

Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

**Note 4:** The subject of this AD is addressed in Brazilian airworthiness directive 97-05-03R3, dated October 2, 2001.

Issued in Renton, Washington, on September 26, 2003.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03-24978] Filed 10-1-03; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Customs and Border Protection

## DEPARTMENT OF THE TREASURY

### 19 CFR Part 191

RIN 1515-AD32

#### Merchandise Processing Fees Eligible To Be Claimed as Certain Types of Drawback Based on Substitution of Finished Petroleum Derivatives

**AGENCY:** Customs and Border Protection, Homeland Security; Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the Customs Regulations to provide that merchandise processing fees are eligible to be claimed, in limited circumstances, as drawback based on substitution of finished petroleum derivatives. The proposed amendments are consistent with a court decision in which merchandise processing fees were found to be eligible to be claimed as unused merchandise drawback. As drawback based on substitution of finished petroleum derivatives is, in limited circumstances, treated in the same manner as unused merchandise drawback, the amendments to the Customs Regulations proposed in this document reflect that merchandise processing fees are also eligible to be claimed as drawback in these circumstances.

**DATES:** Comments must be received on or before December 1, 2003.

**ADDRESSES:** Written comments may be submitted to Bureau of Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at Bureau of Customs and Border Protection, 799 9th Street, NW., Washington, DC, during regular business hours. Arrangements to

inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** William G. Rosoff, Chief, Duty and Refund Determinations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, Tel. (202) 572-8807.

#### SUPPLEMENTARY INFORMATION:

##### Background

##### *Merchandise Processing Fees*

Merchandise processing fees are fees charged and collected for the processing of merchandise that is formally entered or released into the United States. See 19 U.S.C. 58c(a)(9)(A). Merchandise processing fees are assessed as a percentage of the value of the imported merchandise, as determined under 19 U.S.C. 1401a.

##### *Merchandise Processing Fees Eligible To Be Claimed as Drawback*

Section 313 of the Tariff Act of 1930, as amended, (19 U.S.C. 1313), concerns drawback and refunds. Drawback is a refund of certain duties, taxes and fees paid by the importer of record and granted to a drawback claimant under specific conditions.

In *Texport Oil v. United States*, 185 F.3d 1291 (Fed. Cir. 1999), the Court of Appeals for the Federal Circuit (CAFC) held that merchandise processing fees were assessed under Federal law and imposed by reason of importation and therefore eligible to be claimed as unused merchandise drawback pursuant to 19 U.S.C. 1313(j).

Subsection (p) of 19 U.S.C. 1313 authorizes drawback that is based on "substitution of finished petroleum derivatives." Subsection (p)(4)(B) of 19 U.S.C. 1313, in pertinent part, limits the amount of drawback payable under this subsection to the amount of drawback that would be attributable to the article "if imported under [subsection 1313(p)(2)(A)(iii) or (iv)] *had the claim qualified for drawback under subsection (j).*" [emphasis added]

Subsection 1313(p)(2)(A)(iii) requires that the exporter of the exported article had imported the qualified article in a quantity equal to or greater than the quantity of the exported article. Subsection 1313(p)(2)(A)(iv) requires that the exporter of the exported article had purchased or had exchanged, directly or indirectly, an imported qualified article from an importer in a quantity equal to or greater than the quantity of the exported article.

The language "had the claim qualified for drawback under subsection (j)" reflects that drawback is payable under

1313(p)(2)(A)(iii) or (iv) pursuant to the same formula set forth in subsection 1313(j), *i.e.*, the amount of drawback payable under 19 U.S.C. 1313(j) is not to exceed 99 percent of any duty, tax, or fee imposed under Federal law because of the imported article's importation. It is noted that "drawback payable" pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv) includes merchandise processing fees.

It follows, therefore, that as the CAFC has determined that merchandise processing fees are eligible to be claimed as drawback pursuant to 19 U.S.C. 1313(j), such fees are also eligible to be claimed as drawback when drawback is based on substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv).

##### *Proposed Amendments to the Customs Regulations*

The *Texport Oil* decision is reflected in the Customs Regulations at §§ 191.3 and 191.51. See 67 FR 48547 (July 25, 2002), in which a final rule was published amending the Customs Regulations to reflect that merchandise processing fees are eligible to be claimed as unused merchandise drawback pursuant to 19 U.S.C. 1313(j).

In order to reflect that the court's holding is applicable, in limited circumstances, to drawback based on substitution of finished petroleum derivatives, this document proposes to further amend the Customs Regulations.

##### Explanation of Amendments

It is proposed to amend §§ 191.3(a)(4), 191.3(b)(2), 191.51(b)(2) and 191.171 of the Customs Regulations (19 CFR 191.3, 191.51 and 191.171) to provide that merchandise processing fees are eligible to be claimed as drawback when the basis for drawback is the substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv). A more detailed explanation of the proposed amendments is set forth below.

##### *Amendment to § 191.3 of the Customs Regulations*

Section 191.3(a)(4) of the Customs Regulations provides that merchandise processing fees for unused merchandise drawback pursuant to 19 U.S.C. 1313(j) are subject to drawback. As merchandise processing fees are eligible to be claimed as drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv), it is proposed to amend § 191.3(a)(4) accordingly.

Conversely, § 191.3(b)(2) of the Customs Regulations lists the types of duties and fees that are not subject to

drawback, and specifically excepts merchandise processing fees where unused merchandise drawback is claimed.

For the reasons stated above, it is proposed that this provision be amended to include an exception for merchandise processing fees where drawback is claimed for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv).

#### *Amendment to § 191.51*

Section § 191.51(b)(2) of the Customs Regulations sets forth the apportionment calculation to be used when determining the amount of merchandise processing fee eligible for drawback. It is proposed to amend § 191.51(b)(2) to include reference to drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv).

#### *Amendment to § 191.171*

Finally, it is proposed to amend § 191.171 of the Customs Regulations, which describes the drawback allowance for substitution of finished petroleum derivatives, to add a new subsection (c) which sets forth the conditions when merchandise processing fees will be eligible for drawback pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv).

#### **Comments**

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to CBP, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b) of the Customs Regulations (19 CFR § 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th St., NW., Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

#### **The Regulatory Flexibility Act and Executive Order 12866**

Because these proposed regulatory changes conform the Customs Regulations to reflect the full scope of a recent decision by the Court of Appeals for the Federal Circuit, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that, if adopted, the

proposed amendments will not have a significant impact on a substantial number of small entities. Further, these proposed amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

#### **Drafting Information**

The principal author of this document was Ms. Suzanne Kingsbury, Office of Regulations and Rulings, Bureau of Customs and Border Protection. However, personnel from other offices participated in its development.

#### **List of Subjects in 19 CFR Part 191**

Claims, Commerce, Customs duties and inspection, Drawback.

#### **Proposed Amendments to the Regulations**

For the reasons stated above, it is proposed to amend part 191 of the Customs Regulations (19 CFR part 191) as follows:

#### **PART 191—DRAWBACK**

1. The general authority citation for part 191 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1313, 1624.

2. Section 191.3(a)(4) and (b)(2) are revised, and the introductory texts of paragraphs (a) and (b) are republished to read as follows:

#### **§ 191.3 Duties and fees subject or not subject to drawback.**

(a) Duties and fees subject to drawback include:

\* \* \* \* \*

(4) Merchandise processing fees (see § 24.23 of this chapter) for merchandise subject to unused merchandise drawback pursuant to 19 U.S.C. 1313(j), or merchandise subject to drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv).

(b) Duties and fees not subject to drawback include:

\* \* \* \* \*

(2) Merchandise processing fees (see § 24.23 of this chapter), except where unused merchandise drawback pursuant to 19 U.S.C. 1313(j) or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv) is claimed; and

\* \* \* \* \*

3. In § 191.51, paragraph (b)(2) is revised to read as follows:

#### **§ 191.51 Completion of drawback claims.**

\* \* \* \* \*

(b) *Drawback due.*

\* \* \* \* \*

(2) *Merchandise processing fee apportionment calculation.* Where a drawback claimant seeks unused merchandise drawback pursuant to 19 U.S.C. 1313(j), or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv), for a merchandise processing fee paid pursuant to 19 U.S.C. 58c(a)(9)(A), the claimant is required to correctly apportion the fee to that merchandise that provides the basis for drawback when calculating the amount of drawback requested on the drawback entry. This is determined as follows:

\* \* \* \* \*

4. In § 191.171, a new paragraph (c) is added to read as follows:

#### **§ 191.171 General; Drawback allowance.**

\* \* \* \* \*

(c) *Merchandise processing fees.* In cases where the requirements of paragraph (b)(1) of this section have been met, merchandise processing fees will be eligible for drawback.

**Robert C. Bonner,**

*Commissioner, Customs and Border Protection.*

Approved: September 26, 2003.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 03-24856 Filed 10-1-03; 8:45 am]

BILLING CODE 4820-02-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 80**

[FRL-7566-4]

### **Regulation of Fuel and Fuel Additives: Gasoline and Diesel Fuel Test Method Update**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to take action to make certain fuel testing requirements more consistent and up-to-date by having refiners and laboratories use the most current version of an American Society of Testing and Materials (ASTM) analytical test method.

Specifically, we are proposing to update an ASTM designated analytical test method, ASTM D 1319 to the most recent 2002a version which if adopted will supersede earlier versions of this method in EPA's motor vehicle fuel