

(iii) A certification that the following documentary evidence will be made available for Customs review upon request:

(A) For the purpose of establishing that the imported merchandise was not used in the United States (for purposes of drawback under 19 U.S.C. 1313(j)(1)) or that the exported merchandise was not used in the United States and was commercially interchangeable with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)), and, as applicable:

(1) Business records prepared in the ordinary course of business;

(2) Laboratory records prepared in the ordinary course of business; and/or

(3) Inventory records prepared in the ordinary course of business tracing all relevant movements and storage of the imported merchandise, substituted merchandise, and/or exported merchandise; and

(B) Evidence establishing compliance with all other applicable drawback requirements.

(2) *One-Time Use*. The procedure provided for in this section may be used by a claimant only once, unless good cause is shown (for example, successorship).

(3) *Claims filed pending disposition of application*. Drawback claims may be filed under this section pending disposition of the application. However, those drawback claims will not be processed or paid until the application is approved by Customs.

(b) *Customs action*. In order for Customs to evaluate the application under this section, Customs may request, and the applicant shall provide, any of the information listed in paragraph (a)(1)(iii)(A)(1) through (3) of this section. In making its decision to approve or deny the application under this section, Customs will consider factors such as, but not limited to, the following:

(1) Information provided by the claimant in the written application;

(2) Any of the information listed in paragraph (a)(1)(iii)(A)(1) through (3) of this section and requested by Customs under this paragraph; and

(3) The applicant's prior record with Customs.

(c) *Time for Customs action*. Customs will notify the applicant in writing within 90 days after receipt of the application of its decision to approve or deny the application, or of Customs inability to approve, deny or act on the application and the reason therefor.

(d) *Appeal of denial of application*. If Customs denies the application, the applicant may file a written appeal with the drawback office which issued the denial, provided that the applicant files this appeal within 30 days of the date of denial. If Customs denies this initial appeal, the applicant may file a further written appeal with Customs Headquarters, Office of Field Operations, Office of Trade Operations, provided that the applicant files this further appeal within 30 days of the denial date of the initial appeal. Customs may extend the 30 day period for appeal to the drawback office or to Customs Headquarters, for good cause, if the applicant applies in writing for such extension within the appropriate 30 day period above.

(e) *Future intent to export unused merchandise*. If an applicant states it will have future exportations on which unused merchandise drawback may be claimed (see paragraph (a)(1)(ii)(B) of this section), the applicant will be informed of the procedures for waiver of prior notice (see §191.91 of this part). If the applicant seeks waiver of prior notice under §191.91, any documentation submitted to Customs to comply with this section will be included in the request under §191.91. An applicant which states that it will have future exportations on which unused merchandise drawback may be claimed (see paragraph (a)(1)(ii)(B) of this section) and which does not obtain waiver of prior notice shall notify Customs of its intent to export prior to each such exportation, in accordance with §191.35.

#### **§191.37 Destruction under Customs supervision.**

A claimant may destroy merchandise and obtain unused merchandise drawback by complying with the procedures set forth in §191.71 of this part relating to destruction.