DEPARTMENT OF HOMELAND SECURITY

DEPARTMENT OF THE TREASURY

Bureau of Customs and Border Protection

19 CFR Parts 113 and 191

[USCBP–2009–0021]

RIN 1505–AC18

Drawback of Internal Revenue Excise Tax

AGENCY: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend title 19 of the Code of Federal Regulations to preclude situations where imported merchandise subject to Federal excise tax is allowed into the United States, in effect, 99 percent free of that tax through application of a drawback claim. Specifically, the proposed amendments would preclude the filing of a substitution drawback claim for internal revenue excise tax paid on imported merchandise in situations where no excise tax was paid upon the substituted merchandise or where the substituted merchandise is the subject of a different claim for refund or drawback of tax under any provision of the Internal Revenue Code. This document also proposes to amend title 19 by adding a basic importation and entry bond condition to foster compliance with the amended drawback provision. These proposed amendments are necessary to protect the revenue by clarifying the relationship between drawback claims and Federal excise tax liability.

DATES: Comments must be received on or before November 16, 2009.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2009–0021.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW. (Mint Annex), Washington, DC 20229–1179.

Instructions: All submissions received must include the agency name and USCBP docket number for this proposed rulemaking. 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 this 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 regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: William Rosoff, Entry Process and Duty Refunds, Regulations and Rulings, Office of International Trade, (202) 325–0047.

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 proposed rule. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

This document proposes amendments to title 19 of the Code of Federal Regulations (19 CFR) that would preclude the filing of a substitution drawback claim for internal revenue excise tax paid on imported merchandise in situations where no excise tax was paid upon the substituted merchandise or where the substituted merchandise is the subject of a different claim for refund or drawback of excise tax under any provision of the Internal Revenue Code.

The statutory and regulatory framework giving rise to this situation is explained below.

I. Excise Taxation Under the Internal Revenue Code of 1986

The Internal Revenue Code (IRC) of 1986, as amended (IRC), codified as title 26 of the United States Code (26 U.S.C.), is the main body of domestic statutory tax law of the United States and includes, *inter alia*, laws covering Federal excise taxes. Federal excise taxes are imposed on the manufacture and distribution of certain non-essential consumer goods, such as distilled spirits, wines, beer, tobacco products, imported taxable fuel and petroleum products.

Distilled Spirits, Wines, and Beer: Imposition of Federal Excise Tax and Exemptions

Chapter 51 of the IRC sets forth excise tax collection and related provisions applicable to distilled spirits, wines, and beer. In general, this chapter provides that a Federal excise tax is imposed on all wines, distilled spirits, and beer produced in or imported into the United States. 26 U.S.C. 5041, 5001, and 5051.

Statutory exceptions to the imposition of Federal excise tax exist; for example, domestically produced wine, distilled spirits, and beer are exempt from the tax if removed from bonded premises for export. 26 U.S.C. 5362(c), 5214(a), 5053. In addition, upon the exportation of domestically-produced wine, distilled spirits, or beer removed from bonded premises with payment of tax, drawback is allowed in an amount equal to the tax paid. 26 U.S.C. 5062, 5055.

Tobacco: Imposition of Federal Excise Tax and Exemptions

Under Chapter 52, a Federal excise tax is imposed on all tobacco products and cigarette papers and tubes manufactured in or imported into the United States. 26 U.S.C. 5701. The tax on domestically-produced tobacco products and cigarette papers and tubes is imposed at the time that the product comes into existence, that is, when a product meets one of the definitions under the IRC. The Federal excise tax on imported and domestically-produced tobacco products and cigarette papers and tubes is generally not paid or determined until the products are released from customs custody or removed from bonded premises. 26 U.S.C. 5702, 5703. Tobacco products and cigarette papers and tubes may be removed from bonded premises, without the payment of Federal excise tax, for export. 26 U.S.C. 5704. In addition, upon exportation of tobacco products and cigarette papers and tubes upon which the tax has been paid,

drawback of the tax paid is allowed. 26 U.S.C. 5706.

Other Excise Taxes

Chapter 32 of the IRC imposes various manufacturers excise taxes, including taxes on gasoline, diesel fuel, and kerosene (taxable fuel). The tax on imported taxable fuel is imposed on entry into the United States for consumption, use, or warehousing. If taxable fuel is exported, the IRC provides that the tax paid on the fuel may be refunded to the taxpayer or an amount equal to the tax paid on the fuel may be paid to the person exporting the fuel. Chapter 38 of the IRC also imposes various environmental taxes, including a tax on petroleum products entered into the United States for consumption, use, or warehousing.

Implementing Excise Tax Regulations

Regulations implementing the provisions of chapters 51 and 52 of the IRC are contained in chapter 1 of title 27 of the CFR (27 CFR chapter 1). The Alcohol and Tobacco Tax and Trade Bureau (TTB) within the Department of the Treasury is responsible for the administration of chapter 51 and the regulations promulgated thereunder. Regulations implementing the provisions of chapters 32 and 38 are contained in title 26 of the CFR and are administered by the Internal Revenue Service.

II. Drawback Under the Tariff Act of 1930

Section 313 of the Tariff Act of 1930, as amended, (19 U.S.C. 1313), concerns drawback and refunds. Drawback is a refund of certain duties, taxes and fees paid by the importer of record and granted to a drawback claimant upon the exportation, or destruction under CBP supervision, of eligible articles under specified conditions. The purpose of drawback is to place U.S. exporters on equal footing with foreign competitors by refunding most of the duties paid on imports used in domestic manufactures intended for export.

There are several types of drawback. Within section 313, paragraph (j) provides for ''unused merchandise drawback,'' which is intended to permit drawback to be claimed on imported merchandise on which was paid any duty, tax, or fee imposed under Federal law upon entry or importation if such merchandise was exported or was destroyed under CBP supervision, and was not used within the United States before such exportation or destruction, within the 3-years from the date of importation.

Substitution Drawback (19 U.S.C. 1313(j)(2))

Section 313(j)(2) (19 U.S.C. 1313(j)(2)), hereafter referred to in this document as ''(j)(2) substitution drawback,'' is a type of drawback that permits other merchandise to be substituted for the imported merchandise for purposes of satisfying the exportation or destruction requirement. Specifically, 19 U.S.C. 1313(j)(2) provides for the payment of drawback, not to exceed 99 percent of the duties, taxes, and fees paid on the imported merchandise, based on the exportation or destruction of ''any other merchandise (whether imported or domestic)'' that is: (1) Commercially interchangeable with the imported merchandise on which duties, taxes, and fees were paid; (2) exported or destroyed within 3 years of the date of importation of the imported merchandise; and (3) not used within the United States before such exportation or destruction and is in the possession of the party claiming drawback.

Implementing CBP Drawback Regulations

Regulations implementing 19 U.S.C. 1313 are set forth in part 191 of title 19 of the Code of Federal Regulations (19 CFR part 191). Within part 191, subpart C sets forth the regulations pertaining to unused merchandise drawback and includes, in § 191.32, standards applicable to (j)(2) drawback claims.

III. Reasons for Regulatory Change

Integrity of Federal Excise Tax System at Risk

In recent years, CBP has received and approved a number of (j)(2) substitution drawback claims involving imported bottled and bulk wine and domestically-produced wine. A hypothetical example of this type of transaction follows:

A domestic winery imports 100 cases of bottled wine, pays Federal excise tax on the wine, and sells the imported wine in the United States. The domestic winery then exports 100 cases of its domestic wine without payment of Federal excise tax. The domestic winery files a (j)(2) drawback claim with CBP on the basis that the 100 cases of domestically-produced wine are commercially interchangeable with the 100 cases of imported wine. The domestic winery receives a refund of 99 percent of the Federal excise taxes that it paid on the 100 cases of imported wine.

In the above hypothetical, imported wine is introduced into the U.S. market, in effect, free of 99 percent of Federal excise tax. As a result, the U.S. Treasury ultimately receives only 1 percent of the Federal excise tax on the imported wine.

Diverse Commodities Potentially Impacted

In addition to the claims processed by CBP involving (j)(2) substitution drawback on wine, given the present statutory and regulatory structure within which these claims are administered, other products that are subject to excise tax under the IRC may also be the subject of such drawback claims where the excise taxes on the good have been refunded, remitted, or not paid (*e.g.*, distilled spirits and beer (IRC chapters 51 and 52; 26 U.S.C. 5001; 5051); tobacco products and cigarette papers and tubes (IRC chapter 52; 26 U.S.C. 5701); imported taxable fuel (IRC chapter 32; 26 U.S.C. 4081); petroleum products (IRC chapter 38; 26 U.S.C. 4611)).

Congressional Intent

The allowance of (j)(2) substitution drawback claims in circumstances in which internal revenue taxes have not been paid on the substituted domestic product is incompatible with Congress' intent to levy excise taxes under the IRC and circumvents the intended administration of drawback under the comprehensive framework of section 313.

As part of Congress' extensive review of the drawback statute, effected by the Customs Modernization and Informed Compliance Act (Mod Act), Public Law No. 103–182, 632, 107 Stat. 2057 (1993) (enacted as Title VI of the North American Free Trade Agreement Implementation Act), a provision was added to section 313(v) that provides that, ''[m]erchandise that is exported or destroyed to satisfy any claim for drawback shall not be the basis of any other claim for drawback; except that appropriate credit and deductions for claims covering components or ingredients of such merchandise shall be made in computing drawback payments.'' Based on the foregoing statutory prohibition against multiple drawback claims, 19 U.S.C. 1313(v) precludes the use of merchandise on which there has been a remission of duties, taxes, and fees from being used to claim drawback of duties, taxes, and fees paid on other merchandise upon its exportation or destruction.

The legislative history of this provision indicates that Congress did not intend to allow multiple drawback claims on the exportation or destruction of goods. As noted in the House Report accompanying the legislation, section 632(a)(7) provides that under the amended statute, ''only one drawback

claim per exportation or destruction of goods would be allowed.'' H.R. Rep. No. 103–361(l), at 130, *reprinted in* 1993 United States Code Congressional and Administrative News (U.S.C.C.A.N.) 2552, 2680.

In the context of amending 19 U.S.C. 1313 as part of the Mod Act, Congress also added language to subsection (u) of section 313 which restricted eligibility for drawback to imported merchandise that had been regularly entered or withdrawn for consumption. This limiting language was added, as described in the legislative history, because it codified ''current Customs practice against piggybacking other duty exemption benefits (foreign-trade zones, bonded warehouses and duty-free temporary importation) onto the drawback benefits.'' H.R. Rep. No. 103–361(I) at 130, *reprinted in* 1993 U.S.C.C.A.N. at 2680. The addition of this limiting language ensured that companies could not claim drawback on the ''importation'' of goods which had never actually been entered for consumption in the United States, but rather had been physically located in a foreign trade zone and then exported without the payment of duties. The ability to obtain substitution drawback under 19 U.S.C. 1313(j)(2), thus introducing imported wine into the U.S. market nearly free of Federal excise tax, is an example of ''piggybacking'' a previously existing Federal excise tax exemption benefit (exporting domestically-produced wine without payment of excise tax) onto the drawback benefits.

The IRC is quite specific regarding the circumstances in which internal revenue taxes are, and are not, required to be paid on domestic and imported merchandise. *See* chapters 32, 38, 51, and 52 of the IRC. The fact that a party would be able to avoid the payment of internal revenue taxes on both imported and domestically-produced merchandise by relying on the provisions of two discrete statutory programs administered by different agencies for different purposes is contrary to Congressional intent, as discussed above.

Congress is cognizant of the possibility that the interplay of tariff provisions could lead to a situation where collection of internal revenue tax might be at risk in an import transaction. For example, Congress structured U.S. note 1(b) to subchapter I of Chapter 98 of the Harmonized Tariff Schedule of the United States (HTSUS) to avoid this outcome. The subchapter I provisions allow duty-free or reduced-duty treatment for articles exported and returned that were not advanced in value or improved in condition by any process of manufacture or other means while abroad. U.S. note 1(b) was structured to ensure collection of the tax by stating that the provisions of the subchapter (with certain exceptions not relevant here) do not apply to any article ''[o]f a kind with respect to the importation of which an internal-revenue tax is imposed at the time such article is entered, unless such article was subject to an internal-revenue tax imposed upon production or importation at the time of its exportation from the United States and it shall be proved that such tax was paid before exportation and was not refunded.'' The net effect of U.S. note 1(b) to subchapter I of chapter 98, HTSUS, is to ensure that internal revenue tax is imposed on merchandise that is entered for consumption in the United States. Section 10.3 of title 19 of the CFR (19 CFR 10.3) implements the provisions of U.S. note 1(b) to subchapter I of chapter 98, HTSUS. The amendments proposed in this document would similarly ensure that internal revenue taxes will be paid in cases involving (j)(2) substitution drawback.

Explanation of Proposed Amendments

For the reasons outlined above, this document proposes to amend § 191.32 of title 19 of the CFR (19 CFR 191.32) by adding a new paragraph (b)(4) to preclude drawback of internal revenue tax imposed under the IRC in connection with a (j)(2) substitution drawback claim if no excise tax was paid on the substituted exported merchandise or if that merchandise was subject to a claim for refund or drawback of tax under any provision of the IRC. In addition, this document proposes to amend § 113.62 of title 19 of the CFR (19 CFR 113.62), which sets forth basic importation and entry bond conditions, to add a new condition under which the principal agrees not to file, or transfer the right to file, a substitution drawback claim that would be inconsistent with the terms of new § 191.32(b)(4). The consequences of default specified in newly re-designated paragraph (n) of § 113.62 would apply in the case of a breach of this bond condition.

Conforming regulatory texts are also being published by TTB in this edition of the **Federal Register**.

Executive Order 12866 and the Regulatory Flexibility Act

This proposed rule is not considered to be a significant regulatory action under Executive Order 12866 because it will not have an annual effect on the economy of $100 million and does not raise novel policy concerns. The Office of Management and Budget has not reviewed this regulatory evaluation under that Order.

Regarding the impact of the proposed rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 604), 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).

As stated above, these changes are intended to preclude the filing of (j)(2) substitution drawback claims in circumstances in which internal revenue taxes have not been paid on the substituted domestic product, or where that merchandise is subject to a different claim for refund or drawback of IRC taxes. The proposed amendments still allow for the return of 99 percent of the duties, taxes, and fees paid on the imported merchandise upon export, or when IRC taxes have been paid on substituted domestic product and the substituted merchandise is not the subject of a separate claim for refund or drawback of such taxes.

To the extent that small entities have filed (j)(2) substitution drawback claims that would no longer be permitted, this regulation, if finalized as proposed, could have an economic impact on a substantial number of small entities. However, this proposed rule does not restrict import and export activities for any entities, regardless of size; these proposed amendments merely reflect Congress' intent regarding statutory prohibitions against multiple drawback claims and serve to clarify the application of existing statutory provisions. Thus, the impacts of this rule would not rise to the level that would be considered economically significant.

CBP welcomes comments on this assumption. The most helpful comments are those that can give us specific information or examples of a direct impact on small entities. If we do not receive comments that demonstrate that the rule causes small entities to incur significant direct costs, we may, during the process of drafting the final rule, certify that this action does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

As there are no new collections of information proposed in this document,

the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

Signing Authority

The amendments contained in this document are being issued by CBP in accordance with § 0.1(a)(1) of title 19 of the CFR (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 CBP revenue functions.

List of Subjects

19 CFR Part 113

Bonds, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements.

19 CFR Part 191

Administrative practice and procedure, Bonds, Claims, Commerce, Customs duties and inspection, Drawback, Exports, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons set forth in the preamble, CBP and the Treasury Department propose to amend 19 CFR parts 113 and 191 as set forth below:

PART 113—CUSTOMS BONDS

1. The general authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

2. Section 113.62 is amended by redesignating paragraph (m) as paragraph (n) and adding a new paragraph (m) to read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(m) *Agreement to comply with CBP regulations applicable to substitution drawback claims.* In the case of imported merchandise that is subject to internal revenue tax imposed under the Internal Revenue Code of 1986, as amended (IRC), the principal agrees not to file, or to transfer to a successor the right to file, a substitution drawback claim involving such tax if the substituted merchandise has been, or will be, the subject of a removal from bonded premises without payment of tax, or the subject of a claim for refund or drawback of tax, under any provision of the IRC.

* * * * *

PART 191—DRAWBACK

3. 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 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624;

* * * * *

4. Section 191.32 is amended:

a. At the end of paragraph (b)(2), by removing the word ''and'';

b. At the end of paragraph (b)(3), by removing the period and adding, in its place, ''; and''; and

c. By adding a new paragraph (b)(4) to read as follows:

§ 191.32 Substitution drawback.

* * * * *

(b) * * *

(4) For purposes of drawback of internal revenue tax imposed under Chapters 32, 38, 51, and 52 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export or destruction of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substitute merchandise.

* * * * *

Approved: October 8, 2009.

Jayson P. Ahern,

Acting Commissioner, U.S. Customs and Border Protection.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. E9–24789 Filed 10–14–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 908

[Docket No. FR–5351–P–01]

RIN 2501–AD48

Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of Enterprise Income Verification

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: On January 27, 2009, HUD issued a final rule that revised the regulations for HUD's public and assisted housing programs to require the use of HUD's Enterprise Income Verification system by public housing agencies and multifamily housing owners and management agents when verifying the employment and income of program participants. Consistent with Administration policy to review rules issued during the transition from one Administration to another, HUD re-opened the January 27, 2009, final rule for public comment, and specifically solicited public comment on extending the effective date of the rule. While HUD remains committed to full implementation of the Enterprise Income Verification system, the public comments submitted on the January 27, 2009, final rule highlighted for HUD certain regulatory provisions that require further clarification, and ones that were extraneous to the purpose of the rule, which is full implementation of the Enterprise Income Verification system.

By final rule published on August 28, 2009, HUD delayed the effective date of the January 27, 2009, final rule to January 31, 2010. During this period before the final rule takes effect, HUD submits for public comment, through this proposed rule, regulatory revisions designed to make certain provisions in the January 27, 2009, final rule more clear, and return other regulatory provisions to their pre-January 2009 final rule content.

DATES: *Comment Due Date:* November 16, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.