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**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Customs and Border Protection**

**DEPARTMENT OF THE TREASURY**

**19 CFR Parts 10, 128, 143, and 145**

**CBP Dec. No. 16-13**

**USCBP-2016-0057**

**RIN 1515-AE09**

**Administrative Exemption on Value Increased for Certain Articles**

**AGENCIES:** U.S. Customs and Border Protection; Department of the Treasury.

**ACTION:** Interim final rule; solicitation of comments.

**SUMMARY:** This document amends the U.S. Customs and Border Protection regulations to implement section 901 of the Trade Facilitation and Trade Enforcement Act of 2015 by raising from \$200 to \$800 the value of certain articles that may be imported by one person on one day free of duty and tax. This document also makes clarifying and conforming amendments to the regulations.

**DATES:** Effective date: This interim final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comment date: Written comments must be submitted on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by docket number USCBP-2016-0057, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

Instructions: All submissions received must include the agency name and docket title for this rulemaking, and must reference docket number USCBP-2016- 0057. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of the document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during business days between the hours of 9:00 a.m. and 4:30 p.m. at the Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Randy Mitchell, Director, Commercial Operation, Revenue and Entry, Trade Policy and Programs, Office of Trade, U.S. Customs and Border Protection, (202) 863-6532.

## **SUPPLEMENTARY INFORMATION:**

### **Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to CBP in finalizing these regulations will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. CBP is also interested in receiving comments regarding the collection of data on behalf of Partner Government Agencies (PGAs) for shipments valued below \$800. See ADDRESSES above for information on how to submit comments.

### **I. Background**

#### **A. Trade Facilitation and Trade Enforcement Act of 2015**

On February 24, 2016, President Obama signed into law the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Public Law No. 114-125). Prior to enactment of the TFTEA, section 321(a)(2)(C) of the Tariff Act of 1930 (19 U.S.C. 1321(a)(2)(C)) authorized CBP to provide an administrative exemption to admit free from duty and tax shipments of merchandise (other than bona fide gifts and certain personal and household goods) imported by one person on one day having an aggregate fair retail value in the country of shipment not less than \$200. Section 901(c) of the TFTEA amended section 1321(a)(2)(C) by increasing the value of this administrative exemption from \$200 to \$800. Pursuant to section 901(d) of

TFTEA, the effective date of this amendment was the 15<sup>th</sup> day after the date of enactment, i.e., effective as of March 10, 2016. Section 901 did not change the administrative exemption for bona fide gifts and personal or household articles accompanying travelers under 19 U.S.C. 1321(a)(2)(A) and 1321(a)(2)(B).

#### **B. Amendments to Regulations to Reflect New Statutory Amount**

CBP implements the administrative exemption provided for in 19 U.S.C. 1321 in its regulations at 19 CFR 10.151 and 10.153. The administrative exemption amount is also referenced in various other sections in the CBP regulations: §§ 128.21(a)(4)(ii); 128.24(d) and (e); 143.21(l)(1); 143.23(j); 143.26; and 145.31. In all of the previously listed sections that currently provide that the 19 U.S.C. 1321(a)(2)(C) administrative exemption amount is \$200, CBP is amending the regulations to reflect that the new amount is \$800.

#### **C. Other Amendments to Administrative Exemption Regulations**

Under 19 U.S.C. 1321(b), the Secretary of the U.S. Department of the Treasury is authorized to promulgate regulations to prescribe exceptions to any exemption provided for in section 1321(a) whenever the Secretary finds that such action is necessary for any reason to protect the revenue or to prevent unlawful importations.

This rule also amends the scope of alcohol and tobacco products covered by the limitation in paragraph (e) of section 10.153, to conform to other past statutory changes. Perfume is removed from the list of products excluded from the administrative exemption because the excise tax on such products was eliminated in 1995 pursuant to section 136 of the Uruguay Round Agreements Act, Public Law 103-465. Paragraph (e) of section 10.153 is also

amended pursuant to amendments to the Internal Revenue Code, Section 5701, which increased excise taxes for smokeless tobacco, pipe tobacco, roll-your-own tobacco, and cigarette tubes and papers. 26 U.S.C. 5701, as amended by the Children's Health Insurance Program Reauthorization Act of 2009 (Public Law 111-3).

This rule also adds a new paragraph (h) in section 10.153 to clarify that regarding shipments that qualify for the 19 U.S.C. 1321 administrative exemption, the importing party is not exempt from having to pay any applicable excise taxes collected by other agencies on imported goods. It is also noted that pursuant to 19 CFR 24.24(d)(3), the harbor maintenance tax will not be assessed on loadings or unloadings of cargo in which the shipment would be entitled to be entered under informal entry procedures.

This document also revises paragraph (j) of § 143.23 to clarify that different dollar amounts apply to articles that are bona fide gifts and articles that are shipped from the Virgin Islands, Guam, and American Samoa. This document also revises paragraph (j) of § 143.23 to reflect that the increase in the value of shipments from \$200 to \$800 only applies to shipments that qualify for the administrative exemption under sections 10.151 and 128.24(e).

#### **D. Comments**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. In particular, CBP is seeking comments on how CBP can maintain the collection of data required by Partner Government Agencies (PGAs) for imported merchandise to prevent unlawful importations when shipments of merchandise valued below \$800 that qualify for an administrative exemption are

admitted through “release from manifest.” (Generally, such shipments are entered by the carrier and released by CBP based on information contained on the manifest or bill of lading provided by the carrier.) CBP is aware that the manifest information may not contain all the necessary information required by PGAs for admissibility purposes.

## **II. Statutory and Regulatory Requirements**

### **A. Inapplicability of Notice and Delayed Effective Date**

The Administrative Procedure Act (APA) requirements in 5 U.S.C. 553 govern agency rulemaking procedures. Section 553(b) of the APA generally requires notice and public comment before issuance of a final rule. In addition, section 553(d) of the APA requires that a final rule have a 30-day delayed effective date. The APA, however, provides exceptions from the prior notice and public comment requirement and the delayed effective date requirements, when an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest.

Treasury and CBP find that prior notice and comment procedures are unnecessary and that good cause exists to issue these regulations effective upon publication. By immediately effectuating this interim rule, CBP can avoid inconsistent application of the exemption and eliminate confusion that may arise among importers with regard to the scope of the exemption and with regard to payment of excise taxes.

Pursuant to section 901(d) of the TFTEA, Congress established March 10, 2016, as the effective date of the increase in the administrative exemption under 19 U.S.C. 1321(a)(2)(C).

The clear intent of Congress is that this amendment be rapidly implemented; therefore the regulations must be changed to conform to TFTEA's statutory amendment.

In addition, pursuant to the authority of the Secretary of the Treasury under 26 U.S.C. 7805(b)(3), regulations implementing the internal revenue laws can be made immediately effective to prevent abuse. Under that authority, these regulations reflect intervening statutory changes to section 5701 of the Internal Revenue Code, which increased excise taxes for smokeless tobacco, pipe tobacco, roll-your-own tobacco, and cigarette tubes and papers.

Accordingly, pursuant to 5 U.S.C. 553(b) and (d) and the Secretary of the Treasury's authority under 19 U.S.C. 1321(b) and 26 U.S.C. 7805, the requirements for prior notice and comment and a delay in effective date are inapplicable; however, CBP is soliciting comments on this interim rule and will consider all comments received before issuing a final rule.

#### **B. Executive Orders 12866 and 13563**

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a "significant regulatory action," under section 3(f) of Executive Order 12866.

### **C. The Regulatory Flexibility Act**

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). The Regulatory Flexibility Act applies when agencies are required to publish a general notice of proposed rulemaking for a proposed rule. Since a general notice of proposed rulemaking is not necessary in this rulemaking, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

### **D. Paperwork Reduction Act**

As there is no new collection of information required in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

### **Signing Authority**

This document is being issued in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

### **List of Subjects**

#### **19 CFR Part 10**

Customs duties and inspection, Entry of merchandise, Exports, Imports, Reporting and recordkeeping requirements.

#### **19 CFR Part 12**

Customs duties and inspection, Entry of merchandise, Imports, Reporting and recordkeeping requirements.

**19 CFR Part 128**

Administrative practice and procedure, Customs duties and inspection, Entry, Express consignments, Imports, Reporting and recordkeeping requirements.

**19 CFR Part 143**

Customs duties and inspection, Entry of merchandise, Reporting and recordkeeping requirements.

**19 CFR Part 145**

Customs duties and inspection, Reporting and recordkeeping requirements.

**Amendments to the CBP Regulations**

For the reasons stated above in the preamble, CBP amends parts 10, 12, 128, 143, and 145 of title 19 of the Code of Federal Regulations (19 CFR parts 10, 12, 128, 143, and 145) as follows:

**PART 10--ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.**

1. The general authority citation for part 10 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

\* \* \* \* \*

**§ 10.151 [Amended]**

2. Amend § 10.151 by removing the figure “\$200” and adding in its place “\$800” in the section heading and the first sentence.

3. Amend § 10.153 by revising paragraph (e) and by adding paragraph (h) to read as follows:

**§ 10.153 Conditions for exemption.**

\* \* \* \* \*

(e) No alcoholic beverage, cigars (including cheroots and cigarillos) and cigarettes containing tobacco, cigarette tubes, cigarette papers, smoking tobacco (including water pipe tobacco, pipe tobacco, and roll-your-own tobacco), snuff, or chewing tobacco, shall be exempted from the payment of duty and tax under § 10.151 or § 10.152.

\* \* \* \* \*

(h) The exemption provided for in § 10.151 is not to be allowed with respect to any tax imposed under the Internal Revenue Code collected by other agencies on imported goods.

**PART 128 – EXPRESS CONSIGNMENTS**

4. The general authority citation for part 128 continues to read as follows:

**Authority:** 19 U.S.C. 58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

\* \* \* \* \*

**§ 128.21 [Amended]**

6. Amend § 128.21 in paragraph (a)(4)(ii) by removing the figure “\$200” and adding in its place “\$800”.

**§ 128.24 [Amended]**

7. Amend § 128.24 in paragraphs (d) and (e) by removing the figure “\$200” and adding in its place “\$800” in paragraph (d) and in three places in paragraph (e) introductory text.

**PART 143—SPECIAL ENTRY PROCEDURES**

8. The general authority citation for part 143 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1321, 1414, 1481, 1484, 1498, 1624, 1641.

\* \* \* \* \*

**§ 143.21 [Amended]**

9. Amend § 143.21 in paragraph (l)(1) by removing the figure “\$200” and adding in its place “\$800”.

10. Amend § 143.23 by revising paragraph (j) and adding paragraph (k) to read as follows:

**§ 143.23 Form of entry.**

\* \* \* \* \*

(j) Except for mail importations (see §§ 145.31 and 145.32 of this chapter), or in the case of personal written or oral declarations (see §§ 148.12, 148.13, and 148.62 of this chapter), a shipment of merchandise that qualifies for informal entry under 19 U.S.C. 1498 may be entered, including the information listed in paragraph (k) of this section, by presenting the bill of lading or a manifest listing each bill of lading when:

(1) The value of the shipment does not exceed \$100 in the case of a bona fide gift from a person in a foreign country to a person in the United States and the shipment meets the requirements in § 10.152 of this chapter (see § 10.152 of this chapter);

(2) The value of the shipment does not exceed \$200 in the case of articles (including bona fide gifts) from the Virgin Islands, Guam, and American Samoa and the shipment meets the requirements in § 10.152 of this chapter (see § 10.152 of this chapter); or

(3) The value of the shipment does not exceed \$800 and the shipment satisfies the requirements in § 10.151 of this chapter (see §§ 10.151 and 128.24(e) of this chapter).

(k) The following information is required to be filed as a part of entry made under paragraph (j) of this section:

- (1) Country of origin of the merchandise;
- (2) Shipper name, address and country;
- (3) Ultimate consignee name and address;
- (4) Specific description of the merchandise;
- (5) Quantity;
- (6) Shipping weight; and
- (7) Value.

11. Amend § 143.26 by removing the figure “\$200” and adding in its place “\$800” in two places each in paragraphs (a) and (b).

#### **PART 145—MAIL IMPORTATIONS**

12. The general authority citation for part 145 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624.

\* \* \* \* \*

#### **§ 145.31 [Amended]**

13. Amend § 145.31 by removing the figure “\$200” and adding in its place “\$800” in the section heading and text.

R. Gil Kerlikowske  
Commissioner

U.S. Customs and Border Protection

Approved: August 23, 2016

Timothy E. Skud

Assistant Secretary of the Treasury

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