

§ 191.38

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§ 191.38 Records.

(a) *Maintained by claimant; by others.* Pursuant to 19 U.S.C. 1508(c)(3), all records which are necessary to be maintained by the claimant under this part with respect to drawback claims, and records kept by others to complement the records of the claimant, which are essential to establish compliance with the legal requirements of 19 U.S.C. 1313(j)(1) or (j)(2), as applicable, and this part with respect to drawback claims, shall be retained for 3 years after payment of such claims (under 19 U.S.C. 1508, the same records may be subject to a different retention period for different purposes).

(b) *Accounting for the merchandise.* Merchandise subject to drawback under 19 U.S.C. 1313(j)(1) and (j)(2) shall be accounted for in a manner which will enable the claimant:

- (1) To determine, and Customs to verify, the applicable import entry or certificate of delivery;
- (2) To determine, and Customs to verify, the applicable exportation or destruction; and
- (3) To identify with respect to the import entry or certificate of delivery, the imported duty-paid merchandise.

Subpart D—Rejected Merchandise

§ 191.41 Rejected merchandise drawback.

Section 313(c) of the Act, as amended (19 U.S.C. 1313(c)), provides for drawback upon the exportation or destruction under Customs supervision of imported merchandise which has been entered, or withdrawn from warehouse, for consumption, duty-paid; and which does not conform to sample or specifications; has been shipped without the consent of the consignee; or has been determined to be defective as of the time of importation. The claimant must show by evidence satisfactory to Customs that the exported or destroyed merchandise was defective at the time of importation, or was not in accordance with sample or specifications, or was shipped without the consent of the consignee (see subpart P for drawback of internal-revenue taxes for unmerchandise or nonconforming distilled spirits, wines, or beer).

§ 191.42 Procedure.

(a) *Return to Customs custody.* The claimant must return the merchandise to Customs custody within 3 years after the date the merchandise was originally released from Customs custody. Drawback will be denied on merchandise returned to Customs custody after the statutory 3-year time period or exported or destroyed without return to Customs custody.

(b) *Required documentation.* The claimant shall submit documentation to the drawback office as part of the drawback claim to establish that the merchandise did not conform to sample or specification, was shipped without the consent of the consignee, or was defective as of the time of importation. If the claimant was not the importer, the claimant must:

- (1) Submit a statement signed by the importer and every other person, other than the ultimate purchaser, that owned the goods that no other claim for drawback was made on the goods by any other person; and
- (2) Certify that records are available to support the statement required in paragraph (b)(1) of this section.

(c) *Notice.* A notice of intent to export or destroy merchandise which may be the subject of a rejected merchandise drawback claim (19 U.S.C. 1313(c)) must be provided to the Customs Service to give Customs the opportunity to examine the merchandise. The claimant, or the exporter (for destruction, see § 191.44), must file at the port of intended redelivery to Customs custody a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on Customs Form 7553 at least 5 working days prior to the date of intended return to Customs custody. Waiver of prior notice for exportations under 19 U.S.C. 1313(j) (see § 191.91 of this part) is inapplicable to exportations under 19 U.S.C. 1313(c).

(d) *Required information.* The notice shall provide the bill of lading number, if known, the name and telephone number, mailing address, and, if available, fax number and e-mail address of a contact person, and the location of the merchandise.

(e) *Decision to waive examination.* Within two (2) working days after receipt of the Notice of Intent to Export,