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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 24 and 27

[Docket No. TTB–2016–0016; T.D. TTB–147A; Re: T.D. TTB–145, T.D. TTB–146, T.D. TTB–147, Notice No. 168, and Notice No. 168A]

RIN: 1513–AC31

Implementation of Statutory Amendments Requiring the Modification of the Definition of Hard Cider; Delayed Compliance Date of the Hard Cider Tax Class Labeling Statement Requirement

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Temporary rule; delay of compliance date.

SUMMARY: This temporary rule delays the compliance date of a wine labeling requirement that was established by T.D. TTB–147, a temporary rule published on January 23, 2017. In that rule, TTB required the statement “Tax class 5041(b)(6)” to appear on the container of any wine for which the hard cider tax rate is claimed if it is removed from wine premises or customs custody on or after January 1, 2018. This temporary rule delays the compliance date for that requirement by one year. Specifically, the tax class statement “Tax Class 5041(b)(6)” will not be required to appear on containers of wine that are taxed at the hard cider tax rate until January 1, 2019. Through a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**, TTB is soliciting comments from all interested parties on this delay of the compliance

date for the wine labeling requirement, and, also in that document, TTB is reopening for 60 days the comment period for Notice No 168, the notice of proposed rulemaking that published concurrently with T.D. TTB-147 on January 23, 2017.

DATE: This temporary rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through January 23, 2020.

FOR FURTHER INFORMATION CONTACT: Kara Fontaine, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Box 12, Washington, DC 20005; telephone (202) 453-1039 ext. 103.

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

The Alcohol and Tobacco Tax and Trade Bureau (TTB) of the Department of the Treasury administers chapter 51 of the Internal Revenue Code (IRC), which sets forth the Federal excise taxes on wine and related provisions, including provisions addressing the production and marking of wine (see 26 U.S.C. chapter 51). Section 5041 of the IRC (26 U.S.C. 5041) imposes six excise tax rates, including the hard cider tax rate, on wines. These tax rates are associated with six tax classes that correspond to section 5041(b), subparagraphs (1) through (6). The tax on wine is determined at the time of removal (generally, removal from a bonded wine premises or release from customs custody) for consumption or sale (26 U.S.C. 5041(a)). Wine so removed must be in containers bearing marks and labels evidencing compliance

with the IRC as the Secretary of the Treasury may by regulations prescribe (26 U.S.C. 5368(b)).

TTB administers chapter 51 of the IRC and its implementing regulations pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). In addition, the Secretary has delegated various authorities through Treasury Department Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these laws. The TTB regulations that implement the provisions of the IRC, as they relate to wine, include regulations in 27 CFR part 24 for domestic wine and 27 CFR part 27 for imported wine.

PATH Act's Modification of the IRC Definition of Hard Cider

On December 18, 2015, the President signed into law the Consolidated Appropriations Act, 2016 (Pub. L. 114–113). Division Q of this Act is titled the Protecting Americans from Tax Hikes Act of 2015 (PATH Act). Section 335(a) of the PATH Act amended the IRC at 26 U.S.C. 5041 by modifying the definition of “hard cider” for excise tax classification purposes. Pursuant to section 335(b) of the PATH Act, the amended definition applies to hard cider removed on or after January 1, 2017. This allowed a broader range of products to be eligible for the hard cider tax rate. Effective January 1, 2017, a wine removed from wine premises or customs custody is eligible for the hard cider tax rate of 22.6 cents per gallon if it:

- Contains no more than 0.64 gram of carbon dioxide per 100 milliliters of wine;
- Is derived primarily from apples or pears, or from apple juice concentrate or pear juice concentrate and water;
- Contains no fruit product or fruit flavoring other than apple or pear; and
- Contains at least one-half of 1 percent and less than 8.5 percent alcohol by volume.

Publication of Temporary Rule and Notice for Comment

In response to the PATH Act, TTB published in the **Federal Register** on January 23, 2017, a temporary rule, T.D. TTB–147 (82 FR 7653), to amend its regulations in 27 CFR parts 24 and 27 pertaining to the modified definition of “hard cider” for tax purposes. In addition, TTB solicited comments from the public on the temporary regulations implementing the PATH Act through a notice of proposed rulemaking (NPRM), Notice No. 168 (82 FR 7753), published in the **Federal Register** concurrently with the temporary rule. The temporary rule, the notice of proposed rulemaking, and the comments regarding the temporary regulations received in response to the NPRM may be viewed in their entirety within Docket No. TTB–2016–0014 at the Regulations.gov Web site at <https://www.regulations.gov/>.

Current Requirement for Tax Class Statement to Appear on Containers of Wine Taxed at the Hard Cider Tax Rate

In T.D. TTB–147, TTB amended its regulations in parts 24 and 27 to require the statement “Tax class 5041(b)(6)” to appear on the container of any wine for which the hard cider tax rate is claimed; see §§ 24.257(a)(4) and

27.59(b). In issuing the temporary rule, TTB recognized that industry members who produce and import hard cider would need time to comply with this requirement. Therefore, in § 24.257(a)(4), TTB provided a one-year grace period before the tax class labeling requirement would go into effect, and, as set forth in T.D. TTB–147, this grace period applies to products removed prior to January 1, 2018. As such, T.D. TTB–147 requires that for wine removed on or after January 1, 2018, the tax class statement “Tax Class 5041(b)(6)” must appear on the container of any wine for which the hard cider tax rate is claimed.

Requests for Delay of the Tax Class Statement Compliance Date

In response to the request for comments on T.D. TTB–147, TTB received a comment, posted on February 15, 2017, from Ian Flom of Mercier Orchards, indicating that the timeframe to implement the new “Tax Class 5041(b)(6)” labeling statement requirement is insufficient because he buys labels in bulk and has a supply of labels that do not bear the tax class statement that he will not be able to use up before January 1, 2018. Mr. Flom also submitted other comments for TTB consideration.

TTB also was copied on a letter addressed to Steven T. Mnuchin, Secretary of the Treasury, dated August 1, 2017, from the United States Association of Cider Makers (USACM), which represents approximately one-half of the cider makers in the United States. In its letter, USACM requested a one year delay of the requirement to place the hard cider tax class labeling statement on products claiming the hard cider tax rate removed from wine premises or customs custody after January 1, 2018.

In light of this comment and request, TTB is delaying the compliance date for the labeling statement requirement.

Requests for Extension of and Reopening of the Comment Period

In a February 23, 2017 comment in response to Notice No. 168, USACM formally requested a 60-day extension of the public comment period in order to give its members more time to properly address any of their concerns with the regulatory changes. USACM referred to the outstanding extension request in their August 1, 2017 letter.

Through a notice of proposed rulemaking published elsewhere in this issue of the Federal Register, TTB is reopening for 60 days the comment period for Notice No 168. TTB will consider any new comments submitted in response to the reopening of the comment period on T.D. TTB-147 along with any comments received on this Temporary Rule, T.D. TTB-147A, and the suggestions that have already been received from Mr. Flom.

Delayed Compliance Date of the Tax Class Labeling Statement Requirement for Hard Cider

Through publication of this new temporary rule, TTB is amending 27 CFR 24.257(a)(4) to delay until January 1, 2019, the requirement that the tax class statement "Tax class 5041(b)(6)" appear on any container of wine removed from wine premises or customs custody for which the hard cider tax rate is claimed. Because the tax class labeling requirement for imported wine claiming the hard cider tax rate contained in 27 CFR 27.59(b) is a cross-reference to § 24.257(a)(4), no change to the regulatory text in § 27.59(b) is required.

Updating OMB Control Numbers

In addition, TTB notes that, under the requirements of the Paperwork Reduction Act, the Office of Management and Budget (OMB) approved the hard cider tax class labeling statement information collection requirement under OMB control number 1513–0138. Therefore, TTB is amending §§ 24.257 and 27.59 in this temporary rule to reflect that control number. TTB also is correcting the OMB control number statement in § 24.257 to reflect that the IRC-based wine labeling requirements are covered under OMB control number 1513–0092, Marks on Wine Containers, and not the labeling-related recordkeeping requirements covered under 1513–0115, Usual and Customary Business Records Relating to Wine.

Correction to Authority Citation for 27 CFR Part 27

TTB notes that several rule documents published in late 2016 and early 2017 affected 27 CFR part 27, including the authority citation list set out at the beginning of that part. Specifically, T.D. TTB–145, Amendments To Streamline Importation of Distilled Spirits, Wine, Beer, Malt Beverages, Tobacco Products, Processed Tobacco, and Cigarette Papers and Tubes and Facilitate Use of the International Trade Data System, published on December 22, 2016, at 81 FR 94186, revised the part 27 authority citation list to add 26 U.S.C. 5382 (Cellar Treatment of Natural Wine) and 26 U.S.C. 6109 (Identifying Numbers). However, T.D. TTB–146, Changes to Certain Alcohol-Related Regulations Governing Bond Requirements and Tax Return Filing Periods, published on January 4, 2017, at 82 FR 1108, also revised the part 27 authority citation list to

add 26 U.S.C. 6109 but not 26 U.S.C. 5382, resulting in the inadvertent removal of 26 U.S.C. 5382 from the list, and this error was not corrected in T.D. TTB-147. Therefore, in this temporary rule, TTB is correcting the authority citation for 27 CFR part 27 to return 26 U.S.C. 5382 to that part's list of authorities.

Regulatory Analysis and Notices

Public Participation

To submit comments on the delayed compliance date for the hard cider tax class labeling statement described in this temporary rule, or to submit new comments on any of the hard cider regulations contained in T.D. TTB-147, published in the **Federal Register** on January 23, 2017, at 82 FR 7653, please refer to Notice No. 168A, published in the "Proposed Rules" section of this issue of the **Federal Register**.

Executive Order 12866

Certain TTB regulations issued under the IRC, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), TTB certifies that this temporary rule will not have a significant economic impact on a substantial number of small entities. The temporary rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. Rather, this

temporary rule decreases burden on impacted entities by delaying the compliance date for a TTB labeling requirement that implements certain changes to the Internal Revenue Code of 1986 made by the Protecting Americans from Tax Hikes Act of 2015 (see Pub. L. 114–113, Division Q, section 335).

Paperwork Reduction Act

The regulatory sections addressed in this temporary rule (27 CFR 24.257 and 27.59) contain collections of information that have been previously reviewed and approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned control numbers 1513–0092 and 1513–0138. No changes are being made to the existing approved information collections.

Inapplicability of Prior Notice and Public Comment and Delayed Effective Date Procedures

TTB is issuing this temporary rule without prior notice and comment pursuant to authority under section 4(a) of the Administrative Procedure Act, as amended (APA; 5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.”

In this temporary rule, TTB is delaying the compliance date for the requirement that the tax class statement “Tax class 5041(b)(6)” appear on containers of wine for which the hard cider tax class is claimed, from January 1, 2018, to January 1, 2019. TTB finds that prior notice and comment is unnecessary because a delayed compliance date will provide additional time to industry members to comply with that labeling requirement.

TTB is issuing this temporary rule without a delayed effective date pursuant to authority under section 4(c) of the APA (5 U.S.C. 553(d)). TTB finds good cause under 5 U.S.C. 553(d)(1) to dispense with the effective date limitation in 5 U.S.C. 553(d). This temporary rule grants a one-year exemption by delaying the compliance date for a labeling statement requirement that would otherwise become effective on January 1, 2018. Accordingly, the effective date of this temporary rule is [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Drafting Information

Kara Fontaine of the Regulations and Rulings Division drafted this document with the assistance of other Alcohol and Tobacco Tax and Trade Bureau personnel.

List of Subjects

27 CFR Part 24

Administrative practice and procedure, Cider, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Hard Cider, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspections, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and Recordkeeping requirements, Wine.

Amendments to the Regulations

For the reasons discussed in the preamble, TTB is amending 27 CFR chapter I, parts 24 and 27 as follows:

PART 24—WINE

1. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5121, 5122–5124, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 24.257 [Amended]

2. In § 24.257:

- a. Paragraph (a)(4) is amended by removing the date “January 1, 2018” each place it appears and adding in its place the date “January 1, 2019”; and

- b. The Office of Management and Budget control number reference at the end of the section is amended by removing the phrase “1513–0115 and 1513–XXXX” and adding in its place the phrase “1513–0092 and 1513–0138”.

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

3. The authority citation for part 27 is revised to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5121, 5122–5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5382, 5555, 6109, 6302, 7805.

§ 27.59 [Amended]

4. In § 27.59, the Office of Management and Budget control number reference at the end of the section is amended by removing the phrase “number 1513–XXXX” and adding in its place the phrase “numbers 1513–0092 and 1513–0138”.

Signed: October 30, 2017.

John J. Manfreda,

Administrator.

Approved: November 30, 2017.

Timothy E. Skud,

Deputy Assistant Secretary
(Tax, Trade and Tariff Policy).

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