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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 24 and 27

[Docket No. TTB–2016–0014; Notice No. 168A; Re: Notice No. 168, T.D. TTB–147, and T.D. TTB 147A]

RIN: 1513–AC31

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

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

ACTION: Notice of proposed rulemaking and reopening of comment period.

SUMMARY: On January 23, 2017, the Alcohol and Tobacco Tax and Trade Bureau (TTB) published a temporary rule, T.D. TTB–147, Implementation of Statutory Amendments Requiring the Modification of the Definition of Hard Cider, that amended its regulations to implement changes made to the definition of “hard cider” in the Internal Revenue Code of 1986 by the Protecting Americans from Tax Hikes Act (PATH Act) of 2015. The amended regulations included a requirement that the statement “Tax class 5041(b)(6)” appear on the container of any wine for which the hard cider tax rate is claimed if the wine is removed from wine premises or customs custody on or after January 1, 2018. Concurrent with the temporary rule, TTB published Notice of Proposed Rulemaking No. 168 requesting comments on the regulatory amendments made by T.D. TTB–147. In

response to a comment received from a cider industry trade association, TTB, in a temporary rule published elsewhere in this issue of the **Federal Register**, is now delaying the compliance date for the hard cider tax class labeling requirement by one year, until January 1, 2019. In this document, TTB is requesting comments on that delayed compliance date, and we are also re-opening the comment period for Notice No. 168 for an additional 60 days to request comments on the regulatory amendments described in T.D. TTB–147.

DATES: Comments on the delayed compliance date referenced in this document (Notice No. 168A) are due on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The comment period for the proposed rule, Notice No. 168, published on January 23, 2017, at 82 FR 7753 is reopened for 60 days, and, therefore, comments on Notice No. 168 also are now due on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Please send your comments on Notice No. 168 or Notice No. 168A to one of the following addresses:

- **Internet:** <https://www.regulations.gov> (via the online comment forms for Notice No. 168 or Notice No. 168A, as appropriate, which are posted within Docket No. TTB–2016–0014 at Regulations.gov, the Federal e-rulemaking portal);
 - **U.S. Mail:** Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Box 12, Washington, DC 20005; or
 - **Hand delivery/courier in lieu of mail:** Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 400, Washington, DC 20005.
- See the Public Participation sections of Notice No. 168 and this document

(Notice No. 168A) for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this document, Notice No. 168, and any comments made to TTB about the described proposals at <https://www.regulations.gov> within Docket No. TTB–2016–0014. A link to that docket is posted on the TTB Web site at <https://www.ttb.gov/wine/wine-rulemaking.shtml> under Notice No. 168 or Notice No. 168A. You also may view copies of this document, Notice No. 168, and any comments made to TTB about the described proposals by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20005. Please call (202) 453–2270 to make an appointment.

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; phone (202) 453–1039, ext. 103.

SUPPLEMENTARY INFORMATION: In T.D. TTB–147, a temporary rule published in the **Federal Register** on January 23, 2017, at 82 FR 7653, the Alcohol and Tobacco Tax and Trade Bureau (TTB) implemented changes made to the definition of “hard cider” in the Internal Revenue Code of 1986 by the Protecting Americans from Tax Hikes (PATH) Act of 2015 (Consolidated Appropriations Act, 2016 (Pub. L. 114–113), Division Q). The modified definition broadened the range of wines eligible for the hard cider tax rate. In T.D. TTB–147, TTB amended its regulations to reflect the modified definition of hard cider effective for products removed from wine premises or customs custody on or after January 1, 2017, and set forth new labeling requirements to identify products to which the hard cider tax rate applies. The new labeling requirements

include both a one-year transitional rule and a new labeling requirement that takes effect for products removed on or after January 1, 2018.

TTB solicited public comments on the temporary regulations via Notice No. 168, a notice of proposed rulemaking published in the **Federal Register** on January 23, 2017, at 82 FR 7753. The temporary regulations contained in T.D. TTB-147 served as the text of the proposed regulations. The original 60-day comment period for Notice No. 168 closed on March 24, 2017.

In response to this comment request, 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. In addition, TTB received a letter, dated February 23, 2017, from the United States Association of Cider Makers (USACM), a cider industry trade association based in Portland, Oregon, requesting a 60-day extension of the comment period for Notice No. 168. In its letter, the USACM noted that “there was much discussion about these proposed changes” at its annual membership conference and that a number of its members planned to submit comments to TTB. The letter also noted, however, that “orchardists are currently facing time-management challenges due to pruning season,” and that the requested extension “would allow our members time to properly address any of their concerns with the proposed changes to the hard cider definition and related regulatory changes.” The USACM comment period extension request

letter is posted as Comment 2 to Notice No. 168 within Docket No. TTB–2016–0014 on the Regulations.gov website at <https://www.regulations.gov>.

In addition to USACM’s request to TTB to extend the comment period, USACM wrote a letter, on which TTB was copied, to Steven T. Mnuchin, Secretary of the Treasury, dated August 1, 2017, requesting both a reopening of the comment period of T.D. TTB-147 and a one year delay of the January 1, 2018, hard cider tax class labeling statement requirement. A copy of this USACM letter is posted as Comment 3 to Notice No. 168 within Docket No. TTB–2016–0014 on the Regulations.gov website.

In light of these requests, TTB is delaying the hard cider tax class labeling statement compliance date. Such a delay will provide industry members additional time to come into compliance with the labeling requirement. Through the publication of a temporary rule elsewhere in this issue of the **Federal Register**, TTB is amending 27 CFR 24.257(a)(4) to delay until January 1, 2019, the compliance date for 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 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.

Further, in response to the USACM request to reopen the comment period for all the regulatory amendments contained in T.D. TTB–147, TTB is reopening the comment period for the related notice of proposed rulemaking, Notice No. 168, for an additional 60 days. TTB believes that this additional 60-day comment

period will allow all interested parties to fully consider and comment on the regulatory amendments contained in the hard cider temporary rule.

Therefore, new comments on Notice No. 168 and comments on this document (Notice No. 168A) delaying the compliance date of the hard cider tax class labeling requirement are due to TTB on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Public Participation

Comments Sought

TTB requests comments from interested members of the public on the one-year delay, from January 1, 2018, to January 1, 2019, of the hard cider tax-class labeling statement requirement contained in 27 CFR 24.257, as described in the temporary rule, T.D. TTB–147A, published elsewhere in this issue of the **Federal Register**. TTB also requests new comments on the regulatory amendments to 27 CFR parts 24 and 27 set forth in the temporary rule, T.D. TTB–147, published in the **Federal Register** on January 23, 2017 at 82 FR 7653.

Submitting Comments

You may submit comments by using one of the following three methods:

- Federal e-Rulemaking Portal: You may send comments via the online comment form for this proposed rule (Notice No. 168A) or for Notice No. 168, as appropriate, posted within Docket No. TTB–2016–0014 on “Regulations.gov,” the Federal e-rulemaking portal, at <https://www.regulations.gov>. A direct link to that

docket is available under Notice No. 168 and Notice No. 168A on the TTB Web site at <https://www.ttb.gov/wine/wine-rulemaking.shtml>. Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, click on the site's "Help" tab.

- U.S. Mail: You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005.
- Hand Delivery/Courier: You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this proposed rule. Your comments must reference Notice No. 168A or Notice No. 168, as appropriate, and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments and considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name as well as your name and position title. In your comment via Regulations.gov, please enter the entity's name in the "Organization" blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of the proposed rules, the related temporary rules, and any online or mailed comments received about them, within Docket No. TTB–2016–0014 on Regulations.gov, the Federal e-rulemaking portal. A direct link to that docket is available on the TTB Web site at <https://www.ttb.gov/wine/wine-rulemaking.shtml> under Notice No. 168 or Notice No. 168A. You may also reach the relevant docket through the Regulations.gov search page at <https://www.regulations.gov>. For information on how to use Regulations.gov, click on the site’s “Help” tab.

All posted comments will display the commenter’s name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. TTB may omit voluminous attachments or material that it considers unsuitable for posting.

You may view copies of the proposed rules, the related temporary rules, and any electronic or mailed comments TTB receives about them by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC

20005. You may also obtain copies for 20 cents per 8.5- x 11-inch page.

Contact TTB's information specialist at the above address or by telephone at (202) 453-2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act, Paperwork Reduction Act, and Executive Order 12866

Since the regulatory text proposed in this notice of proposed rulemaking is identical to that contained in the companion temporary rule published elsewhere in this issue of the **Federal Register**, the analyses contained in the preamble of the temporary rule concerning the Regulatory Flexibility Act, the Paperwork Reduction Act, and Executive Order 12866 also apply to this proposed rule.

Drafting Information

Kara Fontaine and Michael Hoover 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.

Proposed Amendments to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 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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