from lowest factor on hand, withdrawals for drawback deliveries (i.e., for further manufacture resulting in a product on which drawback could be claimed) are required to be from lowest on hand after exports are deducted, and withdrawals for domestic (nondrawback) shipments are required to be from earliest on hand after withdrawals for export and drawback deliveries are deducted.

The above accounting procedures were based on the accounting requirements for drawback applicable at the time that the general drawback rate was initially promulgated, as fully described in the June 28, 1994, Federal **Register** notice. The general requirements in the Customs Regulations for records, storage, and identification pertaining to drawback are now found in 19 CFR 191.22. Section 191.22(c) authorizes the identification for drawback purposes of commingled lots of fungible merchandise or articles by applying FIFO accounting principles or any other accounting procedure approved by Customs. Customs has issued a number of rulings on the accounting procedures which may be used to identify merchandise or articles for drawback purposes. Those rulings and the background to them were extensively described in the June 28, 1994, Federal Register notice. In one of those rulings, Customs Service Decision (C.S.D.) 84-82, 18 Cust. Bull. 1036, Customs held that when fungible drawback and nondrawback input was placed in commingled storage, withdrawals for drawback purposes could be identified on a higher-to-lower basis against the drawback input commingled therein.

In the June 28, 1994, Federal Register notice, Customs furnished notice that it had been requested to amend T.D. 84-49 to permit the accounting for withdrawals for export and for drawback deliveries from the inventory of a particular product containing product with different drawback factors on the basis of FIFO or higher-to-lower. In the June 28, 1994, Federal Register notice, Customs stated that it believed that the proposal to amend T.D. 84-49 to permit the accounting on a FIFO basis in the described situation had merit. In the interest of administrative simplicity, Customs stated that it believed that the order of such withdrawals should continue to be the same (i.e., first exports, then drawback deliveries, then domestic shipments). In regard to the proposal to amend T.D. 84-49 to permit the described accounting on a higher-tolower basis, however, Customs stated that T.D. 84-49 should not be amended to permit such accounting. Customs also stated that C.S.D. 84-82, the only

published Customs ruling permitting higher-to-lower accounting for drawback purposes, as well as any unpublished Customs rulings to the same effect, should be revoked. The reasons for these conclusions were fully described in the June 28, 1994, **Federal Register** notice.

In the June 28, 1994, Federal Register notice, Customs invited comments on the proposed changes. Four commenters responded to the notice. After review of these comments, Customs has decided to proceed as proposed (i.e., to amend T.D. 84–49 to permit the described accounting on a FIFO basis and to revoke C.S.D. 84-82). In regard to the latter, it is Customs position that unless substitution is specifically provided for in the law, accounting methods used to identify merchandise or articles for drawback purposes must be revenue neutral or favorable to the Government. Other criteria for evaluating such accounting methods include consistency with commercial accounting procedures, consistency with the accounting procedures generally used by the drawback claimant, and ease of administration. The comments received are discussed

Discussion of Comments

Comment: The use of FIFO accounting for T.D. 84–49, as proposed in the June 28, 1994, **Federal Register** notice, is not opposed. However, in the interest of maximum flexibility in accounting for drawback, higher-to-lower accounting should also be permitted for the described accounting in T.D. 84–49.

Response: In regard to the comment on FIFO accounting for T.D. 84-49, this document is proceeding as proposed and amending T.D. 84-49 to permit such accounting. In regard to permitting higher-to-lower accounting for the described purposes in T.D. 84-49, such accounting would not be revenue neutral or favorable to the Government (i.e., withdrawals for drawback purposes (exports or drawback deliveries) would always be from the highest drawback factor first, thus always resulting in the greatest amount of drawback). Furthermore, higher-tolower accounting methods are not consistent with commercial accounting procedures nor, based on information submitted to Customs by a representative of the petroleum industry, are they consistent with the accounting methods generally used by that industry. Therefore, Customs is not permitting higher-to-lower accounting for the described purposes in T.D. 84-49.

Comment: Customs should make it clear that T.D. 56487 (the predecessor of T.D. 84–49) is not authoritative on the issue of producibility, particularly that of proportional deductions.

Response: The June 28, 1994, document did not, and was not intended to, comment on the authoritativeness of T.D. 56487 on the issue of producibility or the issue of proportional deductions (see 19 CFR 22.6(g-1)(5)(1983) and T.D. 84–49, paragraph (5)). No change was proposed in this regard.

Comment: C.S.D. 84–82 should not be revoked. Higher-to-lower accounting procedures are consistent with the purposes of the drawback law and adequately protect the revenue and should continue to be allowed to be used for drawback. Drawback claimants under section 1313(b) are able to substitute any eligible merchandise of the same kind and quality as eligible imported merchandise received and put into production. This should continue.

Response: This comment appears to be based on a misunderstanding of the proposal to revoke C.S.D. 84–82. The proposal would not (and could not) change the current statutory provision allowing a drawback claimant to substitute any eligible merchandise of the same kind and quality as the designated imported merchandise to use in manufacture or production of the exported articles. In this regard, Customs notes the amendment of section 1313(b) by the North American Free Trade Agreement (NAFTA) Implementation Act, Title VI, section 632 (Pub. L. 103-182; 107 Stat. 2057, 2192-2193), specifically providing for the substitution of any other merchandise (whether imported or domestic) for the imported duty-paid merchandise designated for drawback under section 1313(b). The same is true of substitution unused merchandise drawback under section 1313(j)(2) (i.e., any merchandise (whether imported or domestic) may be substituted for the designated imported merchandise, provided that the lots of merchandise are commercially interchangeable and that the other requirements of the law are met).

The revocation of C.S.D. 84–82 would apply to the identification by accounting procedures of merchandise or articles in situations where the law does not authorize substitution. For example, except in the case of petroleum derivatives under certain circumstances, the drawback law does not authorize the substitution of articles on which drawback is claimed under the manufacturing drawback law (section 1313 (a) or (b)) for other