

(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 (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, as established by the certificates of manufacture and delivery they have executed.)

(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 e-mail 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 §§ 191.7 and 191.8 of this part), as appropriate;

(3) A description of the applicant's drawback record-keeping program, including the retention period and method (for example, paper, electronic, etc.);

(4) A list of the records that will be maintained, including at least sample import documents, sample export 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 Customs 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 Customs 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 Customs is notified of any modifications from the procedures described in this application.

§ 191.194 Action on application to participate in compliance program.

(a) *Review by applicable drawback office*—(1) *General.* It is the responsibility of the drawback office where the drawback compliance application package is filed to coordinate its decision making on the package both with CBP Headquarters and with the other field drawback 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 shall 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 §191.193(c) and (d) of this subpart. 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 shall include (as applicable):

- (i) The presence or absence of unresolved customs charges (duties, taxes, 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 applicable 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 §191.62(b) of this part), CBP shall, in the absence of fraud or repeated violations, and in lieu of a monetary penalty as otherwise provided under §1593a, issue a written notice of the violation to the party. Repeated violations by a participant, including a CBP 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 to an applicant, the applicant shall be given written notice by the applicable 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 appropriate drawback office 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 §191.192;
- (iii) The program participant repeatedly files 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 applicable drawback office will serve the program participant with 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 applicable drawback office. A denial of an appeal may itself be appealed to CBP Headquarters, Trade Policy and Programs, Office of International Trade, within 30 days after issuance of the applicable drawback office's appeal decision. CBP Headquarters 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, CBP Headquarters 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 applicable drawback office. A denial of an appeal may itself be appealed to CBP Headquarters, Trade Policy and Programs, Office of International Trade, within 30 days after issuance of the applicable drawback office's appeal decision. CBP Headquarters 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.

[T.D. 98-16, 63 FR 11006, Mar. 5, 1998, as amended by T.D. 00-5, 65 FR 3812, Jan. 25, 2000]

§ 191.195 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 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 in and with the application).

APPENDIX A TO PART 191—GENERAL
MANUFACTURING DRAWBACK RULINGS

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