

(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 shall 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 with which it was initially submitted with modifications and/or explanations addressing the reasons given for non-acknowledgment, or the matter may be referred (by letter from the manufacturer or producer) to Customs Headquarters (Attention: Duty and Refund Determination Branch, Office of Regulations and Rulings).

(d) *Duration.* Acknowledged letters of notification under this section shall remain in effect under the same terms as provided for in §191.8(h) for specific manufacturing drawback rulings.

§191.8 Specific manufacturing drawback ruling.

(a) *Applicant.* Unless operating under a general manufacturing drawback ruling (see §191.7), each manufacturer or producer of articles intended to be claimed for drawback shall 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 shall 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 are 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 §191.6(a)(1) through (6) who will sign drawback documents;

(6) Description of the imported merchandise including specifications;

(7) Description of the exported article;

(8) Basis of claim for calculating manufacturing drawback;

(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.* An application for a specific manufacturing drawback ruling shall be submitted, in triplicate, to Customs Headquarters (Attention: Duty and Refund Determination Branch, Office of Regulations and Rulings). If drawback claims are to be filed under the ruling at more than one drawback office, one additional copy of the application shall be filed with Customs Headquarters for each additional office.

(e) *Review and action by Customs.* Customs Headquarters shall review the application for a specific manufacturing drawback ruling.

(1) *Approval.* If consistent with the drawback law and regulations, Customs Headquarters shall issue a letter of approval to the applicant and shall forward 1 copy of the application for the specific manufacturing drawback ruling to the appropriate drawback office(s) with a copy of the letter of approval. Synopses of approved specific manufacturing drawback rulings shall be published in the weekly Customs Bulletin with each synopsis being published under an identifying Treasury Decision (T.D.). Each specific manufacturing drawback ruling shall be assigned a unique computer-generated manufacturing number which shall be included in the letter of approval to the applicant from Customs Headquarters, shall appear in the published synopsis, and must be used when filing manufacturing drawback claims with Customs.

(2) *Disapproval.* If not consistent with the drawback law and regulations, Customs Headquarters shall promptly and

in writing inform the applicant that the application cannot be approved and shall 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, or the disapproval may be appealed to Customs Headquarters (Attention: Director, Commercial Rulings Division).

(f) *Schedules and supplemental schedules.* When an application for a specific manufacturing drawback ruling states that drawback is to be based upon a schedule filed by the manufacturer or producer, the schedule will be reviewed by Customs 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 shall submit a supplemental application for such a ruling to Customs Headquarters (Attention: Duty and Refund Determination Branch, Office of Regulations and Rulings). 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. number and unique computer-generated number) and include only those paragraphs of the application 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 shall be submitted to the drawback office(s) where claims are 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 draw-

back 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 §191.9 of this chapter, or a change in the identity of an agent under that section;

(G) A change in the drawback office where claims will be filed under the ruling (see paragraph (g)(2)(iii) of this section); or

(H) Any combination of the foregoing changes.

(ii) A limited modification, as provided for in this paragraph, shall 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 shall file with the drawback office(s) where claims are filed (with a copy to Customs Headquarters, Attention, Duty and Refund Determination Branch, Office of Regulations and Rulings) a letter stating the modifications to be made. The drawback office shall promptly acknowledge, in writing, acceptance of the limited modifications, with a copy to Customs Headquarters, Attention, Duty and Refund Determination Branch, Office of Regulations and Rulings.

(iii) To effect a change in the drawback office where claims will be filed, the manufacturer or producer shall file with the new 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 shall provide a copy of the written application to file claims at the new drawback office to the drawback office where claims are currently filed.

(h) *Duration.* Subject to 19 U.S.C. 1625 and part 177 of this chapter, a specific

§ 191.9

19 CFR Ch. I (4-1-02 Edition)

manufacturing drawback ruling under this section shall remain in effect indefinitely unless:

(1) No drawback claim or certificate of manufacture and delivery 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 Customs Headquarters.

[T.D. 98-16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998]

§ 191.9 Agency.

(a) *General.* An owner of the identified merchandise, the designated imported merchandise and/or the substituted other 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 § 191.2(q) of this subpart. For purposes of this section, such owner is the principal and such other person is the agent. Under 19 U.S.C. 1313(b), the principal shall 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, § 191.26 of this part).

(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 § 191.7 of this subpart or in any application for a specific manufacturing drawback ruling filed under § 191.8 of this subpart.

(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 § 191.7), for an agent, covering the articles manufactured or produced, or have obtained a specific manufacturing drawback ruling (see § 191.8), as appropriate.

(d) *Certificate; Drawback entry; Certificate of manufacture and delivery.* (1) *Contents of certificate; when filing not required.* Principals and agents operating under this section are not required to file a certificate of delivery (for the merchandise transferred from the principal to the agent) or a certificate of manufacture and delivery (for the articles transferred from the agent to the