scheme generally became effective on May 1, 1991, but a 16 month phase-in period was provided with respect to specified rules affecting employee benefit plans, in order to give registrants ample time to review the rule changes and amend their plans accordingly.<sup>3</sup> The Adopting Release provided that registrants could continue to rely on the exemptions from Section 16(b) of the Exchange Act<sup>4</sup> afforded by former Rules 16a-8(b),<sup>5</sup> 16a-8(g)(3),<sup>6</sup> and 16b-3<sup>7</sup> after May 1, 1991, but would be required to adopt the substantive conditions of new Rule 16b-38 by September 1, 1992.9

The Rule 16b–3 phase-in period was extended until September 1, 1995, in contemplation of further rulemaking under Section 16 with regard to employee benefit plans.<sup>10</sup> Because the Commission currently is engaged in such rulemaking,<sup>11</sup> the Commission is extending the phase-in period for new Rule 16b–3 until September 1, 1996, or such different date as is set by the Commission.

By the Commission.

# Dated: August 7, 1995.

Margaret H. McFarland,

Deputy Secretary.

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# DEPARTMENT OF THE TREASURY

## **Customs Service**

#### 19 CFR Part 191

[T.D. 95-61]

## Accounting Procedures for Drawback

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

**ACTION:** Final interpretive rule.

**SUMMARY:** This document gives notice that Customs is amending the general drawback rate (or contract) for crude

- 717 CFR 16b-3 (1990).
- <sup>8</sup>17 CFR 240.16b-3 (1991).

<sup>9</sup> The phase-in period applies only to the exemption from Section 16(b), not to the revised reporting requirements under Section 16(a) that became effective on May 1, 1991.

<sup>10</sup> See Exchange Act Release No. 34513 (August 10, 1994) [59 FR 42448].

- <sup>11</sup> See Exchange Act Releases Nos. 34514 (August 10, 1994) [59 FR 42449] and 34–34681 (September
- 16, 1994) [59 FR 48579].

petroleum and petroleum derivatives (Treasury Decision (T.D.) 84–49) to permit first-in-first-out (FIFO) accounting for exports and drawback deliveries of petroleum products with different drawback factors which are commingled in inventory. Customs is also revoking a published ruling (Customs Service Decision (C.S.D.) 84-82) under which identification of merchandise and articles for drawback purposes is permitted on a "higher-tolower" basis. However, drawback claimants operating under properly approved specific drawback rates may continue to claim drawback using higher-to-lower accounting procedures, as provided for in C.S.D. 84-82, if the drawback rates under which they are operating expressly provide for the use of such procedures, until such rates are modified, with notice to the rate holders.

**EFFECTIVE DATE:** The amendment of T.D. 84–49 and the revocation of C.S.D. 84–82 will be effective as to drawback entries or claims properly filed with Customs on or after November 9, 1995, unless there is a prior approved properly-executed contract.

FOR FURTHER INFORMATION CONTACT: Paul Hegland, Entry Rulings Branch, Office of Regulations and Rulings, 202–482–7040.

## Background

Section 313, Tariff Act of 1930, as amended (19 U.S.C. 1313), authorizes "drawback". Drawback is a refund or remission, in whole or in part, of a Customs duty, internal revenue tax, or fee. There are a number of different kinds of drawback authorized under law, including manufacturing and unused merchandise drawback. Under section 1313(a), drawback is authorized when imported merchandise is used in the manufacture of articles which are exported or destroyed. Under section 1313(j)(1), drawback is authorized when imported merchandise is exported or destroyed without having been used in the U.S. Sections 1313(b) and (j)(2)respectively provide for the substitution of other merchandise (whether imported or domestic) for the imported merchandise in manufacturing and unused merchandise drawback. Section 1313(l) provides that the allowance of drawback shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe.

The regulations pertaining to drawback are found in part 191 of the Customs Regulations (19 CFR part 191). Under the Customs Regulations (19 CFR part 191, subparts B and D), manufacturers or producers of articles intended for exportation with drawback under section 1313(a) or (b) must apply for and obtain approval of a drawback rate (sometimes called a drawback contract) describing the manufacturing or production operations covered and setting forth the conditions which are to be met to obtain drawback.

Subpart D of part 191 of the Customs Regulations (19 CFR part 191, subpart D) authorizes general drawback rates for certain common manufacturing operations. A general drawback rate for substitution manufacturing drawback under section 1313(b) for crude petroleum and petroleum derivatives is provided for in T.D. 84-49, 18 Cust. Bull. 149. This general drawback rate was initially promulgated by T.D. 56487, which added the rate to the Customs Regulations then pertaining to drawback (see 19 CFR 22.6(g-1) (1983)). The general rate for crude petroleum and petroleum derivatives now in T.D. 84–49 is substantively the same as the rate formerly contained in the Customs Regulations.

The features and procedures of, as well as the background to, T.D. 84-49 and its predecessor (see 19 CFR 22.6(g-1)(1983), as promulgated by T.D. 56487) were extensively described in the June 28, 1994, Federal Register (59 FR 33322) notice inviting public comment on the subject of this document. Under T.D. 84–49, distribution of drawback among the products produced during a period of production is based on the relative values of all products manufactured or produced during the production period, as of the time of separation of the products. The time of separation of the products is considered to be the monthly period of production. Relative values are stated in terms of drawback factors, which attach to each of the products manufactured or produced during the production period. An example of the calculation of these drawback factors was given in the June 28, 1994, Federal Register notice.

Because the relative value of the petroleum products which may be produced under T.D. 84-49 may vary from month to month, the drawback factors for a particular product produced under the procedures in T.D. 84–49 may also vary from month to month. The T.D. contains explicit procedures to account for such variances. When the inventory of a particular product contains product with different drawback factors (e.g., if the inventory of a product was from more than one month's production, each month's quantity could have a different drawback factor), withdrawals from the inventory for exports are required to be

<sup>&</sup>lt;sup>3</sup>Exchange Act Release No. 28869 (February 8, 1991) [56 FR 7242] ("Adopting Release"). See Section VII of the Adopting Release for transition provisions generally and Section VII.C for transition provisions relating to employee benefit plans.

<sup>&</sup>lt;sup>4</sup>15 U.S.C. 78p(b).

<sup>&</sup>lt;sup>5</sup> 17 CFR 16a-8(b).

<sup>6 17</sup> CFR 16a-8(g)(3).