

## DEPARTMENT OF THE TREASURY

## Customs Service

## 19 CFR Part 101

[T.D. 03-05]

## Consolidation of Customs Drawback Centers

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

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, with a clarification, the proposed amendments to the Customs Regulations that reflect the closure of the Customs Drawback Centers located at the ports of Boston, Massachusetts; Miami, Florida; and New Orleans, Louisiana. The closing of the three Drawback Centers is part of a planned consolidation and is intended to promote operational efficiency in the processing of drawback claims.

**EFFECTIVE DATES:** This regulation becomes effective January 24, 2003. The closing of the Customs Drawback Center located at the port of New Orleans, LA becomes effective February 24, 2003. The closing of the Customs Drawback Centers located at the ports of Boston, MA and Miami, FL become effective July 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** Sherri Lee Hoffman, Entry and Drawback Management, Office of Field Operations, U.S. Customs Service, Tel. (202) 927-0300.

## SUPPLEMENTARY INFORMATION:

## Background

Since 1996, Customs has recognized a decrease in both the number of drawback claims and the amount of drawback payments. To verify these trends, and to determine how to most efficiently operate the Drawback Program, Customs conducted an internal evaluation of the program. Customs also retained the services of an independent contractor to review the Drawback Program to ensure that the agency's findings were valid. The findings of both the agency-led review and the independent contractor's assessment indicated the benefits of consolidating the processing of drawback claims by reducing the number of Drawback Centers.

In a Notice to Congress on March 12, 2001, filed in accordance with 19 U.S.C. 2075, Customs proposed the closure of four Drawback Centers. The Senate Finance and House Ways and Means Committees concurred with the proposal for consolidation, but with the

recommendation that only three Drawback Centers be eliminated and the San Francisco Drawback Center remain operational. The Commissioner of Customs concurred with this recommendation and it was proposed to phase-in the closure of the Drawback Centers located at the ports of Boston, MA; Miami, FL; and New Orleans, LA.

On August 21, 2002, Customs published in the **Federal Register** (67 FR 54137) a proposed amendment to the Customs Regulations to reflect the planned closure of these Customs Drawback Centers, and a request for public comment regarding the proposed actions. In that document, Customs described a phased-in closure process whereby the Customs Drawback Centers located at the ports of Boston and New Orleans would close 30 days from the date a final rule adopting the proposed changes was published in the **Federal Register**, and the Drawback Center located at the port of Miami would close 180 days from such date. The document also stated that any unliquidated drawback claims that remained at each of these Drawback Centers twelve months after their respective closing dates would be transferred to another Drawback Center for processing as follows: Remaining claims from Boston would be transferred to the New York/Newark, NJ Drawback Center; remaining claims from New Orleans would be transferred to the Houston Drawback Center; and remaining claims from Miami would be transferred to the Chicago Drawback Center.

In accordance with the proposal, the five Drawback Centers located at the ports of New York/Newark, NJ; Houston, TX; Chicago, IL; Los Angeles, CA; and San Francisco, CA, will remain operational.

## Discussion of Comments

Fourteen comments were received in response to the solicitation of public comment published in the August 21, 2002, **Federal Register** document. A description of the comments received, together with Customs analyses, is set forth below.

*Comment:* Several commenters expressed concern that closure of three Drawback Centers will negatively impact the level of service at the remaining Drawback Centers. Specific comments were submitted regarding anticipated inefficiencies at the remaining Drawback Centers resulting from:

- Reduction in full-time Customs Drawback Specialist positions;
- Increased workload for remaining Drawback Specialists and failure to

utilize existing Drawback personnel to their potential;

- Transfer of backlogged drawback cases;
- Lack of specific published proposals demonstrating how service levels will be maintained; and
- Lack of realistic methods of determining which Drawback Centers should have been closed;

*Customs Response:* To ensure that the level of service at the remaining Drawback Centers will remain the same as before the consolidation, Customs reviewed the workload of each Center and assessed the burden of any workload that would be transferred to another Drawback Center as result of the consolidation. The determination as to which Drawback Centers would receive drawback cases that remain unliquidated twelve months after closure of a Center was based upon this review. It is noted, however, that the workload transfers that were described in the August 21, 2002, **Federal Register** document have been changed, due to further internal analysis of workloads, staffing and backlogs, and are described in the section of this document entitled "Further Customs Analysis," set forth below.

Regarding staffing issues, Customs recognizes that Drawback personnel levels at the remaining Drawback Centers will have to be routinely reviewed to ensure that the centers are able to sustain pre-consolidation levels of service. Customs is striving to automate and simplify the drawback process to reduce the workload of Drawback Specialists. In an effort to utilize Drawback personnel to their potential, Drawback Specialists will continue to receive annual training.

The Customs Drawback Program has evolved over the years, and the processing procedures in place today are to ensure that the workload increases do not create unworkable backlogs and preserve a pre-consolidation level of service to the trade.

Lastly, Customs notes that its determination to close three Drawback Centers was based on a detailed internal evaluation of the program, as well as the findings of an independent contractor. The findings of the agency-led review and the independent contractor's assessment were based on facts and clearly indicated the benefits of consolidation of the program.

*Comment:* Two commenters requested that the requirement to re-apply for a new letter of intent to operate under a general drawback ruling when transferring from one drawback center to another be waived.

*Customs response:* Claimants will not have to re-file a general drawback ruling request at the Drawback Center designated to receive their claims. If, however, a claimant opts to file a claim at a Drawback Center other than the one designated to receive their claims, that claimant will have to file a new letter of intent to operate under a general drawback ruling at that location.

*Comment:* Several commenters questioned whether consolidating the drawback program would subvert the intent of Congress to assist in increasing U.S. exports.

*Customs response:* Consolidation of the drawback program will not negatively impact U.S. exports.

*Comment:* One commenter objected to the fact that the identity of the independent contractor brought in to perform the review of the Drawback Program was not made public.

*Customs response:* The purpose of retaining an independent contractor was to have an unbiased third party conduct a review of the Drawback Program. Individuals seeking more information may file a request for information pursuant to the Freedom of Information Act (5 U.S.C. 552).

*Comment:* Several commenters noted that although the number of drawback claims has decreased, the volume of import and export shipments that appear on claims has increased.

*Customs response:* Customs has data that reflects that the number of underlying imports in 2001 decreased over 40% from 1999 levels. While it is true that more exports are being claimed in a summarized format, consolidation of the drawback program is a legitimate means of increasing the program's efficiency without impairing U.S. exports.

*Comment:* Two commenters questioned why claimants are not allowed to file a single application for the waivers and privileges set forth in §§ 191.91, 191.92 and 191.195 of the Customs Regulations (*i.e.*, waiver of prior notice of intent to export, accelerated payment, certification in the drawback compliance program).

*Customs response:* Claimants do have the option of filing a single application for these waivers and privileges pursuant to 19 CFR 191.93.

*Comment:* Several commenters noted that all Drawback Specialists must now perform more mandatory audits and/or desk reviews as ordered by the General Accounting Office (GAO).

*Customs response:* Customs has enhanced the processing procedures for drawback so that fewer full desk reviews are completed by each Drawback Specialist. Audits are

completed by Regulatory Auditors with input from the Drawback Specialist. It is noted that the number of audits over the years has remained consistent.

*Comment:* One commenter noted that the proposed rulemaking should have stated that only a customs broker requires a license/permit to file a drawback claim, and not a drawback claimant.

*Customs response:* Customs agrees; the background section of the proposed rulemaking published in the **Federal Register** (67 FR 54137) on August 21, 2002, should have specified that a drawback claimant's customs broker must possess a district or national permit to file a drawback claim.

*Comment:* One commenter questioned whether a broker must file drawback claims via the Automated Broker Interface (ABI) to have a national permit, and noted that the Customs Regulations permit drawback claims to be filed either manually or electronically (via ABI).

*Customs response:* Section 111.19(f) of the Customs Regulations (19 CFR 111.19(f)) allows for national broker permits under any of the circumstances described in § 111.2(b)(2)(i) (19 CFR 111.2(b)(2)(i)). Section 111.2(b)(2)(i)(B) allows for electronic (ABI) drawback claims. There is no allowance in § 111.2(b)(2)(i) for manual drawback claims. Drawback claims may be filed manually by brokers with a district permit. *See* 19 CFR 111.2(b)(2)(ii).

*Comment:* Several commenters noted that by closing Drawback Centers, Customs will be unable to liquidate and audit drawback claims within the three year time period allowed by law.

*Customs response:* As stated previously, Customs believes that consolidation of the Drawback Program will bring about more efficient and effective drawback claim processing, and thereby claims should get liquidated more expeditiously. It is noted that there is no legal or regulatory requirement to liquidate or audit a drawback claim within three years. A drawback claimant is required to retain records for three years after payment of a drawback claim. *See* 19 CFR 163.4(b)(1). If drawback is paid via accelerated payment, pursuant to 19 CFR 191.92, and the three year time period to retain records expires prior to the underlying claim being liquidated, there may be instances where the records necessary to verify a claim are no longer available. This problem, however, has no bearing on the consolidation of the Drawback Program.

It is further noted that audits are performed on unliquidated drawback claims, and this document does not

make any changes to the Regulatory Audit functions of drawback.

*Comment:* One commenter viewed the requirement to provide advance notification to Customs of any changes to a drawback claim as impractical, and questioned who, within Customs, should be notified in such instances.

*Customs response:* Notification of changes to a drawback claim should be provided to the Drawback Specialist handling the original claim.

*Comment:* One commenter questioned whether the Government will actually save money by closing three Drawback Centers and reducing personnel, given the fact that no specific information as to the expected savings have been presented.

*Customs response:* The proposed rulemaking published in the August 21, 2002, **Federal Register** stated that the consolidation is "intended to promote operational efficiency in the processing of drawback claims." The document does not suggest savings as a reason for the consolidation.

*Comment:* One commenter noted that consolidation of the Drawback Program will necessitate submission of drawback applications to Customs Drawback Centers that are outside the Customs port areas most familiar with the claimant/company and thereby further increase delays and backlogs. Additionally, if drawback claims are required to be submitted at ports other than the port of import, the process of obtaining records will be more difficult, time-consuming and expensive.

*Customs response:* The Drawback Program is not currently a port-specific program. Therefore, Drawback Specialists are already adept at reviewing claims that originate from outside their geographical area. Also, the process of transmitting or shipping data to other Customs ports is already followed by all ports that do not have a Drawback Center.

*Comment:* One commenter requested that Customs publish each Drawback Center's drawback claims filing statistics (*i.e.*, dollar amounts claimed, number of drawback personnel assigned to the Drawback Center, number of exports being claimed).

*Customs response:* Relevant export data is unavailable because it is not part of Customs automated system. The other types of drawback statistics specified in the comment may be available by information requests made pursuant to the Freedom of Information Act (5 U.S.C. 552).

*Comment:* One commenter noted that a decline in the number of drawback claims suggests that existing Drawback Centers have idle time and that

privileges and claims should all be approved on time, including those applications made at Customs Headquarters.

*Customs response:* Applications for privileges are not approved at Customs Headquarters. Customs is being proactive, rather than reactive, by consolidating the Drawback Program and ensuring that Drawback resources are used optimally.

*Comment:* One commenter stated that Customs will increase costs by closing some of the Drawback Centers because a Drawback Specialist usually visits the drawback claimant with an Auditor and this will increase Customs travel expenses. In a related comment, several commenters noted that by closing the Boston Drawback Center, Customs expenses will increase because Auditors and Inspectors will have to travel to remote customs sites beyond their port's geographical area to review and audit drawback claims.

*Customs response:* A Drawback Specialist does not always accompany an Auditor. Moreover, Drawback Specialists are technical experts that an Auditor can consult as a resource either electronically or telephonically. Customs already incurs some of these travel expenditures in that a drawback claimant can use any of the eight existing Drawback Centers and does not always choose to file a drawback claim at the Center located nearest the claimant. Regarding the comment directed at the Boston Drawback Center, it is noted that Auditors and Inspectors are located throughout the Customs Service. Regulatory Auditors will remain in Boston, as well as other sites. Inspectors located at the port of export will perform the export examinations, as they always have. They perform functions separate from those of a Drawback Specialist and the role of Inspectors will not be affected by the consolidation.

*Comment:* Several commenters stated that the cost of staffing and training new Drawback personnel will be significant.

*Customs response:* The remaining Drawback Centers have well-trained, capable staffs and there is no need to immediately increase staffing levels at those Centers. New staff will be hired to replace personnel lost through attrition or retirement and to accommodate any sustained increase in drawback filings nationwide.

*Comment:* Several commenters noted that as proposed Free Trade Agreements and yearly reductions in duty rates will eventually eliminate the need for drawback, closure of the Drawback Centers at this time is unwarranted.

*Customs response:* Customs views a consolidated, more efficient Drawback Program as consistent with the trade trends cited in the comment above.

*Comment:* Several commenters are of the view that it is not prudent to change the Drawback Program during this time of transition of the Customs Service to the Homeland Security Department and that any such changes will distract from the goals of fighting terrorism.

*Customs response:* Customs is of the view that the agency's efforts regarding anti-terrorism and its move to the Homeland Security Department will not be impacted by any of the changes to the Drawback Program discussed in this document.

*Comment:* Several commenters questioned why California will have two Drawback Centers operating after the consolidation, even though Boston has more volume than the Los Angeles Drawback Center. The commenters also suggested documenting the length of time it takes certain Drawback Centers to process drawback claims and correcting inefficiencies.

*Customs response:* As stated above, many factors were taken into consideration in making the determination to close the Boston Drawback Center. Regarding workload volume, Customs notes that the volume at the Boston and Los Angeles Centers is approximately the same.

*Comment:* Several commenters stated that exporters will have their costs increased by having to submit drawback applications and claims to remote Drawback Centers. The commenters also expected increased delays in having to wait for shipment inspections and payment of drawback claims.

*Customs response:* Exporters file their claims at the port of exportation. A Drawback Center has no bearing on the export process. There is no reason to believe there will be any delays in shipment inspections, as there have been no changes made to this process.

#### Further Customs Analysis

Customs has determined that based on the above comments, no change is necessary to the proposed rulemaking published in the **Federal Register** on August 21, 2002 (67 FR 54137). However, it has come to Customs attention, upon further review of the proposed consolidation, that a redistribution of the workload that is to be transferred from the closed Drawback Centers, as well as an extension of the time period that the Boston Drawback Center will remain operational, will assist in maintaining the level of service at the remaining Drawback Centers that existed prior to consolidation.

The original phased-in consolidation plan, which detailed the transfer of remaining unliquidated drawback cases and the time frames for Drawback Center closures, as published in the August 21, 2002, **Federal Register** document, remains in effect except for the following changes:

(1) Drawback claims that remain unliquidated twelve months after closure of the Miami Drawback Center and require Customs review will be forwarded to the Los Angeles Drawback Center (not to the Chicago Drawback Center); and

(2) The Drawback Center at the port of Boston, MA will close 180 days from the date of publication of this document in the **Federal Register** (not 30 days from such date as originally planned). As of that date, drawback claims will no longer be accepted at the Boston Drawback Center and claims must be filed at one of the five remaining Drawback Centers. Drawback claims submitted to the Boston Drawback Center after this date will be rejected. Once rejected, it is the responsibility of the claimant to ensure timely filing of the drawback claim at one of the five remaining Drawback Centers. Customs personnel at the port of Boston will continue to process drawback claims for a period of 12-months after closure of the Boston Drawback Center. After this time, all remaining unliquidated drawback claims filed at the Boston Drawback Center prior to its closure that require Customs review will be forwarded to the Chicago Drawback Center for final processing (not to the New York/Newark Drawback Center as originally planned).

#### Conclusion

After analysis of the comments and further review of the matter, Customs has determined to adopt as a final rule the amendments proposed in the Notice of Proposed Rulemaking published in the **Federal Register** (67 FR 54137) on August 21, 2002.

#### Inapplicability of Delayed Effective Date

Although this final rule was issued after a notice for public comments, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Customs solicited and reviewed comments as a courtesy to the public. Accordingly, there is no requirement for a delayed effective date for this regulation.

## The Regulatory Flexibility Act and Executive Order 12866

Because these amendments relate to agency management and organization, they are not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters, such as this proposed closing of three Customs Drawback Centers, are not subject to Executive Order 12866.

### Drafting Information

The principal author of this document was Ms. Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

### List of Subjects in 19 CFR Part 101

Customs duties and inspection, Customs ports of entry.

### Amendments to the Regulations

For the reasons set forth in the preamble, amend part 101 of the Customs Regulations (19 CFR 101) as follows:

## PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Section 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

\* \* \* \* \*

### § 101.3 [Amended]

2. In § 101.3, the table in paragraph (b)(1) is amended by removing the plus sign in the “Ports of entry” column before the column listings for “Miami” under the state of Florida, “New Orleans” under the state of Louisiana, and “Boston” under the state of Massachusetts.

**Robert C. Bonner,**

*Commissioner of Customs.*

Approved: January 22, 2003.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*  
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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[TD 9038]

RIN 1545–BB46

### Statutory Mergers and Consolidations

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains temporary regulations that define the term *statutory merger or consolidation* as that term is used in section 368(a)(1)(A). These regulations affect corporations engaging in statutory mergers and consolidations, and their shareholders. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the proposed rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective January 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Richard M. Heinecke or Reginald Mombrun at (202) 622–7930 (not a toll-free number).

### SUPPLEMENTARY INFORMATION:

#### Background

##### A. Section 368(a) Generally

The Internal Revenue Code of 1986 (Code) provides general nonrecognition treatment for reorganizations specifically described in section 368(a). Section 368(a)(1)(A) provides that the term *reorganization* includes “a statutory merger or consolidation.” Section 1.368–2(b)(1) currently provides that a statutory merger or consolidation must be “effected pursuant to the corporation laws of the United States or a State or Territory or the District of Columbia.”

##### B. Disregarded Entities Generally

A business entity (as defined in § 301.7701–2(a)) that has only one owner may be disregarded as an entity separate from its owner for Federal tax purposes. Examples of disregarded entities include a domestic single member limited liability company that does not elect to be classified as a corporation for Federal tax purposes, a corporation (as defined in § 301.7701–2(b)) that is a qualified REIT subsidiary (within the meaning of section 856(i)(2)) (hereinafter referred to as “QRS”), and a corporation that is a qualified

subchapter S subsidiary (within the meaning of section 1361(b)(3)(B)) (hereinafter sometimes referred to as “QSub”).

Because a QRS and QSub are corporations under state law, state merger laws generally permit them to merge with other corporations. In addition, many state merger laws permit a limited liability company (LLC) to merge with another LLC or with a corporation.

### C. Previous Proposals of Regulations

On May 16, 2000, the IRS and Treasury issued a notice of proposed rulemaking (REG–106186–98; 65 FR 31115) (hereinafter referred to as the 2000 proposed regulations) providing that neither the merger of a disregarded entity into a corporation nor the merger of a corporation into a disregarded entity would qualify as a reorganization under section 368(a)(1)(A). While commentators generally agreed that the merger of a disregarded entity into a corporation should not qualify as a reorganization under section 368(a)(1)(A), commentators asserted that the merger of a corporation into a disregarded entity with a corporate owner should be able to qualify as a reorganization under section 368(a)(1)(A).

On November 15, 2001, after consideration of the comments received regarding the 2000 proposed regulations, the IRS and Treasury withdrew the 2000 proposed regulations (REG–106186–98; 66 FR 57400) and issued another notice of proposed rulemaking (REG–126485–01; 66 FR 57400) (hereinafter referred to as the 2001 proposed regulations).

The 2001 proposed regulations provide that, for purposes of section 368(a)(1)(A), a statutory merger or consolidation must be effected pursuant to the laws of the United States or a State or the District of Columbia. Pursuant to such laws, the following events must occur simultaneously at the effective time of the transaction: (1) All of the assets (other than those distributed in the transaction) and liabilities (except to the extent satisfied or discharged in the transaction) of each member of one or more combining units (each a transferor unit) become the assets and liabilities of one or more members of one other combining unit (the transferee unit); and (2) the combining entity of each transferor unit ceases its separate legal existence for all purposes. For this purpose, a combining entity is a business entity that is a corporation (as defined in § 301.7701–2(b)) that is not a disregarded entity)