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**DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection**

DEPARTMENT OF THE TREASURY

19 CFR Part 24

[CBP Dec. 18-09; Docket No. USCBP-2018-0033]

RIN 1515-AE39

Refund of Alcohol Excise Tax

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document updates language in the U.S. Customs and Border Protection (CBP) regulations to reflect the current organization of CBP and the Department of the Treasury. The document also eliminates a restriction pertaining to CBP's authority to refund excessive duties, taxes, fees, or interest imposed on distilled spirits, wine, and beer to facilitate implementation of Subpart A (Craft Beverage Modernization and Tax Reform) of Part IX of the Tax Cuts and Jobs Act, signed December 22, 2017, commonly referred to as the Craft Beverage Modernization Act.

DATES: This interim final rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]; comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by docket number USCBP-2018-0033, 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 N.E., 10th Floor, Washington, D.C. 20229-1177.

Instructions: All submissions received must include the agency name and docket title for this rulemaking, and must reference docket number USCBP-2018-0033. 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 Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street N.E., 10th Floor, Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Sharolyn J. McCann, Supervisory Program Manager, Office of Trade, U.S. Customs and Border Protection, (571) 468-5478, sharolyn.j.mccann@cbp.dhs.gov.

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. *See* ADDRESSES above for information on how to submit comments. U.S. Customs and Border Protection (CBP) also invites comments that relate to the effects that might result from this interim rule. Comments that will provide the most assistance to CBP 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.

BACKGROUND

CBP is amending § 24.36 of title 19 of the Code of Federal Regulations (19 CFR 24.36) regarding the authority of CBP to issue refunds of excessive duties, taxes, fees, or interest to:

(1) Reflect changes in departmental organization, a statutory citation to account for the Internal Revenue Code of 1986, and current form names and numbers. The current text refers to the Department of the Treasury's (Treasury) organization that preceded the 1972 transfer of certain functions from the Internal Revenue Service to the Bureau of Alcohol, Tobacco and Firearms. *See* Treasury Order 221 (June 6, 1972). The Homeland Security Act of 2002 (Pub. L. No. 107-296, December 25, 2002) later transferred these functions described in 19 CFR 24.36(e) to the Alcohol and Tobacco Tax and Trade Bureau (TTB).

The reference to Internal Revenue Form 843 in § 24.36(e)(1) predates the 1963 republication of chapter I of title 19 (*see* 28 FR 14546, 14815 (Dec. 31, 1963)) and is obsolete. The current IRS Form 843 is not related to excise tax. Current TTB Form 5620.8, "Claim –

Alcohol, Tobacco, and Firearms Taxes,” is the modern equivalent of the form referred to in the regulations.

CBP is also removing references to the “port director” to allow for CBP to issue refunds either through electronic methods or by the ports or the Centers of Excellence and Expertise, and is making other grammatical changes as appropriate.

(2) Add to CBP’s refund authority the ability to refund taxes paid prior to assigning a reduced tax rate or tax credit for alcoholic beverages, including beer, wine, and distilled spirits, as allowed by sections 13801-13808 (Subpart A - Craft Beverage Modernization and Tax Reform, of Part IX) of the Tax Cuts and Jobs Act of 2017 (Pub. L. No. 115-97) signed December 22, 2017, commonly referred to as the Craft Beverage Modernization Act (CBMA).

The CBMA amended the Internal Revenue Code for two calendar years with respect to the tax treatment of alcoholic beverages, including beer, wine, and distilled spirits. For an importer to be eligible to receive a reduced tax rate or a tax credit, the importer must be able to substantiate that the foreign producer has assigned an allotment of its reduced tax rate or tax credits to the beer, wine, or distilled spirits imported by that importer. The new § 24.36(d)(10) makes it clear that CBP has authority to refund the difference between the full excise taxes an importer pays at the time of entry summary filing and the CBMA’s lower effective tax rate. An importer must request and substantiate its entitlement to the reduced tax rate or tax credit appropriately.

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 are unnecessary and that good cause exists to issue these regulations effective upon publication. Prior notice and comment are unnecessary because the rule does not substantively alter the underlying rights or interests of importers or filers, but instead makes technical corrections and makes clear that importers may obtain the benefit of a lower effective tax rate by filing a refund claim with CBP.

Executive Orders 13563, 12866, and 13771

Executive Orders (E.O.) 13563 (“Improving Regulation and Regulatory Review”) and 12866 (“Regulatory Planning and Review”) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

This interim rule is not a “significant regulatory action,” under section 3(f) of E.O. 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed this

regulation. As this rule is not a significant regulatory action, this rule is exempt from the requirements of E.O. 13771. *See* OMB’s Memorandum titled “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

Paperwork Reduction Act (PRA)

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The information collection activities associated with the existing requirements related to the submission of a TTB Form 5620.8 are currently approved by OMB under OMB control number 1513-0030. There is no change in burden hours as a result of this rule.

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 or her delegate) to approve regulations related to certain CBP revenue functions.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Harbors, Reporting and recordkeeping requirements, Taxes.

Amendments to Part 24 of the CBP Regulations

For the reasons set forth in the preamble, 19 CFR part 24 is amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general citation for part 24 continues, and the specific authority citation for § 24.36 is revised, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a-58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. No. 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

Section 24.36 also issued under 26 U.S.C. 6423; Pub. L. No. 115-97.

2. In § 24.36:

- a. Paragraph (d) introductory text is revised;
- b. Amend paragraph (d)(8) by removing the word “or” at the end of the paragraph;
- c. Amend paragraph (d)(9) by removing the period at the end of the paragraph and adding in its place “; or”;
- d. Paragraph (d)(10) is added; and
- e. Paragraphs (e)(1) through (3) are revised.

The revisions and additions read as follows:

§ 24.36 Refunds of excessive duties, taxes, etc.

* * * * *

(d) The authority of CBP to make refunds pursuant to paragraphs (a), (b), and (c) of this section of excessive deposits of alcohol or tobacco taxes, as defined in section 6423(d)(1), Internal Revenue Code of 1986, as amended (26 U.S.C. 6423(d)(1)), is confined to cases of the types which are excepted from the application of section 6423, Internal Revenue Code of 1986, as amended (26 U.S.C. 6423). The excepted types of cases and, therefore, the types in which CBP is authorized to make refunds of such taxes are those in which:

* * * * *

(10) For alcohol excise taxes imposed under the Internal Revenue Code, the refund of tax is claimed pursuant to the assignment of a reduced tax rate or tax credit to an importer by a foreign producer in accordance with CBP implementation of sections 13801-13808 of Pub. L. No. 115-97 (December 22, 2017).

(e) * * *

(1) CBP will provide the following notice to the importer of record: “Claim for refund of any overpayment of internal revenue tax on this entry must be executed and filed with the Director, National Revenue Center, Alcohol and Tobacco Tax and Trade Bureau (TTB), in accordance with TTB regulations (Title 27 of the Code of Federal Regulations).” On request of the claimant, CBP will issue a statement identifying the entry, showing the amount of internal revenue tax deposited with respect to each entry for which a claim on TTB Form 5620.8 is to be made, and showing the date of issuance of the notice of refund of duty.

(2) The claim must be executed on TTB Form 5620.8 (Claim – Alcohol, Tobacco, and Firearms Taxes) and must be filed with the Director, National Revenue Center, TTB. The certified statement must be attached to and filed in support of such claim which may include refunds under more than one entry but is limited to refunds under entries filed at the same port

and the same internal revenue region. The data to be shown on the claim must be as prescribed in TTB regulations, with the exception that any data on the certified statement also required to be shown in the claim need not be restated in the claim.

(3) The date of allowance of refund or credit in respect of such tax for the purposes of section 6407, Internal Revenue Code of 1986, as amended (26 U.S.C. 6407), will be that date on which a claim is perfected and the refund is authorized for scheduling under the applicable TTB regulations.

Kevin K. McAleenan,
Commissioner.

Approved: August 13, 2018.

Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 2018-17710 Filed: 8/15/2018 8:45 am; Publication Date: 8/16/2018]