

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.*

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#### **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