Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points,* dated August 31, 2001, and effective September 16, 2001, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Cold Bay, AK [New]

Cold Bay Airport, AK
(Lat. 55°12′20″ N., long. 162°43′27″ W.)
Cold Bay VORTAC
(Lat. 55°16′03″ N., long. 162°46′27″ W.)
Elfee NDB
(Lat. 55°17′46″ N., long. 162°47′21″ W.)
Cold Bay Localizer
(Lat. 55°11′41″ N., long. 162°43′07″ W.)

That airspace extending upward from 700 feet above the surface within a 14-mile radius of Cold Bay VORTAC extending clockwise from the 253° radial to the 041° radial of the VORTAC and within 4 miles south of the 253° radial Cold Bay VORTAC extending from the VORTAC to 7.2 miles west of the Cold Bay Airport and within 4 miles south of the 041° radial extending from the VORTAC to 7.2 miles east of the airport and within 4.5 miles west and 8 miles east of the Elfee NDB 318° bearing extending from the NDB to 21.7 northwest of the airport and that airspace within 3 miles each side of the Cold Bay VORTAC 150° radial extending from the VORTAC to 18.2 miles south of the airport and within 2.8 miles west of the Cold Bay Localizer back course extending from the airport to 15.7 miles south of the airport; excluding that airspace more than 12 miles from the shoreline; and that airspace extending from 1,200 feet above the surface within 18.3 miles from the Cold Bay VORTAC extending clockwise from the Cold Bay VORTAC 085° radial to the Cold Bay VORTAC 142° radial.

* * * * *

Issued in Anchorage, AK, on July 1, 2002.

Stephen P. Creamer,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–18621 Filed 7–24–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 191

[T.D. 02—39]

RIN 1515–AC67

Merhcandise Processing Fee Eligible To Be Claimed as Unused Merchandise Drawback

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, the interim rule amending the Customs Regulations that was published in the **Federal Register** on February 9, 2001, as T.D. 01–18. The interim rule amended the regulations to indicate that merchandise processing fees are eligible to be claimed as unused merchandise drawback. The change was made to reflect a recent court decision in which merchandise processing fees were found to be assessed under Federal law and imposed by reason of importation and therefore eligible to be claimed as unused merchandise drawback pursuant to 19 U.S.C. 1313(j). The amendment requires a drawback claimant to apportion the merchandise processing fee to that merchandise that provides the basis for drawback.

EFFECTIVE DATE: July 25, 2002.

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

SUPPLEMENTARY INFORMATION:

Background

Merchandise Processing Fees—19 U.S.C. 58c(a)(9)(A)

Merchandise processing fees are fees the Secretary of the Treasury charges and collects for the processing of merchandise that is formally entered or released into the United States. *See* 19 U.S.C. 58c(a)(9)(A). A merchandise processing fee is assessed as a percentage of the value of the imported merchandise, as determined under 19 U.S.C. 1401a. The *ad valorem* rate is currently 0.21 percent. (*See* 19 CFR 24.23). Section 58c(b)(8)(A)(i) provides that the fee charged under subsection (a)(9) may not be less than $25, unless adjusted pursuant to subsection (a)(9)(B) of this section.

Merchandise processing fees are subject to two monetary limits:

(1) A cap of $485 is imposed by 19 U.S.C. 58c(a)(9)(B)(i) for any release or entry, including weekly Free Trade Zone entries (*see* section 410 of the Trade and Development Act of 2000, Pub. L. 106–200, 114 Stat. 251, enacted on May 18, 2000), for which the value of merchandise subject to the fee exceeds $230,952.38 ($485 ÷ .0021 = $230,952.38), and;

(2) For certain monthly entries, as prescribed by Pub. L. 101–382, section 111(f), as amended, and implemented by § 24.23(d) of the Customs Regulations (19 CFR 24.23(d)), the merchandise processing fee is limited to the lesser of the following:

(i) A cap of $400 where the value of the merchandise subject to the fee exceeds $190,476.19 ($400 ÷ .0021 = $190,476.19); or

(ii) The amount determined by applying the *ad valorem* rate under paragraph (b)(1)(i)(A) of § 24.23 to the total value of such daily importations.

Drawback—19 U.S.C. 1313

Section 313 of the Tariff Act of 1930, as amended, (19 U.S.C. 1313), concerns drawback and refunds. Drawback is a refund of certain duties, taxes and fees paid by the importer of record and granted to a drawback claimant under specific conditions. There are several types of drawback. Section 1313(j) concerns drawback for ''unused merchandise,'' and provides, pursuant to specific conditions set forth therein, that a refund of 99 percent of each duty, tax, or fee ''imposed under Federal law because of [an article's] importation'' will be refunded as drawback.

Merchandise Processing Fees Eligible To Be Claimed as Unused Merchandise Drawback

The issue of whether a merchandise processing fee is ''imposed under Federal law because of [an article's] importation,'' and therefore eligible to be claimed as unused merchandise drawback pursuant to the terms of section 1313(j), was recently examined by the Court of Appeals for the Federal Circuit (CAFC) in *Texport Oil* v. *United States,* 185 F.3d 1291 (Fed. Cir. 1999). In that case, the court held that as merchandise processing fees are ''assessed under Federal law'' (pursuant to 19 U.S.C. 58c(a)(9)) and ''explicitly linked to import activities,'' they are imposed by reason of importation and therefore subject to unused merchandise drawback by application of the statute.

On February 9, 2001, Customs published in the **Federal Register** (66 FR 9647), as T.D. 01–18, an interim rule amending §§ 191.2, 191.3 and 191.51 to reflect the CAFC's decision in *Texport Oil.* In that document, the Customs Regulations were amended to allow

merchandise processing fees to be claimed as unused merchandise drawback, and to provide specific information as to how a drawback claimant is to correctly calculate that portion of a merchandise processing fee that is eligible to be claimed as unused merchandise drawback.

Discussion of Comments

Two commenters responded to the solicitation of public comment published in T.D. 01–18. A description of the comments received, together withCustoms analyses, is set forth below.

Comment

One commenter noted that the illustration presented in Example 2, as set forth in the amendments to § 191.51, is inaccurate and inconsistent with the provisions of § 191.51(b)(2)(iii). Pursuant to § 191.51(b)(2)(iii), ''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.'' It is noted that although Example 1 in § 191.51 illustrates the amount of merchandise processing fee eligible for drawback per line item by multiplying by 99 percent (0.99), Example 2 does not. As a result, some of the figures used in Example 2 are incorrect.

Customs Response

Customs agrees with the comment submitted regarding Example 2. Consequently, this document amends § 191.51, Example 2, to insert language that illustrates the amount of merchandise processing fee eligible for drawback per line item by multiplying the amount by 99 percent (0.99). As a result of this amendment, the figures in Example 2 will be revised. It is also noted that this document corrects a clerical error in Example 2, Line Item 1, and the figure $70,000 will be replaced by the figure $7,000.

Comment

One commenter opposed the apportionment formula set forth in T.D. 01–18 and proposed that the merchandise processing fees not be apportioned across the entire entry, but be allowed to be allocated to individual items. The commenter also notes that as drawback for merchandise processing fees is allowed pursuant to section 1313(p)(4)(B), the Customs Regulations should be amended to reflect this fact.

Customs Response

Customs does not agree with the commenter's proposal. It is noted that pursuant to 19 U.S.C. 58c(a)(9)(B)(i), a merchandise processing fee cap of $485 is applicable to each entry. For this reason, it is necessary that the merchandise processing fee be apportioned and refunded as a percentage of the entire entry.

The commenter's statement that the Customs Regulations should be amended to include reference to the fact that section 1313(p)(4)(B) authorizes drawback for merchandise processing fees has merit. Customs will prepare another document for publication in the **Federal Register** that amends the regulations in this regard.

Conclusion

After review of the comments and further consideration, Customs has decided to adopt as a final rule the interim rule published in the **Federal Register** (66 FR 6647) on February 9, 2001, as T.D.01–18, with changes, discussed above, regarding amendment to § 191.51, Example 2, to insert language that illustrates the amount of merchandise processing fee eligible for drawback per line item by multiplying the amount by 99 percent (0.99). As a result of this amendment, the figures in Example 2 will be revised. This document also corrects a clerical error in Example 2, Line Item 1, whereby the figure $70,000 will be replaced by the figure $7,000.

Inapplicability of Delayed Effective Date

These regulations serve to conform the Customs Regulations to reflect a recent decision by the Court of Appeals for the Federal Circuit and to finalize an interim rule that is already effective. In addition, the regulatory changes benefit the public by allowing merchandise processing fees to be claimed as unused merchandise drawback, and by providing specific information as to how a drawback claimant is to correctly calculate that portion of a merchandise processing fee that is eligible to be claimed as unused merchandise drawback. For these reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date.

The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Further, these amendments do not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Drafting Information

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

List of Subjects in 19 CFR Part 191

Claims, Commerce, Customs duties and inspection, Drawback.

Amendment to the Regulations

For the reasons stated above, the interim rule amending §§ 191.2, 191.3 and 191.51 of the Customs Regulations (19 CFR 191.2, 191.3 and 191.51), which was published at 66 FR 9647–9650 on February 9, 2001, is adopted as a final rule with the changes set forth below.

PART 191—DRAWBACK

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

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

2. In § 191.51(b)(2), Example 2 is revised to read as follows:

§ 191.51 Completion of drawback claims.

* * * * *

(b) *Drawback due.*—* * *

(2) *Merchandise processing fee apportionment calculation.* * * *

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).

* * * * *

Robert C. Bonner,

Commissioner of Customs.

Approved: July 19, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–18664 Filed 7–24–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Diclazuril and Bambermycins

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The NADA provides for use of approved single-ingredient diclazuril and bambermycins Type A medicated articles to make two-way combination drug Type C medicated feeds for growing turkeys.

DATES: This rule is effective July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600, e-mail: candres@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., P.O. Box 3182, Union, NJ 07083, filed NADA 141–195 that provides for use of CLINACOX (0.2 percent diclazuril) and FLAVOMYCIN (2, 4, or 10 grams per pound (g/lb) of bambermycins activity) Type A medicated articles to make two-way combination drug Type C medicated feeds containing 0.91 g/ton diclazuril and 1 to 2 or 2 g/ton bambermycins for growing turkeys. The Type C feeds containing 0.91 g/ton diclazuril and 1 to 2 g/ton bambermycins are used for the prevention of coccidiosis caused by *E. adenoeides*, *E. gallopavonis*, and *E. meleagrimitis* and improved feed efficiency. The Type C feeds containing 0.91 g/ton diclazuril and 2 g/ton bambermycins are used for the prevention of coccidiosis caused by *E. adenoeides*, *E. gallopavonis*, and *E. meleagrimitis*, and for increased rate of weight gain and improved feed efficiency. The NADA is approved as of April 2, 2002, and the regulations are being amended in 21 CFR 558.198 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of each application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.198 is amended by adding paragraphs (d)(2)(iii) and (d)(2)(iv) to read as follows:

§ 558.198 Diclazuril.

* * * * *

(d) * * *

(2) * * *

Diclazuril grams/ton	Combination grams/ton	Indications for use	Limitations	Sponsor
* *	*	* *	*	*
(iii) 0.91 (1 ppm).	Bambermycins 1 to 2	Growing turkeys: As in paragraph (d)(2)(i) of this section; for improved feed efficiency.	As in paragraph (d)(2)(i) of this section. Bambermycins provided by No. 057926 in § 510.600(c) of this chapter.	000061
(iv) 0.91 (1 ppm).	Bambermycins 2	Growing turkeys: As in paragraph (d)(2)(i) of this section; for increased rate of weight gain and improved feed efficiency.	As in paragraph (d)(2)(i) of this section. Bambermycins provided by No. 057926 in § 510.600(c) of this chapter.	000061