articles, to provide for the use of the fair market value for the merchandise rather than the value at the time of destruction.

Response: CBP disagrees with this comment. The value of the unused merchandise, determined as if it had been exported in its condition at the time of destruction, is the appropriate value to be used when the ''lesser of'' rule is applied to substitution unused merchandise drawback claims pursuant to 19 U.S.C. 1313(j)(2). This timeframe is consistent with how the ''lesser of'' rule is applied to merchandise that is exported for such claims. This timeframe also serves to protect the revenue, as intended by the ''lesser of'' rule in 19 U.S.C. 1313(l)(2)(B), by preventing claimants from importing expensive merchandise and destroying significantly less expensive merchandise (classified under the same HTSUS subheading) in order to manipulate their drawback claim refunds to the detriment of the revenue of the United States. Alternatively, claimants whose merchandise is destroyed may seek refunds calculated based on the value of the imported merchandise (without the application of the ''lesser of'' rule), by filing claims for either direct identification unused merchandise drawback (19 U.S.C. 1313(j)(1)) or rejected merchandise drawback (19 U.S.C. 1313(c)). Prior to TFTEA-Drawback, the commenter would have had to file under these provisions (as opposed to 19 U.S.C. 1313(j)(2)) in order to recover a refund based on the value of the imported merchandise. This is because destroyed merchandise that would have been significantly depreciated in value (relative to its value at the time of importation) could not have qualified for substitution under the much more stringent commercial interchangeability standard applicable to unused merchandise drawback claims under the pre-TFTEA drawback law. Moreover, adopting the suggestion of the commenter would turn the drawback program into an insurance program, and the drawback laws were not designed for the purpose of protecting against profit loss in every instance where imported merchandise is not able to be used as intended or sold.

Comment: CBP proposed a regulation regarding the valuation of substituted merchandise in manufacturing drawback claims at section 190.11(d), including the requirement that the value of substituted merchandise be the cost of acquisition. Several commenters stated that it is both impractical and infeasible to require all manufacturers to ascertain and record the acquisition value of merchandise used to manufacture a specific exported item, citing, among other things, bulk, commingled, and non-serialized merchandise inventory practices. As acquisition cost is not always a cost kept in the normal course of business, the commenters believe that this regulatory requirement is in direct violation of the statute's provisions on ''records kept in the normal course of business'' as well as the National Customs Automation Program (NCAP) goals set forth in 19 U.S.C. 1412(2). As an alternative, the commenters requested that other values be used to calculate the value of substituted merchandise. Specifically, the commenters suggested that those values could be calculated based upon generally accepted accounting principles, and suggested specific values that may be used for such a calculation should be listed, including standard costs, industry average costs, average inventory values in a specified turnover period, weighted average duty cost, and lowest valued merchandise acquired during a fixed time period.

Response: CBP agrees, in part, with the commenters. Claimants must be able to determine the value of the substituted merchandise (and support this determination) when filing substitution manufacturing drawback claims pursuant to the ''lesser of'' rule, which is set forth in 19 U.S.C. 1313(l)(2)(C). CBP has modified the definition of substituted merchandise in section 190.11(d) to reflect that substituted values for manufacturing drawback claims, which is to be calculated based on either the cost of acquisition *or* the cost of production, may be determined based upon generally accepted accounting principles. Certain of the commenters' other specific methods of inventory valuation may also be allowable, but only if they are permitted under generally accepted accounting principles. Accordingly, CBP disagrees with the suggestions to specifically list additional methods of calculating the value of the substituted merchandise. If a party requires further clarification regarding its method of calculating the cost of acquisition or production, then the claimant may request an administrative ruling (*see* 19 CFR part 177). More generally, CBP notes that the accuracy of the substituted values is critical to the proper application of the ''lesser of'' rule in 19 U.S.C. 1313(l)(2)(C), which requires an actual comparison between the values of the imported and substituted merchandise to arrive at the amount of the allowable refund for substitution drawback claims. The ''lesser of'' rule does not contain a provision for reliance on records kept in the normal course of business, nor does it otherwise entitle claimants to such reliance, for purposes of establishing the value of substituted merchandise. Finally, the drawback program is outside the scope of the NCAP program goals set forth in 19 U.S.C. 1412(2).

Comment: One commenter referred to its specific manufacturing ruling on sought chemical elements for tungsten powders and semifinished components and expressed concern that it would no longer be valid under TFTEA. The commenter also urged that CBP modify the definition of the value of substituted merchandise in section 190.11(d) to allow for certain types of costs tracked in the commenter's continuous manufacturing operations.

Response: A decision with respect to the validity of a specific manufacturing ruling is outside the scope of this final rule. As provided for in section 190.8(g)(2)(iv), a limited modification may be requested in order to comply with TFTEA-Drawback requirements. More generally, a ruling may be requested under 19 CFR part 177 if clarification is required. However, CBP notes that section 190.11(d) includes the cost of production and, as modified, will allow for the use of accounting methods under generally accepted accounting principles, which should enable the commenter to properly value its substituted merchandise.

Comment: CBP proposed regulations regarding accounting methods with certain conditions and criteria in section 190.14. One commenter provided suggested language regarding the requirement that all inputs and withdrawals, domestic and foreign, be kept as required under each accounting method for the five-year period from the date of filing a claim. The commenter also suggested adding the phrase ''for the five-year period from the import

date to the date of filing the claim'' in multiple places in section 190.14.

Response: CBP disagrees with the suggestion. Adding this timeframe is not necessary, as section 190.14 is largely the same as 19 CFR 191.14, with respect to the approved methods. Claims remain subject to their filing deadlines, as provided for in 19 U.S.C. 1313(r), and the accounting methods are only applicable to the inventories maintained within the timeframe for filing the claims.

3. First Filed and Mixed Claims

CBP proposed certain limitations on claims known as the first filed rule and the prohibition on mixed claims. These limitations were intended for two purposes, to safeguard the revenue and to ensure that drawback claimants would be paid the entirety of the refund amounts available under the drawback laws. The propensity for conflict between these purposes exists when an importer or another party to whom the importer has assigned its drawback rights splits the merchandise from a single import entry summary line to be designated as the basis for a refund on more than one drawback claim. Accordingly, such drawback claims must use the same method of refund calculation (either per unit averaging or invoice-based) to avoid a conflict. CBP received several comments described below involving concerns over the effects of these limitations on the availability of drawback.

Comment: In the NPRM, CBP proposed the first filed rule (whereby the first claim that is filed with respect to merchandise designated on a given entry summary line limits the type of claim (direct or substitution drawback, which ever was claimed first with respect any merchandise on that line) that may be filed with respect to any of the remaining merchandise designated on that same entry summary line). Multiple commenters urged CBP to reconsider this position and requested that CBP not implement the first filed rule.

Response: CBP disagrees with these comments. The first filed rule creates an essential bright line rule for simplification of drawback. It is necessary to limit a single import entry summary line to a single method of calculation of refund amounts. If invoice-based and per unit averaging calculations were to be used to calculate drawback for merchandise designated on the same import entry summary line, it is entirely possible that the last-in-line claimant would not be able to receive the full amount of the refund to which it would be entitled by law because the maximum aggregate amount of the refund available for merchandise designated on a single entry summary line cannot exceed 99% of the total duties, taxes, and/or fees paid on all of the merchandise on that line (however that total is distributed among the individual units of merchandise—whether by per unit averaging for substitution claims or by actual respective amounts for direct claims). For example, if a substitution claim were made with respect to low value merchandise designated on a line that contains both high value and low value goods, the high value goods would increase that line's overall per unit average value, thereby increasing the drawback amount paid on the substitution claim. However, if a direct identification claim were subsequently made with respect to the high value goods on that same entry summary line, the total amount of drawback remaining for that entry summary line may not be sufficient to pay the amount of drawback that would otherwise be associated with those high value goods. When an importer envisions that its merchandise might be the basis for multiple drawback claims calculated based upon different methods, it is a prudent business decision to split that merchandise among multiple entry summary lines to maximize drawback refund opportunities. In short, the first filed rule creates a predictable legal framework in which claimants and other parties to transactions can, with certainty, engage in import transactions as well as transfers of merchandise so as to ensure the full availability of the drawback refund that will be claimed. CBP notes that Section 906(g) provided CBP with the authority to determine how drawback refunds would be calculated, but there is no authority to grant less than what would properly be paid based upon a given method of calculation, or to exceed the aggregate amount of drawback available for merchandise on a given entry summary line, nor is there a legal basis to allow a claimant to modify the method of calculation to maximize its drawback refunds. Accordingly, to ensure that no inappropriate underpayments or overpayments are made, CBP had to build protections into the calculation methodologies.

Comment: A few commenters stated that CBP did not study and quantify the impact of the first filed rule on revenue or on drawback provided. Some commenters also asserted that the first filed rule would substantially reduce the amount of drawback available to trade members.

Response: CBP disagrees with the claims that CBP did not study and quantify the impact of the first filed rule. CBP analyzed and quantified the impact of the first filed rule under the ''Major Amendment 3—Generally require per-unit averaging calculation for substitution drawback'' section of the RIA accompanying the NPRM. CBP agrees that the first filed rule could result in reduced drawback for some claimants, including U.S. manufacturers and producers. While this amendment could result in lost drawback to trade members, trade members could mitigate, or even completely avoid, these losses through operational or business decisions such as, for example, breaking up, or requiring importers to break up, the various products included in a single entry into as many distinct entry summary lines as possible to ensure that the claim filing limitations do not arise.

Comment: One commenter stated that CBP did not satisfy any link between per unit averaging and the first filed rule.

Response: CBP disagrees with this commenter. The first filed rule is required to institute the per unit averaging amendments proposed in TFTEA. As previously stated, if invoice-based and per unit averaging calculations were to be used to calculate drawback for merchandise designated on the same import entry summary line, it is entirely possible that the last-in-line claimant would not be able to receive the full amount of the refund to which it would be entitled by law because the maximum amount of the aggregate refund available for merchandise designated on a single entry summary line cannot exceed 99 percent of the total duties, taxes, and/or fees paid on all of the merchandise on that line (however that total is distributed among the individual units of merchandise–whether by per unit averaging for substitution claims or by actual respective amounts for direct claims). The first filed rule limits a single import entry summary line to a single method of calculation of refund amounts to avoid such a discrepancy.

Comment: One commenter stated that CBP ''did not fulfill their obligations under TFTEA in examining the use of per-unit averaging.'' The commenter stated that the first filed rule should be withdrawn from the Modernized Drawback rule until CBP completes the study on per unit averaging mandated by Congress and issue a report on the results of that study. The commenter further stated that the RIA does not satisfy the expectations of the Congressional report because the per unit averaging drawback transfers cited

in the RIA are ''rough estimates'' and range from $23.6 million to $94.4 million over the period of analysis.

Response: CBP disagrees with this comment for several reasons. First, Congress did not specify any requirements for the way in which CBP must conduct the per unit averaging study. Congress only indicated that it expects CBP ''to study the potential impact of such line item averaging in drafting regulations.'' Second, CBP based the per unit averaging estimates in the RIA on the best data available. While CBP notes that they are rough estimates, the per unit averaging impacts cited were developed in consultation with various members of the trade community and subject matter experts. CBP chose to use a range of estimated transfer impacts given the unavailability of data, but this range purposely uses conservatively low and high endpoints. Finally, for further reference, CBP included an appendix in the NPRM's Regulatory Impact Analysis comparing the impacts of per unit averaging to the current invoice-based drawback calculation method.

Comment: One commenter requested that CBP allow a single line on an import entry summary to be designated as the basis for both direct identification claims (calculated using invoice values) and substitution claims (calculated using per unit averaging). The commenter claimed that CBP could impose a customized ''lesser of'' rule in situations where a line has already been claimed against using the per unit average calculation method for substitution claims, by comparing the per unit average amount and the invoice amount for the direct identification claim, with the lesser amount being the amount payable.

Response: CBP disagrees with this comment. There is no statutory authority under 19 U.S.C. 1313(l) to allow for the implementation of a customized ''lesser of'' rule that would effectively result in an award of less than the full 99% of the duties, taxes, and fees to which a claimant was entitled for its refund by application of the method of refund calculation required by CBP. Moreover, such a rule would prevent drawback claimants who received partial transfers of merchandise from an import entry line item from being in a position to calculate the amount of their drawback refunds, which they are required to do as part of their complete claim.

Comment: One commenter suggested adding an exception to the first filed rule for situations where merchandise on a line item is subject to duties and taxes based on a specific rate (as opposed to an *ad valorem* or compound duty rate) for sections 190.51(a)(3) and 190.51(a)(4).

Response: CBP disagrees with this comment. While customs duties assessed at a specific rate may not be affected by the type of calcuation method used (because they are based on quantity, not value), CBP notes that the same mechandise subject to customs duties at a specific rate may also be subject to other duties, taxes, and/or fees assessed at ad valorem rates. For consistency and ease of administration, CBP has determined that a transparent and brightline method of applying per unit averaging is the most reasonable approach.

Comment: In the NPRM, CBP proposed not to allow mixed claims (*i.e.,* TFTEA-Drawback substitution claims cannot designate imported merchandise if the associated entry summary was already designated on a drawback claim filed under the law in effect prior to February 24, 2016). However, these mixed claims were allowed to be submitted pursuant to the Interim Guidance (and were not rejected by the system) to enable the filing of TFTEA-Drawback claims as of February 24, 2018. Multiple commenters urged CBP to reconsider this prohibition on mixed claims. Some commenters suggested that CBP should clarify that the prohibition on mixed claims should only be for any merchandise on a particular entry summary line that has been designated as the basis of a claim under part 191 (as opposed to any merchandise covered by the same entry summary).

Response: CBP agrees with this comment. The issue of mixed claims exists because the drawback claims filed under the pre-TFTEA law did not identify the specific import entry line items upon which imported merchandise was entered. As a result, ACE cannot determine, in an automated manner, whether the imported merchandise for a particular drawback claim was previously entered on a specific line item. Because substitution drawback claims under TFTEA are calculated based on per unit averaging, they cannot designate merchandise that was previously designated on any drawback claim with an invoice-based calculation, which means all pre-TFTEA claims. Accordingly, if a substitution drawback claim is filed under TFTEA that designated imported merchandise on an entry summary that also contains merchandise that was previously designated as the basis for a pre-TFTEA drawback claim, it is necessary to determine whether the merchandise that was the basis of the pre-TFTEA claim is on the same entry line as the merchandise that is now being designated as the basis for a TFTEA substitution claim (because if so, then the same concerns that necessitate the first filed rule, discussed above, are also implicated in these circumstances). Since ACE cannot make this determination in an automated manner, it must be done manually. Nevertheless, CBP agrees that drawback should be allowed for a claimant who can provide evidence to prove that a TFTEA-Drawback substitution claim does not designate merchandise that is covered by an entry summary line that also contains merchandise that was previously claimed on a drawback claim under the pre-TFTEA drawback law. CBP has modified section 190.51(a)(4) accordingly. A related modification was made to 19 CFR 191.51(a)(3). CBP notes that mixed claims may be filed so long as supporting documentation, as defined in the regulations, is submitted to CBP within 30 days of the date of filing of the drawback claims. Also, in contrast to the Interim Guidance, in the final rule, there is no time limit on the filing of the mixed claims (although this transitional issue will no longer exist after 2024).

D. Specific Claims

1. Unused Merchandise

Comment: CBP proposed to not allow multiple substitutions in section 190.33(b)(1)(iii) in situations involving transferred merchandise and unused merchandise drawback claims. Multiple commenters requested that the prohibition on multiple substitutions be removed. One commenter claimed that section 190.33(b)(1)(iii) improperly continued to apply this prohibition on multiple substitutions contrary to TFTEA. Specifically, the commenter alleged that the definitions set forth by TFTEA in 19 U.S.C. 1313(z)(1) and (3) for the terms ''directly'' and ''indirectly'' preclude a prohibition on multiple substitutions for unused merchandise drawback claims.

Response: CBP disagrees with this recommendation. TFTEA did not modify the language in 19 U.S.C. 1313(j)(2) with respect to the prohibition on multiple substitutions. The party entitled to claim drawback must either be the importer of the imported merchandise, or must have received, directly or indirectly, from the importer, the imported merchandise, properly substituted merchandise, or some combination thereof. The proposed regulations continue to allow for multiple transfers of imported or substituted merchandise, but do not

permit multiple substitutions (*see* 19 U.S.C. 1313(j)(2)(C)(ii)). CBP notes that the definitions of directly and indirectly, as set forth by TFTEA in 19 U.S.C. 1313(z)(1) and (3), respectively, do not affect this interpretation. The definitions pertain to transfers of merchandise between importers, intermediate parties, and claimants, but they do not authorize multiple substitutions within the context of those transfers. Notwithstanding the lack of a statutory basis for multiple substitutions, as an administrative matter, they would be extremely burdensome to CBP and would pose a risk to the revenue given the numerous additional opportunities for impermissible substitutions that would exist, and which could only be monitored through manual verifications. Allowing multiple substitutions would also significantly impede CBP's ability to enforce the drawback laws by significantly complicating verifications of the correctness of substitutions, thereby jeopardizing the revenue of the United States.

Comment: CBP proposed regulations regarding which party may claim drawback in situations regarding unused merchandise drawback at section 190.33(b). One commenter noted instances of related but separate entities, which are precluded from claiming drawback under the proposed regulations (for example, an importer and a closely related exporter). The commenter provided hypothetical examples and requested that CBP amend section 190.33(b) to provide for related parties (as defined at 19 U.S.C. 1401a(g)) to the importer.

Response: CBP disagrees with the comment. There is a statutory requirement that the drawback claimant have had possession of the imported or substituted merchandise under 19 U.S.C. 1313(j)(2)(c)(ii), and CBP does not have the authority to permit substitution unused merchandise claims that do not comply with this requirement. A party that does not take possession of the imported or substituted merchandise is not eligible to claim drawback (through assignment of that right by the exporter or destroyer), regardless of the relationship as between the related party and the importer, any intermediate parties, or the exporter/destroyer.

Comment: In section 190.31(c), CBP proposed language stating that performing an operation or combination of operations on imported merchandise not amounting to a manufacture or production is not a ''use'' for purposes of 19 U.S.C. 1313(j), regarding unused merchandise drawback. One commenter requested that the phrase ''under the provisions of the manufacturing drawback law'' be removed as there is a reference to the specific statutory provision in the same sentence.

Response: CBP disagrees with this comment. The phrase ''under the provisions of the manufacturing drawback law'' will remain in section 190.31(c) because it is necessary to clarify that, under no circumstances, will a drawback claimant qualify for unused merchandise drawback if any operation or combination of operations rises to the level of a manufacture or production, regardless of whether those operations are listed in 19 U.S.C. 1313(j)(3). However, based on the review of this section, CBP has corrected in the final rule the citation in section 190.31(c) to properly reference 19 U.S.C. 1313(j)(3) (and not 19 U.S.C. 1313(j)(3)(A)).

Comment: CBP proposed section 190.183, regarding Foreign Trade Zones (FTZ) and articles manufactured or produced in the United States. One commenter suggested that section 190.183(a) be modified to also include references to unused merchandise drawback. The commenter also requested that section 190.183(b) should include a reference to the electronic equivalent of the CBP Form 214, Application for Foreign-Trade Zone Admission and/or Status Designation.

Response: CBP disagrees with the commenter. Section 190.183 is limited to a description of eligibility for FTZ merchandise for manufacturing drawback claims and so CBP declines to modify section 190.183(a) to include a reference to unused merchandise drawback claims. However, CBP notes that eligibility for FTZ merchandise for unused merchandise drawback claims is separately provided for in section 190.185. CBP also declines to modify section 190.183(b) to include a reference to the electronic equivalent of the CBP Form 214, as such a reference is unnecessary and implicitly accepted by CBP by virtue of reference to the actual form itself.

2. Rejected Merchandise

CBP proposed a new regulation in section 190.45 regarding the special rule for substitution for returned retail merchandise that is a subset of rejected merchandise provided for in 19 U.S.C. 1313(c). Several comments were received on this matter and are addressed below.

Comment: One commenter requested that CBP modify section 190.45 by adding a new paragraph regarding returned retail merchandise and the lack of use.

Response: CBP disagrees with this comment. The language in 19 U.S.C. 1313(c)(1)(C)(ii) is sufficiently clear as it provides for drawback on merchandise 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. This specific language is already provided for in section 190.41, which is the subpart of part 190 that pertains to rejected merchandise drawback claims. Accordingly, CBP will not be amending proposed section 190.45 in response to this comment.

Comment: Regarding eligibility requirements for returned retail merchandise in section 190.45(b), one commenter stated that the section is vague and subject to different interpretations based on the CBP personnel and office reviewing the claim. In the view of this commenter, the section should be modified/clarified to include a certification of non-use by the claimant and the returned merchandise subject to the written return policy of the claimant or person who received the imported merchandise from the claimant. These certifications of return could then be submitted to CBP upon request by CBP. The return policy and records of refund supporting the return could be required as part of the recordkeeping requirements for drawback payment under this section.

Response: Pursuant to 19 U.S.C. 1313(c)(1)(C)(ii), returned retail merchandise is merchandise that is 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. A certification of non-use is not required under the statute and CBP disagrees with the commenter's suggestion to impose such an additional burden on drawback claimants.

Comment: One commenter, discussing a specific ruling regarding retail operations and what constitutes use of merchandise, stated that there are significant barriers to retailers participating in drawback.

Response: CBP understands that certain inventory practices may prevent drawback claimants from maximizing drawback opportunities under both the unused merchandise drawback provision in 19 U.S.C. 1313(j)(1) and (2) along with the returned retail merchandise provision in 19 U.S.C. 1313(c). However, these statutory bases for drawback are subject to different legal requirements. The commenter

raised concerns over a particular ruling, HQ H263493, which addressed the scope of ''use,'' and criticized its application more generally to retailers. This is outside the scope of the final rule, but the commenter's concerns may be addressed through the request of a ruling pursuant to 19 CFR part 177.

3. Manufacturing Rulings

CBP proposed certain requirements in the regulations relating to manufacturing drawback in subpart B of part 190. Appendix A to Part 190 contains general manufacturing drawback rulings, under which manufacturers may operate, and Appendix B to Part 190 contains sample formats for applications for specific manufacturing drawback rulings, which provide templates for applicants. CBP received multiple manufacturing drawback-related comments.

Comment: CBP proposed regulations for specific manufacturing drawback rulings, including procedures for limited modifications to specific manufacturing rulings granted under part 191 in section 190.8(g)(2)(iv). One commenter stated that this section is not required in general due to the statutory clarity of TFTEA. Multiple commenters stated the regulation should include a requirement of prompt review and approval by CBP. Related, some comments were received indicating that CBP should provide adequate personnel and resources to timely approve the limited modifications, claiming that the current timeframe for review and approval takes close to two years for approval.

Response: CBP disagrees with the comment. The statutory clarity, alone, is not sufficient to be considered a deemed modification for all manufacturing rulings issued under part 191. In fact, those manufacturing rulings are limited, by their own terms, only to drawback claims filed under part 191. Unless a limited modification is filed, in accordance with the regulations, to modify the terms to comply with part 190, a manufacturing ruling issued under part 191 will become moot as of February 24, 2019, when TFTEA-Drawback (under part 190) becomes the sole statutory authority under which drawback claims may be approved. CBP will manage its workload with respect to the processing of drawback ruling applications and limited modifications thereto based on the available resources, but notes that most approvals do not take two years.

Comment: One commenter noted that the Interim Guidance referenced a ''representative bill of materials'' and requested that section 190.8(g)(2)(iv), which requires a supplemental application for a limited modification to file a claim under part 190 based on a ruling approved under part 191, be amended in paragraph (B) to also include this reference.

Response: CBP disagrees with this comment. An actual bill of materials must be provided as part of the application for a limited modification to bring a manufacturing ruling issued under 19 CFR part 190 into compliance with TFTEA. The use of the description for a representative bill of materials in the Interim Guidance was intended to further clarify that each drawback claim will have an actual bill of materials associated with it.

Comment: CBP proposed regulations that set out the procedures on how the public submits general manufacturing drawback rulings in section 190.7. Regarding section 190.7(b)(2), one commenter stated that the requirements are reasonable for new claimants only. One commenter noted that CBP did not provide a specific timeframe in proposed section 190.7(c) regarding when it would acknowledge receipt of letters of intent to operate under a general manufacturing ruling promptly. Some commenters requested that CBP respond within a specified timeframe, suggesting a 90-day timeframe be added to proposed section 190.7(c), noting that failing to include a timeframe could result in delays.

Response: CBP appreciates these comments but disagrees that changes are needed to the proposed regulations involved. The requirements in part 190 will be applied to all drawback claims filed for TFTEA-Drawback, both during the transition year and, exclusively, on or after February 24, 2019. Drawback claimants, for the most part, receive acknowledgment of letters of intent to operate under general manufacturing rulings well within 90 days. However, as delays may occur, retaining flexibility is essential. Further, as provided for in proposed section 190.7(b)(2), claimants may file claims at the same time as submitting the letter of intent to operate, and therefore filing timeframes will not be jeopardized.

Comment: CBP proposed a process on how CBP will review applications for specific manufacturing drawback rulings promptly and laid out the steps CBP would take for approvals and disapprovals in proposed section 190.8(e), without providing a specific timeframe as to when CBP would make its decision. Some commenters requested that CBP respond within a specified timeframe, suggesting a 90-day timeframe be added to section 190.8(e), noting that failing to include a timeframe could result in delays.

Response: CBP disagrees with this comment. Drawback claimants, for the most part, receive appropriately prompt responses regarding the approval or disapproval of specific manufacturing drawback applications (appropriate to the level of complexity and the thoroughness of the application). However, in many cases, the applications are incomplete when first submitted and require a significant amount of cooperative discussions between CBP and the applicant just to enable CBP to make a proper determination. If the regulations were to require a response within 90 days (or some other similar timeframe), many applications would simply be denied. As the process is now, the applicants are afforded the opportunity to correct and augment the application without an artificial deadline looming.

Comment: CBP proposed Appendix A to Part 190, which, like Appendix A in current part 191, sets forth the general manufacturing drawback rulings along with instructions for how to submit a letter of notification to operate under a general manufacturing drawback ruling. Multiple comments were received requesting that ''III. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) or 1313(b) for Agents (T.D. 81–181)'' be removed from Appendix A because transfers of merchandise are now documented by recordkeeping, and a manufacturing ruling is not something kept in the normal course of business.

Response: CBP disagrees with this commenter and the general ruling will not be removed from Appendix A to Part 190. Agents operating under a principal's general manufacturing ruling(s) must continue to follow the instructions outlined in T.D. 81–181. Any party that seeks to perform manufacturing or production for the ultimate purpose of making a drawback claim must be compliant with the manufacturing drawback laws, as established under this particular T.D. Records kept in the normal course of business, alone, do not demonstrate such compliance, and each transfer of imported merchandise or drawback products for manufacture or production must be supported by a manufacturing ruling, even if the party performing the operations is an agent of a principal, who is separately authorized to perform a particular manufacturing or production operation.

Comment: CBP proposed certain requirements in the regulations relating to general and specific manufacturing rulings. One commenter stated that,

beyond some very basic requirements from the statute, the requirements related to providing information to CBP could be replaced with a certification of manufacturing (and a promise to adhere to all regulatory requirements). Multiple commenters suggested edits to the appendices with a few recommending removing the appendices to part 190 altogether.

Response: Except for the changes required under TFTEA, most of the underlying processes involved in manufacturing drawback claims, including manufacturing rulings, remain unchanged. CBP maintains the authority to fully vet, prior to submission, the basis for any manufacturing claim, through the well-established ruling process, in order to ensure compliance and protect the revenue. Historically, the requirement for manufacturing drawback rulings dates back several decades, to when these rulings were considered to be contracts. In practice, CBP provided sample proposal contracts upon request, to help facilitate the mandatory submission of information regarding a manufacturing process. To reduce the burden on the trade for the development of such contracts specific to their manufacturing and production operations, in 1988, CBP published extensive guidance on how to submit these contracts, converting them to rulings, as provided for in the appendices to part 191. The continuation of the requirement for the submission of these applications, under the appendices to part 190, places no further burden on the trade, outside of the changes required by TFTEA. Moreover, these rulings facilitate the vetting of the manufacturing or production operations and the merchandise to be imported/substituted and the exported article. Any proprietary data provided to support these requirements is maintained by CBP and is not released to the public. A mere certification regarding these requirements, to be supported by a bill of materials/formula, as suggested by the commenter, does not enable CBP to fully assess whether a manufacture or production has taken place, which is integral to a proper manufacturing drawback claim.

Comment: One commenter stated that a new general ruling for manufacturing operations under 19 U.S.C. 1313(b) should be developed, where the claimant agrees to follow the substitution requirements identified in the statute. This commenter stated that there is no longer a need for specific ruling applications, review, or approval because the statute clearly defines the substitution criteria for TFTEA-Drawback claims. The commenter stated that a simple certification letter would insure compliance with the statute given the statutory requirements for substitution at the 8-digit HTSUS level. The commenter stated that implementation of a general manufacturing ruling would result in effective and efficient implementation of a manufacturing substitution drawback program under 19 U.S.C. 1313(b) given the limited resources the commenter stated that CBP has to review specific manufacturing drawback rulings.

Response: CBP disagrees with the request to create a new general manufacturing ruling based on commercial interchangeability requirements, which do not apply under TFTEA-Drawback. CBP notes more generally that the specific manufacturing rulings required in Appendix B to Part 190 require more extensive review than the general manufacturing rulings, so that CBP can ensure compliance with the applicable requirements.

Comment: CBP proposed to require the description of the merchandise and articles and the applicable HTSUS number in section 190.7(b)(3)(v). One commenter noted that in complex manufacturing situations, capturing this data will be difficult as components to be claimed could change frequently and stated that this could result in the need for frequent modification letters. This commenter also requested that the reference to the requirement that the IRS number be provided as part of the application for a general manufacturing drawback ruling be changed to a requirement for the Importer of Record number, in section 190.7(b)(3)(viii).

Response: CBP agrees, in part, with this comment. The manufacturer or producer who operates under a drawback ruling is responsible for the accuracy of the bill of materials data. Because the HTSUS classification constitutes the basis for substitution, this data must necessarily be identified for imported merchandise that will be designated for substitution drawback claims. However, claimants who do not wish to identify HTSUS subheadings for imported components used in manufacture or production for direct identification claims will not be required to do so as the merchandise will be directly traceable from importation through exportation or destruction. Accordingly, section 190.7(b)(3)(v) is revised to indicate that the applicable 8-digit HTSUS subheading number(s) must only be provided for imported merchandise that will be designated for substitution manufacturing drawback claims. However, CBP declines to revise section 190.7(b)(3)(viii) because the requirement for the IRS number remains relevant as not all applicants for general manufacturing ruling are importers. Moreover, the IRS number also effectively delineates between entities with separate legal status, which can be significant (*e.g.,* in cases where successorship is an issue).

Comment: CBP proposed to require the HTSUS number and quantity of merchandise in Appendix A to Part 190. One commenter suggested these requirements be removed and replaced with a description of the articles, unless specifically described in the general manufacturing ruling.

Response: CBP disagrees with this suggestion. A producer or manufacturer who seeks to qualify its imported merchandise for drawback should know the classification under the HTSUS. Given that this information is critical to confirm the nature of the merchandise and the propriety of the substitution, and it should be known to the drawback claimant, CBP maintains that its being provided as part of the general ruling request's merchandise description is important to ensure the enforcement of the ruling in a verification context.

Comment: CBP proposed section 190.7, providing information on general manufacturing drawback rulings. One commenter suggested that section 190.7(a) be edited to state that unincorporated business units with separate IOR numbers from a parent corporation can operate under a letter of notification submitted by the parent corporation.

Response: CBP disagrees with the comment. Section 190.7(a) specifically requires that a separately incorporated subsidiary must submit its own letter of notification and is precluded from operating under a letter submitted by the parent. This language specifically does not apply to an unincorporated subsidiary and no further clarification is needed.

Comment: CBP proposed to allow for the designation of any eligible imported merchandise or drawback product (which was used in manufacture or production) in substitution manufacturing drawback claims under 19 U.S.C. 1313(b). One commenter noted that some drawback products received through transfer are not always subject to further operations and noted that there is no provision that allows for a claimant to designate or substitute an export back to a drawback product. This commenter stated that drawback products are not unused merchandise

and that the ''other; other'' HTSUS limitation for residual (or basket) provisions, as provided for in 19 U.S.C. 1313(j)(5), did not apply and requested an allowance for substitution designation of exported articles and the drawback products received via transfer. This commenter also stated that the ''lesser of'' rule should not apply in this scenario.

Response: CBP disagrees with this comment. Substitution of finished manufactured articles is not authorized under 19 U.S.C. 1313(a) and (b). Only imported merchandise may be designated as the basis for a manufacturing drawback claim under 19 U.S.C. 1313(b). Intermediate drawback products may exist, but the imported merchandise and any other merchandise substituted for it, must be traceable through the exportation or destruction. There is no statutory authority for the substitution of the exported or destroyed merchandise, nor is there any statutory authority to circumvent the application of the ''lesser of'' rule for substitution manufacturing drawback claims, absent a statutory exemption.

4. Packaging Materials

Comment: Regarding section 190.13, one commenter requested revisions to better align with the language from 19 U.S.C. 1313(q) to reflect that packaging is drawback-eligible under 19 U.S.C. 1313(q), regardless of whether drawback is (or is not) claimed on its contents so long as the packaging otherwise qualifies under the other applicable drawback provisions.

Response: CBP agrees with the comment and section 190.13 is modified accordingly in this final rule.

5. North American Free Trade Agreement

Comment: Regarding same condition and NAFTA, one commenter requested that CBP amend 19 CFR 181.45(b)(1) to include the phrase ''including, but not limited to'' in order to provide flexibility regarding which operations could be undergone without materially altering the characteristic of the good and still be considered to be in the same condition for purposes of drawback under NAFTA.

Response: CBP does not agree with the comment. Unused merchandise drawback claims for NAFTA drawback, which applies to goods exported to Canada and Mexico, is more limited than under TFTEA-Drawback. Only direct identification claims are permitted pursuant to 19 U.S.C. 1313(j)(1) and, in addition, the goods must be in the same condition. The term same condition is more restrictive than the term unused, as it is defined in 19 U.S.C. 1313(j)(3). The term same condition is specifically defined in 19 CFR 181.45(b)(1) to be restricted to certain operations in order to comply with the limitations set forth in section 203 of the NAFTA. The commenter did not identify any specific operations that it believes to be improperly excluded under the current regulatory language and, accordingly, CBP declines to modify the language of the regulation to provide for a more expansive interpretation of same condition. However, in order to further clarify within the regulations, CBP is adding a new definition of *unused merchandise* to section 190.2, which incorporates that statutory limitations on the allowable operations for unused merchandise. This new definition will also further distinguish between unused merchandise within the meaning of 19 U.S.C. 1313(j), as implemented in part 190, and the more stringent same condition standard applicable to NAFTA claims under this provision pursuant to 19 CFR 184.45(b)(1).

Comment: Regarding inventory methods for commingled goods and NAFTA, 19 CFR 181.45(b)(2)(i) provides for the use of approved inventory methods as set forth in the appendix to part 181. One commenter requested that CBP change the reference from the appendix in part 181 to section 190.14, which provides for the identification of merchandise by accounting method for direct identification drawback claims. The commenter claimed that section 190.14 should strictly control for purposes of inventory accounting for commingled fungible goods to be identified for NAFTA same condition drawback claims filed under 19 U.S.C. 1313(j)(1).

Response: CBP does not agree with the comment. The provision in 19 CFR 181.45(b)(i), which provides for accounting for fungible goods commingled in inventory, applies to unused merchandise exported to Canada or Mexico in the same condition as imported and for which drawback is claimed under 19 U.S.C 1313(j)(1). The provision distinguishes between inventories limited to only non-originating merchandise and inventories that are not limited to only non-originating merchandise. For the former, in 19 CFR 181.45(b)(2)(i)(B), CBP requires the use of section 190.14 for the identification of the imported merchandise. However, for the latter, in 19 CFR 181.45(b)(2)(i)(A), CBP requires the use of the accounting methods in the appendix to part 181. The accounting methods in section 190.14, and the appendix in part 181 are not the same, and CBP intentionally distinguished the circumstances in which each would be allowed for purposes of the identification of merchandise for NAFTA same condition drawback claims under 19 U.S.C. 1313(j)(1). The reason that the accounting methods in section 190.14 may not be used for inventories that are not limited to only non-originating merchandise, in 19 CFR 181.45(b)(2)(i)(A), is because the outcome would be so complex—in terms of the tracing of merchandise—that verification by CBP would be an extreme administrative burden. As a result, CBP will not adopt the commenter's suggestion.

E. Bonding

1. Bond Type

Comment: CBP proposed in section 190.92(e)(3) to require a single transaction bond for claims involving accelerated payment filed before CBP provided written notification of approval. Multiple comments were received stating that this requirement (for a single transaction bond) was too restrictive, and suggested that the regulation provide flexibility of permitting claims under a continuous bond if there was sufficient balance for the amount of accelerated payment claimed.

Response: CBP agrees with the comments and section 190.92(e)(3) is modified in this final rule by removing the language limiting the bonding type to single transaction bonds, which will allow for an active continuous bond or a single transaction bond (with sufficient balance in place) to cover the amount of accelerated drawback to be paid on the claim.

Comment: One commenter stated that CBP is not carrying forward the existing drawback regulation in 19 CFR 191.73, which provides for requirements of the Export Summary Procedure (ESP), to proposed part 190. Instead, CBP will ultimately approve an electronic export system of the U.S. Government for use in verifying actual proof of exportation. The text in 19 CFR 113.65(a) creates obligations triggered by the use of the ESP and the commenter recommended that this paragraph be amended in order to establish a sunset date of February 23, 2019.

Response: CBP disagrees with the comment. ESP is only required in 19 CFR part 191, and so the terms of this agreement do not apply to claims filed under part 190 with a bond posted for accelerated payment. Accordingly, the de facto date is when part 191 is no longer allowed for drawback claims,

which is as of February 24, 2019, as provided for in 19 CFR 191.0.

2. Joint and Several Liability

Comment: Several commenters questioned whether CBP intends to pursue importers to recoup payment of erroneous drawback claims.

Response: Any person making a drawback claim is liable for the claim. *See* TFTEA 906(f)(1). In addition, TFTEA expressly states that importers are also liable for any drawback claim made by another person with respect to merchandise imported by the importer. TFTEA 906(f)(2) (amending 19 U.S.C. 1313(k)). Pursuant to TFTEA, CBP reserves the right to recoup from the importer payment of erroneous drawback claims based on merchandise imported by the importer. The importer and the claimant are ''jointly and severally'' liable pursuant to section 906(f)(3). Further, 19 U.S.C. 1593a, the drawback claim penalty statute, is not limited to the actions of the claimant. 19 U.S.C. 1593a provides that no person, by fraud or negligence, may seek, induce or affect, or attempt to seek, induce, or affect, the payment or credit to that person or others of any drawback claim by means of any document, written or oral statement, or electronically transmitted data or information, or act which is material and false, or any omission which is material. 19 U.S.C. 1593a also covers aiding or abetting any other person to violate the drawback statute. Section 190.62 reiterates the criminal and civil penalties related to drawback and section 190.63 incorporates the joint and several liability into the new drawback regulatory regime.

Comment: CBP proposed an additional import bond condition contained in section 113.62(a)(4), establishing that, with respect to merchandise imported by the principal, the principal and surety are liable to pay erroneous drawback payments made to a drawback claimant who is not the principal. Several commenters stated that such an import bond requirement was misplaced. The commenters noted that drawback is not part of the import transaction and therefore it is inappropriate for a bond condition to require the importer and its surety to maintain liability for the actions of a future assignee, who is unknown at the time the import bond is written. Some commenters suggested that any importer drawback bond requirement should be separate from the import bond conditions and pointed to amending section 113.65, which covers bonds for repayment of erroneous drawback payments.

Response: After careful consideration of the comments, CBP is withdrawing proposed section 113.62(a)(4). CBP agrees that there are several ways to address the importer's liability to pay erroneous drawback payments claimed for merchandise imported by the importer. CBP may take appropriate action in the future to require, for completion of a drawback claim, a bond from an importer whose imported merchandise is subject of a drawback claim. CBP also notes that, currently, only accelerated payment claims require a bond, as provided for in sections 190.51 (Completion of Drawback Claims) and 190.92 (Accelerated Payment). CBP may propose, in the future, that all drawback claims be bonded.

Comment: CBP also proposed an additional import bond condition regarding claims involving internal revenue tax imposed under the Internal Revenue Code of 1986 (IRC), as amended, in proposed section 113.62(m). Several commenters expressed concerns regarding this additional bond condition. One commenter pointed out that the provision would extend to all provisions of the IRC as drafted, not just the excise taxes contemplated by the NPRM. Other commenters stated that a bond covenant not to file, or transfer the right to file, a claim, puts the importer in the untenable position of having to violate a bond condition in order to file a protective claim so as to thereafter be able to contest in court the application of the excise tax refund language in this final rule. Some commenters also discussed the proposed changes to section 113.62 extending the liquidated damages to a violation of proposed section 113.62(m) and asserted that this proposed change creates a punitive, not compensatory situation, with the liquidated damages likely exceeding the maximum drawback penalties.

Response: After careful consideration of the comments, CBP is withdrawing proposed section 113.62(m) and the conforming changes to section 113.62. As stated in the response to the comment on proposed section 113.62(a)(4) above, CBP may in the future take action to require a bond covering an importer's joint and several liability for drawback claims based on the importer's imported merchandise.

F. Federal Excise Tax and Substitution Drawback Claims

CBP proposed to add text clarifying the prohibition on double drawback: Drawback of certain excise taxes pursuant to 19 U.S.C. 1313 is allowed only to the extent that tax has been paid and not refunded or remitted on the export or destruction that is the basis for the drawback claim.

1. Double Drawback Generally

Comment: One commenter stated that essentially all domestically produced wine would no longer be available for substitution unused merchandise drawback under the NPRM, even though Congress has supported substitution and enacted special rules for wine producers providing drawback based on color and value. Several other commenters expressed opposition to limits on duty drawback or substitution drawback.

Response: CBP disagrees that the rule would prohibit export of domestically produced wine from being the basis for substitution drawback. Many of these commenters appear to have conflated double drawback of excise taxes with drawback of duties, or substitution drawback generally. The statute does not prevent substitution drawback, but it does prevent claiming two drawbacks of excise tax, one on the export and one on the import, on the basis of a single export. The proposed rule, as required by statute, would continue to allow for the drawback of duties and fees on imported products, and it would also allow drawback of excise tax on imported product, when that claim is based on an exported product for which the tax has been paid and not refunded.

CBP agrees that Congress has supported substitution drawback. In fact, the rule and statute expand the availability of substitution for drawback claims. Currently, substitution unused merchandise drawback claims for wine are permitted within the same color where price variation does not exceed 50 percent. This practice continues under TFTEA, which also allows for substitution unused merchandise drawback claims when the imported and substituted merchandise are classifiable under the same 8-digit (or, in some cases, 10-digit) HTSUS subheading number, as provided for in 19 U.S.C. 1313(j)(2) and (5).

The prohibition on double drawback of excise taxes does not preclude drawback of excise tax on exported goods when that export is not the basis for a second claim of drawback of excise taxes on an import. The excise tax regime already encourages U.S. exports of goods subject to excise taxes by virtue of Internal Revenue Code provisions that refund or remit excise tax on goods that are exported and not consumed domestically.

Comment: One commenter stated that drawback of excise taxes based on domestically produced exports on which no tax has been paid is no more

a double drawback than would be a producer exporting its product and claiming drawback against duty paid for imported products. Other commenters similarly stated that there is no distinction between drawing back excise tax when no tax has been paid on the export and the drawback of duties.

Response: CBP disagrees with these commenters. Not all goods are subject to excise taxes. Generally, under the excise tax regime, goods consumed domestically are taxed, regardless whether they are of foreign or domestic origin. The import duty regime levies tariffs only on imported products, an important difference. When a domestic product is exported, no duty is refunded, remitted, or otherwise extinguished because, unlike most excise taxes, no duty is imposed on domestically made products. Because no import duty is imposed on the domestic substituted product, and thus no duty liability is remitted upon its export, there is no double drawback of duties in the commenter's example. When there is, however, an excise tax liability associated with the substituted domestic product that has been either refunded or remitted upon export, and that export is also used as the basis for an additional refund or remission of tax on an import, then there are two drawbacks—a double drawback that 19 U.S.C. 1313(v) prohibits.

Comment: One commenter stated that the NPRM's assertion, that double drawback results in imported product being introduced into commerce with no net payment of excise tax, is false because the import is tax-paid and consumed before drawback has been claimed. The comment states that the reality of claiming drawback is that designated imported merchandise for drawback generally comes from the oldest consumption entry or warehouse withdrawal under the retroactive drawback time period, which can be up to five years prior to exportation of substituted merchandise.

Response: CBP disagrees that the drawback of taxes after their payment, even if this follows the sale of the imported merchandise in the United States, materially changes the NPRM's explanation or analysis, even if an importer were to receive the payment five years after importation. To reflect the actual incidence of the tax, one must look at the transaction as a whole—the import, export, and corresponding drawbacks. Although the excise taxes on the imports are paid initially at entry in this example, the eventual drawback of 99 percent of these taxes indeed results in the imported product being introduced into commerce and consumed domestically with a net tax of only one percent of the excise tax that is applied to domestic goods. In the example provided, there would be no excise tax paid on the substituted merchandise that is exported, or if there was such a tax paid, it could be refunded. Such provisions in the tax code continue to encourage exports.

Comment: Several commenters stated that 19 U.S.C. 1313(v) operates only to prevent multiple drawback claims filed under Title 19 or with CBP based on the same exported merchandise. The commenters stated that the language of 19 U.S.C. 1313 makes it clear that it has no relationship to drawback under the Internal Revenue Code and that section 1313(v)'s ''claim for drawback'' language has the same meaning as the term ''drawback claim'', defined in section 190.2 and 19 CFR 191.2(j), which relate to an entry filed with CBP.

Response: CBP disagrees that the scope of 19 U.S.C. 1313(v) is so limited as to prevent only multiple drawbacks processed by CBP based on the same exported or destroyed merchandise. Congress adopted no such limitation on the language of section 1313(v). The language of section 1313(v) is broad by its terms, stating that merchandise used to satisfy ''any claim for drawback'' cannot be the basis for ''any other claim for drawback.'' This expansive language contrasts with the language used elsewhere in section 1313 to refer to particular kinds of drawback. *See* 19 U.S.C. 1313(j), (k)(1), and (1)(2)(A), (B), and (C) (referring to ''drawback *under this section*'') (emphasis added); 1313(n)(2) (referring to ''NAFTA drawback''); and 1313(n)(4) (referring to ''Chile FTA drawback''). CBP further disagrees that the regulatory definition of ''drawback claim'' used by CBP to administer its drawback payments under the customs law forecloses a broader definition of ''claim for drawback'' for the purpose of 19 U.S.C. 1313(v). While the CBP regulatory definition was focused only on the actual payments CBP makes pursuant to the customs law, the language of section 1313(v) is not so narrow. Further, a request for a payment is satisfied by a payment, not by exporting or destroying merchandise. If Congress had intended ''any claim for drawback'' to mean only the specific written request for drawback payment, it is unlikely that it would have referred to ''[m]erchandise that is exported or destroyed to satisfy any claim for drawback.'' Instead, CBP believes that Congress used ''any claim for drawback'' more broadly, in the sense of a legal claim or entitlement, the elements of which may be satisfied (in part) by the exportation or destruction of merchandise. To clarify its scope, and its use in these two different contexts, CBP is amending its definition of ''drawback claim'' in 19 CFR 190.2.

Comment: One commenter claimed that there is a long-established precedent for paying double drawback of excise taxes on wine.

Response: A CBP field office first paid double drawback of excise tax on wine claims inadvertently and these payments have continued since that time. This grant of double drawback was not effectuated or ratified by any CBP rule, guidance document, or other action of general applicability, and CBP is unaware of any approval of this administrative treatment beyond the responsible field office. Customs law generally requires a notice and comment process to change a practice that has become an established ''treatment previously accorded by the Customs Service,'' 19 U.S.C. 1625(c), and many private parties may regard their receipt of double drawback as an established treatment. However, CBP is not aware of granting double drawback claims for commodities other than wine. The proposed drawback regulations clarify that the prohibition on double drawback applies to wine just as it applies to other commodities subject to excise taxes. For all such commodities, drawback claims for excise taxes on imports are only allowed to the extent that tax has been paid and not refunded on the export or destruction that is the basis for the drawback claim.

CBP believes the best reading of 19 U.S.C. 1313(v) precludes such a double drawback, but to the extent section 1313(v) may be considered ambiguous, CBP has adopted a reasonable construction of the prohibition on double drawback that appropriately advances the policies of the excise tax regime. That regime provides, on net, for the collection of an excise tax on goods that are consumed domestically. It would undermine the policy of this regime if certain imported goods could be consumed domestically free of excise tax, due to double drawback.

Comment: Several commenters asserted that ''drawback'' does not include an exemption from tax, and specifically that the statutory schemes allowing the export of alcohol beverages from bond without payment of tax cannot be a drawback because no tax obligation exists. They state there is neither a refund nor a remission. One commenter asserted that exporting from a TTB-bonded facility is a tax exemption and not a drawback or claim for drawback. The commenter stated that there is no taxable event because

that tax is never assessed on alcohol beverage exports.

Response: CBP disagrees that the export of alcohol beverages without payment of excise taxes is not remission of tax and therefore not a drawback for the purposes of 19 U.S.C. 1313(v). Alcohol taxes on domestic product are imposed, by operation of law, before or upon removal from bond. Those products may be allowed to be removed ''without payment of tax,'' but that is not synonymous with ''free of tax.'' *See, e.g.,* 26 U.S.C. 5214. The tax liability is extinguished only upon export. *See, e.g.,* 26 U.S.C. 5062(b). Drawback encompasses both refunds and remission of unpaid tax liabilities that were determined or otherwise imposed by Federal law. The understanding that drawback includes export from a TTB-bonded facility is consistent with Congress's use of the term ''drawback'' in 19 U.S.C. 1313(d), which refers to export of domestic products on which tax has been paid *or determined* (*i.e.,* not yet paid), and in 26 U.S.C. 5062(b), which describes the extinguishment of a product's tax liability upon export as a ''drawback.'' Moreover, it would be anomalous for 19 U.S.C. 1313(v) to prevent revenue loss only when it arose in the form of a refund of amounts already paid and not because it arose from withdrawal without payment of tax, where the unpaid tax liability is remitted.

Comment: One commenter asserted that the NPRM interprets the statutory language too broadly in defining drawback, stating that the NPRM attempts to redefine the terms ''drawback'' and ''claim for drawback'' as used in 19 U.S.C. 1313(v) to include any tax-free exportation of domestically produced goods to which an excise tax might otherwise apply and that this is inconsistent with statutory language and congressional intent. The commenter stated that only three of at least seven different Internal Revenue Code provisions governing the excise tax status of exported beer, wine, spirits, tobacco, and petroleum products use the term drawback and that, in these cases, they specifically refer to refund of a tax already paid or extinguishment of a previously determined tax liability. The commenter explained that the statutory framework, including the ''parallel statutory schemes'' for beer, wine, and spirits, notwithstanding bond requirements, never requires determination of the tax on these products bound for export and that the possibility that a tax liability would be incurred if the goods were not exported is not sufficient to create an obligation that requires remission.

Response: CBP recognizes that not every IRC provision concerning remission of excise tax liability expressly uses the term drawback, but disagrees that the rule's interpretation of the prohibition in 19 U.S.C. 1313(v) is too expansive. Rather, for reasons described in the NPRM, 19 U.S.C. 1313(v)'s prohibition on multiple drawback claims is best read to mean that excise taxes may not effectively be drawn back twice on the basis of a single export—once for the export of the substituted merchandise and then again with respect to the imported merchandise for which the exported merchandise is being substituted. This is the case even if the excise tax statute does not use the term ''drawback'' to describe refund or remission, because such statutes create the same economic effect and operate, as a commenter explained, parallel to statutes that do use the term. Section 1313(v) broadly refers to ''any claim for drawback,'' and Congress's inconsistent use of the term ''drawback'' in the Internal Revenue Code does not preclude CBP from construing that term—particularly its use in combination with the term ''any''—to encompass transactions that are identical in economic substance to transactions that Congress has expressly label a ''drawback.'' *Compare* 26 U.S.C. 5062(b) (which uses the term drawback to describe remission upon export of a tax liability determined but not yet paid for wine and distilled spirits) *with* 26 U.S.C. 5704(b), 27 CFR 44.61, 44.66 (the similar process for tobacco taxes that also provides for remission of a tax liability upon export but does not use the term drawback) *and with* 26 U.S.C. 5051(a)(1)(A), 5053(a), 5054(a)(1), 27 CFR 25.93, 27 CFR Subpart G (the similar process for beer taxes that provides for remission of tax liability imposed on removal upon export). As explained previously, the language in 19 U.S.C. 1313(v) is broad and does not suggest an intent for ''any claim for drawback'' to be interpreted narrowly.

Comment: One commenter stated that, contrary to the NPRM text, federal excise taxes are not imposed on all tobacco products and cigarette papers and tubes manufactured in or imported into the United States. The commenter reproduced 26 U.S.C. 5703 and 5704 and stated that section 5704 provides for exemption from excise taxes for tobacco products removed in bond from domestic factories and for products exported. The commenter stated that an exemption from excise tax is not an extinguishment of liability from tax but rather there is no excise tax imposed on tobacco products removed in bond from domestic factories and for products exported.

Response: IRC section 5701 (26 U.S.C. 5701) imposes an excise tax on tobacco products manufactured in or imported into the United States. IRC section 5704(b) (26 U.S.C. 5704(b)) provides permission to remove from bond without payment of tax in accordance with such regulations and under such bonds as the Secretary shall prescribe. This statute does not provide permission to remove free of tax. The tax liability of the product to be exported is only extinguished upon proof of export. *See* 27 CFR 44.66. Consequently, CBP disagrees with the argument that this is not a drawback for purposes of 19 U.S.C. 1313(v).

Comment: Several commenters refer to the TTB's use of ''drawback'' in a more narrow way than in the NPRM. These commenters distinguish TTB's drawback process on TTB's Forms 5130.6, 5120.24, and 5110.30 from withdrawal for exportation on TTB's Forms F 5100.11 and 5130.12. One commenter also cites an online TTB forms tutorial glossary that defines drawback as a return or rebate of excise taxes previously paid.

Response: CBP disagrees that TTB's use of the term ''drawback'' in different, narrower ways in some contexts precludes the interpretation of 19 U.S.C. 1313(v) reflected in the rule. TTB does not interpret or administer 19 U.S.C. 1313(v) or other customs laws, and must distinguish between taxes that have been paid and those that have been forgiven for purposes of determining whether a refund of tax should be paid.

Comment: Two commenters asserted that the rule's changes to 19 CFR 191.22, 191.23, and 191.171, provisions for drawback under the pre-TFTEA law, reflect an impermissible attempt to circumvent the statutorily-mandated one-year transition period and should be withdrawn in their entirety.

Response: CBP disagrees that prohibiting double drawback implicates TFTEA's transition period. The statutory prohibition on double drawback, 19 U.S.C. 1313(v), predates TFTEA. Double drawback was contrary to law before TFTEA, and TFTEA did nothing to alter this. Accordingly, the rule correctly prohibits double drawback for all claims without regard to the transition period provided for TFTEA changes. However, as noted above, CBP is providing a 60-day delayed effective date for regulations regarding the drawback of excise taxes and clarifying the prohibition on double drawback. Other sections of the regulation will go into effect immediately.

Comment: Two commenters stated that under the definition of drawback in 19 CFR 191.2(i), domestically-produced wine exported exempt from tax cannot create a drawback, because it is not an importation. The commenters further note that Congress quoted this customs definition when enacting TFTEA.

Response: The existing regulatory definition was adopted when, at least as a practical matter, the drawback of excise taxes was not available on imported goods. The commenter cites the Senate Finance Committee's quotation of the definition in its general description of drawback. This recent legislative history did not speak to Congress's understanding of the phrase in section 1313(v), much less Congress's intent when it enacted that provision in 1993. Moreover, the existing CBP regulations contain no provision implementing section 1313(v) and therefore do not control the agency interpretation of the phrase ''any claim for drawback'' as used in that section. CBP is amending the 19 CFR 190.2 definition of drawback in the final rule, however, to further clarify that it is only for purposes of CBP's authority to pay claims. As revised, the definition explicitly recognizes that the term ''drawback'' has a broader meaning outside the specific context of customs payment of drawback, such as the drawback associated with exporting merchandise subject to an excise tax. CBP is also deleting the cross reference to 19 CFR 101.1 that was proposed at 190.3(a)(3). It had been included to provide for drawback of internal revenue taxes in manufacturing drawback, but it is no longer necessary because TFTEA makes explicit when tax is subject to drawback.

Comment: Two commenters proposed that the potential abuse of double drawback through destruction be addressed directly rather than by prohibiting all double drawback. One of these commenters suggested regulations under Internal Revenue Code section 5008 may be an avenue for doing so, or else by deleting the words ''export or'' from the proposed regulatory text in sections 190.22, 190.32, and in 19 CFR 191.22 and 191.32.

Response: Section 1313(j) makes plain that both exportation and destruction are valid bases for substitution drawback, available on equal terms, and section 1313(v) similarly makes no distinction between export-based drawbacks and destruction-based drawbacks. CBP does not believe that section 1313(v) should be read so narrowly as to invite widespread abuse that would thwart its purpose, on the assurance that section 5008 could be used to curb some of the abuse.

Comment: Two commenters stated that excise tax drawback provides a WTO legal export promotion incentive that makes the U.S. wine industry competitive in world markets or helps offset the risk of developing foreign markets.

Response: Drawback of excise taxes not in excess of the amounts that have accrued for the product can be acceptable under WTO rules. The proposal will continue to allow drawback of excise taxes on imports, as long as the export on which the drawback claim is based is in taxpaid status. Trading partners have complained that double drawback, or drawback granted on the basis of exports for which a drawback has already been granted, amounts to a disguised export subsidy prohibited under WTO rules. In addition, for reasons explained in the NPRM and below, CBP believes that the practice of double drawback is inefficient in promoting the competitiveness of exports and disadvantages some U.S. domestic producers.

2. Harbor Maintenance and Oil Spill Liability Taxes

Comment: Several commenters stated that the prohibition on double drawback would change the treatment of drawback of harbor maintenance taxes (HMT) and oil spill liability trust fund taxes (OSLTF). Some commenters stated that the NPRM's interpretation of 19 U.S.C. 1313(v) would limit drawback claims to only one claim across all types of duties, taxes, and fees. They state that if exportation without payment of tax constitutes a claim for drawback, then this would bar drawback not only of excise taxes but also of duties, fees, and taxes such as HMT and OSLTF. One commenter stated that OSLTF is never imposed on petroleum products refined in the United States and suggested that this lack of taxation cannot be characterized as a drawback. This commenter further stated that Chapter 38 of the Internal Revenue Code should not have been included in the proposed regulatory text designed to prevent double drawback because there is no chance of a double drawback arising under OSLTF imposed by that chapter.

Response: CBP proposed no changes with regard to HMT or OSLTF in the NPRM. CBP has neither adopted nor proposed an interpretation that would limit a claimant to only one duty, tax, or fee upon which to claim drawback. A single claim for drawback on a particular product can (and often does) cover multiple types of liabilities, while still remaining a single, consolidated claim. Nothing about CBP's interpretation of section 1313(v) implies that the prohibition on double drawback should be applied *across* all types of taxes, duties, and fees rather than *within* each class. That issue is distinct from the question whether drawback encompasses remission of tax liabilities not yet determined.

In any event, it is not CBP's intent to limit drawback in the manner the commenters suggest. With respect to pre-TFTEA drawback law, CBP believes such an interpretation is inconsistent with the statutory language of 19 U.S.C. 1313(j), which provides that each duty, tax, or fee imposed under federal law upon entry or importation can be eligible for drawback. With respect to post-TFTEA drawback law, CBP believes that section 1313(l) (which is cross-referenced in (j)(1) and (j)(2)) provides conjunctively for refunds of ''99 percent of the duties, taxes, and fees paid'' (emphasis added). CBP's position is that merchandise exported or destroyed to satisfy a claim for drawback cannot be the basis for any other claim for drawback of the same tax.

CBP also disagrees that the 19 U.S.C. 1313(v) prohibition on multiple drawback claims limits CBP's current practice with regard to HMT or OSLTF. HMT does not apply to exports. *See* 26 U.S.C. 4462(d). Finally, 26 U.S.C. 4461, in Chapter 36, imposes the HMT, while the proposed section 190.171(c)(3) only addresses taxes imposed under Chapters 32 and 38. Therefore, it is clear drawback of HMT based on the exported U.S.-refined fuels would remain available, even though the section 4081 taxes were never paid on the export.

Similarly, it is not possible for double drawback of excise tax to arise with respect to OSLTF as it has with wine. A U.S. refiner is responsible for paying OSLTF on the inputs for domestic fuel production. That tax attaches, inter alia, per 26 U.S.C. 4611(a)(1), when crude oil is received at a United States refinery. Consequently, and as explained above, all exports of substituted domestic petroleum products are subject to the OSLTF, but at an earlier stage in the production chain. The proposed amendments to sections 190.171(c)(3) and 19 CFR 191.171(d) are not intended to limit drawback of the OSLTF. Under the OSLTF regime, the tax is always paid, whether on imported product or domestically produced product. There is no provision in the Internal Revenue Code for drawback of OSLTF upon export. The tax is never deferred, remitted, or refunded under a statutory provision other than Title 19 drawback.

Thus, this situation is distinct from the double drawback scenarios that can arise with excise taxes that may be remitted or refunded. CBP considers the tax to be paid even though it was paid on the inputs for exported substituted product and not on the product itself. To avoid any potential confusion about the continued availability of OSLTF drawback, CBP is changing the regulatory text in the final rule to exclude Subchapter A of Chapter 38 from the scope of the restrictions in 19 CFR 190.22(a)(1)(ii)(C), 190.32(b)(3), 190.171(c)(3), 191.32(b)(4), and 191.171(d).

3. Statutory Prohibition on Double Drawback and Legislative Intent

Comment: Several commenters stated that ending double drawback on wine and declining to extend the practice to other commodities is contrary to the language of the statute and to legislative intent. One commenter stated that the rule disallows excise tax drawback provided for by TFTEA and does not further Congress's purposes.

Response: CBP does not agree that Congress intended to permit double drawback when it enacted TFTEA. TFTEA did not amend 19 U.S.C. 1313(v), which expressly prohibits double drawback, or make any other statutory changes that indicate approval of double drawback.

While TFTEA expands eligibility for substitution drawback, eligibility for substitution drawback and double drawback are separate issues. The more liberalized substitution standard provided for by TFTEA and these regulations does not require allowing double drawback. Section 1313(v) continues to prohibit double drawback.

Comment: Several commenters stated that TFTEA's ''lesser of'' rule clarifies that double drawback is permitted and makes no exception for substituted merchandise that was subject to a tax exemption or refund.

Response: CBP disagrees that TFTEA allows double drawback. The commenter refers to TFTEA's ''lesser of'' rule, which is a safeguard that limits drawback claims to the lesser of the duties, taxes, and fees paid on imported merchandise or the duties, taxes, and fees that would have been paid on the substituted merchandise if it were imported. It applies independently of any double drawback, and therefore does not indicate whether Congress intended to allow such a practice. The ''lesser of'' rule does not override the 19 U.S.C. 1313(v) prohibition on double drawback, but rather, sections 19 U.S.C. 1313(j)(2) and (l) are both subject to that prohibition. As addressed above, drawback in the form of a remission of an excise tax that occurs upon exportation is a drawback for purposes of 19 U.S.C. 1313(v).

Comment: Several commenters argued that the withdrawal of a 2009 NPRM that proposed a similar clarification with respect to the prohibition on double drawback demonstrates that this rule is not sound or backed by statute. These commenters claimed that there was significant opposition to the 2009 NPRM, including from Members of Congress. Several commenters asserted that because Congress was aware of the withdrawn 2009 NPRM and did not subsequently address the issue in TFTEA in 2016, Congress ratified CBP's payment of excise tax drawback claims without regard to whether excise taxes were in fact paid on the substituted merchandise.

Response: CBP disagrees with this comment. CBP's policy decision to withdraw the 2009 NPRM is not probative of legislative intent under any accepted methods of statutory construction. Withdrawing the 2009 NPRM provided Congress with an opportunity to consider double drawback legislation. Congress ultimately decided against authorizing double drawback in TFTEA and left section 1313(v) in place. Although CBP has paid double drawback of excise taxes on wine since 2004, the clarification on double drawback contained in this rule will ensure that double drawback of excise taxes on wine is prohibited in the same way as it has always been for all other commodities subject to excise tax. Congress took no steps in TFTEA to authorize double drawback, despite knowing that CBP was not granting double drawback to distilled spirits, tobacco, beer, and fuel—all of which are governed by substantially similar drawback regimes as wine.

Comment: Several commenters stated that the ''notwithstanding any other provision of law'' language in 19 U.S.C. 1313(j)(2) was added specifically to overturn court decisions that upheld the denial of claims for HMT drawback. The commenters stated that this not only changed the HMT treatment but also means that no other provision of law can restrict drawback eligibility; they state any excise tax is recoverable notwithstanding any other provision of law—even if doing so conflicts with other legal provisions. One commenter also cited case law for the proposition that ''notwithstanding'' clauses such as this are clear and should be interpreted strictly. Another commenter described the history of the ''notwithstanding'' language in 19 U.S.C. 1313(j)(2), stating that it reflects Congress's overturning of CBP's practice of rejecting excise drawback claims under the customs laws on the basis that the Internal Revenue Code was the exclusive means of drawing back those taxes. The commenters also noted that 19 U.S.C. 1313(j)(2) delineates precise conditions under which substitution drawback claims must be allowed, and paying tax on the substituted exported merchandise is not among them. The commenters stated that the NPRM is, for these reasons, inconsistent with 19 U.S.C. 1313(j)(2).

Response: CBP agrees that the legislative history indicates that Congress intended the ''notwithstanding any other section of law'' language to clarify that drawback of HMT is permitted. CBP disagrees, however, that this language was intended to limit the operation of 19 U.S.C. 1313(v)'s prohibition on double drawback. Courts have cautioned against literal constructions of ''notwithstanding any other provision of law'' clauses that ''narrow so dramatically an important provision that it inserted in the same statute.'' *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran* v. *Elahi,* 556 U.S. 366, 386 (2009); *see also Oregon Natural Resources Council* v. *Thomas,* 92 F.3d 792, 796 (9th Cir. 1996) (noting that the court had ''repeatedly held that the phrase 'notwithstanding any other law' is not always construed literally''). If 19 U.S.C. 1313(j)(2)'s ''notwithstanding'' language applied to the crucial prohibition set forth in section 1313(v), then nothing in section 1313 would prevent the same export or destruction from being used to claim drawback from the actual importation of that merchandise (direct identification drawback under 19 U.S.C. 1313(j)(1)) *and* from the importation of other merchandise for which the exported or destroyed merchandise is substituted (substitution drawback under 19 U.S.C. 1313(j)(2)). Likewise, if section 1313(j)(2)'s ''notwithstanding'' language applied to section 1313(v), then nothing in section 1313 would prohibit multiple claims under (j)(2) where there are multiple imports of commercially interchangeable merchandise but only one export. Section 1313(v) prohibits these duplicative claims. If 19 U.S.C. 1313(j)(2) applied its ''notwithstanding'' language to section 1313(v), a firm could export a single item every five years, for example, and never pay duty on any import of any commercially interchangeable item. Congress could not have intended such results. Rather, as the commenter notes, the legislative

history shows that Congress intended the ''notwithstanding'' language in section 1313(j)(2) for the purpose of changing the law to allow drawback of HMT. *See* S.Rep. No. 108–28, at 173 (2003). The rule continues to provide for HMT drawback as Congress provided, while also preventing double drawback that Congress prohibited.

Comment: Several commenters stated that Congress intended to allow drawback of excise taxes regardless of whether excise taxes were paid on the substituted exported or destroyed merchandise. They described the long history of drawback, noting that its presence in U.S. law dates to the ''first substantive legislation in this government's history'' signed into law by George Washington in 1789. The commenters noted that Alexander Hamilton and Adam Smith exalted the good economic sense of customs drawback, with the commenters suggesting that drawback of excise taxes when no excise taxes were paid on substituted exports also makes good economic sense.

Response: CBP agrees that drawback has a long history in the United States, dating to the Second Act of Congress on July 4, 1789, but part of that long history has been Congress's efforts to prevent abuses. In fact, in his ''Sketch of the Finances of the United States,'' Secretary of the Treasury Albert Gallatin noted that Congress suspended a drawback law that drained the Treasury instead of yielding revenue. Albert Gallatin, *Sketch of the Finances of the United States,* 43 (1796). Nothing in the NPRM is in tension with this history.

Comment: One commenter stated that the NPRM argued that restrictions on duty drawback were intended to prevent revenue loss even though there is no evidence that Congress intended this when passing TFTEA. Another commenter stated that CBP has taken the position that following the statute would result in undue revenue loss and has found ambiguity in the drawback law where none exists in order to substitute its judgment on double drawback for that of Congress.

Response: CBP disagrees that the rule is inconsistent with the statutory framework for drawback. TFTEA is silent on double drawback, and CBP, to the best of its knowledge, has not been allowing double drawback claims on commodities other than wine. The prohibition on multiple claims in section 1313(v) continues to prohibit double drawback, as it did before TFTEA's enactment, and the NPRM corrects an aberration in CBP's practice with respect to wine.

Comment: One commenter asserted that the revenue loss estimates described in the NPRM are a minor share of total federal revenue, stating that foregone excise tax revenue never truly belonged to the federal government as the product was never sold in the United States.

Response: CBP disagrees that the size of the revenue loss relative to the entire federal budget relieves it of a responsibility to carry out Congress's intent to levy excise taxes on products consumed domestically. CBP also disagrees that the potential revenue loss is minor, for reasons described in the NPRM.

Comment: Several commenters stated that the U.S. Constitution prohibits the imposition of any tax on exports and that the NPRM's rationale would require that a tax on exports be paid for substitution drawback eligibility. One commenter noted the Declaration of Independence and Articles of Confederation signer Elbridge Gerry's observation that Congress could not be trusted to tax exports.

Response: The Constitutional prohibition on export taxes does not apply to generally applicable taxes that are imposed at the time of production. *See, e.g., Nufarm America's, Inc.* v. *United States,* 477 F.Supp. 2d 1290, 1296 (Ct. Int'l Trade 2007), *quoting Cornell* v. *Coyne,* 192 U.S. 418, 427 (1904). Accordingly, CBP disagrees that the Constitutional prohibition on export taxes affects the application of drawback on generally applicable excise taxes. Whether the Constitution permits these taxes to apply to products destined for export is immaterial to CBP's decision here, however, insofar as Congress has specifically allowed drawback of excise taxes that ultimately is exported, consistent with a framework that levies the excise tax on goods consumed in the United States. Even if the Constitution were understood to prohibit levying excise taxes on goods that are exported, however, it certainly does not require Congress to forgive excise tax paid on a corresponding import. This would result in the domestic consumption that has not been taxed, a problem not compelled by the Constitution and one that Congress prevented through 19 U.S.C. 1313(v).

Comment: One commenter supported the regulatory text originally proposed in section 190.32(d), stating that it recognizes the statutory history of wine drawback, preserves an important export incentive, and is consistent with a TFTEA conference report (H. Rept. 114–376), which states that the Conferees further clarify that the existing treatment of wine under section 313(j)(2) of the Tariff Act of 1930 is preserved, and that the amendments to the statute do not change this treatment.

Response: On August 20, 2018, CBP published a technical correction of proposed section 190.32(d) in the **Federal Register** (83 FR 42062), which clarified the references in that provision. As is evident from the detailed discussion of wine in the preamble of the proposed rule, the statutory prohibition on double drawback applies to excise taxes on wine just as it applies to other products. The technical correction document fixed an inadvertent error in a cross-reference in the proposed regulation, which the commenter requested that CBP adopt. The uncorrected proposed text in section 190.32(d)(2) had an exemption for drawback claims for wine that included an imprecise reference to the entirety of section 190.32(b). The reference should have been only to paragraphs (b)(1) and (b)(2), the specific paragraphs regarding the ''lesser of'' rule, and not to all of section 190.32(b), and the oversight was corrected.

With respect to the TFTEA conference report cited in this comment, CBP disagrees that it addresses double drawback. The only mention of wine in 19 U.S.C. 1313(j)(2) does no more than clarify that the unique alternative substitution standard that has been applied to wine will continue to be available along with the new HTSUS-based substitution standard TFTEA created. Eligibility for substitution and double drawback are separate issues. The more liberalized substitution standard provided for by TFTEA and these regulations does not equate to allowing the double drawback prohibited by 19 U.S.C. 1313(v).

Comment: One commenter stated that several legislators tried to amend 19 U.S.C. 1313 in 2007, proposing a subsection (z) that would have reduced the drawback claims allowed under subsections 1313(b), (j)(2), and (p) by the amount of any Federal tax credit or refund of any Federal tax paid on the merchandise. Because this language is consistent with the NPRM's clarification regarding the prohibition on double drawback but was never enacted into law, the comment states the Congress must have intentionally omitted the proposed restriction. The comment also states that the proposal to add a subsection (z) rather than amend subsection (v) demonstrates that Congress did not interpret section 1313(v) the way the NPRM does.

Response: The comment refers to text contained in a provision to limit or reduce drawback on certain imported ethanol that was part of two 2007 energy

tax amendments to major legislation that were not adopted. CBP disagrees that the failure of these broad energy tax proposals to become law can be seen as Congressional support for double drawback. There is no indication that Congress debated or voted on double drawback in 2007. More broadly, the fact that Congress might have considered specifically mandating a change to CBP's application of section 1313(v) through clarifying legislation would not establish that CBP lacked the authority to make such a clarification on its own.

Comment: One commenter stated that Treasury cannot rely on an economic impact rationale to eliminate the eligibility of excise taxes for drawback when Congress intends to continue and expand this type of drawback.

Response: CBP disagrees that Congress allowed, much less expanded, double drawback through TFTEA, or that this rule would eliminate the eligibility of excise taxes for drawback. On the contrary, 19 U.S.C. 1313(v), which TFTEA did not change, prohibits ''double drawback'' of excise taxes. CBP included the economic analysis to explain to the public the effects of an arcane practice not well understood by many, and to explain the policy considerations that informed its resolution of any statutory ambiguity on this issue.

4. Trade Trends and Economic Effects of Double Drawback

To explain the economic and trade impact of double drawback, CBP presented trade statistics during the period in which CBP has allowed for the double drawback of excise taxes on wine, and a discussion of potential effects from double drawback.

Comment: One commenter stated that, contrary to the analysis in the NPRM and in large part due to the availability of excise tax drawback, U.S. wine exports have substantially increased during the period from 2001 to 2017, exceeding $1.53 billion in 2017.

Response: CBP disagrees that the available trade data demonstrate that wine exports have increased because of the availability of double drawback. CBP believes that it began paying claims that resulted in double drawback of excise taxes for wine in 2004. Therefore, 2004 (and not 2001) is the more instructive starting point for analysis. While exports increased in value from $682 million to $1.255 billion from 2004 to 2016, exports by volume only increased from 327 million liters in 2004 to 345 million liters in 2016, a 5.5 percent increase. In evaluating the impact of double drawback, the volume of exports is more relevant than the value of exports because excise taxes are assessed by volume. On balance, the data submitted by commenters and considered by CBP do not demonstrate that double drawback was a significant driver of the increase in wine exports. The large increase in value of wine exports was not from an increase in volume,[5] but rather was due to an increase in the average value per liter of bottled wine exports from $2.32 to $6.14 during that period.

Comment: One commenter described the adverse effects of double drawback and stated that double drawback has caused market distortion and significantly disrupted the U.S. import wine market, with those importers benefiting from a drawback credit earned from non-tax paid exports enjoying a significant cost of goods advantage. One commenter concluded that the expansion of substitution drawback eligibility under TFTEA created an urgency to fix the double drawback problem before its effects broaden.

Response: CBP agrees that double drawback has market distorting effects that likely most benefit firms that both import and export, typically larger firms. CBP believes these observations provide additional support for clarifying the prohibition on double drawback, as proposed in the NPRM.

Comment: One commenter stated that the NPRM's double drawback clarification discriminates against certain industries by choosing who should be eligible for tax and trade programs instead of making sure that tax and trade policy is economically neutral and promotes efficient allocation of resources by affording the same benefits to all businesses.

Response: CBP disagrees that the proposed rule discriminates against specific industries. To the contrary, it corrects a practice that inadvertently afforded imported wine special treatment for certain claimants, as applicable—allowing drawback for wine on the basis of an export already subject to drawback, in effect a double drawback. Although a CBP field office has allowed double drawback of excise taxes for wine, CBP does not believe it has done so for other commodities subject to excise tax (*e.g.,* distilled spirits, beer, taxable fuel). Far from discriminating against particular industries as the commenter suggests, this rule restores parity by clarifying that double drawback is prohibited by statute for each product class. The rule changes a practice that allowed for special treatment of wine for certain claimants, as applicable, and thereby treats the wine industry in the same manner as all other industries that have not collected double drawback. Even within the wine industry, double drawback does not benefit firms evenly, but rather advantages U.S.-based firms that import while putting solely domestic U.S. producers at a competitive disadvantage.

Comment: Several commenters stated that ending double drawback of excise taxes on wine or not extending double drawback to all industries subject to relevant excise taxes would cause economic harm, including a loss of U.S. jobs. These commenters suggested that double drawback helps U.S. wine compete internationally, including in markets where foreign products may receive government subsidies and benefit from more favorable foreign trade agreements. Multiple commenters stated that increasing U.S. production depends on double drawback. Several commenters also said that ending double drawback for wine would harm many businesses supporting the wine industry or that failing to extend double drawback to other industries would present a lost economic opportunity for U.S. manufacturing.

Response: The rule fully preserves the ability to export wine without payment of tax, which will continue to help promote exports. The rule would, however, limit a practice that nearly eliminates excise taxes on imported wine and therefore encourages imports. Double drawback allows imported products to be sold 99 percent free of excise tax in the United States, while domestic products are fully taxed. Thus, while double drawback may provide a tax advantage for those U.S.-based firms that both import and export, CBP does not believe that this policy, on balance, provides a competitive advantage to U.S. production as a whole. The practice of double drawback, which reduces taxes on imports, does not appear to be an effective measure for promoting exports and domestic production. As described in the NPRM, trade statistics indicate that the U.S. trade deficit for wine by volume *increased* during the time that CBP has allowed the drawback of excise taxes for wine without regard to whether excise tax was paid on the substituted merchandise. Import volumes of wine grew over 50 percent while export volume grew only five percent from 2004 to 2016.

Comment: One commenter from a distilled spirits firm stated that it is

[5] The volume of bottled wine exports decreased from 2004 to 2016, from 259 to 171 million liters. *See* Table B, NPRM, 83 FR at 37900.

moving a portion of its Canadian production to the United States due solely to the ability to claim drawback for a distilled spirits product through February 24, 2019. It referred to its alleged recent approval from CBP for substitution unused merchandise drawback claims on internal revenue taxes paid upon whiskey under 19 CFR part 191 and expressed concern that it would no longer be valid under TFTEA pursuant to the new part 190.

Response: CBP acknowledges that double drawback is an attractive tax benefit for some firms and may play a role in production decisions. These firm-level incentives, however, do not mean that the market-wide effect is positive for U.S. production. In the particular case of the commenter, CBP has not, to the best of its knowledge, allowed double drawback of excise taxes on distilled spirits. Insofar as the drawback eligibility of domestically manufactured product is concerned, there should not be an impact as a result of TFTEA because, as indicated elsewhere in the responses to the comments, double drawback is not allowable for pre-TFTEA or TFTEA-drawback claims in light of the general applicability of 19 U.S.C. 1313(v) to both.

Comment: One commenter states that the view in the NPRM that double drawback results in excise tax-free foreign products competing with domestic products that are fully taxed improperly assumes that drawback funds will be used to reduce U.S. domestic prices instead of being used to add new employees, build new bottling lines, and reduce export pricing.

Response: CBP recognizes that a reduction in taxes applicable to a particular imported product will result in lower prices and/or increased profits for the seller, and that those profits could be applied in any number of ways more or less beneficial to the U.S. economy. This observation, however, does not alter CBP's and Treasury's duty to collect the taxes imposed by Congress, or change the fact that failure to correctly apply the tax to certain sellers will provide a competitive advantage to those sellers. Furthermore, we note that this benefit accrues only to certain firms and does not appear to be effective as an export promotion measure. The commenter provides no evidence to assert that the tax reduction on imports has resulted in a meaningful increase in employment or investment in the United States, nor does the commenter present evidence that undercuts CBP's reasonable expectation that lower excise taxes on imports will result, on balance, in lower priced imports (inclusive of tax). We also note that contrary to the commenter's suggestion that double drawback of excise taxes reduces export prices, the average export price of bottled wine increased 250 percent during the period of double drawback.

Comment: One commenter stated that the NPRM's clarification with respect to drawback of excise taxes would benefit California's wine grape growers. The commenter observed that double drawback subsidizes both imports and exports, hurting wineries that use only California wine grapes, as these wineries are forced to compete against subsidized wineries who benefit from imported bulk wine.

Response: CBP agrees that double drawback can have an effect on both imports and exports, that it can reduce the price of imports, and that it affects the wine industry in uneven ways—providing a tax break on imported wine for firms that both import and export, but providing no benefits for firms that only serve the domestic market.

Comment: One commenter observed that the economic arguments and reasoning contained in the NPRM lack the evidence and rigor required to establish its conclusions.

Response: CBP has used the best data available to inform its conclusions and has reviewed and considered all data submitted by commenters. CBP acknowledges that its analysis (like any economic analysis) is not without uncertainty and limitations. CBP does not believe that the available trade data provide persuasive evidence that double drawback is effective as a tool for promoting exports of U.S. product. During the period in which double drawback was paid, import growth was significantly greater than export growth.

Comment: One commenter stated that the trade statistics described in the NPRM are incomplete in that they only extend back to 2004, even though the U.S. wine industry began claiming substitution unused merchandise drawback in 2001. This commenter also describes as ''baseless'' the conclusion that drawback promotes imports but not exports, considering the refund of taxes on the import is only possible when there is an export.

Response: CBP disagrees that the NPRM's economic analysis concluded that double drawback exclusively promotes imports, not exports. CBP acknowledges that double drawback may promote exports for some firms. To be clear, to the extent that double drawback promotes exports, it does so by giving firms that export an entitlement to import a similar product 99 percent excise tax-free into the U.S. market. The analysis in the NPRM concluded that the observed economic effects of double drawback do not support the view that it is effective in promoting exports. CBP underscores that the NPRM fully preserves the ability of U.S. firms to export domestic product with the benefit of drawback of excise taxes. They may not, however, use such an export as the basis for a claim of drawback of excise taxes on an import.

The proposed regulations do not restrict the wine substitution standards. The prohibition is on double drawback, and CBP believes that it began paying claims for wine that resulted in double drawback of excise taxes in 2004, not 2001. Therefore, CBP believes that 2004 (and not 2001) was the appropriate starting date for its analysis. The commenter may have been confusing the impact of the application in 2001, by the San Francisco drawback office of a commercial interchangeability standard that was inconsistent with, and more liberal than, that applied by CBP Headquarters. That more liberal standard for substitution may have led to expanded approval of substitution unused merchandise drawback claims and also more exports. *See* ''Commercial Interchangeability of Table Wine; Drawback; Food, Conservation, and Energy Act of 2008,'' CBP Ruling HQ H036362 (Mar. 27, 2009).

Comment: Two commenters stated that ''flexitanks,'' a technological innovation for transporting wine, rather than double drawback, caused the increase in bulk wine imports described in the NPRM. Another commenter stated that many reasons may explain why imports of bulk wine into the United States have increased so significantly since 2004.

Response: CBP acknowledges that technological innovation and other factors potentially contributed to the growth in bulk wine shipments, but these factors do not change the incentive for vintners to import bulk wine provided by the availability of double drawback of excise taxes. In fact, the advent of flexitanks, which made bulk shipments cheaper, may have amplified the impact of the incentive to import provided by double drawback. This is because the reduction of the cost in the wine means that the value of the drawback, which is by volume and constant, has increased relative to the cost of bulk wine, which is lower when imported in flexitanks. Thus, CBP disagrees with the statement that the increase in bulk wine shipments has nothing to do with excise tax. It is more likely that both flexitanks and double

drawback contributed to rising trade shares in bulk wines.

Comment: One commenter presented the following hypothetical as an illustration of double drawback's subsidy of bulk wine imports: If a U.S. winery is choosing between a lot of California grapes and one that is imported, and assuming both are equivalent in cost and quality, the potential for double drawback makes the foreign import a better choice. The comment notes that there is no subsidy if the winery chooses the U.S. product, but the imported bulk wine has the potential of returning the equivalent of $0.2827 in federal excise tax per liter of wine to the imported winery, provided the winery can find a qualifying export.

Response: CBP agrees that double drawback provides an advantage to and may encourage imports, as explained in the NPRM.

Comment: One commenter stated that the NPRM does not explain how the ratio of excise tax to product value matters in the context of incentives to seek double drawback.

Response: The ratio of excise tax to product value in the context of double drawback matters because economic decisions are made in part because of relative costs. The larger the drawback of excise tax relative to the purchase price of the imported product, the more likely one is to purchase that product. For example, if the excise tax on a product is $1 and imported product A costs $2 and imported product B costs $3, the purchaser is more likely to choose product A, with all else being constant, because its net cost (with drawback) is half that of product B. If product A, however, costs $10 and product B costs $11, the difference in net value ($9 and $10) would only be about 10 percent and less likely to affect a purchasing decision. This is why the ratio of product value to excise tax means that drawback that is constant by volume is more likely to have an impact on decisions to purchase less expensive products such as bulk wine.

Comment: One commenter stated that the NPRM incorrectly concludes that double drawback uniquely promotes imports without having an effect on exports. The commenter provided a ''difference-in-difference'' analysis to support his view that the practice of double drawback promoted exports.

Response: In the NPRM, CBP concluded that trade data are consistent with the view that double drawback may have promoted wine imports but that it has not been effective as an export promotion measure. CBP disagrees that the difference-in-difference model presented persuasively establishes otherwise. To support the critique, the commenter provided analysis showing a relative growth in bulk wine exports to the European Union (EU) compared to Canada beginning around 2004, the year CBP inadvertently began allowing double drawback on substituted wine. CBP has some concerns with this approach, which are discussed below.

First, the analysis focuses narrowly on bulk wine exports to the EU, while double drawback has affected both bottled and bulk wine exports to all non-NAFTA countries. The reason for this narrow focus appears to be, as the analysis in the NPRM indicated, that an analysis of bottled wine (or bulk and bottled wine combined) would find a negative effect on exports. While the commenter argued that the NPRM's analysis is flawed because it does not extend far enough into the past, if one were to take at face value the bulk wine analysis figure, the effect on exports operates with a strong lag, so starting a comparison in 2004 would have little effect on the findings in the NPRM.

Second, the commenter notes that careful economic analysis controls for variables not being studied. CBP acknowledges that it lacks sufficient data to control for these variables in its analysis. Instead, CBP produced a qualitative examination of trends in aggregate trade data. CBP did not make categorical causal statements, but rather explained that the low growth rate in export volume did not suggest a large export response to double drawback. CBP agrees that strong causal statements would require considerably more data and exhaustive economic analysis as the commenter describes, controlling for a wide range of economic factors affecting supply and demand for wine. Unfortunately, the commenter's analysis also fails to control for these variables. Instead, the commenter's analysis hinges entirely on the assumption that exports of bulk wine to Canada and the EU would have behaved identically over the period in question in the absence of double drawback. There are, however, many factors that may affect the EU but not Canada over this sample period. Bulk wine shipping costs, for example, decreased significantly around the time CBP began paying double drawback claims, which would have a much bigger effect on shipments to the EU than to Canada.

To more carefully evaluate the fundamental assumption underlying the commenter's analysis, CBP examined total EU imports of bulk wine, both from the United States and other origins, from 2000 to 2016. Using United Nations (UN) Comtrade import data for bulk wine, CBP is able to recreate the commenter's findings that the U.S. exports to the EU grew substantially beginning around 2004 while U.S. exports to Canada remained relatively flat. Figure 1 shows the volume of U.S. bulk wine imports for Canada and the EU from 2000 to 2016. Much like Figure 1 in the commenter's analysis, EU imports diverge from Canadian imports around the time of the introduction of substitution drawback.

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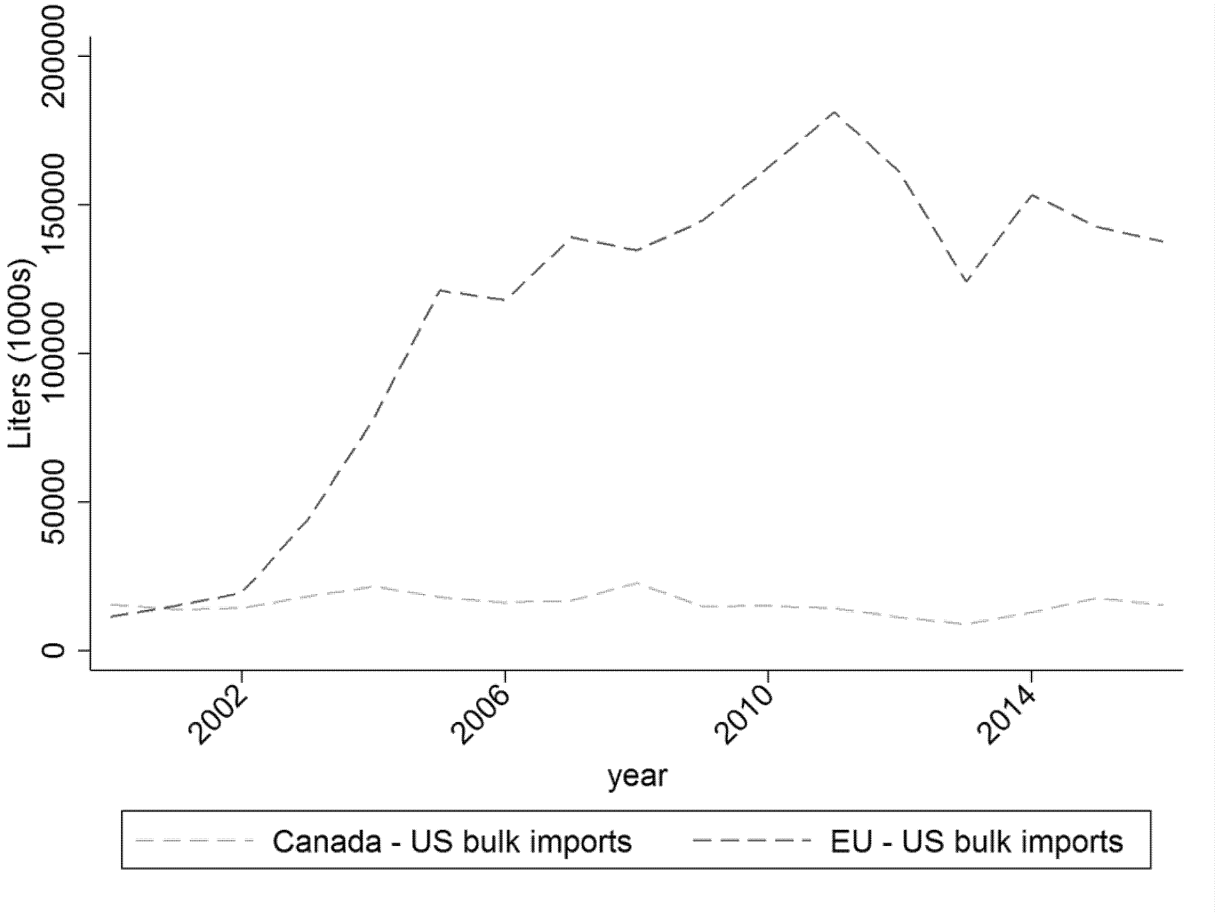
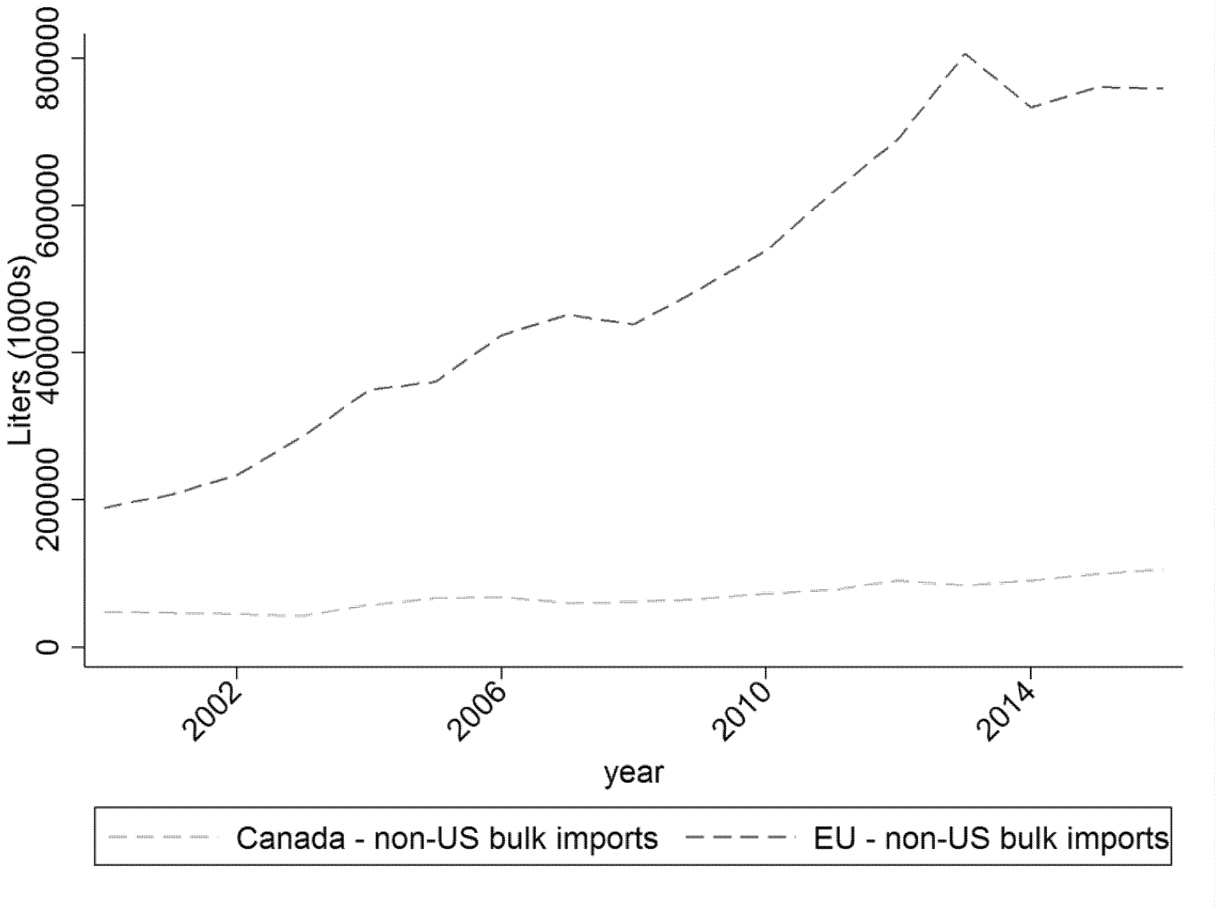
Figure 1



However, during this time period, EU imports of bulk wine from non-U.S. countries increased dramatically while imports to Canada from other non-U.S. countries remained relatively flat. *See* Figure 2.

Figure 2



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This analysis shows that Canada and the EU experienced very different trends in bulk wine imports unrelated to double drawback in the United States, making Canada a poor control group for this analysis. In short, because the fundamental assumption underlying the model is unrealistic in this context, the results are not useful in evaluating the effects of double drawback.

The commenter then claims that the NPRM ''ignores the fundamental economic logic of substitution drawback,'' namely, that it ''requires a *firm* to match its imports with corresponding exports'' (emphasis added), and then cites that in the period between 2004 and 2016, the United States imported about three times as many liters as it exported. The commenter argues that therefore the limiting factor was not imports but exports, and, as such, double drawback incentivized exports, not imports.

The effect of double drawback as an incentive to boost exports or imports depends not just on the amount of importing and exporting a firm does but also on many other factors that affect the profitability of importing and exporting (*e.g.,* production costs, supply chain costs, demand for products, transaction costs associated with double drawback). CBP also notes that many firms that do business in the United States will export more than they import, such that they would have an incentive to increase imports. The relative effect of double drawback on importing versus exporting is theoretically ambiguous and varies from firm to firm, but by the commenter's rationale, exports should have increased during this time period while actual trends tend to show more of an increase in imports than exports during the time CBP has paid double drawback claims.

Finally, the commenter takes the volume of bottled wine exports from 2016, the tax to value ratio, and an elasticity of export supply to estimate a possible effect of substitution drawback on bottled wine exports. While the commenter asserts that the ''calculation demonstrates how substitution drawback has in fact increased exports of wine relative to what would have otherwise occurred,'' this is an unsubstantiated claim. The exercise merely simulates what, under key and somewhat arbitrary assumptions, may be considered a plausible effect.

Whether this is a plausible effect depends in particular on the size of the elasticity of export supply used, with larger elasticities predicting a larger effect on exports. The commenter used an elasticity of 9, which is arguably quite large. Further, the commenter provides no direct evidence that it is a reasonable elasticity. Instead, it is indirectly backed out using price elasticities of supply and demand from the literature and a set of structural assumptions. These assumptions ignore many important margins along which behavior might change, and assume producers only respond to double drawback by increasing exports of bottled wine. The commenter dismisses effects on imports without justification, and he does the same with respect to benefits that would accrue to firms that would not need to change their investment, production, exporting, or importing to take advantage of tax reduction. He also dismisses benefits that accrue to mergers between importers and exporters that occur for

the sole purpose of capturing the subsidy. In fact, those responses involve no actual change in production, and it is plausible that those represent the largest potential uses of double drawback. Further, the exercise does not take into account possible offsetting negative effects on U.S. production for domestic consumption, nor does it take into consideration potential shifting of production between bottled and bulk wine.

Comment: One commenter stated that the analysis is overly narrow and overlooks potential economic benefits of double drawback to the U.S. economy.

Response: Double drawback serves as a subsidy for the joint importation and exportation of wine and likely distorts the decisions of consumers and firms, leading to deadweight loss. A reduction in excise taxes on wine would be made up by higher taxes or increased borrowing and would produce a change to overall economic output that varies from modestly negative to minimal. Double drawback no doubt benefits its beneficiaries, but CBP does not believe it benefits the overall economy, and notes that double drawback advantages imported product in the domestic market over domestically produced goods.

5. Revenue Loss Estimates of Double Drawback

Comment: One commenter stated that the Congressional Budget Office (CBO) assessed the loss of revenue resulting from TFTEA-Drawback changes and concluded that the ten-year impact of the drawback changes was only a revenue reduction of $24 million. The commenter argued that the Administration should not replace the CBO analysis. The commenter stated, based on the CBO figures, that the potential impact of TFTEA-Drawback changes is minor and that double drawback should be allowed.

Response: CBP disagrees that the CBO assessment reflected an expansion of double drawback. Because nothing in TFTEA changes the law on double drawback, there is no reason to believe CBO would have assumed a change in its analysis. The disparity between the CBO score and the revenue loss estimates in the NPRM tends to, if anything, support CBP's conclusion that TFTEA was not intended to expand the availability of double drawback. CBO's estimates predicted the revenue loss due to the more liberal 8-digit HTSUS substitution standard introduced in TFTEA. The analysis in the NPRM estimated $674 million to $3.3 billion in annual lost revenue if double drawback were expanded.

Comment: One commenter stated that the NPRM should not have included motor fuels taxes (IRC Chapter 32) in any estimate of revenue loss attributable to drawback, because it is not legally possible to claim drawback of these taxes under the Tariff Act of 1930, as amended.

Response: While the framework for collecting motor fuels taxes makes double drawback less likely than it is for other commodities, such as wine and distilled spirits, there are import procedures that may be used for motor fuels that could result in a claim for drawback of these taxes under the Tariff Act of 1930, as amended. Internal Revenue Code sections 6421(c) and 6427(l) provide for the refund of motor fuels taxes paid on exported gasoline and diesel, respectively. The NPRM estimate uses a small takeup rate of one to five percent that would result in only a $20 million to $98 million annual revenue loss, recognizing that use of those procedures is less likely. But, even assuming zero takeup of double drawback for motor fuels, it does not change the larger finding that double drawback would lead to substantial revenue loss, a loss that CBP believes Congress did not intend.

Comment: One comment sought clarification of the exact methodology behind the $54.9 million estimate of disbursed substitution unused merchandise drawback claims for wine included in the NPRM.

Response: CBP appreciates the opportunity to clarify. The estimate is based on two separate sources of data: (1) Transaction level data on all excise tax refunds for the top 20 importers of wine, and (2) data on substitution drawback claims. For 2015, CBP processed $51.393 million in excise refunds for substitution drawback claims for the top 20 importers. The figure of $54.9 million comes from a second analysis by CBP not limited to the top importers, but based on a comprehensive analysis of all substitution drawback claims for HTS codes 2204, 2205, and 2206. These two figures are in close alignment, suggesting that 2015 drawback claims for wine were greater than $50 million and that the vast majority of these claims were attributable to the top 20 importers.

Comment: One commenter questioned the assumption that the tax refunds reflect drawback on wine as opposed to drawback on other excise-taxable goods like taxable fuel and tobacco.

Response: CBP only examined the claims for wine categories because CBP does not believe it has paid double drawback claims on other excise taxable goods. Wine is the only product that CBP knows has received this treatment for certain claimants, and therefore any drawback claim is highly unlikely to be attributed to another source.

Comment: One commenter questioned the assumption that these refunds reflect double drawback claims at all, asking whether these refunds could be for other excise taxes.

Response: The analysis carefully focuses on drawback claims for excise tax on wine. Other forms of drawback, such as manufacturing drawback, are identified using a different code, and excluded from the analysis. Given the limits of the data, however, these claims could contain related claims for refunds of other taxes, namely refunds of harbor maintenance taxes. Those fees, however, are trivial in comparison to the excise tax on wine, and therefore would not have a significant effect on the analysis.

Comment: One commenter stated that the NPRM's tax-to-value discussion is mistaken.

Response: This critique demonstrates some confusion about the tax-to-value ratios reported in the NPRM, specifically the claim that the tax-to-value ratio for spirits is five to eight times higher than it is for wine. These figures are constructed using 2015 United States International Trade Commission (USITC) trade data as follows. Wine imports have a value per gallon of $18.40 and face a maximum tax of $1.07 per gallon. The tax-to-value ratio is $1.07/$18.40, or 0.058. Spirits imports, including grain alcohol, have an average value of $36.37 per proof gallon and face a maximum tax of $13.50 per proof gallon, for a tax-to-value ratio of $13.50/$36.37, or 0.371. The tax-to-value ratio for spirits is therefore 538 percent larger. Wine exports have a value per gallon of $13.70 for a tax-to-value ratio of 0.078. Distilled spirits exports, including grain alcohol, have an average value of $19.50 per proof gallon for a tax-to-value ratio of 0.692. The tax-to-value ratio for distilled spirits is therefore 786 percent larger. The values of five and eight times higher for spirits refer to these calculations based on import and export values.

The commenter correctly notes that these averages hide substantial variation in value across individual products. CBP largely agrees with the commenter in that CBP estimates that only 34 percent of spirits imports fall into the high tax-to-value category. The only point of disagreement concerns vodka. It is true that most vodka imports are of relatively high value. The vast majority of vodka imports are in subheading 2208.60.20, HTSUS, which is defined as

vodka valued over $2.05 per liter. On average, these imports have a tax-to-value ratio similar to that of bulk wine. Under the TFTEA 8-digit HTSUS substitution standard, however, this vodka can be substituted with much cheaper domestic vodka. Assuming most vodka imports are 80 proof and converting into proof gallons, $2.05 per liter corresponds to a minimum value of $9.69 per proof gallon. The tax is $13.50 per proof gallon, or 139 percent of the minimum value. Therefore, even expensive vodka imports could be matched profitably with cheap vodka exports or destroyed domestic product, which can be obtained at even lower prices.

Comment: One commenter argued that the NPRM failed to consider adequately that taking advantage of double drawback requires matching an import to an export.

Response: CBP disagrees that the NPRM did not consider the necessity of matching imports to exports to claim drawback. The commenter correctly notes that beer exports are much lower than beer imports, and CBP agrees that matching imports and exports would be an important constraint for beer producers. That is a reason the revenue loss estimates for beer are relatively low as a fraction of total excise liability on imported beer. Currently, non-NAFTA exports as a share of imports is only 7.7 percent. Through a combination of matching pre-existing imports and exports, and increasing exports, the lower bound estimate in the NPRM is that only 1.5 percent of imports are matched with an export and therefore eligible for a drawback claim. In the NPRM's upper bound estimate, 4.6 percent of imports are matched with an export. This is much lower than the observed value of 15.5 percent for wine imports because of the constraint of matching exports.

For spirits, the analysis in the NPRM considered two kinds of goods. For relatively expensive spirits, those with a low tax-to-value ratio, the analysis recognized that matching exports is an important constraint. The focus therefore was limited to 8-digit HTSUS provision products that are both imported and exported in non-trivial quantities, namely brandy, liqueurs, and cordials. For these products, the analysis assumed that only current exports and imports can be matched and apply the takeup rate to the minimum of imports or exports. With respect to high tax-to-value products, namely vodka, gin, and grain alcohol, the analysis in the NPRM did not view current exports as an important constraint because of the potential to destroy domestic production profitably without the need to find an export market.

In the case of tobacco, currently, the vast majority of cigarettes sold in the United States are produced domestically. There is, however, a large international market for similar cigarettes, and they are produced in many foreign countries. Many of the largest cigarette companies are multinational, producing and selling cigarettes all over the world. Therefore, given the availability of foreign produced goods and the strong incentive double drawback would provide, CBP would expect a gradual shift in the composition of the U.S. market as more U.S. production is exported and more U.S. consumption is imported. Eventually, were double drawback allowed, most excise tax on cigarettes could disappear as more packaging is shifted overseas and U.S.-packaged cigarettes are exported to foreign markets.

Comment: One commenter stated that the NPRM is incorrect in its assertion that double drawback would create a significant incentive to shift the production of tobacco products overseas. It asserts that federal regulatory requirements applicable to tobacco imports are significant and that the potential for drawback to change at any time also disincentivizes undertaking the expense of offshoring production until there is, among other things, more history of drawback refunds and assessment by outside attorneys. Another commenter similarly expressed skepticism that tobacco producers would shift packaging facilities overseas to take advantage of double drawback.

Response: CBP disagrees that double drawback would not incentivize shifting the production of tobacco products overseas. Although uncertainty over availability of double drawback may initially depress the takeup rate, CBP believes that if double drawback became settled law (as many commenters insist it should be), there would be a powerful economic incentive for outsourcing the production of tobacco products overseas for consumption in the United States, as at least one comment anticipates.

These comments correctly note that CBP predicts strong responses, including shifting packaging facilities overseas, by cigarette manufacturers in response to double drawback. This is a much more cost-intensive response than any behavior observed for wine producers. The incentives to serve the domestic market with foreign-packaged cigarettes would be extremely strong, however. The pre-tax wholesale price of cigarettes is approximately $2.50 per carton. The federal excise tax is approximately $10 per carton. This means that cigarettes packaged abroad and eligible for double drawback would be 80 percent cheaper than domestic cigarettes. Unless shipping costs were close to 400 percent of the wholesale price, tobacco companies would find it profitable to serve the U.S. market with foreign cigarettes. It is worth noting that only the packaging would need to be overseas to qualify as an import. The foreign-packaged cigarettes could still contain U.S. grown tobacco, so this scenario does not require a change in tobacco production. CBP acknowledges that other regulatory considerations would affect the industry response, but CBP is unaware of any insurmountable barriers to widespread off-shoring of cigarette packaging.

CBP predicts that such a process would take several years. CBP acknowledges substantial uncertainty in the timing of this shift to overseas packaging, and this uncertainty is reflected in the large difference between the upper and lower bound estimates of the revenue loss for tobacco were double drawback to be expanded. In the long run, were double drawback allowed, substantively all excise tax on cigarettes could disappear as more packaging is shifted overseas and U.S.-packaged cigarettes are exported to foreign markets.

Comment: One commenter expressed skepticism that distilled spirits producers would destroy cheaply made goods to claim drawback.

Response: CBP agrees that the destruction of goods is an unusual act. It could, however, be a profitable one for importers and claimants of drawback for distilled spirits and tobacco products. Take vodka as an example. The vast majority of vodka imports are in the subheading 2208.60.20, which is defined as vodka valued over $2.05 per liter. Assuming most vodka imports are 80 proof and converting into proof gallons, that corresponds to a minimum value of $9.69 per proof gallon. The tax is $13.50 per proof gallon, or 139 percent of the minimum value. A vodka importer could buy the cheapest wholesale vodka above the $9.69 per proof gallon threshold, and destroy it, earning a net profit of $3.81 per proof gallon after submitting a drawback claim. That same vodka importer could earn an even higher profit by producing cheap vodka in the United States and using its discretion to assign a subjective value of $9.69 to it, and then destroying it. The profit would be the difference between $13.50 and the cost of production. Given that bulk vodka

has a 2016 wholesale price of approximately $3 per proof gallon, there is reason to believe the profit margin on destruction could be over $10 per proof gallon. The incentive is even stronger for grain alcohol importers. The 2016 wholesale price of grain alcohol is $2.37 per proof gallon, suggesting the cost of production is even lower than that of cheap vodka. The USDA figures cited in the NPRM indicate that production costs for grain alcohol are between 50 cents and $1 per proof gallon.

Comment: Two commenters stated that two scenarios in the NPRM involving drawback of excise tax on distilled spirits imported into and exported from bond are incorrect in that they are already expressly prohibited under current and proposed drawback regulations. The commenters stated that imported merchandise must be regularly entered or withdrawn from consumption to be available for drawback. *See* 19 U.S.C. 1313(u); 19 CFR 191.151(a)(2). One commenter stated that there is no evidence that the re-routing hypotheticals are based on real examples, and another similarly states that re-routing is unprecedented and implausible.

Response: CBP disagrees that these scenarios are not realistic. While 19 U.S.C. 1313(u) and related regulations would disqualify goods entered into a customs warehouse but not withdrawn for consumption, alcohol regularly entered, but entered into a TTB warehouse, would not pay tax and could still be the basis for a claim for drawback.

CBP also disagrees that trade re-routing is unprecedented. The USITC defines re-exports as ''foreign-origin goods that have previously entered the U.S. customs territory, a Customs bonded warehouse, or a U.S. FTZ, and, at the time of exportation, have undergone no change in form or condition or enhancement in value by further manufacturing in the U.S. customs territory or U.S. FTZs.'' For 2015, re-exports represented 41 percent of total U.S. exports of spirits by volume and 22 percent by value.

CBP recognizes that transportation costs and other logistical difficulties would make foreign trade re-routing impractical in many circumstances. For instance, Japanese exports to Korea would make a poor candidate for trade re-routing through the United States. CBP, therefore, limited the NPRM's analysis to exports from Canada and Mexico to non-NAFTA countries. An analysis of UN Comtrade data suggests that non-NAFTA exports from Canada and Mexico would amount to approximately 8 percent of U.S. imports. CBP treats this as the feasible amount of re-routing and apply the upper and lower bound takeup rates of 25 percent and 75 percent, respectively, to this amount in the analysis.

The commenter also questions why foreign manufacturers would give permission to have their products re-routed through the United States. All multinational spirits producers that sell imports in the United States would have an incentive to re-route trade. The largest distilled spirits producers and suppliers in the United States are multinational firms. Even smaller foreign producers with production in only one country would have incentive to route their exports bound for other countries through the United States in order to receive drawback on their exports that are destined for the United States. Other importers could sell imports to exporters that wish to claim substitution drawback.

Comment: One commenter stated that CBP estimated the amount of double drawback paid rather than calculating exact figures by tabulating paper claim forms.

Response: CBP agrees that the analysis of the paper forms, approximately 12,000 annually, should provide the exact amount of the excise taxes refunded under existing practice. CBP disagrees, however, that undertaking such an analysis would be useful or necessary. CBP based the wine double drawback estimates on two separate sources of data: (1) Transaction level data on all excise tax refunds for the top 20 importers of wine, and (2) data on substitution drawback claims. Furthermore, as the comment itself explains, ''the majority, if not all, of the taxes refunded under the existing drawback law are excise tax refunds on wine.'' Therefore, CBP believes its conclusions were reasonable.

Comment: One commenter stated that the NPRM's estimates of potential revenue loss associated with double drawback of tobacco excise taxes are not based on any facts, figures, or statistics. It notes that from 2013 to 2017, the total actual excise taxes paid on cigarettes has averaged only $401.8 million, and therefore the $322 million to $2.2 billion estimated range is ''certainly arbitrary and capricious and must be disregarded,'' with the higher end of the estimate exceeding the entire cumulative taxes paid on cigarettes in the past five years.

Response: CBP disagrees with this comment because the total excise tax collections on tobacco averaged $14 billion per year during the years cited. *See, e.g.,* TTB Tax Collection Activities by Fiscal Year, available at *https://www.ttb.gov/tax_audit/tax_collections.shtml.* CBP's revenue loss estimates are based on the best data available to the Federal government, and CBP acknowledges a degree of uncertainty in any forecast premised on behavioral responses to a change in policy. Commenters have not produced evidence that supports the conclusion CBP's estimates are unreasonable.

G. Miscellaneous

1. Assignment of Drawback Rights

Comment: When multiple parties will have an interest in the exported merchandise, CBP proposed that drawback claimants submit, as part of a complete claim, a letter describing the component article on the export bill of lading to which a particular claim is related. One commenter stated that this requirement, in section 190.26(e)(2)(i), is unnecessary because the electronic signature on a drawback claim includes a general certification as to the accuracy of the drawback claim.

Response: CBP disagrees with the commenter's statement that the letter required in proposed section 190.26(e)(2)(i) is unnecessary due to the electronic signature requirement. This letter, which is endorsed by the exporter, is necessary to demonstrate compliance with the limitation set forth in 19 U.S.C. 1313(v) regarding the prohibition on using merchandise that was exported or destroyed as the basis for multiple drawback claims. A general statement as to the accuracy of a drawback claim does not specifically indicate that it is a manufacturing drawback claim involving merchandise that will be designated by multiple claimants, nor does it contain the endorsement of the exporter regarding these respective interests (noting that the exporter is not always the drawback claimant).

Comment: Regarding blanket waivers and assignments of drawback rights for manufacturing drawback claims, CBP proposed to allow exporters to waive and assign their drawback rights for all, or any portion, of their exportations with respect to a particular commodity for a given period of time to any other party who has the right to be a drawback claimant. One commenter requested that CBP amend this restriction in proposed section 190.26(e)(2)(ii) to allow waivers for all future exports without specifying a given period.

Response: CBP disagrees with the suggestion and section 190.26(e)(2)(ii) will remain as it was proposed. Waivers for indefinite periods of time regarding assignment of drawback rights could create a significant risk to the revenue

because these waivers do not require renewals. Absent an expiration date, there is a serious compliance risk. Specifically, an exporter or destroyer might decide, for business reasons, to cease the assignment of drawback rights to a party to whom it has already issued a waiver and elect to either claim the drawback itself or assign the rights to a separate party. The regulations do not require the exporter or destroyer to notify CBP of such a change in business practices, and so the expiration date for the waivers acts as a check to ensure that there will not be multiple waivers in perpetuity to different parties for rights to the same exported or destroyed merchandise (which would be contrary to 19 U.S.C. 1313(v)). Accordingly, the identification of the specified period of time is necessary to ensure waiver validity and enable verification.

Comment: Regarding waivers and assignments of drawback rights for unused merchandise drawback claims, CBP proposed to allow exporters to waive the right to claim drawback and assign such right by executing a certification waiving the right to claim drawback. One commenter stated that there was an inconsistency in proposed section 190.33(b), stating that the waiver had to be filed at the time of or prior to filing a drawback claim, and proposed section 190.52(b), stating that this waiver needed only to be on file and made available to CBP on request. This commenter requested that CBP address this inconsistency.

Response: CBP agrees with the comment and has amended section 190.33(b)(2) to clarify this certification requirement as it applies to electronic claim filing by indicating that certifications must accompany each claim. Similarly, the certification requirement for manufacturing drawback claims in section 190.28 is also modified in this final rule.

Comment: Regarding the assignment of rights for unused merchandise drawback claims, CBP proposed in the NPRM to require claimants to file a certification that is signed by the exporter or destroyer waiving the right to claim drawback. As proposed in section 190.33, the certification is required to be filed at the time of filing the claim or prior to filing the claim and can be a single or blanket certification. One commenter, noting the general recordkeeping requirements regarding records kept in the normal course of business in some provisions of 19 U.S.C. 1313, requested that CBP amend proposed sections 190.33(a)(2) and (b)(2) to state that the claimant must retain such certification or other business record and provide such evidence of waiver and assignment upon request by CBP, rather than at the time of or prior to filing the claim.

Response: CBP disagrees with this comment. TFTEA specifically eliminated certain certification requirements for drawback claims, but not with respect to the documentation of the claimant's actual right to claim drawback. Because the right to claim drawback belongs exclusively to the exporter or destroyer, parties other than the exporter or destroyer must be able to demonstrate that such rights have been assigned to them in order to maintain the integrity of the drawback claims process and to ensure compliance with 19 U.S.C. 1313(v), which explicitly prohibits multiple drawback claims from being filed on the same exported or destroyed merchandise.

2. Successorship

CBP largely kept the same language used in the corresponding sections in part 191 regarding drawback successorship in proposed sections 190.22(d) and 190.32(f). A ''drawback successor'' is an entity to whom the predecessor has transferred, by written agreement, merger, or corporate resolution, certain rights and assets, including the right to claim drawback. CBP received multiple comments on the topic.

Comment: One commenter requested that CBP modify the language in proposed sections 190.22(d)(2) and 190.32(f)(2) to better align with the statutory text of 19 U.S.C. 1313(s) and requested related edits to sections 190.91(a)(3), regarding waiver of prior notice, and 190.92(a)(3), regarding accelerated payment.

Response: CBP agrees, in part, with the commenter. CBP modified the language in sections 190.22(d)(2) and 190.32(f)(2) to properly align with the statutory text of 19 U.S.C. 1313(s). However, CBP disagrees with the commenter's proposal to modify the provisions on limited successorship in section 190.91(a)(3), regarding waiver of prior notice, and section 190.92(a)(3), regarding accelerated payment. These provisions are specifically intended to be more narrow than the general successorship provisions in 19 U.S.C. 1313(s), which are intended to allow for successorship with respect to substitution manufacturing claims under 19 U.S.C. 1313(b) and substitution unused merchandise drawback claims under 19 U.S.C. 1313(j)(2). The limited succession for the privileges in sections 190.91(a)(3) and 190.92(a)(3) is intended to be more narrow because the standards for compliance with their requirements are higher and unlikely to be adhered to during a mere asset transfer, which is allowable for succession under 19 U.S.C. 1313(s). Instead, the limited succession for privileges is allowed only when there is a complete corporate consolidation as opposed to an asset transfer, in order to ensure a sufficient level of knowledge of the drawback claims process will be transferred from the predecessor company.

Comment: One commenter stated that CBP failed to account for all successor scenarios in section 190.22(d)(1) and proposed suggested language regarding explicitly stating that a successor can claim where the predecessor imports and uses merchandise and then manufactures a finished article where either the successor or the predecessor exports the finished article, so long as the merger agreement provides for this situation.

Response: CBP disagrees with this comment. The successor provision for drawback in 19 U.S.C. 1313(s)(1) is limited to an authorization for the designation of imported merchandise used by the predecessor before the date of succession as the basis for drawback on articles manufactured or produced by the drawback successor after the date of succession. There is no allowance in the statute for the scenario proposed by the commenter and CBP lacks the authority to further expand the scope of what constitutes a succession with respect to manufacturing drawback claims.

Comment: Regarding designations by successors and section 190.22(d)(3)(i), one commenter stated that clarifications are needed to indicate that the certifications required under this section do not require prior approval by CBP and can be made at the time of filing a drawback claim. This commenter stated that this clarification would be consistent with section 190.22(d)(3)(iv), which states that records supporting the evidence of a successor's right to a predecessor's drawback need only be submitted to CBP upon request.

Response: CBP agrees with the commenter and section 190.22(d)(3)(ii) is amended to indicate that the certification of the predecessor that has not been otherwise designated is now required to be kept in the claimant's records, but not provided as part of a complete claim for a substitution manufacturing drawback claim. Relatedly, a corresponding change has been made to the requirement for the same certification in section 190.32(f)(3)(i) and (ii) for successorship

for substitution unused merchandise drawback claims.

3. CBP Form 7553 Notice of Intent

Comment: CBP received multiple comments requesting the elimination of CBP Form 7553, Notice of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback. One commenter requested that CBP eliminate the form to comply with the goals of the Paperwork Reduction Act and TFTEA in reducing the number of forms to be filled out. Another commenter, citing section 190.166, dealing with destruction of merchandise in subpart P, which deals with distilled spirits, wine, or beer, requested that CBP Form 7553 be eliminated because the elements are already transmitted electronically. This commenter also requests a process be established to electronically notify if a shipment will be reviewed.

Response: CBP disagrees with these commenters. CBP must have the opportunity to inspect merchandise prior to export or destruction to ensure the specific requirements for drawback eligibility are satisfied. Additionally, claimants who wish to avoid the filing of this form, which is authorized in compliance with the Paperwork Reduction Act, may apply for the privilege to waive this requirement, which is specifically provided for in section 190.91. Return to CBP custody is mandatory for drawback internal revenue tax to be allowed pursuant to 26 U.S.C. 5062(c), for distilled spirits, wines, or beer which are unmerchantable or do not conform to sample or specifications. Without the submission of the CBP Form 7553, there would be no proof that such return was properly made to CBP. Regarding the commenter's request to make notification of CBP's intent to examine be electronic, at this time, the current manual process will remain in effect.

4. Privileges

CBP proposed procedures in sections 190.91, 190.92, and 190.93 regarding the ability to apply for and obtain the privilege of: Waiver of prior notice of intent to export; accelerated payment in which payment of drawback claims may be obtained prior to liquidation; or a combination of both types of privileges separately or in a combined application. These provisions are similar to the provisions dealing with privileges in current part 191, except where modification was necessary to implement the terms of TFTEA such as the need to meet the standard for substitution rather than using the term commercially interchangeable. These sections are cross-referenced in other sections such as section 190.36 dealing with failure to file notice of intent to export, destroy, or return merchandise for purposes of drawback and section 190.42 dealing with procedures and supporting documentation. CBP received several comments described below involving the applications and the privileges of waiving prior notice or accelerated payment.

Comment: Several commenters stated that accelerated payment should be paid on TFTEA-Drawback claims prior to the implementation of the regulations, so long as those claims were filed in compliance with the Interim Guidance. The commenters noted that because the claims are 100% bonded, there is no risk to the revenue.

Response: CBP disagrees with the commenters. As indicated in the Interim Guidance, accelerated payment privileges will not be allowed for TFTEA-Drawback claims under part 190 until the regulations become effective. While the claims may be 100% bonded, the methods of claim calculation could not be considered final until the regulations are implemented (and claims are perfected to fully comply, if necessary). Further, despite claims being 100% bonded, the potential recovery of any overpayments could entail significant administrative burdens that should not be incurred given the absence of legal certainty on the correct claim amounts. Finally, CBP notes that the Interim Guidance also provides that drawback claimants may provide bonding information when TFTEA-Drawback claims are filed or after part 190 becomes effective in order to obtain accelerated payments.

Comment: CBP proposed certain regulations regarding the applications and requirements for obtaining privileges for the waiver of prior notice and accelerated payment. One commenter requested that CBP eliminate the applications altogether, and if not, that the applications be modified to be a registration to use the privileges rather than an application requiring CBP approval.

Response: CBP disagrees with the comment. The purpose of these applications is to ensure that the drawback claimant maintains records sufficient to support eligibility for these privileges, including the necessary trace documents and other details (*e.g.,* the structure of the claimant's drawback program and structure of future claims). The processing of these applications also provides CBP the opportunity to address questions regarding the claimant's drawback program, to ensure compliance. It should be noted that claimants may consolidate privilege applications pursuant to section 190.93.

Comment: CBP proposed regulations regarding applications for obtaining privileges and the Interim Guidance also had instructions. Multiple commenters stated that the NPRM did not contain information on what to do in the case of an application that is pending CBP review and points out that most of the information provided presumed applications had been granted. This commenter asked for clarification regarding these unresolved applications and asked that CBP modify the regulations to state that privileges granted for 19 U.S.C. 1313(j)(1) claims be extended to 1313(j)(2) claims, as stated in the Interim Guidance.

Response: CBP disagrees with the request to modify the regulations. However, to clarify, as provided for under the Interim Guidance, privileges granted under part 191 may be used for claims under part 190 in addition to being available for claims under part 191 through February 23, 2019. Regarding pending privilege applications, CBP will address applications submitted under the applicable part (part 190 or part 191, which is available through February 23, 2019). CBP notes that both the proposed and final regulations, in sections 190.91(a)(2) and 190.92(a)(2), specifically provide that, for privilege applications approved before the end of the transition period for claims under 19 U.S.C. 1313(j)(1), the privilege will also be applicable to claims for the same type of merchandise if made under 19 U.S.C. 1313(j)(2).

Comment: One commenter requested that CBP amend section 190.42(c), regarding the procedures required for rejected merchandise under 19 U.S.C. 1313(c), to allow for waiver of prior notice of exportation pursuant to proposed section 190.91.

Response: CBP agrees with the commenter's request to amend proposed section 190.42(c) to allow for the waiver of prior notice, and CBP will also modify sections 190.91(a) and (b) in this final rule to provide for waiver of prior notice for rejected merchandise claims under 19 U.S.C. 1313(c). Changes to 19 U.S.C. 1313(c) made in the Miscellaneous Trade and Technical Corrections Act of 2004 removed the requirement for merchandise to be returned to CBP custody, and replaced it with the requirement for exportation or destruction under CBP supervision. While the statutory change preceded TFTEA, the regulations were not previously amended to reflect its implementation. Now, the regulations have been amended to remove the

requirement for return to CBP custody and, consistent with this comment, to also allow for the privilege of waiver of prior notice, which has already been allowed in practice. Related to this, CBP has made similar changes to 19 CFR 191.42(c) and has also modified the provision in section 190.36(a) for one-time waiver of prior notice, which originally applied only to drawback claims under 19 U.S.C. 1313(j), to also include drawback claims under section 1313(c), which has already been allowed in practice.

Comment: CBP proposed procedures in section 190.92 regarding the ability to apply for and obtain the privilege of accelerated payment. The proposed regulation did not state a deadline as to when CBP will certify the drawback claim for payment. One commenter stated that the proposed regulation should contain a three-week deadline by which CBP must certify the claim for payment. The commenter also stated that section 190.92(i) failed to provide for a timeframe in which bills or refunds (as a result of liquidation) would be issued by CBP and stated that the lack of a timeframe removes accountability from CBP.

Response: CBP disagrees with this commenter's suggestion to add timeframes for certifying accelerated payment claims. This is not necessary because ACE automation ensures that accelerated payment requests for claims that pass validation (including sufficient bonding) will be paid on a regular, periodic basis within a relatively short timeframe. Typically, such payment will be made within one month. Regarding the commenter's suggestion to provide a timeframe for issuing bills or refunds because of liquidation, drawback claims are subject to the standard billing and refund cycles administered in ACE and adding a specified timeframe in this regulation is unnecessary.

Comment: Regarding section 190.92(a)(1), dealing with accelerated payment, one commenter stated that the NPRM specifically states 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. The commenter stated that the regulation as drafted would require that drawback claimants must then exclude from accelerated payment requests any duties, taxes or fees where certain rules, such as the first filed rule, would apply. The commenter stated that this section of the NPRM should be eliminated as CBP's arbitrary and capricious attempt to restrict prompt payment of eligible drawback under accelerated payment provisions of this part.

Response: CBP disagrees with the commenter. TFTEA-Drawback claims must be filed in accordance with the applicable drawback laws and part 190, regardless of whether the claimant requests the benefit of the accelerated payment privilege.

Comment: Regarding section 190.92(a)(2), one commenter stated that the NPRM limits the types of drawback covered by an existing approval of accelerated payment by type of drawback claimed except that approvals under 19 U.S.C. 1313(j)(1) may also be applied to claims under 19 U.S.C. 1313(j)(2). The commenter stated that a limitation on types of drawback covered is administratively inefficient and not effective in the administration of accelerated payment of drawback. The commenter stated that a simple certification by a claimant that it maintains records to support drawback coupled with a drawback bond to cover the drawback payment is sufficient for CBP to protect the revenue yet administratively result in an efficient operation of the accelerated payment program. The commenter stated that requiring claimants to submit multiple applications to cover multiple types of drawback to which a claimant may be eligible is a waste of CBP's limited resources in the administration of drawback.

Response: CBP disagrees with the commenter regarding the specification of the basis for the drawback claims. Different types of drawback claims have different regulatory requirements and the documentation required to support the claims will vary. In order to ensure that a privilege should be granted, CBP must review the supporting documentation that the claimant would provide for its claims upon request from CBP and determine that it is sufficient. CBP notes that the kind of documentation needed for a substitution unused merchandise drawback claim is significantly different from that which would be required for a direct identification manufacturing drawback claim and declines to do as the commenter has suggested, which would be to accept documentation to support the former as being acceptable to support the latter.

Comment: As part of an application for accelerated payment, CBP proposed in section 190.92(b)(1)(iv) to require applicants to provide a description of the bond coverage that the applicant intends to use to cover the accelerated payment of the drawback. One commenter stated that ACE will only approve advance payment if sufficient bond coverage exists and stated this system requirement applies for both single transaction bonds and continuous bonds. The commenter suggested that requiring an accelerated payment privilege application to describe the claimant's bond coverage is no longer necessary because of the eBond filing capabilities in ACE. This commenter stated that CBP should remove the requirement from section 190.92(b)(1)(iv). Related to eBond, one commenter requested that CBP modify section 190.92(d) to better reflect the electronic environment for bonds.

Response: CBP disagrees with this comment. The required information for the application for accelerated payment of drawback is separate from the processing of claims for accelerated payment. By providing a description of the anticipated bond coverage, the applicant is demonstrating its preparation for compliance with the requirements necessary to qualify for the privilege of accelerated payment. Accordingly, the application requirement for a description of the anticipated bonding will remain in place. Regarding the request to modify section 190.92(d), CBP disagrees because this section continues to reflect the applicable requirements even though some aspects may be automated in eBond.

Comment: CBP proposed regulations regarding destruction in section 190.71. One commenter also requested that CBP provide for waiver of prior notice in situations regarding destruction in section 190.71 and requested related edits to provide for destruction in section 190.92, regarding eligibility for accelerated payment.

Response: CBP agrees with the comment. Waiver of prior notice for intent to export should be expanded to include destruction, although only an ongoing program of destruction would likely satisfy the requirements to qualify for the privilege. Accordingly, changes have been made in the relevant provisions of sections 190.71 and 190.92 in this final rule to account for the eligibility of destruction for waiver of prior notice, which has already been allowed in practice. Relatedly, CBP has also modified section 190.36, the provision for one-time waiver of prior notice, which originally applied only to exportations, to also include destruction. CBP has determined that this allowance for destruction, which has already been allowed in practice, enables the trade to more efficiently file drawback claims and eases the administrative burden on CBP, while facilitating compliance through the

advance vetting of destruction programs and supporting documentation prior to approval of the privilege application. Relatedly, CBP has made clarifying edits throughout section 190.35 to provide for destruction for unused merchandise drawback, which has already been allowed in practice.

III. Technical Corrections

In the August 2, 2018 NPRM, certain drafting errors had been made, such as the numbering of lines within the same example (*e.g.,* errors made in the examples regarding the amount of merchandise processing fee eligible for drawback in certain scenarios in section 190.51(b)(2)). These and other technical or grammatical errors have also been corrected throughout. As noted below, the final rule contains the following changes:

In section 190.6, CBP is amending paragraph (b)(3) by removing the phrase ''of exporters on bills of lading or evidence of exportation'' and replacing it with the phrase ''to assign the right to claim drawback''. This change creates consistency with the liberalization of documentary evidence for proof of export as provided for in 19 CFR 181.47, 191.72, and 191.74. Bills of lading and other general types of exportation no longer require such certifications; however, the certifications to assign the right to claim drawback continue to be required as noted in the parenthetical for sections 190.28 and 190.82. In section 190.6, CBP is also amending paragraph (c)(3) to include a citation to section 190.36 for one-time waivers along with the reference to waiver of prior notice under section 190.91.

In section 190.8, CBP is amending paragraph (e)(1) as CBP Headquarters will no longer forward a copy of the application for the specific manufacturing drawback ruling to the appropriate drawback office(s) with a copy of the approval letter. Rather, with the transition to the electronic filing environment under TFTEA, CBP Headquarters will upload approved specific manufacturing ruling requests via DIS into ACE.

In section 190.14(b)(4), CBP is amending the section by removing the phrase ''Generally Acceptable Accounting Procedures (GAAP)'', an incorrect reference, and replacing it with ''generally acceptable accounting procedures'', which is the phrase used in 19 CFR 191.14.

In sections 190.22(a) and 190.32(b), CBP is amending each section by adding the following clarifying phrase: The amount of duties, taxes, and fees eligible for drawback is determined by per unit averaging, as defined in section 190.2, for any drawback claim based on 19 U.S.C. 1313(b).

In sections 190.28, 190.33(a)(2) and 190.33(b)(2), CBP is amending each section to clarify the certification requirement as it applies to electronic claim filing by indicating that certifications should accompany each claim. Similarly, the certification requirement for manufacturing drawback claims in section 190.28 is also modified in this final rule.

In sections 190.35(a), to be consistent with sections 190.42 and 190.71, CBP is amending the section to state that CBP Form 7553 must be filed five working days prior to the date of intended exportation.

In section 190.51(a)(2)(iv), CBP is amending this section to require the port code for the drawback office ''where the claim is being filed'' where it previously required the port code for the drawback office ''that will review the claim''.

In section 190.51(a)(2)(ix), CBP has made edits to clarify that, in some scenarios, multiple manufacturing rulings may be involved in a single drawback claim, as well as clarifying the applicable information required for each ruling involved.

In section 190.51, regarding the completion of drawback claims, CBP is correcting an error where two paragraphs were listed as (b). The first, and accurate, paragraph (b) is concerning drawback due. The second paragraph (b), limitation, is now correctly labelled as paragraph (b)(4).

In section 190.193, CBP is amending paragraph (c)(3) by removing the reference to certificates of manufacture and delivery as these certificates were eliminated in TFTEA. CBP also added a reference to destruction in paragraph (d)(4) to clarify that destruction is also a basis for drawback eligibility and, when applicable, the application package for the drawback compliance program would require supporting documentation for recordkeeping for destruction.

In reviewing the Appendices to Part 190, CBP has made a number of non-material or conforming changes in order to further align the appendices with the requirements of TFTEA and aid in simplifying the contents of the appendices. CBP has made certain technical corrections or clarifying edits throughout (such as minor grammatical edits, replacing outdated references to kind and quality with references to identity, and removing references to the physical location of CBP locations where drawback claims will be filed due to electronic filing).

IV. Conclusion

Based on the analysis of the comments and further consideration, CBP has decided to adopt as final the proposed rule published in the **Federal Register** (82 FR 37886) on August 2, 2018, as modified by the changes noted in the discussion of comments and the noted technical corrections.

V. Statutory and Regulatory Requirements

A. Inapplicability of Delayed Effective Date

Under section 553(d) of the Administrative Procedure Act (APA) (5 U.S.C. 553), substantive rulemaking generally requires a 30-day delayed effective date, subject to specified exceptions. Among the statutory exceptions to this general rule is the situation presented here, with respect to most sections of the final TFTEA-Drawback rule, where good cause is found and the reasons establishing good cause are published with the rule. 5 U.S.C. 553(d)(3).

With the exception of certain sections (addressed below), this rulemaking generally eases burdens through modernization of the drawback program and will provide extensive benefits to the public, such as liberalizing the standards for substituting merchandise, easing documentation requirements, and providing for electronic filing; finalization of the rule also will enable accelerated payment as to claims made under the new drawback law. Delaying the final implementation of this rule would result in further delays for claimants in receiving the refund payments that Congress mandated. Due to the strict statutory timelines for filing drawback claims, and given the extensive stakeholder engagement with respect to this regulatory package to date, including in the context of five months of experience with the Interim Guidance prior to publication of the NPRM, as well as the robust comments received after publication of the NPRM, CBP believes that there is good cause for most sections of this rule to become effective immediately upon publication, so as to not further delay payments to claimants. For these reasons, pursuant to 5 U.S.C. 553(d)(3), CBP finds that there is good cause for dispensing with a delayed effective date.

Section 808 of the Congressional Review Act (5 U.S.C. 808) provides that any rule as to which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary

to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines. For the same reasons that CBP finds there is good cause for dispensing with a delayed effective date under the Administrative Procedure Act, CBP believes that, under section 808 of the Congressional Review Act, notwithstanding section 801 of that act (which would essentially result in a 60-day delay in effective date), and even though there was notice and public procedure as to the NPRM, good cause exists for the final rule to become effective without further public procedure and immediately upon its filing for publication (44 U.S.C. 1503), as delaying the effective date would be contrary to the public interest. Additionally, on October 12, 2018, the United States Court of International Trade ordered the regulations, with certain exceptions noted below, to be filed with the Office of Federal Register on or before December 17, 2018, and to become effective on the date of filing with the Office Federal Register. *See Tabacos de Wilson,* v. *United States,* No. 18–00059 (Ct. Int'l Trade 2018).

As proposed in the NPRM, there is an exception to the immediate effective date as to claims of a specific type, with respect to which additional considerations, involving a possible change in prior treatment for certain claimants, as applicable, are present. Specifically, for the regulatory sections regarding the drawback of excise taxes at §§ 190.22(a)(1)(C), 190.32(b)(3), 190.171(c)(3), 191.22(a), 191.32(b)(4), and 191.171(d), the effective date will be 60 days after publication. This effective date is also in compliance with the October 12, 2018 order from the United States Court of International Trade.

B. 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 costs, benefits, and transfers, 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 rule has been reviewed by the Office of Management and Budget (''OMB''). CBP prepared an economic analysis of the estimated impacts of this rule for public awareness, which CBP summarizes below. The complete analysis can be found in the public docket for this rulemaking at *www.regulations.gov.*

To fulfill a mandate in the Trade Facilitation and Trade Enforcement Act of 2015 (Pub. L. 114–125), U.S. Customs and Border Protection and the Department of the Treasury published the Modernized Drawback Notice of Proposed Rulemaking in the **Federal Register** on August 2, 2018.[6] The Modernized Drawback NPRM proposed to create new drawback regulations that would make the current regulations generally obsolete for claims filed on or after February 24, 2019. These regulations would (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; and (9) modify recordkeeping requirements. These regulations would also (10) eliminate ''double drawback'' of excise taxes. These changes are referred to subsequently as ''Major Amendment'' and the corresponding number, 1 through 10. The Modernized Drawback NPRM also included minor amendments that mostly clarify current practice and policy, restructure the regulations, and eliminate outdated regulations. After much consideration of the public comments on the Modernized Drawback NPRM, CBP adopts most of the regulatory amendments specified in the NPRM without change in the Modernized Drawback Final Rule, except CBP will allow mixed TFTEA and non-TFTEA substitution drawback claims (''mixed claims''). Additionally, CBP will make minor changes to the NPRM, which the final rule will reflect, to: (1) Remove the proposed requirement for joint and several liability bonds; (2) codify existing CBP drawback practices, such as allowing waivers of prior notice for rejected merchandise and accepting continuous bonds for drawback claims with pending accelerated payment approval; (3) ease documentation requirements for transferred merchandise; (4) standardize document submission timelines; (5) reduce drawback claim data submission requirements; (6) clarify regulations; and (7) make technical corrections. With the adoption of most of the proposed regulatory amendments, CBP has largely used the Modernized Drawback NPRM's regulatory impact analysis template for this final rule analysis.[7] However, some changes to the analysis were necessary to capture the regulatory changes from the NPRM just described, OMB suggestions, and data updates, as discussed later in this analysis.

The Modernized Drawback Final Rule will affect trade members involved in the drawback process, including those engaged in the U.S. import, export, and destruction processes, and the U.S. Government (particularly CBP) over a 10-year period of analysis spanning from 2018 to 2027. The largest impact of this rule will be in the form of monetary transfers from the U.S. Government to trade members. Under CBP's primary estimation method, the U.S. Government (or, in turn, taxpayers) will transfer $763.3 million in present value revenue, or $101.6 million when annualized, to trade members as a result of Major Amendment 2's eased substitution drawback standard and Major Amendment 5's expanded scope of drawback refunds (using a 7 percent discount rate; see Summary Table). Alternatively, trade members will transfer between $494.0 million and $525.7 million in present value revenue, or $65.7 million to $70.0 million on an annualized basis, to the U.S. Government due to Major Amendment 2's limitation of substitution unused merchandise drawback, Major Amendment 3's per unit averaging calculation, Major Amendment 4's ''lesser of'' calculation, and Major Amendment 10's elimination of ''double drawback'' (using a 7 percent discount rate; see Summary Table). Though these transfers are not to and from the same private entities (*i.e.,* some entities may experience only a monetary transfer *from* the U.S. Government and others may only experience a monetary transfer *to* the U.S. Government), on net, over the 10-year period of analysis the U.S. Government will transfer $237.6 million to $269.3 million in present value revenue to trade members as a direct result of this rule. These net transfers will equal $31.6 million to $35.8 million when annualized (using a 7 percent discount rate; see Summary Table).

[6] *See* 83 FR 37886 (August 2, 2018).

[7] The Regulatory Impact Analysis of the Modernized Drawback Notice of Proposed Rulemaking is available at *https://www.regulations.gov/docket?D=USCBP-2018-0029.*

This rule will also produce costs and benefits to trade members and CBP. Trade members affected by this rule will sustain costs related to Major Amendment 1's electronic filing requirement, Major Amendment 3's mixed claim [8] requirements, Major Amendment 7's modified rulings process, and Major Amendment 9's expanded recordkeeping requirements. These costs will total $57.2 million in present value and $7.6 million at an annualized rate under CBP's primary estimation method from 2018 to 2027 (using 7 percent discount rate; see Summary Table). Trade members will also incur non-monetized, non-quantified costs from this rule. Major Amendment 3's per unit averaging calculation requirement and claim limitations may make it less attractive for trade members to use the United States as a home base for a distribution facility when coupled with other considerations and offer drawback rights to parties to whom they sell merchandise (*i.e.,* third-party drawback), though the extent of these costs is unknown. Major Amendment 6's establishment of joint and several liability for drawback claims will impose a new liability on importers that may deter some drawback claims. Lastly, Major Amendment 8's standardized drawback eligibility timeframe and a new CBP amendment will offer some trade members less time to file drawback claims and documentation as compared to the current process. Based on CBP subject matter expertise, CBP does not believe that these non-monetized, non-quantified costs will be large when considering the additional drawback opportunities presented with this rule.[9]

CBP will sustain costs from Major Amendment 1's electronic filing requirement, Major Amendment 2's eased substitution drawback standard, and Major Amendment 7's modified rulings process. These costs will total $5.1 million in present value, or $0.7 million when annualized, under the primary estimation method from 2018 to 2027 (using a 7 percent discount rate; see Summary Table).

Over the period of analysis, trade members will experience cost savings from Major Amendment 1's electronic filings and Major Amendment 2's eased substitution. These cost savings will measure $5.4 million in present value and $0.7 million when annualized under the primary estimation method over the period of analysis (using a 7 percent discount rate; see Summary Table). Trade members will also enjoy non-monetized, non-quantified benefits from this rule's streamlined claim submissions and processing, increased time to claim drawback, simplified understanding of the drawback process, added reassurance that rulings with potentially business-sensitive information will not be available for public consumption, and decreased business costs.

CBP will enjoy cost savings from Major Amendment 1's electronic filings, Major Amendment 2's eased substitution drawback standard, and Major Amendment 3's per unit averaging calculation. These benefits will equal $4.2 million in present value and $0.6 million on an annualized basis under the primary estimation method (using a 7 percent discount rate; see Summary Table). In addition to these monetized savings, CBP will experience non-monetized, non-quantified benefits from this rule, including an eased work process, strengthened ability to validate drawback claims and recoup inaccurately over-claimed drawback, added administrative review time, and simplified implementation of drawback filing rules. These changes will result in major benefits to CBP.[10]

The Summary Table outlines the total impact of the Modernized Drawback Final Rule under CBP's primary estimation method. As shown, the U.S. Government will transfer $237.6 million to $269.3 million in present value net revenue to trade members as a direct result of this rule, which will equal $31.6 million to $35.8 million when annualized (using a 7 percent discount rate). In total, this rule will generate $62.3 million to $62.4 million in monetized present value costs and $9.6 million in monetized present value cost savings under the primary estimation method (using a 7 percent discount rate). When annualized, the monetized cost of this rule equals $8.3 million and its monetized cost saving will measure $1.3 million (using a 7 percent discount rate). Altogether, the total monetized present value net benefit of this rule under the primary estimation method is between −$52.7 million and −$52.8 million (*i.e.,* a net cost), while its annualized net benefit totals −$7.0 million (using a 7 percent discount rate). Furthermore, this rule will introduce non-monetized, non-quantified costs and benefits. Some aspects of this rule will make it potentially less attractive for some trade members to use the United States as a home base for a distribution facility and offer drawback rights to other parties, impose a new liability for importers, and offer less time for trade members to file drawback claims and documentation. Nonetheless, these costs will likely be minor when considering the rule's additional drawback opportunities. In contrast, the rule will introduce major non-monetized, non-quantified benefits to trade members and CBP. The rule will provide streamlined claim submissions and processing for trade members and CBP, increased time for trade members to claim drawback, added administrative review time for CBP, a strengthened ability for CBP to validate drawback claims and recoup inaccurately over-claimed drawback, a simplified drawback process for trade members and CBP, added reassurance for trade members that rulings with potentially business-sensitive information will not be available for public consumption, and decreased business costs for trade members. CBP believes that this rule's non-monetized, non-quantified benefits will be much greater than this rule's non-monetized, non-quantified costs.

Because CBP has previously granted ''double drawback'' for wine (granting drawback of excise taxes paid on imported wine upon the export of substituted non-taxpaid wine under section 1313(j)(2)), some firms dealing in other products subject to Federal excise tax that is imposed upon entry or importation have asked whether they could also pursue substitution drawback claims similar to those that have been made for wine. Therefore, CBP has also included a Supplementary Summary Table showing the impact of this rule under an alternate analysis where it is assumed, solely for analytical and informational purposes, that double drawback had been extended to other commodities prior to this rule taking effect. As shown in the Supplementary Summary Table, if it is assumed that double drawback had been expanded to other goods subject to excise taxes collected upon entry, then the effect of eliminating the revenue loss under the hypothetical extension of double drawback would be a transfer of $13.5 billion in present value net revenue to the U.S. Government under the alternate analysis from 2018 to 2027, which would equal $1.8 billion when annualized (using a 7 percent discount rate). The actual estimated range of the

[8] This rule will allow trade members to file TFTEA drawback claims that designate unused line items from import entry summaries previously designated on non-TFTEA claims, but only if trade members submit documentation proving that the line items in issue were unused via DIS upload within 30 days of submitting their drawback claim.

[9] Source: Email correspondence with CBP's Office of Trade on July 12, 2018.

[10] Source: Email correspondence with CBP's Office of Trade on July 12, 2018.

transfer or revenue loss would average $674 million to $3.3 billion annually over the next 10 years (undiscounted). The quantified costs and benefits of the rule would be the same as under the primary analysis.

Although this analysis includes CBP's best estimates of the costs, benefits, and transfers resulting from this rule, the exact impact of this rule is unknown due to data limitations and indefinite reactions from the trade community. Accordingly, the actual costs, benefits, and transfers resulting from this rule could be higher or lower than CBP has estimated in this analysis.

SUMMARY TABLE—TOTAL IMPACT OF RULE UNDER PRIMARY ESTIMATION METHOD, 2018–2027

[Monetized values in millions; 2018 U.S. dollars]

	Undiscounted	3% Discount rate		7% Discount rate	
		Present value	Annualized	Present value	Annualized
Major Amendment 1—Require the Electronic Filing of Drawback Claims:					
Total Cost	$70.3	$65.7	$7.5	$60.9	$8.1.
Total Benefit	$10.5	$9.1	$1.0	$7.7	$1.0
	Streamlined claim submissions and processing and strengthened ability for CBP to validate claims and recoup inaccurately over-claimed drawback.				
Total Transfer to Trade Members.					
Total Transfer to U.S. Government.					
Major Amendment 2—Liberalize the Standard for Substituting Merchandise for Drawback:					
Total Cost	$0.03	$0.03	$0.003	$0.02	$0.003.
Total Benefit	$0.7	$0.6	$0.1	$0.5	$0.1.
Total Transfer to Trade Members	$1,000.5	$876.9	$99.8	$747.7	$99.5.
Total Transfer to U.S. Government	$11.0	$9.6	$1.1	$8.2	$1.1.
Major Amendment 3—Generally Require Per Unit Averaging Calculation for Substitution Drawback:					
Total Cost	$0.01 to $0.03	$0.01 to $0.03	$0.001 to $0.004.	$0.01 to $0.03	$0.001 to $0.004.
	Potentially less attractive for trade members to use the United States as a home base for a distribution facility and offer drawback rights to parties to whom they sell merchandise (*i.e.,* third-party drawback).				
Total Benefit	$1.8	$1.6	$0.2	$1.4k	$0.2.
	Strengthened ability for CBP to validate claims and recoup inaccurately over-claimed drawback.				
Total Transfer to Trade Members.					
Total Transfer to U.S. Government	$14.2 to $56.7	$12.4 to $49.6	$1.4 to $5.6	$10.6 to $42.3	$1.4 to $5.6.
Major Amendment 4—Generally Require Substitution Drawback Claims to be Calculated on a "Lesser of" Basis:					
Total Cost.					
Total Benefit	**Strengthened ability for CBP to validate claims and recoup inaccurately over-claimed drawback.**				
Total Transfer to Trade Members.					
Total Transfer to U.S. Government	$20.1	$17.6	$2.0	$15.0	$2.0.
Major Amendment 5—Expand the Scope of Drawback Refunds:					
Total Cost.					
Total Benefit.					
Total Transfer to Trade Members	$20.9	$18.3	$2.1	$15.6	$2.1.
Total Transfer to U.S. Government.					
Major Amendment 6—Establish Joint and Several Liability for Drawback Claims:					
Total Cost	**New liability for importers.**				

SUMMARY TABLE—TOTAL IMPACT OF RULE UNDER PRIMARY ESTIMATION METHOD, 2018–2027—Continued

[Monetized values in millions; 2018 U.S. dollars]

	Undiscounted	3% Discount rate		7% Discount rate	
		Present value	Annualized	Present value	Annualized
Total Benefit	**Improved accuracy of the documentation surrounding the transfer of drawback rights for some trade members claiming drawback and expanded opportunities for CBP to recoup inaccurately over-claimed drawback.**				
Total Transfer to Trade Members. Total Transfer to U.S. Government.					
Major Amendment 7—Modify the Rulings Process: Total Cost	$1.1	$1.1	$0.1	$1.1	$0.1.
Total Benefit	**Strengthened ability for CBP to validate claims and recoup inaccurately over-claimed drawback.**				
Total Transfer to Trade Members. Total Transfer to U.S. Government.					
Major Amendment 8—Standardize the Timeframe for Eligibility to Claim Drawback:					
Total Cost	**Less time for trade members to file drawback claims.**				
Total Benefit	**Additional time for trade members to use merchandise for drawback; simplified understanding of the drawback process for trade members; simplified implementation of drawback filing rules for CBP.**				
Total Transfer to Trade Members. Total Transfer to U.S. Government.					
Major Amendment 9—Modify Recordkeeping Requirements: Total Cost	$0.4	$0.3	$0.04	$0.3	$0.04.
Total Benefit	**Strengthened ability for CBP to validate claims and recoup inaccurately over-claimed drawback.**				
Total Transfer to Trade Members. Total Transfer to U.S. Government.					
Major Amendment 10—Eliminate ''Double Drawback'' of Excise Taxes: Total Cost. Total Benefit. Total Transfer to Trade Members. Total Transfer to U.S. Government	$622.6	$543.1	$61.8	$460.3	$61.2.
Minor Amendments: Total Cost.					
Total Benefit	**Additional opportunity for trade members to recover materials rather than destroy entire shipments when claiming unused merchandise drawback; enhanced understanding of the drawback process.**				
Total Transfer to Trade Members. Total Transfer to U.S. Government.					
New Amendments to NPRM:					
Total Cost	**Less time for trade members to file drawback claim documentation**				
Total Benefit.					
	Streamlined claim submissions and processing; simplified drawback process for trade members and CBP; added reassurance for trade members that rulings with potentially business-sensitive information will not be available for public consumption; decreased business costs; added administrative review time for CBP.				
Total Transfer to Trade Members.					

SUMMARY TABLE—TOTAL IMPACT OF RULE UNDER PRIMARY ESTIMATION METHOD, 2018–2027—Continued

[Monetized values in millions; 2018 U.S. dollars]

	Undiscounted	3% Discount rate		7% Discount rate	
		Present value	Annualized	Present value	Annualized
Total Transfer to U.S. Government.					
Overall Rule: Total Cost	$71.9 to $71.9	$67.2 to $67.2	$7.6 to $7.7	$62.3 to $62.4	$8.3 to $8.3.
	Potentially less attractive for trade members to use the United States as a home base for a distribution facility and offer drawback rights to other parties; new liability for importers; less time for trade members to file drawback claims and documentation.				
Total Benefit	$13.0	$11.3	$1.3	$9.6	$1.3.
	Streamlined claim submissions and processing; improved accuracy of the drawback rights transfer documentation; additional time for trade members to use merchandise for drawback; additional opportunity for trade members to recover materials rather than destroy entire shipments when claiming unused merchandise drawback; simplified drawback process for trade members and CBP; strengthened ability for CBP to validate claims and recoup inaccurately over-claimed drawback; added reassurance for trade members that rulings with potentially business-sensitive information will not be available for public consumption; decreased business costs; added administrative review time for CBP.				
Total Transfer to Trade Members	$1,021.3	$895.2	$101.9	$763.3	$101.6.
Total Transfer to U.S. Government	$667.8 to $710.3	$582.7 to $619.9	$66.3 to $70.6	$494.0 to $525.7	$65.7 to $70.0.
Net Transfer (from U.S. Government to Trade Members).	$311.0 to $353.5	$275.2 to $312.4	$31.3 to $35.6	$237.6 to $269.3	$31.6 to $35.8.

Notes: The estimates in this table are contingent upon CBP's expectations of the population affected by the rule and the discount rates applied. The net transfers to trade members shown in this table are also not necessarily to and from the same private entities (*i.e.,* some entities may experience only a monetary transfer *from* the U.S. Government and others may only experience a monetary transfer *to* the U.S. Government). Estimates may not sum to total due to rounding.

C. 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.'' [11] 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.'' [12]

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 in this rule are the result of the Trade Facilitation and Trade Enforcement Act of 2015 (Pub. 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) will measure $8.3 million on an annualized basis,[13] while its deregulatory impacts (*i.e.,* cost savings) will measure $1.3 million on an annualized basis (in 2016 U.S. dollars, using a 7 percent discount rate). Together, these impacts will introduce an annualized net regulatory cost of $7.0 million.

D. Regulatory Flexibility Act

This section examines the impact of the Modernized Drawback Final 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 rulemaking on small entities. If at the final rule stage an agency still cannot certify that the rule will not have a ''significant economic impact on a

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

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

[13] This estimate includes the high value of CBP's estimated range of costs of Major Amendment 3's mixed substitution drawback claim requirements. *See* Regulatory Impact Analysis of the Modernized Drawback Final Rule.

substantial number of small entities,'' a final regulatory flexibility analysis (FRFA) assessing the final rule's impact on small entities is required. CBP published a screening analysis and IRFA of the Modernized Drawback Notice of Proposed Rulemaking in the **Federal Register** on August 2, 2018.[14] For the final rule, CBP has updated the initial screening analysis to reflect information on additional entities and new costs, benefits, and transfers data. CBP has also prepared a FRFA.

Screening Analysis

The Modernized Drawback rule will 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 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 will 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 businesses under the RFA do not explicitly define small business 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 375 unique entities.[15]

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 business 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.[16] As shown, CBP finds that 71 percent (268) of the drawback claimants sampled are considered ''small businesses'' according to the SBA's size standards or are a small non-profit organization, of which there was one in the sample. CBP did not identify any small governmental jurisdictions affected by the rule in this sample. According to these findings, CBP assumes that the rule will 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 will 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 1,200 and their annual revenue measured from less than $0.5 million to $751.8 million (see Table 2). Table 2 shows the average number of employees and annual revenue corresponding to the small entities sampled in each NAICS industry using the low ranges of data available (as only ranges of employees and revenue are available for some entities).

TABLE 1—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
113210	Forest Nurseries and Gathering of Forest Products.	1	0.3	$11.0 Million	0	0.0
113310	Logging	1	0.3	500 Employees	0	0.0
212391	Potash, Soda, and Borate Mineral Mining.	1	0.3	750 Employees	1	0.3
221118	Other Electric Power Generation	1	0.3	250 Employees	1	0.3
311211	Flour Milling	1	0.3	1,000 Employees	1	0.3
311224	Soybean and Other Oilseed Processing.	1	0.3	1,000 Employees	0	0.0
311421	Fruit and Vegetable Canning	2	0.5	1,000 Employees	1	0.3
311930	Flavoring Syrup and Concentrate Manufacturing.	1	0.3	1,000 Employees	1	0.3
312130	Wineries	1	0.3	1,000 Employees	1	0.3
312140	Distilleries	1	0.3	1,000 Employees	1	0.3
313210	Broadwoven Fabric Mills	3	0.8	1,000 Employees	2	0.5
314994	Rope, Cordage, Twine, Tire Cord, and Tire Fabric Mills.	1	0.3	1,000 Employees	1	0.3
314999	All Other Miscellaneous Textile Product Mills.	2	0.5	500 Employees	2	0.5
315190	Other Apparel Knitting Mills	1	0.3	750 Employees	1	0.3
315220	Men's and Boys' Cut and Sew Apparel Manufacturing.	5	1.3	750 Employees	4	1.1
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing.	6	1.6	750 Employees	5	1.3
315280	Other Cut and Sew Apparel Manufacturing.	1	0.3	750 Employees	1	0.3

[14] *See* 83 FR 37886 (August 2, 2018).

[15] Out of a total population of 9,017 unique drawback claimants who filed claims between 2007 and 2016, CBP used a sample of 375 claimants with market data to inform this screening analysis due to the extensive time burden to gather and analyze business information. This sample size resulted in a statistically valid sample using a 95 percent confidence level with a 5 percent margin of error.

[16] 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—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
315990	Apparel Accessories and Other Apparel Manufacturing.	2	0.5	500 Employees	1	0.3
316210	Footwear Manufacturing	1	0.3	1,000 Employees	0	0.0
321911	Wood Window and Door Manufacturing.	1	0.3	1,000 Employees	1	0.3
321918	Other Millwork (including Flooring)	1	0.3	500 Employees	1	0.3
325180	Other Basic Inorganic Chemical Manufacturing.	7	1.9	1,000 Employees	5	1.3
325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing.	1	0.3	1,250 Employees	1	0.3
325199	All Other Basic Organic Chemical Manufacturing.	2	0.5	1,250 Employees	0	0.0
325211	Plastics Material and Resin Manufacturing.	4	1.1	1,250 Employees	3	0.8
325220	Artificial and Synthetic Fibers and Filaments Manufacturing.	1	0.3	1,000 Employees	1	0.3
325412	Pharmaceutical Preparation Manufacturing.	2	0.5	1,250 Employees	2	0.5
325612	Polish and Other Sanitation Good Manufacturing.	1	0.3	750 Employees	1	0.3
325620	Toilet Preparation Manufacturing	1	0.3	1,250 Employees	1	0.3
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.	2	0.5	500 Employees	1	0.3
326113	Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing.	1	0.3	750 Employees	1	0.3
326199	All Other Plastics Product Manufacturing.	3	0.8	750 Employees	3	0.8
326299	All Other Rubber Product Manufacturing.	1	0.3	500 Employees	1	0.3
327110	Pottery, Ceramics, and Plumbing Fixture Manufacturing.	1	0.3	1,000 Employees	1	0.3
327120	Clay Building Material and Refractories Manufacturing.	2	0.5	750 Employees	2	0.5
327390	Other Concrete Product Manufacturing.	1	0.3	500 Employees	1	0.3
327420	Gypsum Product Manufacturing	1	0.3	1,500 Employees	1	0.3
327910	Abrasive Product Manufacturing	1	0.3	750 Employees	0	0.0
331110	Iron and Steel Mills and Ferroalloy Manufacturing.	2	0.5	1,500 Employees	0	0.0
331410	Nonferrous Metal (except Aluminum) Smelting and Refining.	2	0.5	1,000 Employees	2	0.5
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding.	1	0.3	750 Employees	1	0.3
332323	Ornamental and Architectural Metal Work Manufacturing.	1	0.3	500 Employees	1	0.3
332510	Hardware Manufacturing	1	0.3	750 Employees	0	0.0
332813	Electroplating, Plating, Polishing, Anodizing, and Coloring.	1	0.3	500 Employees	1	0.3
332911	Industrial Valve Manufacturing	1	0.3	750 Employees	0	0.0
332996	Fabricated Pipe and Pipe Fitting Manufacturing.	1	0.3	500 Employees	1	0.3
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing.	1	0.3	750 Employees	1	0.3
333111	Farm Machinery and Equipment Manufacturing.	1	0.3	1,250 Employees	1	0.3
333244	Printing Machinery and Equipment Manufacturing.	1	0.3	750 Employees	1	0.3
333249	Other Industrial Machinery Manufacturing.	1	0.3	500 Employees	1	0.3
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.	1	0.3	1,250 Employees	0	0.0
333613	Mechanical Power Transmission Equipment Manufacturing.	1	0.3	750 Employees	1	0.3
333997	Scale and Balance Manufacturing	1	0.3	500 Employees	0	0.0

TABLE 1—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	0.3	1,000 Employees	0	0.0
334310	Audio and Video Equipment Manufacturing.	2	0.5	750 Employees	1	0.3
334419	Other Electronic Component Manufacturing.	1	0.3	750 Employees	0	0.0
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing.	1	0.3	1,250 Employees	1	0.3
334513	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables.	1	0.3	750 Employees	0	0.0
334516	Analytical Laboratory Instrument Manufacturing.	1	0.3	1,000 Employees	1	0.3
335121	Residential Electric Lighting Fixture Manufacturing.	1	0.3	750 Employees	1	0.3
335122	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.	1	0.3	500 Employees	1	0.3
335129	Other Lighting Equipment Manufacturing.	1	0.3	500 Employees	1	0.3
335220	Major Household Appliance Manufacturing.	1	0.3	1,500 Employees	1	0.3
336213	Motor Home Manufacturing	1	0.3	1,250 Employees	1	0.3
336330	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing.	1	0.3	1,000 Employees	1	0.3
336510	Railroad Rolling Stock Manufacturing.	1	0.3	1,500 Employees	1	0.3
337214	Office Furniture (except Wood) Manufacturing.	1	0.3	1,000 Employees	1	0.3
337920	Blind and Shade Manufacturing	1	0.3	1,000 Employees	0	0.0
339112	Surgical and Medical Instrument Manufacturing.	3	0.8	1,000 Employees	2	0.5
339113	Surgical Appliance and Supplies Manufacturing.	1	0.3	750 Employees	1	0.3
339115	Ophthalmic Goods Manufacturing	1	0.3	1,000 Employees	1	0.3
339910	Jewelry and Silverware Manufacturing.	1	0.3	500 Employees	1	0.3
339920	Sporting and Athletic Goods Manufacturing.	2	0.5	750 Employees	1	0.3
339930	Doll, Toy, and Game Manufacturing	1	0.3	500 Employees	1	0.3
339991	Gasket, Packing, and Sealing Device Manufacturing.	1	0.3	500 Employees	0	0.0
339992	Musical Instrument Manufacturing	1	0.3	1,000 Employees	1	0.3
339999	All Other Miscellaneous Manufacturing.	3	0.8	500 Employees	3	0.8
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers.	2	0.5	200 Employees	2	0.5
423220	Home Furnishing Merchant Wholesalers.	9	2.4	100 Employees	6	1.6
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers.	1	0.3	200 Employees	1	0.3
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers.	1	0.3	250 Employees	1	0.3
423440	Other Commercial Equipment Merchant Wholesalers.	3	0.8	100 Employees	3	0.8
423460	Ophthalmic Goods Merchant Wholesalers.	1	0.3	150 Employees	1	0.3
423510	Metal Service Centers and Other Metal Merchant Wholesalers.	3	0.8	200 Employees	2	0.5
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.	3	0.8	200 Employees	3	0.8
423690	Other Electronic Parts and Equipment Merchant Wholesalers.	5	1.3	250 Employees	2	0.5
423710	Hardware Merchant Wholesalers	4	1.1	150 Employees	3	0.8

TABLE 1—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
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers.	2	0.5	250 Employees	2	0.5
423830	Industrial Machinery and Equipment Merchant Wholesalers.	13	3.5	100 Employees	12	3.2
423840	Industrial Supplies Merchant Wholesalers.	4	1.1	100 Employees	3	0.8
423850	Service Establishment Equipment and Supplies Merchant Wholesalers.	1	0.3	100 Employees	0	0.0
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers.	1	0.3	150 Employees	1	0.3
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers.	13	3.5	100 Employees	11	2.9
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers.	2	0.5	150 Employees	2	0.5
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers.	13	3.5	100 Employees	13	3.5
423990	Other Miscellaneous Durable Goods Merchant Wholesalers.	5	1.3	100 Employees	5	1.3
424130	Industrial and Personal Service Paper Merchant Wholesalers.	1	0.3	150 Employees	1	0.3
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers.	6	1.6	100 Employees	6	1.6
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers.	5	1.3	150 Employees	4	1.1
424330	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers.	17	4.5	100 Employees	14	3.7
424340	Footwear Merchant Wholesalers	7	1.9	200 Employees	6	1.6
424410	General Line Grocery Merchant Wholesalers.	2	0.5	250 Employees	2	0.5
424490	Other Grocery and Related Products Merchant Wholesalers.	4	1.1	250 Employees	4	1.1
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers.	5	1.3	150 Employees	5	1.3
424690	Other Chemical and Allied Products Merchant Wholesalers.	7	1.9	150 Employees	7	1.9
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals).	3	0.8	200 Employees	3	0.8
424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers.	3	0.8	250 Employees	2	0.5
424910	Farm Supplies Merchant Wholesalers.	3	0.8	200 Employees	3	0.8
424940	Tobacco and Tobacco Product Merchant Wholesalers.	1	0.3	250 Employees	1	0.3
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers.	5	1.3	100 Employees	5	1.3
441120	Used Car Dealers	1	0.3	$25.0 Million	1	0.3
441222	Boat Dealers	2	0.5	$32.5 Million	1	0.3
441228	Motorcycle, ATV, and All Other Motor Vehicle Dealers.	1	0.3	$32.5 Million	0	0.0
442210	Floor Covering Stores	1	0.3	$7.5 Million	0	0.0
443142	Electronics Stores	2	0.5	$32.5 Million	2	0.5
446130	Optical Goods Stores	1	0.3	$20.5 Million	0	0.0
448110	Men's Clothing Stores	1	0.3	$11.0 Million	0	0.0
448120	Women's Clothing Stores	4	1.1	$27.5 Million	4	1.1
448130	Children's and Infants' Clothing Stores.	2	0.5	$32.5 Million	2	0.5
448140	Family Clothing Stores	2	0.5	$38.5 Million	2	0.5
448190	Other Clothing Stores	3	0.8	$20.5 Million	2	0.5
448210	Shoe Stores	1	0.3	$27.5 Million	1	0.3
448310	Jewelry Stores	1	0.3	$15.0 Million	1	0.3
451110	Sporting Goods Stores	3	0.8	$15.0 Million	3	0.8

TABLE 1—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
451140	Musical Instrument and Supplies Stores.	1	0.3	$11.0 Million	0	0.0
452210	General Merchandise Stores	1	0.3	$32.5 Million	1	0.3
453930	Manufactured (Mobile) Home Dealers.	1	0.3	$15.0 Million	1	0.3
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores).	1	0.3	$7.5 Million	1	0.3
454110	Electronic Shopping and Mail-Order Houses.	4	1.1	$38.5 Million	0	0.0
483112	Deep Sea Passenger Transportation	1	0.3	1,500 Employees	0	0.0
486210	Pipeline Transportation of Natural Gas.	1	0.3	$27.5 Million	0	0.0
488510	Freight Transportation Arrangement	1	0.3	$15.0 Million	0	0.0
492110	Couriers and Express Delivery Services.	1	0.3	1,500 Employees	1	0.3
493110	General Warehousing and Storage	1	0.3	$27.5 Million	1	0.3
493130	Farm Product Warehousing and Storage.	1	0.3	$27.5 Million	1	0.3
512250	Record Production and Distribution	1	0.3	250 Employees	1	0.3
522110	Commercial Banking	1	0.3	$550.0 Million in Assets.	0	0.0
522390	Other Activities Related to Credit Intermediation.	1	0.3	$20.5 Million	1	0.3
525990	Other Financial Vehicles	1	0.3	$32.5 Million	1	0.3
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works).	1	0.3	$38.5 Million	1	0.3
541330	Engineering Services	1	0.3	$15.0 Million	0	0.0
541380	Testing Laboratories	1	0.3	$15.0 Million	0	0.0
541611	Administrative Management and General Management Consulting Services.	1	0.3	$15.0 Million	1	0.3
541618	Other Management Consulting Services.	1	0.3	$15.0 Million	1	0.3
541690	Other Scientific and Technical Consulting Services.	1	0.3	$15.0 Million	0	0.0
541990	All Other Professional, Scientific, and Technical Services.	2	0.5	$15.0 Million	2	0.5
551112	Offices of Other Holding Companies	1	0.3	$20.5 Million	1	0.3
561499	All Other Business Support Services	3	0.8	$15.0 Million	3	0.8
561621	Security Systems Services (except Locksmiths).	1	0.3	$20.5 Million	0	0.0
561990	All Other Support Services	4	1.1	$11.0 Million	4	1.1
624110	Child and Youth Services*	1	0.3	$11.0 Million	1	0.3
711410	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures.	1	0.3	$11.0 Million	1	0.3
711510	Independent Artists, Writers, and Performers.	1	0.3	$7.5 Million	1	0.3
712110	Museums	1	0.3	$27.5 Million	1	0.3
713940	Fitness and Recreational Sports Centers.	1	0.3	$7.5 Million	1	0.3
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.	1	0.3	$7.5 Million	0	0.0
811490	Other Personal and Household Goods Repair and Maintenance.	1	0.3	$7.5 Million	1	0.3
812332	Industrial Launderers	1	0.3	$38.5 Million	0	0.0
813910	Business Associations	1	0.3	$7.5 Million	1	0.3
	Foreign Entity	37	9.9	N/A		
Total		375	100		268	71

*This sample corresponds to a non-profit organization.

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

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 August 31, 2018 through September 12, 2018; Manta. Online company reports. Available at *http://www.manta.com/.* Accessed August 31, 2018 through September 12, 2018.

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.'' October 1, 2017. Available at *https://www.sba.gov/sites/default/files/2018-07/NAICS%202017%20Table%20of%20Size%20Standards.pdf.* Accessed September 6, 2018.

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

NAICS code	NAICS description	Number of *small* entities in sample	Average number of employees at small entities in sample—low range value	Average annual revenue of small entities in sample—low range value (in millions)
212391	Potash, Soda, and Borate Mineral Mining	1	680	$751.8
221118	Other Electric Power Generation	1	14	2.0
311211	Flour Milling	1	20	2.9
311421	Fruit and Vegetable Canning	1	540	178.1
311930	Flavoring Syrup and Concentrate Manufacturing	1	70	14.7
312130	Wineries	1	50	10.7
312140	Distilleries	1	985	392.7
313210	Broadwoven Fabric Mills	2	15	2.1
314994	Rope, Cordage, Twine, Tire Cord, and Tire Fabric Mills	1	375	116.7
314999	All Other Miscellaneous Textile Product Mills	2	90	6.0
315190	Other Apparel Knitting Mills	1	138	17.4
315220	Men's and Boys' Cut and Sew Apparel Manufacturing	4	127	15.4
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing	5	69	10.6
315280	Other Cut and Sew Apparel Manufacturing	1	2	0.2
315990	Apparel Accessories and Other Apparel Manufacturing	1	1	0.1
321911	Wood Window and Door Manufacturing	1	250	56.3
321918	Other Millwork (including Flooring)	1	18	4.5
325180	Other Basic Inorganic Chemical Manufacturing	5	447	190.8
325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing	1	1,000	269.6
325211	Plastics Material and Resin Manufacturing	3	227	79.2
325220	Artificial and Synthetic Fibers and Filaments Manufacturing	1	740	230.6
325412	Pharmaceutical Preparation Manufacturing	2	332	61.7
325612	Polish and Other Sanitation Good Manufacturing	1	98	30.0
325620	Toilet Preparation Manufacturing	1	350	169.4
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	1	34	9.7
326113	Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing	1	275	46.7
326199	All Other Plastics Product Manufacturing	3	221	55.7
326299	All Other Rubber Product Manufacturing	1	1	0.1
327110	Pottery, Ceramics, and Plumbing Fixture Manufacturing	1	5	0.2
327120	Clay Building Material and Refractories Manufacturing	2	201	73.9
327390	Other Concrete Product Manufacturing	1	97	24.4
327420	Gypsum Product Manufacturing	1	10	0.1
331410	Nonferrous Metal (except Aluminum) Smelting and Refining	2	358	116.1
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding.	1	20	9.7
332323	Ornamental and Architectural Metal Work Manufacturing	1	47	16.0
332813	Electroplating, Plating, Polishing, Anodizing, and Coloring	1	25	2.4
332996	Fabricated Pipe and Pipe Fitting Manufacturing	1	100	38.4
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing	1	65	13.5
333111	Farm Machinery and Equipment Manufacturing	1	1,200	675.0
333244	Printing Machinery and Equipment Manufacturing	1	110	39.8
333249	Other Industrial Machinery Manufacturing	1	256	87.8
333613	Mechanical Power Transmission Equipment Manufacturing	1	38	10.5
334310	Audio and Video Equipment Manufacturing	1	13	1.2
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing	1	15	0.3
334516	Analytical Laboratory Instrument Manufacturing	1	430	121.8
335121	Residential Electric Lighting Fixture Manufacturing	1	11	1.5
335122	Commercial, Industrial, and Institutional Electric Lighting Fixture Manufacturing.	1	410	201.5
335129	Other Lighting Equipment Manufacturing	1	300	137.7
335220	Major Household Appliance Manufacturing	1	89	12.1
336213	Motor Home Manufacturing	1	275	138.1
336330	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing.	1	215	54.6
336510	Railroad Rolling Stock Manufacturing	1	100	42.6
337214	Office Furniture (except Wood) Manufacturing	1	45	7.0
339112	Surgical and Medical Instrument Manufacturing	2	126	11.5
339113	Surgical Appliance and Supplies Manufacturing	1	110	73.2
339115	Ophthalmic Goods Manufacturing	1	660	329.6
339910	Jewelry and Silverware Manufacturing	1	1	0.2
339920	Sporting and Athletic Goods Manufacturing	1	40	4.6

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

NAICS code	NAICS description	Number of *small* entities in sample	Average number of employees at small entities in sample—low range value	Average annual revenue of small entities in sample—low range value (in millions)
339930	Doll, Toy, and Game Manufacturing	1	7	1.0
339992	Musical Instrument Manufacturing	1	625	126.1
339999	All Other Miscellaneous Manufacturing	3	45	10.4
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	2	15	13.5
423220	Home Furnishing Merchant Wholesalers	6	31	23.6
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers	1	1	2.6
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers.	1	60	24.0
423440	Other Commercial Equipment Merchant Wholesalers	3	41	29.3
423460	Ophthalmic Goods Merchant Wholesalers	1	7	1.6
423510	Metal Service Centers and Other Metal Merchant Wholesalers	2	3	0.7
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.	3	49	** 13.6
423690	Other Electronic Parts and Equipment Merchant Wholesalers	2	60	15.7
423710	Hardware Merchant Wholesalers	3	83	** 28.5
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers.	2	26	14.3
423830	Industrial Machinery and Equipment Merchant Wholesalers	12	29	26.7
423840	Industrial Supplies Merchant Wholesalers	3	9	11.4
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers.	1	12	3.2
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	11	23	11.3
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers	2	59	21.7
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers.	13	14	16.0
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	5	23	23.0
424130	Industrial and Personal Service Paper Merchant Wholesalers	1	23	0.1
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	6	11	** 3.8
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers	4	16	** 10.0
424330	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers.	14	8	** 4.4
424340	Footwear Merchant Wholesalers	6	10	6.2
424410	General Line Grocery Merchant Wholesalers	2	11	6.7
424490	Other Grocery and Related Products Merchant Wholesalers	4	16	11.1
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	5	23	12.9
424690	Other Chemical and Allied Products Merchant Wholesalers	7	14	21.6
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals).	3	15	29.9
424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers	2	6	2.2
424910	Farm Supplies Merchant Wholesalers	3	26	49.9
424940	Tobacco and Tobacco Product Merchant Wholesalers	1	70	15.5
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	5	26	10.9
441120	Used Car Dealers	1	1	0.1
441222	Boat Dealers	1	33	12.1
443142	Electronics Stores	2	19	2.7
448120	Women's Clothing Stores	4	24	3.1
448130	Children's and Infants' Clothing Stores	2	72	16.3
448140	Family Clothing Stores	2	24	3.5
448190	Other Clothing Stores	2	23	6.8
448210	Shoe Stores	1	17	2.5
448310	Jewelry Stores	1	1	0.1
451110	Sporting Goods Stores	3	13	1.9
452210	General Merchandise Stores	1	20	2.5
453930	Manufactured (Mobile) Home Dealers	1	91	13.0
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	1	5	0.5
492110	Couriers and Express Delivery Services	1	6	1.7
493110	General Warehousing and Storage	1	20	0.5
493130	Farm Product Warehousing and Storage	1	14	1.7
512250	Record Production and Distribution	1	55	8.0
522390	Other Activities Related to Credit Intermediation	1	4	0.03
525990	Other Financial Vehicles	1	2	0.2
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	1	11	3.4
541611	Administrative Management and General Management Consulting Services	1	2	0.1
541618	Other Management Consulting Services	1	1	0.1
541990	All Other Professional, Scientific, and Technical Services	2	3	0.2

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

NAICS code	NAICS description	Number of *small* entities in sample	Average number of employees at small entities in sample—low range value	Average annual revenue of small entities in sample—low range value (in millions)
551112	Offices of Other Holding Companies	1	1	1.6
561499	All Other Business Support Services	3	1	0.9
561990	All Other Support Services	4	5	0.3
624110	Child and Youth Services*	1	21	3.9
711410	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures.	1	15	3.2
711510	Independent Artists, Writers, and Performers	1	2	0.3
712110	Museums	1	4	0.2
713940	Fitness and Recreational Sports Centers	1	4	0.1
811490	Other Personal and Household Goods Repair and Maintenance	1	18	1.8
813910	Business Associations	1	4	0.8

* This sample corresponds to a non-profit organization.

** The number of small entities forming this average excludes an entity missing revenue information. That entity had employment information, which the average employee figure includes.

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 August 31, 2018 through September 12, 2018; Manta. Online company reports. Available at *http://www.manta.com/.* Accessed August 31, 2018 through September 12, 2018.

Based on the share of drawback claimants sampled, CBP assumes that 71 percent of drawback claimants affected by this rule over the 2018 to 2027 period of analysis, or 7,042 claimants, will be small entities. These drawback claimants will incur costs related to ACE system modifications, electronic claim submission requirements, expanded recordkeeping requirements, mixed substitution drawback claim requirements, and additional full desk reviews; however, these costs will differ depending on their filing preferences and claim review.

Each unique drawback claimant will 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 206 small entity drawback claimants (71 percent of the estimated 290 total claimants) will modify their ACE filing systems in 2018 to comply with all of the new drawback regulations outlined in 19 CFR part 190.[17] These claimants could incur an estimated one-time cost of $90,000 that will translate to $9,000 per year of the analysis.[18] 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 3,905 small drawback claimants (71 percent of the estimated 5,500 total claimants) will 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 2,932 small paper-based drawback claimants (71 percent of the estimated 4,129 total claimants) will hire a customs broker to file their claims as a result of the rule. These claimants will likely file an average of 3 drawback claims per year, at an annual cost of $921 according to the $307 customs broker filing fee.[19] These estimates are based on the assumption that all small drawback claimants will continue to file drawback claims in spite of these electronic filing costs. CBP received public comments on these assumptions, which the agency discusses later in section 2 of the IRFA.

All drawback claimants must also retain drawback records for an extended period of time with this rule. CBP finds that all 7,042 small drawback claimants will 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.[20]

[17] 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 drawback claimants 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) × 5 percent anticipated to modify their ACE drawback systems = 290 (rounded) drawback claimants.

[18] Such regulatory changes will include providing line-item drawback claim data at the 10-digit HTSUS subheading level; consistent units of measurement for claimed imports, exports, and destructions (matching the HTSUS code to the designated imported merchandise for substitution drawback claims); 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.

[19] From 2018 to 2027, CBP projects under its primary estimation method that 4,129 unique drawback claimants will file 101,642 drawback claims electronically instead of by paper as a result of this rule (see Regulatory Impact Analysis of the Modernized Drawback Final Rule), averaging about 3 claims per unique drawback claimant each year over the 10-year period: 101,642 drawback claims filed electronically instead of by paper over 10-year period/4,129 unique drawback claimants = 25 (rounded) claims per unique drawback claimant over the 10-year period; 25 claims over 10-year period/10 years = 3 (rounded) claims per unique drawback claimant each year.

[20] $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

Continued

Furthermore, some drawback claimants may be subject to this rule's mixed substitution drawback claim requirements and additional full desk reviews. CBP estimates that this rule's mixed substitution drawback claim requirements will affect up to 141 small drawback claimants each year between 2018 and 2023 (71 percent of an estimated 198 total claimants).[21] CBP also estimates that each affected claimant will file an average of two mixed substitution drawback claims subject to this rule's supporting documentation requirements each year between 2018 and 2023, at a cost of $15 per claim or $30 total each year from 2018 to 2023.[22] Over the 10-year period of analysis, CBP estimates that each small drawback claimant affected by this rule's mixed substitution drawback claim requirements would sustain an average cost of $18 per year over the 10-year period of analysis.[23] CBP estimates that this rule's additional full desk reviews will affect 366 small drawback claimants (71 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 366 claimants will each complete one full desk review over the 10-year period, at a cost of $179 per review (or $18 over 10 years). Besides these monetized costs, this rule will 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 and documentation as compared to the current process.

Table 3 outlines the rule's different costs to small entities, while Table 4 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 (Cost B + Cost D in Table 4) and up to $9,040 if a small claimant experiences the rule's high ACE drawback system modification cost, added recordkeeping cost, mixed substitution drawback claim requirements cost, and full desk review cost (once over the 10-year analysis) (Cost A + Cost D + Cost E + Cost F in Table 4). About 96 percent of small drawback claimants will likely sustain a cost of $943 (Cost C + Cost D + Cost F in Table 4) or less per year from this rule, while the remaining 4 percent could incur higher annual costs measuring up to $9,040.

TABLE 3—COST OF RULE TO SMALL ENTITIES

[Undiscounted 2018 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	206	3	$9,000
B. Add-On Drawback Software	3,905	55	150
C. Customs Broker Claim Filing	2,932	42	921
D. Added Recordkeeping	7,042	100	4
E. Mixed Substitution Claim Requirements	141	2	18
F. Full Desk Review	366	5	18

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

TABLE 4—RANGE OF ANNUAL COSTS OF RULE TO SMALL ENTITIES

[Undiscounted 2018 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]	Mixed substitution claim requirements [E]	Full desk review [F]	Total
Low		$150		$4			$154
Medium			$921	4		$18	943

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 drawback claimants incurring electronic recordkeeping cost per year = $4 (rounded) electronic recordkeeping cost per unique drawback claimant each year.

[21] For the purposes of this analysis, CBP assumes that the percentage of unique drawback claimants affected by this rule's mixed substitution drawback claim requirements is equal to the high value of the estimated range of substitution drawback claims affected by Major Amendment 3's mixed substitution drawback claim requirements—2 percent. As such, CBP estimates that 2 percent of the assumed 9,919 unique drawback claimants would be affected by this rule's mixed substitution rule, for a total of 198 drawback claimants. Of these claimants, CBP finds that 71 percent, or 141, would be affected by this requirement over the period of analysis.

[22] CBP bases the average number of mixed substitution drawback claims subject to this rule's supporting documentation requirements each year on the high value of estimated mixed substitution drawback claims filed during the period of analysis under CBP's primary estimation method (2,210; see Regulatory Impact Analysis of the Modernized Drawback Final Rule) divided by the 6-year period of mixed substitution drawback claim submissions and then divided by the number of drawback claimants affected by this rule's mixed substitution drawback claim requirements: 2,210 total mixed substitution drawback claims filed/6-year submission period = 368 (rounded) mixed substitution drawback claims filed per year between 2018 and 2023; 368 (rounded) mixed substitution drawback claims filed per year between 2018 and 2023/198 drawback claimants affected by the mixed substitution drawback claim requirements = 2 (rounded) mixed substitution drawback claims filed each year per affected drawback claimant.

[23] $30 mixed substitution drawback claim supporting document submission cost per year × 6-year period of recordkeeping = $180 (rounded) total mixed substitution drawback claim supporting document submission cost over 6-year period; $180 mixed substitution drawback claim supporting document submission cost over 6-year period/10-year period of analysis = $18 (rounded) mixed substitution drawback claim supporting document submission cost per year of the 10-year period of analysis.

TABLE 4—RANGE OF ANNUAL COSTS OF RULE TO SMALL ENTITIES—Continued

[Undiscounted 2018 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]	Mixed substitution claim requirements [E]	Full desk review [F]	Total
High	$9,000			4	$18	18	9,040

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

CBP compares the rule's low ($154), medium ($943), and high ($9,040) 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 will represent less than 1 percent of annual revenue for 100 percent (263) of the small entities sampled with revenue data available,[24] as shown in Table 5. At the medium range, this rule's $943 monetized cost will represent less than 1 percent of annual revenue for 96 percent (252) of the small entities sampled with revenue data available. This rule's $943 monetized cost will represent between 1 percent and 3 percent of annual revenue for the remaining 4 percent (11) of the small entities, as Table 6 illustrates. Finally, at the high range, this rule's $9,040 monetized cost will represent less than 1 percent of the annual revenue for 74 percent (195) of the small entities sampled with revenue data available (see Table 7). The share of this rule's $9,040 monetized cost on annual revenue will measure between: 1 percent and 3 percent for about 10 percent (27) of the remaining small entities, 3 percent and 5 percent for 6 percent (17) of the small entities sampled, 5 percent and 10 percent for 5 percent (14) percent of small entities sampled, and 10 percent or more for 4 percent (10) of the small entities sampled (see Table 7). 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 will likely incur this rule's high annual cost of $9,040. Instead, most claimants will probably choose lower-cost options like purchasing add-on drawback software or hiring a customs broker to meet this rule's requirements that will have minimal impacts on their annual revenue, as assumed under the low- and medium-cost scenarios shown in Table 5 and Table 6.

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 will experience an impact of 5 percent or more only under the high cost range of $9,040. 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 (71 percent), the total annualized cost of this rule to all small entities will equal $5.4 million under the primary estimation method and assuming that Major Amendment 3 affects 2 percent of substitution drawback claims. CBP did not receive any public comments on whether these costs would deter small entities from filing drawback claims, though CBP did receive a comment stating that these costs are understated. Unfortunately, the commenter did not include any data to support this claim or propose alternative costs that CBP could incorporate into the analysis. CBP based its estimates on the best data available. Therefore, CBP has no basis for changing its estimates. To the extent that small entities incur greater (fewer) costs from this rule, the costs of this rule will be higher (lower) than estimated.

TABLE 5—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%	263	100
1% ≤ Impact < 3%	0	0
3% ≤ Impact < 5%	0	0
5% ≤ Impact < 10%	0	0
10% or More	0	0
Total	263	100

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

TABLE 6—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%	252	96

[24] Five of the small entities sampled did not have revenue data available, so CBP excluded these entities from the revenue impact calculation.

TABLE 6—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
1% ≤ Impact < 3%	7	3
3% ≤ Impact < 5%	4	2
5% ≤ Impact < 10%	0	0
10% or More	0	0
Total	263	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 $9,040 PER UNIQUE DRAWBACK CLAIMANT

Cost as a share of revenue range	Number of small entities affected	Percent of small entities affected
0% ≤ Impact < 1%	195	74
1% ≤ Impact < 3%	27	10
3% ≤ Impact < 5%	17	6
5% ≤ Impact < 10%	14	5
10% or More	10	4
Total	263	100

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

This rule will also result in benefits as well as net monetary transfers to drawback claimants. This rule will 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 2,932 small paper-based drawback claimants (71 percent of the estimated 4,129 total claimants) will enjoy $9 in cost savings for each paper claim avoided. These claimants will likely file an average of 3 drawback claims per year, at an annual cost saving of $27.[25] CBP finds that all 7,042 small drawback claimants will save $16 in printing and mailing costs related to forgone CBP Form 7552 submissions beginning in 2019. Before 2019, the estimated 2,932 small paper-based claimants will not gain this benefit because they will 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 will forgo about 4 CBP Form 7552 submissions each year of the analysis, saving a total of $64 per year.[26] Lastly, only a small number of claimants will sustain benefits from forgone ruling and predetermination requests. CBP estimates that 645 requests will 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 71 percent of drawback claimants affected by this rule over the 2018 to 2027 period of analysis are small entities, CBP finds that 458 small drawback claimants will each save $188 in costs related to ruling and predetermination requests. This will translate to about $19 per year over the 10-year period of analysis. Small drawback claimants will also enjoy non-monetized, non-quantified benefits from this rule, including streamlined claim submissions and processing, increased time to claim drawback, simplified understanding of the drawback process, added reassurance that business-sensitive information is not available for public consumption, and decreased business costs.

This rule's share of net monetary transfers to small entities is unknown. This rule will introduce $31.6 million to $35.8 million in annualized net transfers from the U.S. Government to drawback claimants (using a 7 percent discount rate). These transfers will average between $3,200 and $3,600 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.

Similar to the notice of proposed rulemaking and corresponding IRFA, CBP believes that a substantial number of trade members who could be considered ''small'' may be affected by this final rule based on the results from this screening analysis.[27] CBP cannot determine whether the economic impact on these entities may be considered

[25] From 2018 to 2027, CBP projects under its primary estimation method that 4,129 unique drawback claimants will file 101,642 drawback claims electronically instead of by paper as a result of this rule (see Regulatory Impact Analysis of the Modernized Drawback Final Rule), averaging about 3 claims per unique drawback claimant each year over the 10-year period: 101,642 drawback claims filed electronically instead of by paper over 10-year period/4,129 unique drawback claimants = 25 (rounded) claims per unique drawback claimant over the 10-year period; 25 claims over 10-year period/10 years = 3 (rounded) claims per unique drawback claimant each year.

[26] From 2018 to 2027, CBP projects under its primary estimation method that 9,919 unique drawback claimants will forgo 392,000 CBP Form 7552 submissions as a result of this rule (see Regulatory Impact Analysis of the Modernized Drawback Final Rule), averaging about 4 forms per unique drawback claimant each year over the 10-year period: 392,000 CBP Form 7552 submissions forgone over 10-year period/9,919 unique drawback claimants = 40 (rounded) forms per unique drawback claimant over the 10-year period; 40 claims over 10-year period/10 years = 4 (rounded) forms per unique drawback claimant each year.

[27] 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.

significant under the RFA. For these reasons, CBP cannot certify that the rule will not have a significant economic impact on a substantial number of small entities. CBP has prepared the following FRFA assessing the final rule's potential effect on small entities.

Final Regulatory Flexibility Analysis

This FRFA includes the following:

1. A succinct statement of the need for, and objectives of, the rule;
2. A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
3. A description and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
4. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record; and
5. A description of the steps the agency has taken to minimize the significant adverse economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency was rejected.

1. A succinct statement of the need for, and objectives of, the rule.

Section 906 of the Trade Facilitation and Trade Enforcement Act of 2015 (Pub. 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. TFTEA requires CBP to promulgate 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 through February 23, 2019. This rule will implement new drawback regulations consistent with TFTEA and the protection of U.S. Government revenue, and thereby modernize the current drawback process.

2. A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

CBP received some comments specifically addressing the Modernized Drawback rule's potential impacts on small entities. One commenter claimed that the rule's costs to small entities are significantly understated in the Regulatory Flexibility Act (RFA) analysis in the NPRM. The commenter asserted that CBP's analysis underestimates the costs of ACE drawback system modifications, add-on drawback software, and broker fees to trade members due to recent changes in ACE programming and new regulatory requirements. Unfortunately, the commenter did not include any data to support the claims or propose alternative costs that CBP could incorporate into the analysis. CBP based its estimates on the best data available. Therefore, CBP has no basis for changing its estimates. To the extent that small entities incur greater (fewer) costs from this rule, the costs of this rule will be higher (lower) than estimated.

The same commenter said that CBP understated the costs of added recordkeeping, arguing that the rule's costs to trade members are higher than estimated due to the variety of documentation that CBP could require for drawback verification under the rule and increased retention periods. CBP disagrees with this comment. TFTEA, and the corresponding drawback regulations proposed in 19 CFR part 190, largely reduce the recordkeeping burden for members by allowing them to verify claims using records maintained in the normal course of business. For example, TFTEA and the proposed drawback regulations in 19 CFR part 190 will completely eliminate CBP Form 7552: Delivery Certificate for Purposes of Drawback, allowing trade members to instead keep evidence of transfers in their records kept in the normal course of business, and provide such evidence to CBP upon request. This transition will result in savings to trade members rather than costs. In regards to TFTEA and the rule's longer record retention period, CBP captured the cost of extended recordkeeping in the Major Amendment 9 section of the NPRM's RIA and in this document. CBP developed the extended recordkeeping cost estimates in consultation with various members of the trade community and subject matter experts. Unfortunately, the commenter did not include any data to support the claim that CBP understated recordkeeping costs, and the commenter did not propose alternative costs that CBP could incorporate into the analysis. For this reason, CBP chose to maintain its recordkeeping estimates.

Furthermore, the commenter questioned CBP's RFA conclusion that the agency cannot determine whether the (negative) economic impact of the rule on small entities may be considered significant under the RFA. The commenter claimed that CBP did not adequately evaluate the new electronic filing costs and data element submissions of TFTEA and the expanded recordkeeping and data retention requirements of the statute. The commenter also suggested that CBP should acknowledge the ''significant cost impact to small business of the NPRM and work to simplify the operation requirements of Part 190 to minimize the impact of TFTEA on small business.'' CBP disagrees with these statements. CBP developed a comprehensive analysis examining the impacts of TFTEA and the proposed Modernized Drawback rule. The analysis evaluates new filing costs and data element submissions under the Major Amendment 1 section of the RIA as well as the Major Amendment 7 section. The RIA also includes an assessment of the costs of TFTEA's expanded recordkeeping and data retention requirements in the Major Amendment 9 section of the RIA. The RFA analysis accounts for these costs, analyzing their impacts on small entities. This document continues to include a full assessment of TFTEA's drawback amendments and the Modernized Drawback rule's corresponding changes. CBP worked in consultation with various members of the trade community representing a wide range of industries involved in drawback and subject matter experts to inform many of the estimates of the RIA and RFA analysis, as cited throughout the document. Moreover, CBP has worked to craft a regulation to minimize the impact on small entities while still meeting TFTEA and other legal requirements and protecting U.S. Government revenue. For instance, CBP has eased the proposed requirement in 19 CFR 190.26(d) for drawback claimants to maintain manufacturing or production records for articles purchased from a manufacturer or producer and claimed for drawback. CBP made this change based on a public comment explaining that the requirement could harm businesses. The commenter questioning the RFA analysis did not include any data or justification to support the claims that the RIA and RFA did not adequately evaluate the impact of the rule on trade

members, including those considered small under the RFA. The commenter also did not provide evidence to support its statement that CBP should certify that this rule has a significant economic impact on a substantial number of small entities. To further assess the impacts of the rule on small entities, CBP has expanded its RFA sample from 100 entities to 375 entities, leading to a 95 percent confidence level with a 5 percent margin of error. For these reasons, CBP continues to conclude that the agency cannot determine whether the economic impact of the rule on small entities may be considered significant under the RFA.

3. A description and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

As discussed in the screening analysis above, the Modernized Drawback rule will 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 71 percent of drawback claimants affected by this rule over the 2018 to 2027 period of analysis, or 7,042 claimants, will be small entities.

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

This rule will implement several new reporting, recordkeeping, and other compliance requirements for all drawback claimants, including those considered small. Among these changes, CBP will 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 (matching the HTSUS code to the designated imported merchandise for substitution drawback claims).
- File their complete drawback claims electronically using ACE and DIS, thus not allowing for manual, paper-based claims.[28]
- 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 will change the recordkeeping standards for all drawback claimants filing under the new regulations in 19 CFR part 190. Consistent with TFTEA, this rule will 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 will generally have to retain records for one extra year with this rule's new recordkeeping requirement rather 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.[29]

This rule will also encourage 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 should be documented in records, which may include records kept in the normal course of business.

Furthermore, this rule will require all drawback claimants filing manufacturing drawback claims under the new regulations in 19 CFR part 190 (which will account for about 20 percent of all claims filed with this rule) to maintain applicable bills of materials and/or formula records[30] 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 bills of materials and/or formula records by checking a box on their electronic drawback claim, and provide the documentation to CBP upon request.

CBP will also now require trade members to submit CBP Form 7553: Notice(s) of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback to CBP five working days prior to the date of intended exportation with this rule. The current regulations in 19 CFR part 191 require trade members to file CBP Form 7553 only two working days prior to the date of intended exportation. This change will give trade members less time to submit CBP Form 7553, but it will give CBP more time to review the form.

Under the current and proposed drawback regulations, a trade member filing a substitution unused merchandise or manufacturing drawback claim that is not the exporter or destroyer must submit an assignment letter certifying the drawback rights to CBP at the time of, or prior to the filing of the claim(s) covered by the certification. This rule will require trade members to file the certification only at the time of filing the claim(s) covered by the certification. Eliminating the ability to file the certifications prior to submitting a claim will have little to no effect as most trade members already submit the certifications at the time of filing their claims, and trade members must currently possess these certifications at the time of filing a drawback claim as a matter of law.[31]

Drawback claimants must follow these new reporting, recordkeeping, and compliance requirements of the rule. Other than obtaining the software or broker necessary to file drawback claims electronically in ACE, CBP does not believe that drawback claimants need any additional professional skills or resources to satisfy the rule's reporting, recordkeeping, and compliance requirements. CBP believes that the benefits of filing a drawback claim will outweigh the reporting, recordkeeping, and other compliance requirements of this rule, and thus not discourage drawback claimants from filing claims.

5. A description of the steps the agency has taken to minimize the significant adverse economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant

[28] Some drawback documentation, such as privilege and ruling applications, will remain paper-based.

[29] 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.

[30] *See* 19 CFR 190.2.

[31] Email correspondence with CBP's Office of Trade on September 27, 2018.

alternatives to the rule considered by the agency was rejected.

Section 906 of the Trade Facilitation and Trade Enforcement Act of 2015 (Pub. L. 114–125) seeks to 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. This rule will implement new drawback regulations consistent with TFTEA and the protection of U.S. Government revenue.

Due to the nature of TFTEA's mandate, CBP could not establish different requirements for small entities while still following the statute. Nonetheless, CBP conducted outreach with various members of the trade community representing a wide range of industries involved in drawback. CBP also considered two other alternatives to the rule that would have different impacts on drawback claimants, including those considered small. A detailed discussion of these alternatives is in the Regulatory Impact Analysis of the Modernized Drawback Final Rule, which can be found in the public docket for this rulemaking at *www.regulations.gov.* As previously mentioned, CBP further modified the new drawback regulations in 19 CFR part 190 in response to public comments to minimize certain impacts on trade members, including those considered small.

a. Alternative 1

The first regulatory alternative CBP considered will implement all of the rule's changes in 2018 rather than in 2019, offering no transition year. With this alternative, paper-based filers must begin filing their drawback claims electronically in 2018, but they will receive the benefits of drawback modernization in 2018 and beyond. With this alternative, paper-based filers, including those considered small, will begin to incur electronic filing costs in 2018 rather than 2019 like under the rule. This alternative will also lead to relatively more full desk reviews for claimants, including those considered small, than under the rule. Drawback claimants, including those considered small, will sustain an annualized cost of $8.1 million from this alternative under the primary estimation method, which is slightly higher than the rule's $7.6 million annualized cost to drawback claimants (using a 7 percent discount rate; see Regulatory Impact Analysis of the Modernized Drawback Final Rule). On a per-claimant basis, Alternative 1 will cost $810 annually over the period of analysis compared to the rule's nearly $770 cost per unique claimant.[32] Alternative 1 will also result in an annualized net transfer measuring between $39.1 million and $43.3 million from the U.S. Government to drawback claimants, which will average from $3,900 to $4,400 per unique claimant based on the 9,919 unique drawback claimants projected under this alternative (using a 7 percent discount rate; see Regulatory Impact Analysis of the Modernized Drawback Final Rule). Like the rule, Alternative 1 will introduce benefits to drawback claimants that the Regulatory Impact Analysis of the Modernized Drawback Final Rule discusses in further detail. These benefits to claimants, including those considered small, will 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.[33]

b. Alternative 2

The second regulatory alternative CBP considered will implement all of the rule's changes, except it will not change the current regulatory standard for substituting merchandise for drawback (*i.e.,* no implementation of Major Amendment 2 of the Regulatory Impact Analysis of the Modernized Drawback Final Rule). Under this alternative, CBP estimates that the number of substitution drawback claim submissions and the number of drawback claimants will be lower than under the rule over the period of analysis because this alternative will offer relatively fewer new opportunities to claim drawback (see Regulatory Impact Analysis of the Modernized Drawback Final Rule). In fact, drawback claims will measure about 548,000 from 2018 to 2027 under Alternative 2's primary estimation method and the number of unique drawback claimants will equal approximately 9,017. Because of its narrower scope, Alternative 2 will introduce slightly lower overall costs to drawback claimants, including those considered small, than the rule's cost. In particular, claimants will incur relatively fewer full desk reviews and associated costs with this alternative. Drawback claimants, including those considered small, will incur an annualized cost of $7.6 million from this alternative under the primary estimation method, compared to the rule's annualized cost of $7.6 million (using a 7 percent discount rate; see Regulatory Impact Analysis of the Modernized Drawback Final Rule). On a per-claimant basis, Alternative 2 will cost nearly $840 annually over the period of analysis, while the rule will introduce an average cost of almost $770 cost per unique claimant.[34] Alternative 2 will also result in annualized net transfers between $62.9 million and $67.1 million from drawback claimants to the U.S. Government, which will average $7,000 to $7,400 per unique claimant based on the 9,017 unique drawback claimants projected under this alternative (using a 7 percent discount rate; see Regulatory Impact Analysis of the Modernized Drawback Final Rule). Like the rule, Alternative 2 will introduce benefits to drawback claimants that the Regulatory Impact Analysis of the Modernized Drawback Final Rule discusses in further detail. These benefits will be slightly lower than the rule's benefits because drawback claimants will continue to submit ruling and predetermination 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.[35]

Conclusion

In conclusion, because the Modernized Drawback rule will presumably affect all drawback claimants, it will likely affect a substantial number of small entities in each industry submitting such claims. CBP cannot determine whether the rule's economic impact on these entities may be considered significant under the RFA due to data limitations. Therefore,

[32] $8,100,000/9,919 unique drawback claimants = $810 (rounded); $7,600,000/9,919 unique drawback claimants = $770 (rounded).

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

[34] $7,600,000/9,017 unique drawback claimants = $840 (rounded); $7,600,000/9,919 unique drawback claimants = $770 (rounded).

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

CBP cannot certify that this final rule will not have a significant economic impact on a substantial number of small entities. As a result, CBP has conducted a FRFA of the final rule.

E. 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 rulemaking are included in an existing collection for CBP Forms 7551, 7552, and 7553 (OMB control number 1651–0075).

This rule will, among other things, eliminate the submission requirement for CBP Form 7552 for drawback claimants who file electronically under the new drawback regulations in 19 CFR part 190. Drawback claimants filing by paper under the current drawback regulations in 19 CFR part 191 will 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 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 this rule's changes. 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

VI. Signing Authority

This 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 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.

Regulatory Amendments

For the reasons given above, 19 CFR chapter I is amended as set forth below:

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

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

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

* * * * *

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

■ 2. 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 191 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.

■ 3. Add part 190 to read as follows:

PART 190—MODERNIZED DRAWBACK

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190.0a Claims filed under NAFTA.

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190.6 Authority to sign or electronically certify drawback documents.
190.7 General manufacturing drawback ruling.
190.8 Specific manufacturing drawback ruling.
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190.44 [Reserved]
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190.102 Procedure.
190.103 Additional requirements.
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Subpart K—Supplies for Certain Vessels and Aircraft

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Subpart L—Meats Cured With Imported Salt

190.121 Drawback allowance.
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190.123 Refund of duties.

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190.131 Drawback allowance.
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190.181 Drawback allowance.
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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.
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Subpart S—Drawback Compliance Program

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190.192 Certification for compliance program.
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Appendix A to Part 190—General Manufacturing Drawback Rulings
Appendix B to Part 190—Sample Formats for Applications for Specific Manufacturing Drawback Rulings

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624;

§§ 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 chapter. 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 (and includes components used in the manufacturing or production process). 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 into and contained within an electronic data field, and electronic versions of hard-copy documents.

Drawback. Drawback, as authorized for payment by CBP, means the refund, in whole or in part, of the duties, taxes, and/or fees paid on imported merchandise, which were imposed under Federal law upon entry or importation, and the refund of internal revenue taxes paid on domestic alcohol as prescribed in 19 U.S.C. 1313(d). More broadly, drawback also includes the refund or remission of other excise taxes pursuant to other provisions of law.

Drawback claim. Drawback claim, as authorized for payment by CBP, 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 Electronic Data Interchange system. More broadly, drawback claim also includes claims for refund or remission of other excise taxes pursuant to other provisions of law.

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 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 (and includes those used in the manufacturing or production process). 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 (or destroyer) from the importer and who has acquired, purchased, or possessed the imported or substituted 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. This method of refund calculation is required for certain substitution drawback claims (*see* § 190.51(b)(ii)), which may also be subject to additional limitations under the ''lesser of'' rules, if applicable (*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. 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 designated imported merchandise;

(2) For rejected merchandise 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 designated imported merchandise;

(3) For unused merchandise drawback pursuant to section 1313(j)(2), substituted merchandise must be classifiable under the same 8-digit HTSUS subheading number as the designated imported 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''; but when the first 8 digits of the 10-digit Schedule B number applicable to the exported merchandise are the same as the first 8 digits of the HTSUS subheading number under which the imported merchandise is classified, the merchandise may be substituted (without regard to whether the Schedule B number corresponds to more than one 8-digit HTSUS subheading number); 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)).

Unused merchandise. Unused merchandise means, for purposes of unused merchandise drawback claims,

imported merchandise or other merchandise upon which either no operations have been performed or upon which any operation or combination of operations has been performed (including, but not limited to, testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), but which does not amount to a manufacture or production for drawback purposes under 19 U.S.C. 1313(a) or (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 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;

(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.

§ 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 to assign the right to claim drawback (*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 or a 1-time waiver of prior notice under § 190.36;

(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) for imported merchandise that will be designated as part of substitution manufacturing drawback claims;

(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.

(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 upload a copy of the application for the specific manufacturing drawback ruling to the Automated Commercial Environment (ACE) along 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 claim(s) 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, 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. 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) *Line item designation for partial transfers of merchandise.* Regardless of any agreement between the transferor

and the transferee, the method used for the first filed claim relating to merchandise reported on that entry summary line item will be the exclusive basis for the calculation of refunds (either using per unit averaging or not) for any subsequent claims for any other merchandise reported on that same entry summary line item. *See* § 190.51(a)(3).

(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 upon request by CBP, 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. These costs must be based on records kept in the ordinary course of business and may be determined on the basis of any of the inventory accounting methods recognized in the Generally Accepted Accounting Principles. Any inventory management method which is used by a manufacturer or producer for valuation of the substituted merchandise for manufacturing drawback claims under 19 U.S.C. 1313(b) must be used without variation with other methods for a period of at least 1 year.

§ 190.12 Claim filed under incorrect provision.

A drawback claim filed under this part and 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 is provided for 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 is provided for 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 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. Drawback under 19 U.S.C. 1313(q)(2) is allowed, regardless of whether or not any of the articles or merchandise the packaging contains are actually eligible for drawback.

§ 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, 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 1 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.* 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).

Note to paragraph (c)(3)(ii)(B): 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 designated imported 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 will 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 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. The amount of duties, taxes, and fees eligible for drawback is determined by per unit averaging, as defined in § 190.2, for any drawback claim based on 19 U.S.C. 1313(b).

(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 (after the value of the imported merchandise has been 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 (after the value of the imported merchandise has been 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 (with the exception of Subchapter A of Chapter 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, but only if in such transfer the value of the transferred realty, personalty, and intangibles (other than drawback rights, inchoate or otherwise) exceeds the value of all transferred drawback rights, inchoate or otherwise.

(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 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 duties, taxes, and fees 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 amounts 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 or destruction.* Where the claimant purchases articles from the manufacturer or producer and exports or destroys them, the claimant must maintain records to document the transfer of articles received.

(e) *Multiple claimants*—(1) *General.* Multiple claimants may file for drawback with respect to the same export or destruction (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 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 or destroyer 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 accompany each claim and also affirm that the exporter (or destroyer) has not claimed 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), 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. 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(j)(2).

(b) *Allowable refund*—(1) *Exportation.* In the case of an article that is exported, subject to paragraph (b)(3) of this section, 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 (b)(3) of this section, 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 (after the value of the imported merchandise has been 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 (after the value of the imported merchandise has been 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 (with the exception of Subchapter A of Chapter 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 the 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 19 U.S.C. 1313(j)(2), the total amount of drawback allowable will not exceed 99 percent of the duties, taxes, and fees paid with respect to the imported merchandise, without regard to the limitations in paragraph (b)(1) or (b)(2) of this section.

(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, but only if in such transfer the value of the transferred realty, personalty, and intangibles (other than drawback rights, inchoate or otherwise) exceeds the value of all transferred drawback rights, inchoate or otherwise.

(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 imported and/or substituted merchandise.

(ii) *Merchandise not otherwise designated.* The predecessor or successor must certify that the predecessor has not designated 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 stating that it 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 with each claim.

(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 stating that it 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 with each claim.

§ 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 or destroy; examination of merchandise.

(a) *Notice.* A notice of intent to export or destroy 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 (for destruction under CBP supervision, see § 190.71) 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 5 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 or destruction. In addition, if applicable, 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 exported 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 to be 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.

(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 to be 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 or destroyed without complying with the requirements of § 190.35(a), § 190.42(a), § 190.71(a), or § 190.91 may be eligible for unused merchandise drawback under 19 U.S.C. 1313(j) or under 19 U.S.C. 1313(c) 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 or destructions 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 or destroyed 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 or destroy unused merchandise.* If an applicant states it will have future exportations or destructions 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 or destructions 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 or destroy prior to each such exportation or destruction, 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 of this part 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, unless the claimant has been granted a waiver of prior notice (*see* § 190.91) or complies with the procedures for 1-time waiver in § 190.36.

(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 to be 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 § 190.74.

§ 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) of this section.

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 paragraph (a)(2) of this section), 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;

(ii) Broker identification number (if applicable);

(iii) If requesting accelerated payment under § 190.92, surety code and bond type (and, for single transaction bonds, also the bond number and amount of bond);

(iv) Port code for the drawback office where the claim is being filed;

(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, 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 for substitution manufacturing and substitution unused merchandise drawback claims), as well as the types 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), each associated ruling number, along with the following information: Corresponding information for the factory location, the basis of the claim (as provided for in § 190.23), the date(s) of use of the imported and/or substituted merchandise in manufacturing or processing (or drawback product containing the imported or substituted merchandise), a description of and the 10-digit HTSUS classification for the drawback product or finished article that is manufactured or produced, the quantity and unit of measure for the drawback product or finished article that is manufactured or produced, the disposition of the drawback product or finished article that is manufactured or produced (transferred, exported, or destroyed), 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 exported or destroyed 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 in paragraph (viii) for substitution unused merchandise drawback claims) 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), export destination, name of exporter, the applicable comparative value pursuant to § 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 § 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.

(4) *Limitation on line item eligibility for imported merchandise.* Claimants 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 must provide additional information enabling CBP to verify the availability of drawback for the indicated merchandise and associated line item within 30 days of claim submission. The information to be provided will include, but is not limited to: summary document specifying the lines used and unused on the import entry; the import entry summary, corresponding commercial invoices, and copies of all drawback claims that previously designated the import entry summary; and post summary/liquidation changes (for imports or drawback claims, if applicable).

(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 § 190.2. The amount that may be refunded is also subject to the limitations set forth in § 190.22(a)(1)(ii) (manufacturing claims) and § 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.

Example 1:

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

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).

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).

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).

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

Line item 1—700 meters of printed cloth valued at $10 per meter (total value $7,000) that is exempt from the merchandise processing fee under 19 U.S.C. 58c(b)(8)(B)(iii)
Line item 2—15,000 articles valued at $100 each (total value $1,500,000)
Line item 3—10,000 duty-free articles valued at $50 each (total value $500,000)

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

Line item 2—1,500,000 ÷ 2,000,000 = .75 (line items 2 and 3 form the total value of the merchandise subject to the merchandise processing fee).
Line item 3—500,000 ÷ 2,000,000 = .25.

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

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

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

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

(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.

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.

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).

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.

(4) *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 § 190.22(a)(1)(ii) (manufacturing claims) and § 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, and consistent with the applicable general manufacturing drawback ruling or the specific manufacturing drawback ruling, the applicable HTSUS classification numbers 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.

(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 when transmitted in ACE, 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 (or within 3 years after the date of exportation of the articles upon which drawback is claimed for drawback pursuant to 19 U.S.C. 1313(d)). If it is later determined by CBP, subsequent to acceptance of the claim and upon further review, that the claim was incomplete or untimely, then it may be denied.

(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 (or within 3 years after the date of exportation of the articles upon which drawback is claimed for drawback pursuant to 19 U.S.C. 1313(d)). 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 the exporter which must be attached to such records or other documentary evidence, 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) of this section 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 complete 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 complete drawback claim based on the destruction (*see* § 190.51(a)).

(d) *Deduction for value of recovered materials.* Under 19 U.S.C. 1313(x), a destruction may include a process by which materials are recovered from imported merchandise or from an article manufactured from imported merchandise for drawback claims made pursuant to 19 U.S.C. 1313(a), (b), (c), and (j). In determining the amount of duties to be refunded as drawback to a claimant, the value of recovered materials (including the value of any tax benefit or royalty payment) that accrues to the drawback claimant must be deducted from the value of the imported merchandise that is destroyed, or from the value of the merchandise used, or designated as used, in the manufacture of the article.

§ 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):

(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.* The documents for establishing exportation (which may be records kept in the normal course of business) include, but are not limited to:

(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 presented 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 in their records and made available to CBP upon request (*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 (*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.

§ 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) 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) of this section, 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) of this chapter.

(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 1 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 assigned 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 or Destroy; Accelerated Payment of Drawback

§ 190.91 Waiver of prior notice of intent to export or destroy.

(a) *General*—(1) *Scope.* The requirement in § 190.35 for prior notice of intent to export or destroy merchandise which may be the subject of an unused merchandise drawback claim under section 313(j) of the Act, as amended (19 U.S.C. 1313(j)), or a rejected merchandise drawback claim under section 313(c), as amended (19 U.S.C. 1313(c)), 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 part 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 § 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) or rejected merchandise drawback under 19 U.S.C. 1313(c) may apply for a waiver of prior notice of intent to export or destroy 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) or destroyer(s) (if more than 3 exporters or destroyers, such information is required only for the 3 most frequently used exporters or destroyers), if applicant is not the exporter or destroyer;

(C) Export or destruction period covered by this application;

(D) Commodity/product lines of imported and exported or destroyed merchandise covered by this application;

(E) Origin of merchandise covered by this application;

(F) Estimated number of export transactions or destructions during the next calendar year covered by this application;

(G) Port(s) of exportation or location of destruction facilities 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 or destructions; 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 or destroyed 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)) or that the rejected merchandise that was exported or destroyed satisfies the relevant requirements (for purposes of drawback under 19 U.S.C. 1313(c)), 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 or destroyed 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) or sample of evidence of destruction, 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 or destroy, under this section, will operate prospectively, applying only to those export shipments or destructions 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 or destroy, 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 or destroyed with drawback prior to its exportation or destruction 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 or destroy, 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 or destroy. 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 or destroy, 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 or destroy 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 or destruction 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 § 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 or evidence of destruction, 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 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 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 sections 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 that 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) 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) 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) *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 section 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 section 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 section 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, 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 section 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 section 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 § 190.2, for any drawback claim based on 19 U.S.C. 1313(p) pursuant to the standards set forth in § 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 (with the exception of Subchapter A of Chapter 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, 2709.00, 2710, 2711, 2712, 2713, 2714, 2715, 2901, and 2902, and subheadings 2903.21.00, 2909.19.14, 2917.36, 2917.39.04, 2917.39.15, 2926.10.00, 3811.21.00, and 3811.90.00, 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);

(b) *Exported article.* The exported article on which drawback is claimed must be an ''exported article'' as defined in § 190.172(c);

(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);

(b) *Exported article.* The exported article on which drawback is claimed must be an ''exported article'' as defined in § 190.172(c);

(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 served 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 served 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 section 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)). 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 (or 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.

(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 recordkeeping 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 or destruction 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). 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 section 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 office will advise the appellant of the reasons for the delay and of any further actions which will be carried out to complete the appeal review and of the anticipated date for issuance of the appeal decision.

(2) *Appeal of certification removal.* A party who has received a 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 or destroy 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

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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 of its intention to operate under the ruling (*see* § 190.7). The letter of notification must be sent, electronically, to the drawback offices at the below listed email accounts:

NewYorkDrawback@cbp.dhs.gov
SanFranciscoDrawback@cbp.dhs.gov
HoustonDrawback@cbp.dhs.gov
ChicagoDrawback@cbp.dhs.gov.

Such 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, include 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 must 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

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

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, quantity, and 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. 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 all 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.

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

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 (I. General Instructions, 1 through 10), 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.

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, identity, 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, identity, 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 (I. General Instructions, 1 through 10), 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 must 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).

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

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, quantity, and 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 compliance with all 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 establish 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 (I. General Instructions, 1 through 10), 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.

The designated components must be manufactured in accordance with the same specifications and from the same materials, and must be 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 review by CBP Officials.

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), quantity, and 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 and 8-digit HTSUS classification of the designated merchandise;

[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. 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.

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 all 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 (I. General Instructions, 1 through 10), 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 must 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, quantity, and 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 all 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

[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.''

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, and 8-digit HTSUS classification of oil so intermixed. The identity of the merchandise or articles in either instance must be in accordance with § 190.14.

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 (I. General Instructions, 1 through 10), 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 must 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, quantity, and 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 all 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

[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.''

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 (I. General Instructions, 1 through 10), 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.

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.

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 and identity 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 all 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 (I. General Instructions, 1 through 10), 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, 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 (I. General Instructions, 1 through 10), 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.

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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.)

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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	1.00126	21,221	.45962	8,774	4.52178	195	1.00244
	176	1.01300	104,397	.43642				
(13) Drawback Deliveries	.....	.....	.....	.....	.....	.....	696	1.00244
							319	1.07895
(14) Domestic Shipments	97,863	1.01300	180,957	.43642	468	4.52178	6,867	1.07895
					278,286	4.64041		
(15) Closing Inventory	10,230	1.01300	22,648	.43642	14,206	4.64041	810	1.07895

Line (10)—Opening inventory from previous period's closing inventory.
Line (11)—From production period under consideration.
Line (11–A)—Product received from other sources.
Line (12)—From earliest on hand (inventory or production). Totals from drawback entry or entries recapitulated (*see* column 18).
Line (13)—Deliveries for export or for designation against further manufacture—earliest on hand after exports are deducted.
Line (14)—From earliest on hand after lines (12) and (13) are deducted.

Line (15)—Balance on hand.

BILLING CODE 9111–14–P

EXHIBIT D
RECAPITULATION OF DRAWBACK ENTRY
ABC OIL CO., INC - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

(16)	(17)	(18)	(19)	(20)	(20a)
Product	Quantity in Bbls. Exported	Quantity in Bbls. In the Terms of the Abstract	Drawback Factor per Bbl.	Crude Allowed for Drawback in Bbls.	Crude to be Allowed for Drawback Deliveries in Bbls.
Aviation Gasoline	11,410	11,216 176	1.00126 1.01300	11,232 176	
Residual Oils	125,618	21,221 104,397	0.45962 0.43642	9,754 45,561	
Lubricating Oils	8,875	8,774	4.52178	36,674	
Petrochemicals – Other	195	696 319 195	1.00244 1.07895 1.00244	195	698 344
Total	146,098	146,996		106,594	1,042

Duty paid on raw material selected for designation - $.1050 per bbl. (class III crude)

Amount of drawback claimed - gross - 106,594 x .1050 =	$11,192
Less 1%	- 112
Amount of drawback claimed - net	$11,080

Col. (16) Lists only products exported.
Col. (17) Quantities in condition as shown on the notices of exportation and notices of lading.
Col. (18) Quantities in condition as shown on the abstract (i.e., less additives if any). These quantities will appear in line 12.
Col. (19) The drawback factor(s) shown on line 12.
Col (20) Raw 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.	Drawback Computation
B - Total quantity exported (including drawback deliveries (column 22):	151,347 "	4,165* bbls. @ 10½ = $437.33
C - Largest quantity of raw material needed to produce an individual exported product (see col. 24):	151,347	Less 1% 4.37
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		Amount of Drawback
$432.96		
the domestic industry, the exported articles (including drawback deliveries) in the quantities exported or delivered):		Claim - Net
E - Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable):		See subtotal, col. 20, for Residual Rights above 151,347

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

BILLING CODE 9111–14–C

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	Quantity in barrels	Industry standard (%)	Quantity of raw material of type and class designated needed to produce product per barrel	Drawback factor	Crude allowed for drawback
(21)	(22)	(23)	(24)	(19)	(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, 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.

BILLING CODE 9111–14–P

The attached sample, **EXHIBIT E (COMBINATION)**, illustrates the procedures to be followed when two classes or types of raw material are designated on a given abstract. For purposes of illustration it is assumed that the refiner has only 100,000 barrels of Class III crude to designate, but adequate supplies of Class II to designate.

In addition, please note that the computation of drawback on **EXHIBIT D** will be as follows:

Duty paid on raw material selected for designation:

$.1050 per barrel (Class III crude)
$.0525 per barrel (Class II crude)

Amount of drawback claimed- gross: 81,638 x .1050=$8,571.99
24,956 x .0525= $1,310.19
$9,882.18
(Rounded Off) 9,882
Less 1% -99

Amount of drawback claimed- net: $9,783

BILLING CODE 9111–14–C

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.

B. Exported Articles on Which Drawback Will Be Claimed

Finished piece goods.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s. 55027(2) and 55207(1) (*see* § 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 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 all legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of eligible piece goods used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible piece goods that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste from each lot of piece goods, drawback may be claimed on the quantity of eligible piece goods used to produce the exported articles less the amount of piece goods which the value of the waste would replace.

L. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the

[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.

[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.

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 (I. General Instructions, 1 through 10), 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), quantity, and 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 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 (I. General Instructions, 1 through 10), 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. 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).

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).

[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).

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), quantity, and 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 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 all 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 (I. General Instructions, 1 through 10), 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.

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,
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), quantity, 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.

[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.

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 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 all 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 (I. General Instructions, 1 through 10), 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 must 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 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 all 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

[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.''

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 (I. General Instructions, 1 through 10), 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 U.S.C. 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

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

I. General

Applications for specific manufacturing drawback rulings using these sample formats must be submitted to, reviewed, and approved by CBP Headquarters. *See* 19 CFR 190.8(d). Applications must be submitted electronically to *HQDrawback@cbp.dhs.gov.* 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

(Provide the address of the factory(s) where the process of manufacture or production will take place. Indicate if the factory is a different legal entity from the applicant, 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, and 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).)

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, specify that 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, the applicant must make a statement affirming 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 designated 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.

(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. 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. The application must also include the Bill of Materials and/or formulas annotated with the HTSUS classifications.)

(It is essential that all the characteristics which determine the identity of the merchandise are specified 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 identities.)

(The descriptions should be sufficient to classify the merchandise in the same 8-digit HTSUS subheading number included in the Parallel Columns. The left-hand column will consist of the name and the 8-digit HTSUS subheading number of the imported merchandise. The right-hand column will consist of the name and the 8-digit HTSUS subheading number for the duty-paid, duty-free, or domestic designated merchandise. 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 providing 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, include equations of any chemical reactions. Including a flow chart in the description of the manufacturing process is an excellent means of illustrating how a manufacture or production occurs. 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 into two or more products. If applicable, 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 are necessarily produced 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 $1,500 or 1/5. The relative value of B is 2/15 and of product C is 2/3, calculated in the same manner. This means that 1/5 of the drawback product payments will be distributed to product A, 2/15 to product B, and 2/3 to product C.)

(Drawback is allowable on exports of any of multiple products, but is not permitted on exports of valuable waste. In making this distinction between a product and valuable waste, the applicant should address the following significant elements: (1) The nature of the material of which the residue is composed; (2) the value of the residue as compared to the value of the principal manufactured product and the raw material; (3) the use to which it is put; (4) its status under the tariff laws, if imported; (5) whether it is a commodity recognized in commerce; (6) whether it must be subjected to some process to make it saleable.)

2. Producibility

(Some processes result in the separation of fixed proportions of each product, while other processes afford the opportunity to increase or decrease the proportion of each product. An example of the latter is petroleum refining, where the refiner has the option to increase or decrease the production of one or more products relative to the others. State under this heading whether you can or cannot vary the proportionate quantity of each product.)

(The MULTIPLE PRODUCTS section consists of two sub-sections: Relative Values and Producibility. If multiple products do not result from your operation state ''Not Applicable'' for the entire section. If multiple products do result from your operation Relative Values will always apply. However, Producibility may or may not apply. If Producibility does not apply to your multiple product operation state ''Not Applicable'' for this sub-section.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a statement to that effect.)

(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 you choose to claim on the basis of the quantity of merchandise used in producing the exported articles (less any 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.

[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.

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. If applicable, state the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured by weight unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. The identity and 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 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, you must state: ''All legal requirements will be met by our inventory procedures.'' 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 recordkeeping procedures if those procedures are solely 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 the waste is valueless or unrecovered. 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, as reduced by the quantity of such merchandise which the value of the waste would replace. In such a 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.)

[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.

(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 of material that is 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 of merchandise used in producing all articles 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 a ''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;

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

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

[5] Section 190.6(a) requires that applications for specific manufacturing drawback rulings be signed or electronically certified 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, an individual acting on his or her own behalf, 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 may sign such an application, as may a licensed customs broker with a customs power of attorney.

division or company as the applicant (*see* § 190.8(a)).)

LOCATION OF FACTORY

(Provide the address of the factory(s) where the process of manufacture or production will take place. Indicate if the factory is a different legal entity from the applicant, and indicate if the applicant is 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, and 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).)

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, specify that 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, the applicant must make a statement affirming the same 8-digit HTSUS subheading numberof the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise designated in our claims will be classifiable under the same 8-digit HTSUS subheading number as 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 designated merchandise.

(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.'' To enable CBP to rule on the proper ''same 8-digit HTSUS subheading number,'' the application must include a detailed description of the designated imported merchandise, and of the substituted duty-paid, duty-free, or domestic merchandise used to produce the exported articles. The application must also include the Bill of Materials and/or formulas annotated with the HTSUS classification.)

(It is essential that all the characteristics which determine the identity 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 identities.

(The descriptions of the ''same 8-digit HTSUS subheading number'' merchandise should be included in the Parallel Columns. The left-hand column will consist of the name and 8-digit HTSUS subheading number of the imported merchandise. The right-hand column will consist of the name and 8-digit HTSUS subheading number for the duty-paid, duty-free, or domestic designated merchandise. Amendments to the ruling 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 providing 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, include equations of any chemical reactions. Including a flow chart in the description of the manufacturing process is an excellent means of illustrating how manufacture or production occurs. 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 into two or more products. If applicable, 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 are necessarily produced 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.)

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

(The 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 $1,500 or 1/5. The relative value of B is 2/15 and of product C is 2/3, calculated in the same manner. This means that 1/5 of the drawback product payments will be distributed to product A, 2/15 to product B, and 2/3 to product C.)

(Drawback is allowable on exports of any of multiple products, but is not permitted 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, then 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 statement to that effect.)

(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 merchandise used in producing the exported articles less any 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. If applicable, state the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. The identity and 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

[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.

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, you must state: ''All legal requirements will be met by our inventory procedures.'' 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 recordkeeping procedures if those procedures are solely 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 the waste is valueless or unrecovered. 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, as reduced by the quantity of such merchandise which the value of the waste would replace. In such a 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 of material that is 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 of merchandise used in producing all articles 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] _____

[4] Section 190.6(a) requires that applications for specific manufacturing drawback rulings be signed or electronically certified 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, an individual acting on his or her own behalf, or, if a corporation, the president, a vice president,

Continued

(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

(Provide the address of the factory(s) where the process of manufacture or production will take place. Indicate if the factory is a different legal entity from the applicant, and indicate if the applicant is 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, and 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).)

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 may sign such an application, as may a licensed customs broker with a customs power of attorney.

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 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 providing 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 statement to that effect.)

(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 any 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. If applicable, 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 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, as 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)

[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.''

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

(Provide the address of the factory(s) or shipyard(s) at which the construction and equipment will take place. Indicate if the factory or shipyard is a different legal entity from the applicant, and indicate if the applicant is 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, and 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).)

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, specify that the applicant understands 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), 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

(Provide a clear and concise description of the process of construction and equipment involved. The description should 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 statement to that effect.)

(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 you choose to claim on the basis of the quantity of merchandise used in producing the exported articles (less any 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. If applicable, 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.

[2] Section 190.6(a) requires that applications for specific manufacturing drawback rulings be signed or electronically certified 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, an individual acting on his or her own behalf, 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 may sign such an application, as may a licensed customs broker with a customs power of attorney.

[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.''

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 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, as reduced by the quantity of such material which the value of the waste would replace. In such a 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 of material that is 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 of merchandise used in producing all articles 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)

[2] Section 190.6(a) requires that applications for specific manufacturing drawback rulings be signed or electronically certified 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, an individual acting on his or her own behalf, 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 may sign such an application, as may a licensed customs broker with a customs power of attorney.

PART 191—DRAWBACK

■ 4. 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 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624;

* * * * *

■ 5. 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.

■ 6. 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.

■ 7. 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:

(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.

* * * * *

■ 8. 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.

■ 9. In § 191.22, paragraph (a) is amended by adding a 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.

* * * * *

■ 10. In § 191.32:

■ a. Remove the word ''and'' at the end of paragraph (b)(2);

■ b. Remove ''.'' and add, 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 (with the exception of Subchapter A of Chapter 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.

* * * * *

■ 11. 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.

(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 to be 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.

■ 12. Section 191.45 is added to subpart D 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 not exceed 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.

■ 13. Amend § 191.51 by adding paragraph (a)(3) to read as follows:

§ 191.51 Completion of drawback claims.

(a) * * *

(3) *Limitation on eligibility for imported merchandise.* Claimants filing any drawback claims under this part 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 of this chapter must provide additional information enabling CBP to verify the availability of drawback for the indicated merchandise and associated line item within 30 days of claim submission. The information to be provided will include, but is not limited to: Summary document specifying the lines used and unused on the import entry; the import entry summary, corresponding commercial invoices, and copies of all drawback claims that previously designated the import entry summary; and post summary/liquidation changes (for imports or drawback claims, if applicable).

* * * * *

■ 14. 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) of this section, 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) of this chapter.

(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 1 year from the date of the drawback claim (*see* § 190.51(e)(1)(i) of this chapter) 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 of this chapter 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* paragraph (b) of this section).

(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.

■ 15. 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 sections 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.

■ 16. 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 that 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.

■ 17. Section 191.106 is revised to read as follows:

§ 191.106 Amount of drawback.

(a) *Claim filed with TTB.* If the declaration required by § 191.103 shows that a claim has been or will be filed with TTB for domestic drawback, drawback under section 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 section 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).

■ 18. 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 (with the exception of Subchapter A of Chapter 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: December 6, 2018.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

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