

Loan programs, Loan programs—business, Loan programs—housing and community development, Renewable energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons discussed in the preamble, 7 CFR part 4287 is amended as follows:

#### PART 4287—SERVICING

■ 1. The authority citation for part 4287 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1932(a); 7 U.S.C. 1989.

#### Subpart B—Servicing Business and Industry Guaranteed Loans

■ 2. Amend § 4287.107 by revising paragraph (d) to read as follows:

##### § 4287.107 Routine servicing.

(d) *Borrower financial reports.* The lender must obtain, analyze, and forward to the Agency the borrower's and any guarantor's annual financial statements required by the loan agreement within 120 days of the end of the borrower's fiscal year. States, local government, Indian tribes, institution of higher education, and nonprofit organization borrowers who meet the Federal awards expended threshold established in 2 CFR part 200, subpart F, during their fiscal year must submit an audit conducted in accordance with 2 CFR part 200, subpart F. When the borrower's audit is conducted in accordance with 2 CFR part 200, subpart F, audits must be submitted no later than nine months after the end of the borrower's fiscal year or 30 days after the borrower's receipt of the auditor's report, whichever is earlier. The lender must analyze these financial statements and provide the Agency with a written summary of the lender's analysis, ratio analysis, and conclusions, which, at a minimum, must include trends, strengths, weaknesses, extraordinary transactions, violations of loan covenants and covenant waivers proposed by the lender, any routine servicing actions performed, and other indications of the financial condition of the borrower. Spreadsheets of the financial statements must also be included. Following the Agency's review of the lender's financial analysis, the Agency will provide a written report of any concerns to the lender. Any concerns based upon the Agency's review must be addressed by the lender. If the lender makes a reasonable attempt to obtain financial statements but is unable to obtain the borrower's cooperation, the failure to obtain

financial statements will not impair the validity of the Loan Note Guarantee.

\* \* \* \* \*

■ 3. Amend § 4287.112 by revising paragraph (b) to read as follows:

##### § 4287.112 Interest rate changes.

\* \* \* \* \*

(b) No increases in interest rates will be permitted, except the normal fluctuations in approved variable interest rates, unless a temporary interest rate reduction occurred or to change from a variable rate to a fixed rate. Variable rates can be changed to a fixed rate at the request of the borrower, lender, agreement of the holder, if any, and with the Agency's prior written concurrence. After the rate change, the rate must meet the requirements of 7 CFR 4279.125.

\* \* \* \* \*

■ 4. Amend § 4287.113 by revising paragraph (a) and the introductory text of paragraph (c) to read as follows:

##### § 4287.113 Release of collateral.

(a) Within the parameters of paragraph (c) of this section, lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) without Agency concurrence if the proceeds generated are used to pay down debt in order of lien priority, reduce the guaranteed loan or to acquire replacement collateral. Working assets, such as accounts receivable, inventory, and work-in-progress that are routinely depleted or sold and proceeds used for the normal course of business operations may be used in and released for routine business purposes without prior concurrence of the Agency as long as the loan is not in monetary default or liquidation.

\* \* \* \* \*

(c) Collateral must remain sufficient to provide for adequate collateral coverage for the outstanding guaranteed loan(s). For a release of collateral request when the Borrower is not in monetary default or liquidation, the lender must support all releases of chattel collateral with a value exceeding \$250,000 and real estate collateral with a value exceeding \$500,000 with a current appraisal on the collateral being released and otherwise meets the requirements of § 4279.144 of this chapter. All other release of collateral requests must meet the appraisal requirements of § 4279.144 of this chapter. The cost of this appraisal will not be paid for by the Agency. The Agency may, at its discretion, require an appraisal of the remaining collateral in cases where it has been determined that

the Agency may be adversely affected by the release of collateral. The sale or release of the collateral must be based on an arm's length transaction, and there must be adequate consideration for the release of collateral. Such consideration may include, but is not limited to:

\* \* \* \* \*

**Karama Neal,**

*Administrator, Rural Business Cooperative Service.*

**Christopher A. McLean,**

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#### DEPARTMENT OF THE TREASURY

#### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Parts 26 and 27

[Docket No. TTB–2022–0009; T.D. TTB–186; Re: Notice No. 186]

RIN 1513–AC89

#### Implementation of Refund Procedures for Craft Beverage Modernization Act Federal Excise Tax Benefits Applicable to Imported Alcohol

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

**ACTION:** Temporary rule; Treasury decision.

**SUMMARY:** This temporary rule amends the Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations to implement certain changes made to the Internal Revenue Code by the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Tax Relief Act), which amended the Craft Beverage Modernization Act (CBMA) provisions of the Tax Cuts and Jobs Act of 2017. The Tax Relief Act transfers responsibility for administering CBMA provisions regarding reduced tax rates and tax credits on imported alcohol from U.S. Customs and Border Protection (CBP) to the U.S. Department of the Treasury, effective January 1, 2023. Beginning on that date, importers will pay the full tax rate at entry and subsequently submit refund claims to TTB to receive the lower rates. This rule establishes procedures for industry members to take advantage of reduced tax rates and tax credits that may be applied to specified limits of imported alcohol products that are entered for consumption in the United States beginning on January 1, 2023. These regulations establish the procedures by which foreign producers

may assign the reduced tax rates and tax credits to importers and the procedures by which such importers may receive the assignments and submit refund claims to TTB. TTB is soliciting comments from all interested parties on these amendments through a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

#### DATES:

*Effective date:* This temporary rule is effective October 24, 2022.

*Comment due date:* Comments on the proposed rule must be received on or before November 22, 2022. See the Public Participation section of the **SUPPLEMENTARY INFORMATION** for information on how to comment on the proposed rule.

#### FOR FURTHER INFORMATION CONTACT:

Jesse Longbrake, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; telephone (202) 453-1039, extension 066.

#### SUPPLEMENTARY INFORMATION:

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#### I. Background

##### *A. Transition to Refunds in Lieu of Reduced Tax Rates and Tax Credits for Imported Alcohol*

This temporary rule amends the Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations to implement changes to the Internal Revenue Code of 1986 (IRC) pursuant to the Taxpayer Certainty and Disaster Tax Relief Act of 2020 ("Tax Relief Act"). The principal regulatory changes establish procedures for taking advantage of reduced tax rates and tax credits established under the Craft Beverage Modernization Act (CBMA) (collectively, "tax benefits" or "CBMA tax benefits") for imported alcohol products entered for

consumption<sup>1</sup> in the United States beginning in 2023. These CBMA tax benefits were first made available in 2018, through the Tax Cuts and Jobs Act (Pub. L. 115-97).<sup>2</sup>

The CBMA provisions of the Tax Cuts and Jobs Act provided limited tax benefits to domestic and foreign producers of distilled spirits, wine, and beer. Domestic industry members are eligible for CBMA tax benefits when they pay tax to TTB. Foreign producers must assign the applicable tax benefits to importers, who then may elect to take them. Since 2018, U.S. Customs and Border Protection (CBP) has administered the provisions for imported alcohol, and established procedures for the foreign producer to assign tax benefits to importers, as well as for the importers to receive the benefits and apply them at the time of entry. The CBMA tax benefits available to domestic and foreign producers are subject to controlled group limitations, which are described more fully later in this document. The CBMA tax benefits for imported alcohol products<sup>3</sup> are as follows:

- Each foreign distilled spirits operation receives tax benefits in the form of reduced tax rates that they may assign to importers. The benefits apply to the first 22,230,000 proof gallons of

<sup>1</sup> This temporary rule implements statutory tax refund provisions that apply to imported products "removed" after December 31, 2022. See 26 U.S.C. 5001(c)(4), 5041(c)(7), and 5051(a)(6). TTB regulations at 27 CFR 27.48 provide that any internal revenue taxes payable on imported distilled spirits, wines, and beer upon release from customs custody are collected, accounted for, and deposited as internal revenue collections by U.S. Customs and Border Protection (CBP) in accordance with CBP requirements. There are different types of entry under CBP regulations, and "entered for consumption" refers to a type of customs entry filed to introduce the goods into the stream of U.S. commerce. Such entries are subject to applicable tax and duties. Accordingly, consistent with TTB regulations and CBP policies, TTB interprets the term "removed" as used in the CBMA tax refund statutory provisions for imported products to mean "entered for consumption." For purposes of this temporary rule, "entered for consumption" includes withdrawal from a CBP bonded warehouse for consumption.

<sup>2</sup> The "Craft Beverage Modernization and Tax Reform Act." These statutory provisions apply to beverage and non-beverage alcohol. See Public Law 115-97, sections 13801-13808 (CBMA provisions of the law commonly known as the Tax Cuts and Jobs Act).

<sup>3</sup> These tax benefits apply to alcohol from foreign countries and other areas outside of the customs territory of the United States (as defined in 19 CFR 101.1) that is imported into the United States (as defined at 26 U.S.C. 7701(a)(9) as the 50 States and the District of Columbia) and entered for consumption subject to tax. Foreign producers may not assign tax benefits to domestic distilled spirits plants, bonded wine cellars, or breweries that receive bulk distilled spirits, natural wine, or beer that is withdrawn without payment of tax from customs custody for transfer to their bonded premises under 26 U.S.C. 5232, 5364, or 5418.

that foreign producer's product imported into the United States in a calendar year. These rates are, for each foreign producer, \$2.70 per proof gallon on the first 100,000 proof gallons imported, and \$13.34 per proof gallon on the next 22.13 million proof gallons imported into the United States.

- Each foreign wine producer receives tax benefits in the form of tax credits that they may assign to importers. The benefits apply to the first 750,000 wine gallons of that producer's production imported into the United States in a calendar year. The credits are, for each foreign producer, \$1 per wine gallon on the first 30,000 wine gallons of wine imported, 90 cents on the next 100,000 wine gallons imported, and 53.5 cents on the next 620,000 wine gallons imported. The tax credits apply to all wine tax rates,<sup>4</sup> except that CBMA provides for adjusted credits for imported wine eligible for the hard cider tax rate (6.2 cents, 5.6 cents, and 3.3 cents, respectively).

- Each foreign brewer receives tax benefits in the form of a reduced tax rate of \$16 per barrel. These tax benefits may be assigned to importers for the first 6,000,000 barrels produced by that foreign producer and imported into the United States in a calendar year.

These CBMA tax benefits applied to calendar years 2018 and 2019, and were subsequently extended and finally made permanent through the Tax Relief Act.<sup>5</sup> In making these tax benefits permanent, this Act also transferred responsibility for administering the CBMA tax benefits for imported alcohol from CBP to the Department of the Treasury (Treasury).<sup>6</sup> Consequently, beginning January 1, 2023, importers must pay the full tax rate<sup>7</sup> on imported alcohol products to

<sup>4</sup> Wine tax rates vary based on a number of factors such as alcohol and carbonation content. See 26 U.S.C. 5041.

<sup>5</sup> See Public Law 115-97, sections 13801-13808 (CBMA provisions of the law commonly known as the Tax Cuts and Jobs Act); Public Law 116-94, section 144 (Further Consolidated Appropriations Act, 2020 extending and amending CBMA provisions); Public Law 116-260, Division EE, sections 106-110 (Tax Relief Act of 2020 making CBMA provisions permanent with amendments).

<sup>6</sup> See Section 107(e) & (f) of the Tax Relief Act of 2020 (Pub. L. 116-260, Division EE) (134 Stat. 3048). Paragraph (e) reads, "The Secretary of the Treasury (or the Secretary's delegate within the Department of the Treasury) shall implement and administer sections 5001(c)(4), 5041(c)(7), and 5051(a)(6) of the Internal Revenue Code of 1986, as added by this Act, in coordination with the United States Customs and Border Protection of the Department of Homeland Security." Paragraph (f) reads, "The Secretary of the Treasury (or the Secretary's delegate within the Department of the Treasury) shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section. . . ."

<sup>7</sup> Here the "full tax rate" refers to the tax rate applicable without taking into account any reduced

CBP and then subsequently submit refund claims for the difference between the tax paid at the full rate and the amount that would have been paid if tax liability had been calculated using the tax benefits foreign producers assigned to them. These regulations establish the procedures by which foreign producers assign the CBMA tax benefits to importers and the procedures by which such importers receive the foreign producer's assignment and submit refund claims to TTB.

These temporary regulations set forth the procedures under which foreign distilled spirits operations, wine producers, and brewers (collectively "foreign producers") may elect to assign CBMA tax benefits to importers and the procedures by which importers may elect to receive the assignments and file refund claims with TTB to receive those benefits starting in 2023. Generally, these provisions: (1) require foreign producers to register with TTB prior to assigning tax benefits to importers; (2) establish the information foreign producers must submit in order to register and assign those benefits; and (3) establish the information that importers must provide to claim a refund based on the foreign producer's assignment of tax benefits to them. The information the importers must provide includes information the importer will generally submit through CBP's Automated Commercial Environment (ACE) as part of the entry summary,<sup>8</sup> as well as information the importer submits directly to TTB with the claim.

The temporary regulations also include provisions to implement statutory limitations on the CBMA tax benefits. For example, the CBMA tax benefits available for assignment by foreign producers are subject to controlled group limitations that apply to producers under common ownership. See 26 U.S.C. 5001(c)(3)(C), 5041(c)(3), and 5051(a)(5)(B). Accordingly, the temporary regulations require foreign producers to either attest that they are not under common ownership with other alcohol producers or to provide details about their owners when registering with TTB, as authorized by 26 U.S.C. 6038E.<sup>9</sup> The temporary

rates or credits available under CBMA; importers of distilled spirits will still be able to pay a reduced rate to CBP based on eligible wine or flavor content pursuant to 27 CFR 27.76 and 27.77.

<sup>8</sup> TTB understands that the vast majority of importers file entry and entry summary data electronically in ACE. As explained below, the electronic submission of import data in ACE is a prerequisite for using TTB's CBMA importer claims interface.

<sup>9</sup> See 26 U.S.C. 6038E (authorizing Treasury to require that foreign producers provide information related to a foreign producer's assignment of CBMA

regulations also address the statutory provisions that provide for revoking the eligibility of foreign producers to assign and importers to receive CBMA tax benefits due to the foreign producer's submission of erroneous or fraudulent information that is material to qualifying for CBMA tax benefits. See 26 U.S.C. 5001(c)(3)(B)(iv), 5041(c)(6)(B)(iv), and 5051(a)(4)(B)(4). These provisions are discussed in detail in section II of this document.

TTB will administer the CBMA import refund program through two components of an online system, "myTTB,"<sup>10</sup> as described in the Treasury Department's, "Report to Congress on Administration of Craft Beverage Modernization Act Refund Claims for Imported Alcohol," dated June, 2021.<sup>11</sup> Using the online system, foreign producers will register, receive a TTB-issued Foreign Producer ID, and assign the CBMA tax benefits to importers. The importers will use the online system to elect to receive CBMA tax benefits assigned to them by foreign producers, and to submit refund claims based on those assignments and the information submitted by the importers themselves through ACE in connection with entries that are subject to CBMA claims.

#### B. TTB Authority

TTB regulates, among other things, the importation of distilled spirits, wine, and malt beverages<sup>12</sup> pursuant to the Federal Alcohol Administration Act (FAA Act). TTB also administers the provisions of the IRC with respect to the

tax benefits to importers, including information about a foreign producer's controlled group structure).

<sup>10</sup> TTB is currently engaged in a multiyear initiative to develop and deploy "myTTB," a single, online interface for all industry transactions with TTB, including permit, label, and formula applications, as well as tax filings, payments, and claims. When complete, myTTB will provide both industry and TTB with online access to a consolidated view of an industry member's records, approvals, and filings.

<sup>11</sup> Available at <https://www.ttb.gov/images/pdfs/treasury-cbma-import-claims-report-june-2021.pdf>.

<sup>12</sup> The terms "distilled spirits" and "wine," when used in the context of the FAA Act, apply only to distilled spirits and wine for nonindustrial use, and "wine" is further defined under the FAA Act as containing "not less than 7 percent" alcohol by volume. See 27 CFR 1.10. Additionally, the FAA Act defines "malt beverage" as "a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption." Id.

taxation of domestically produced distilled spirits, wine, and beer.<sup>13</sup>

The FAA Act requires a TTB permit before engaging in certain activities related to distilled spirits, wine, and malt beverages, including importation. See 27 U.S.C. 203(a). Section 203(a) provides that it shall be unlawful, except pursuant to a "basic permit," to engage in the business of importing into the United States distilled spirits, wine, or malt beverages. Section 203(a) also states that it is unlawful for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, imported distilled spirits, wine, or malt beverages without a basic permit. Because many—but not all—alcohol products that are subject to tax under the IRC fall under the FAA Act definitions of distilled spirits, wine, and malt beverages, most—but not all—alcohol importers are required to obtain a TTB importer's basic permit under the FAA Act.<sup>14</sup>

Chapter 51 of the IRC pertains to the taxation and regulation of distilled spirits (including spirits used for both beverage and nonbeverage purposes), wine, and beer. The IRC imposes a Federal excise tax on all distilled spirits, wine, and beer manufactured in or imported into the United States. See 26 U.S.C. 5001, 5041, and 5051, respectively. The tax on distilled spirits, wine, and beer either imported from foreign countries or brought into the United States from beyond the customs territory of the United States, as defined in 19 CFR 101.1, including the U.S. Virgin Islands, is generally collected by CBP along with any import duties as part of CBP's exercise of its delegated customs revenue functions.<sup>15</sup> See

<sup>13</sup> Under the IRC, alcohol subject to tax as "distilled spirits" includes both beverage and industrial spirits, as well as wine that contains more than 24 percent alcohol by volume. See 26 U.S.C. 5001(a)(1) and (3). Alcohol subject to tax as "wine" includes wine containing up to 24 percent alcohol by volume. The IRC defines "beer" as "beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor." See 26 U.S.C. 5052(a). References to "beer," "wine" and "distilled spirits" in TTB's IRC regulations refer to those terms as they are defined in the IRC.

<sup>14</sup> Importers of industrial alcohol, wine under 7 percent alcohol by volume, or beer that is not a "malt beverage" may engage in the business of importing such alcohol without an FAA Act basic permit.

<sup>15</sup> Imported bulk distilled spirits, natural wine, and beer withdrawn without payment of tax from customs custody and transferred in bond to a domestic distilled spirits plant, bonded wine cellar, or brewery under 26 U.S.C. 5232, 5364, and 5418

Continued

Treasury Order 100–16, “Delegation of Authority to the Secretary of Homeland Security,” dated May 23, 2003.

The IRC provides general authority to the Secretary of the Treasury (Secretary) to issue regulations to carry out the provisions of the IRC. See 26 U.S.C. 7805(a). With respect to the tax benefits available under CBMA to foreign producers and to importers, the IRC directs the Secretary to issue rules, regulations, and procedures as appropriate for the assignment of such tax benefits. See 26 U.S.C. 5001(c)(3), 5041(c)(6), and 5051(a)(4). Additionally, these include procedures for allowing a foreign producer to assign and an importer to receive the CBMA tax benefits; limitations to ensure that the quantity of products for which a foreign producer assigns reduced rates does not exceed the statutory quantity limitations on such rates; requirements for foreign producers to provide any information the Secretary determines necessary and appropriate for making assignments; and procedures allowing for revocation of a foreign producer’s eligibility to assign reduced rates based on erroneous or fraudulent information provided by the foreign producer that is material to qualifying for a reduced rate. *Id.* The IRC further provides specific authority for the Secretary to require foreign producers seeking to make assignments of CBMA tax benefits to provide information, at such time and in such manner, as the Secretary may prescribe, including information about the controlled group structure of such foreign producer. See 26 U.S.C. 6038E. An importer will only be allowed a refund for CBMA tax benefits if a foreign producer has elected to assign, and the importer has elected to receive, such benefits in accordance with the rules, regulations, and procedures. See, e.g., 26 U.S.C. 5001(c)(4)(C).

TTB administers these IRC and FAA Act provisions pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). In addition, the Secretary has delegated certain administrative and enforcement authorities to TTB through Treasury Order 120–01. Responsibility for collecting the excise taxes incident to the importation of distilled spirits, wines, and beer is vested by statute with the Secretary. See 26 U.S.C. 7801. Under the authority of the Homeland Security Act of 2002, the Secretary has delegated these customs revenue functions to the Secretary of Homeland Security. See

Treasury Department Order 100–16. Accordingly, TTB regulations provide that such taxes are collected, accounted for, and deposited as internal revenue collections by CBP in accordance with CBP requirements. See 27 CFR 27.48; see also 27 CFR 26.200(d).

Sections 107(e) & (f) of the Tax Relief Act set forth the Secretary’s ability to delegate the implementation, administration, and rulemaking authority concerning the assignment of a foreign producer’s CBMA benefits to importers, and the claims of importers seeking to receive those benefits, to “the Secretary’s delegate within the Department of the Treasury.” Treasury indicated in its June 2021 “Report to Congress on Administration of Craft Beverage Modernization Act Refund Claims for Imported Alcohol,”<sup>16</sup> that it planned to delegate its authority to administer these provisions to TTB, and TTB was delegated such authority.

TTB regulations implementing the applicable provisions of chapter 51 of the IRC are found in 27 CFR part 27. Specifically, this part contains requirements relative to the importation of distilled spirits, wine, and beer into the United States from foreign countries, including the information importers are required to submit upon importation and the records importers must keep. Regulations at 27 CFR part 26 implement chapter 51 of the IRC as it applies to distilled spirits, wine, and beer brought into the United States from the U.S. Virgin Islands.

TTB has authority under section 2(d) of the FAA Act, Public Law 74–401 (1935) “to prescribe such rules and regulations as may be necessary to carry out [its] powers and duties” under the FAA Act. The TTB regulations at 27 CFR part 1 implement the permit requirements of the FAA Act.

## II. Description of Temporary Regulations

As noted above, the temporary regulations set forth in this document address the procedures under which foreign producers of alcohol products elect to assign the tax benefits available under CBMA to importers and under which electing foreign producers can make such assignments. It also addresses how such importers may elect to receive the assignments and claim refund of tax based on those assignments of CBMA tax benefits for imported alcohol products entered for consumption in the United States beginning in 2023. These provisions require the use of electronic registration

and filing systems that are intended to streamline processing of CBMA import refund claims. The electronic systems are necessary for the administration of the tax benefits and will, to the extent possible, accelerate the approval and payment of valid refund claims.

### A. Foreign Producer Registration

TTB’s temporary regulations require that foreign producers seeking to assign CBMA tax benefits to importers first register with TTB through an online foreign producer interface and obtain a Foreign Producer ID. The Foreign Producer ID will be necessary to link the foreign producer’s assignment to the importer’s associated customs entry data and refund claim. See, *infra*, section II(C).

The foreign producer registration is also necessary to protect the revenue by ensuring that entities seeking to assign CBMA tax benefits to importers are in fact existing foreign producers and by allowing TTB to collect certain ownership information necessary for TTB to enforce controlled group rules that limit assignments when there is common ownership with other producers.

Under the temporary regulations at 27 CFR 27.254, foreign producers will register by submitting basic identifying information for their business and for a point of contact at the business. This information includes the business name and address, as well as name, title, country of residence, phone number, and email address for an employee or individual owner of the business who can serve as a TTB point of contact for the foreign producer. If the individual submitting the foreign producer’s registration information is different than this point of contact, the individual submitter must also provide basic identifying information, including the individual’s name, address, phone number, and email address. TTB may request additional information, if necessary, to verify the submitter’s identity.

The submitter may be the proprietor of the foreign producer, an employee thereof, or any agent that the foreign producer has authorized to act on its behalf. The submitter (and, if different, the employee or individual owner of the business identified as a point of contact) must have authorization from the foreign producer to provide the required registration information, edit the foreign producer’s registration information, designate additional persons who are also authorized by the foreign producer to act on the foreign producer’s behalf or cancel the designations of authorized persons, and make assignments of

<sup>16</sup> is outside the scope of this rule as, in those cases, the tax is collected from domestic industry members by TTB and not from the importers by CBP.

<sup>16</sup> Available at <https://www.ttb.gov/images/pdfs/treasury-cbma-import-claims-report-june-2021.pdf>.

CBMA tax benefits, because the submitter will be able to take these actions in the online foreign producer interface.

To validate the existence of the registered entity and to assist in preventing a single foreign producer from registering with TTB multiple times and making assignments to importers exceeding the statutory quantity limitations, the temporary regulations require foreign producers to submit, as part of the TTB registration, the U.S. Food and Drug Administration (FDA) Food Facility Registration number(s) that are generally reported to FDA in connection with the importation(s) into the United States of such producer's products.

Additionally, the foreign producer must either attest that it does not share common ownership with other producers or submit identifying information for any individual or entity that owns 10 percent or more of the foreign producer being registered. As explained further below, this information is necessary for TTB to enforce statutory controlled group rules that limit assignments of CBMA tax benefits when there is common ownership with other producers.

The registering foreign producer must also provide certain certifications attesting to the submitter's authority and the truthfulness of the information submitted. The foreign producer must also acknowledge that providing erroneous or fraudulent information may result in the revocation of the foreign producer's eligibility to assign CBMA tax benefits. See, *infra*, section II(D) of this document.

Finally, the temporary regulations require registration information to be submitted in the English language, except an individual's name, the name of a company, and the name of a street may be submitted in a foreign language. All information, including these items, must be submitted using the English alphabet.

#### i. FDA Food Facility Registration Number

In order to identify and prevent duplicate and fraudulent registrations, TTB's temporary regulations generally require registering foreign producers to provide the unique FDA Food Facility Registration number(s) that is typically reported to FDA in connection with the importation of the producer's products pursuant to the FDA prior notice regulations at 21 CFR 1.281(a)(6)(ii) implementing 21 U.S.C. 381(m).<sup>17</sup> The

FDA Food Facility Registration and prior notice requirements carry out the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act), which directs the FDA, as the food regulatory agency of the Department of Health and Human Services, to take steps to protect the public from a threatened or actual terrorist attack on the U.S. food supply and other food-related emergencies. See Public Law 107–188, sections 301–315.

Foreign distilled spirits operations, wine producers, and brewers who produce products for consumption in the United States generally must register their production facilities with FDA, see 21 U.S.C. 350d; 21 CFR 1.225, 1.227 (requirements applicable to foreign facilities that manufacture/process, pack, or hold food in storage for consumption in the United States).

Due to the long-established FDA Food Facility Registration requirement and its direct application in this context, TTB is not requiring a separate, potentially duplicative system for validation of foreign producers.

Rather, TTB's temporary regulations require the foreign producer to submit to TTB each FDA Food Facility Registration number that they have already obtained for FDA purposes prior to the importation of their distilled spirits, wine, or beer, into the United States. TTB believes requiring the Food Facility Registration numbers minimizes burden on foreign producers since it allows them to use identifying information already used for the importation of their products.

TTB understands there are cases where a foreign distilled spirits operation, wine producer, or brewer does not have an FDA Food Facility Registration number because its products are further manufactured or processed (including packaging) by another foreign facility before shipment to the United States. See 21 CFR 1.226(a). In such cases, TTB's temporary regulations require the registering foreign producer to submit the Food Facility Registration number of the facility further manufacturing or processing the distilled spirits, wine, or beer. Because the Food Facility Registration number is already required to be obtained from FDA and is generally required to be submitted to FDA in connection with the import under FDA's regulations, TTB expects that the foreign producer will be able to obtain such registration number directly from the other foreign facility or from

manufacturer's name, partial address, and FDA registration number or the name, full address, and the reason the registration number is not provided.

the importer(s) to whom the foreign producer intends to assign CBMA tax benefits.

TTB also understands that a foreign producer that produces only alcohol for industrial use (as defined at 27 CFR 1.60 through 1.62) also will not have an FDA Food Facility Registration number when such alcohol is not reasonably expected to be directed to a food use. In such cases, TTB's temporary regulations provide that, in lieu of providing an FDA Food Facility Registration number, the foreign producer will certify that it does not have an FDA Food Facility Registration because FDA does not require one for its operations.

#### ii. Ownership Information

A foreign producer's assignments of CBMA tax benefits may be restricted by statutory controlled group rules that limit eligibility for tax benefits when there is common ownership with other producers.<sup>18</sup> It is the foreign producer's ultimate responsibility to ensure that it does not assign tax benefits in excess of the quantities allowed. However, to collect information necessary for enforcing the controlled group limitations in the event of noncompliance, the temporary regulations at new 27 CFR 27.256 require foreign producers who are under common ownership with other foreign or U.S. distilled spirits operations, wineries, or breweries also assigning CBMA tax benefits or taking CBMA tax benefits (if a domestic alcohol producer) to provide information for any individual or entity that owns 10 percent or more of the foreign producer.

Specifically, for each individual or entity with an ownership interest of 10 percent or more, the foreign producer must provide that owner's name, address, phone number, and, if the owner is a business entity, the owner's Employer Identification Number (EIN) issued by the U.S. Internal Revenue Service (for U.S. entities, and only if the domestic owner has an EIN) or Dun & Bradstreet Data Universal Numbering System (DUNS) number (for foreign entities, and only if the foreign owner has a DUNS).

<sup>18</sup> The IRC provides that the quantity limitations for the CBMA tax benefits are applied to the entire controlled group and shall be apportioned among the members of the controlled group. See 26 U.S.C. 5051(a)(5)(B), 5001(c)(3)(C), and 5041(c)(3). For these purposes the term "controlled group" has meaning assigned to it by the IRC at 26 U.S.C. 1563(a), except that the phrase "more than 50 percent" is substituted for the phrase "at least 80 percent" in each place it appears in that paragraph. Pursuant to TTB regulations, these controlled group principles apply to common ownership situations in which one or more producers is not a corporation. See 26 U.S.C. 5001(c)(3)(C)(ii); 5041(c)(3); and 5051(a)(5)(A)–(B).

<sup>17</sup> FDA prior notice regulations at 21 CFR 1.281(a)(6) require reporting of the foreign

Given controlled group rules that require aggregation of certain ownership interests, as well as the statutory requirement to apply U.S. legal definitions of controlled groups to business arrangements outside the United States, TTB believes that requesting this information for those with an ownership interest of 10 percent or more is generally the least information necessary, reported in the most simplified and consistent way, to enforce controlled group limitations. Foreign producers whose owners do not have ownership interests in other alcohol producers will only be required to certify to that fact.

#### iii. Changes in Registration Information

TTB's temporary regulations at new 27 CFR 27.258 require foreign producers who register with TTB to update their registration within 60 days of any change to the information required as part of the original registration. These provisions are necessary to ensure that TTB is able to maintain the information necessary to timely and appropriately process CBMA import claims, to identify foreign producers, to take any appropriate enforcement action in the event of noncompliance with the controlled group limitations discussed above, and to prevent duplicate registrations. In addition, the foreign producer interface in myTTB will include prompts for the foreign producer to either confirm or update the ownership information on file with their registration. The foreign producer may be unable to assign CBMA tax benefits until the foreign producer updates its registration as required.

TTB understands that, under FDA rules, Food Facility Registrations must be canceled when ownership of a food facility changes, and the new owner must submit a new FDA registration for the facility within 60 days. See 21 CFR 1.234(b). If a facility goes out of business, FDA requires that the previous owner must cancel its FDA registration within 60 days. See 21 CFR 1.235.

TTB's temporary regulations do not require a foreign producer to cancel its TTB registration in the event of a change in ownership, but do require the foreign producer to update its information, for example, regarding its ownership and any FDA registration, within 60 days of a change. Depending on the circumstances, that may mean that the foreign producer cancels its TTB registration to be consistent with the FDA requirements.

#### iv. Electronic Registration

TTB temporary regulations at new 27 CFR 27.254(d) provide that foreign

producers elect to make tax benefit assignments by registering with TTB electronically through myTTB. Collecting registration and tax benefit assignment information electronically is essential to TTB's administration of the CBMA importer refund program, as TTB must be able to validate the existence of the foreign producers, enforce controlled group limitations in the event of noncompliance, and ensure that statutory limitations on assignable tax benefit quantities are not exceeded. The requirement to file electronically is consistent with FDA regulations that also require foreign producers to register electronically under the Food Safety Modernization Act, see FDA, "Amendments to Registration of Food Facilities; Final Rule," published in the **Federal Register** at 81 FR 45911, 51913 (2016). To address rare situations where foreign producers have obtained an electronic filing waiver from FDA under 21 CFR 1.245 and are also unable to interact with TTB electronically, TTB is amending its regulations at 27 CFR 27.221 to allow foreign producers to request an alternate method from TTB regulations.

#### B. Foreign Producer Assignment of CBMA Tax Benefits

Once a foreign producer has registered with TTB and received its TTB Foreign Producer ID, the foreign producer may begin assigning CBMA tax benefits to importers. These CBMA tax benefits are described in further detail below. TTB's temporary regulations set forth the information that a foreign producer must provide to TTB to assign these CBMA tax benefits. As previously noted, this assignment information will be collected electronically through an online interface for foreign producers within myTTB. The electronic submission of assignment information, in the prescribed format, will facilitate the streamlined processing of importer refund claims by allowing foreign producers to directly create a record of the assignment in TTB's systems.

To make an assignment, TTB's temporary regulations at 27 CFR 27.262 require a foreign producer to submit the following information for each assignment: (1) The calendar year for which the CBMA tax benefits are being assigned; (2) the importer to whom the assignment is made, identified by TTB permit number (or TTB-assigned reference number in cases in which an importer is not required to have a permit number); (3) the commodity for which the assignment is made (either distilled spirits, wine, or beer); (4) the category of reduced rate or credit being

assigned; (5) the quantity of proof gallons, wine gallons, or beer barrels being assigned; and (6) certain certifications and acknowledgements that the assignment is in compliance with law and regulation. These requirements are generally consistent with those currently administered by CBP. See, e.g., Craft Beverage Modernization Act (CBMA)—2022 Procedures and Requirements, CSMS #50484790 (Dec. 23, 2021); CBMA Assignment Certification, <https://www.cbp.gov/trade/basic-import-export/craft-beverage-modernization-tax-reform-act-2017/certification> (accessed June 22, 2022).

As described in section I(A) above, the law provides that a foreign producer may assign reduced tax rates or tax credits only on a limited quantity of imported alcohol during a calendar year. That is, each calendar year, there is a limited quantity that a foreign producer may assign to one or more importers. Under the temporary regulations set forth here, foreign producers may assign tax benefits for a calendar year starting no earlier than October 1 of the year prior, but must assign the benefits no later than December 31 of the calendar year for which the benefits would apply. For example, a foreign producer could make assignments of tax benefits for importations in 2024 starting October 1, 2023, but no later than December 31, 2024. After December 31, 2024, a foreign producer will not be allowed to assign, by any method, tax benefits for imports in 2024. TTB believes specifying this length of time for making assignments, that is, requiring that assignments be made during the calendar year in which they would apply to the import, is necessary to effectively administer these provisions. For example, it may be impossible to adequately determine or verify a foreign producer's controlled group status in prior years, and any assignments within a controlled group could affect other assignments among members of the controlled group. As a result, ensuring the assignment is made in the timeframes provided, and no later than the year during which the products are imported into the United States, minimizes the potential impact on affected entities and risk to the revenue.

It is important to note that the assignment of CBMA tax benefits applies to the calendar year of importation, not the calendar year of entry for consumption. That is, if in December 2023, alcohol products arrive within the Customs territory of the United States or, in the case of merchandise imported by vessel, within the limits of a port in the United States

with intent then and there to unlade such merchandise, this is an “importation” under the provisions of the CBMA, and in order to receive the CBMA tax benefits, the importer must have an assignment from the foreign producer for those products for the year 2023.<sup>19</sup> This is true even if the consumption entry for the products imported in December 2023 is not filed until January 2024; the importer must still have an assignment of CBMA tax benefits from the foreign producer for the year 2023 (and the foreign producer must have assigned those benefits no earlier than October 1, 2022, and no later than December 31, 2023). This is particularly important to note given that the administration of the CBMA provisions transfers from CBP to TTB beginning January 1, 2023. As explained above in section I(A) of this document, TTB will be responsible for processing and issuing refunds on foreign distilled spirits, wine, and beer entered for consumption on or after January 1, 2023.

In making an assignment, TTB’s temporary regulations at new 27 CFR 27.262(b)(2) require the foreign producer to provide the importer’s TTB permit number (or TTB-assigned reference number) rather than identify the importer to whom an assignment is made by name. As explained later in this document, importers must file claims with TTB based on their TTB permit number, except under limited circumstances in which the importer is not required to have a TTB permit number (that is, when the importer who imports alcohol does not have an FAA Act basic permit because it does not import alcohol products that are regulated by the FAA Act).<sup>20</sup> In those rare cases, to facilitate the claim process for CBMA tax benefits, the importer must request a TTB reference number for such purposes under the provisions set forth at 27 CFR 27.266 and must file the number in ACE as required by 27 CFR 27.264(c).

The foreign producer must make assignments of CBMA tax benefits based on the TTB permit number or TTB reference number. Otherwise, the assignment will not be valid. The foreign producer interface in myTTB is designed to provide the importer name

associated with a TTB permit number for purposes of verifying that it is the permit of the intended recipient of the assignment. This process should greatly minimize the potential for spelling and other errors that arise with using names as identifiers. In the case of assignments based on a TTB-reference number, the foreign producer must obtain this number directly from the importer.<sup>21</sup>

As noted above, in addition to identifying the importer, the foreign producer must identify the commodity, the rate, and the tax benefit quantities assigned. The foreign producer must identify the alcohol commodity for the assignment, either distilled spirits, wine (including hard cider), or beer,<sup>22</sup> and the particular reduced rate or credit to be assigned. The reduced rates and credits available to be assigned are as follows:

- Each foreign distilled spirits operation may assign reduced tax rates of \$2.70 per proof gallon on the first 100,000 proof gallons imported, and \$13.34 per proof gallon on the next 22.13 million proof gallons imported into the United States.
- Each foreign wine producer may assign tax credits of \$1 per wine gallon on the first 30,000 wine gallons of wine imported, 90 cents on the next 100,000 wine gallons imported, and 53.5 cents on the next 620,000 wine gallons imported. The tax credits apply to all wine tax rates,<sup>23</sup> except that CBMA provides for adjusted credits for imported wine eligible for the hard cider tax rate (6.2 cents, 5.6 cents, and 3.3 cents, respectively).
- Each foreign brewer may assign a reduced tax rate of \$16 per barrel on the first 6,000,000 barrels imported into the United States.

A foreign producer must also specify the quantity of proof gallons, wine gallons, or beer barrels being assigned. Foreign producers may assign the CBMA tax benefits to multiple importers so long as a foreign producer’s

total assignments do not exceed the total quantities allowed by law, including taking into account controlled group limitations.<sup>24</sup> Finally, the foreign producer making an assignment must provide certain certifications attesting to the submitter’s authority and the submitter’s acknowledgement of statutory limitations on the quantities of assignments that may be made. The foreign producer must also acknowledge that providing erroneous or fraudulent information may cause TTB to revoke the foreign producer’s eligibility to assign CBMA tax benefits. See section II(D) of this document, *infra*.

Under the temporary regulations, once a foreign producer assigns CBMA tax benefits to an importer, the foreign producer may not revoke or reduce the assigned benefits unless the importer elects not to take the assignment. This is consistent with the current administration of these benefits under CBP’s responsibility; that is, under current CBP procedures, the foreign producer must make an Assignment Certification on company letterhead, signed by a duly authorized officer or employee of the foreign producer,<sup>25</sup> and once the importer is in possession of that assignment, there was not a mechanism by which the assignment could then be changed unilaterally by the foreign producer.

Information submitted to TTB by or on behalf of a foreign producer, including the assignment of tax benefits to an importer, is the return information of that foreign producer and TTB will not disclose such information except as authorized by law. Because users of the foreign producer interface must each be granted authority by the foreign producer to act on its behalf, TTB is authorized under 26 U.S.C. 6103 to disclose the foreign producer’s return information to users in the online interface. Because assignments that a foreign producer makes to an importer are also the importer’s return information, TTB may disclose information about the assignment to that importer under 26 U.S.C. 6103(e)(1) and (e)(7).

### C. Importer Product Entry and Refund Claims Procedures

As stated above, beginning January 1, 2023, importers will no longer be eligible to apply the CBMA tax benefits

<sup>19</sup> TTB interprets its statutory mandate to ensure that the quantity of tax benefits assigned “to any importer does not exceed [the quantity] produced by such foreign producer during the calendar year which were imported into the United States by such importer,” see, e.g., 26 U.S.C. 5041(a)(6)(b)(i)(I), as reiterating the requirement that the assignment year correspond to the calendar year of importation. New 27 CFR 27.262(c)(1) addresses general quantity limitations on foreign producer assignments.

<sup>20</sup> See footnote 11.

<sup>21</sup> TTB importer basic permit numbers are publicly available on the TTB website as they are issued under the FAA Act; any reference numbers issued by TTB for CBMA purposes are protected from disclosure by IRC section 6103.

<sup>22</sup> Importers are responsible for accurately classifying their products to CBP for tax purposes; foreign producers should confirm with importers that CBMA tax benefits are assigned correctly. For example, saké is usually classified as beer under the Internal Revenue Code, although it is subject to wine labeling requirements under the FAA Act. Saké importers will not be able to claim a refund of taxes paid to CBP at \$18 a barrel if the foreign producer incorrectly assigns CBMA wine tax credits to the importer. Note that saké fortified with distilled spirits is taxed as a distilled spirits product under the IRC at the rate of \$13.50 a proof gallon, see CBP Ruling NY A83563 (1996).

<sup>23</sup> Wine tax rates vary based on a number of factors such as alcohol and carbonation content. See 26 U.S.C. 5041.

<sup>24</sup> As explained in further detail in section II(A)(ii), the IRC provides that the quantity limitations on the reduced rates are applied to the entire controlled group.

<sup>25</sup> See [https://www.cbp.gov/trade/basic-import-export/craft-beverage-modernization-tax-reform-act-2017/certification?language\\_content\\_entity=en](https://www.cbp.gov/trade/basic-import-export/craft-beverage-modernization-tax-reform-act-2017/certification?language_content_entity=en), accessed June 14, 2022.



when paying tax to CBP. Instead, importers must pay the full tax rate initially to CBP and subsequently submit refund claims to TTB. The temporary regulations set forth the procedures under which importers will submit such claims. Importers are required to submit refund claims electronically through an importer claims interface that will be part of myTTB. TTB is providing the new electronic system, dedicated to the processing of CBMA importer claims, and requiring its use to support timely, effective, and accurate claims processing. TTB will separately publish alternate procedures for submitting claims and supporting documentation in the potentially rare cases where an importer is unable to file entry or entry summary data electronically in ACE and/or perfect a claim through the procedure established in the temporary regulations.

Prior to submitting a claim, the temporary regulations require importers to have filed the applicable entry summary information with CBP electronically through ACE. TTB has attempted to streamline the claims process by relying upon information the importer would have already filed with CBP about the applicable entries through ACE, as well as information about the foreign producer's assignment of benefits to that importer through TTB's electronic system.

The procedures under which foreign producers will assign CBMA tax benefits to importers are discussed in sections II(A) and (B) of this document. The procedures for importers to provide through ACE the data underlying a claim, as well as the procedures for filing a refund claim with TTB, are explained below.

#### i. Electronic Filing and Information Required on Product Entry Summary

Prior TTB regulations did not require electronic filing of import data, but set forth the information that an importer must file with CBP on the entry or entry summary if filing TTB data electronically in connection with distilled spirits, wines, and beer imported subject to tax. See 27 CFR 27.48. Among the information required from electronic filers is the importer's FAA Act basic permit number and certain information necessary to determine the amount of tax due on the imported product, such as the quantity and tax classification. See 27 CFR 27.48(a). In addition, under CBP's current rules for administering the CBMA reduced tax rates and credits, importers must submit certain information substantiating their

eligibility for such reduced rates and credits. See CSMS #50484790 (Dec. 23, 2021), available at <https://content.govdelivery.com/bulletins/gd/USDHSCBP-3025636>. To facilitate TTB's electronic processing of CBMA importer claims in 2023 and onward, these temporary regulations at 27 CFR 27.264(c) require importers intending to file CBMA importer refund claims to file electronically their CBP entries and/or entry summaries along with TTB data required at 27 CFR 27.48(a)(2). The electronic filing must also include information consistent with that currently required by CBP. Existing ACE programming is expected to continue to collect this information, with certain definitional updates described further below.

To claim an assigned CBMA tax benefit on imported alcohol, CBP currently requires the importer to designate the entry summary with the claim indicator "C" at the time of entry summary or when submitting a post-summary correction (PSC). CBP further requires entry summaries marked with the "C" indicator to include seven data elements pertaining to qualification for the reduced rate or credit claimed. The seven data elements are:

- (1) Controlled Group Name,
- (2) Foreign Producer Identifier,
- (3) Foreign Producer Name,
- (4) Allocation Quantity,
- (5) Flavor Content Credit Indicator,
- (6) CBMA Rate Designation Code, and
- (7) TTB Tax Rate.

These data elements are defined in the "CBP and Trade Automated Interface Requirements—Entry Summary Create/Update" (CATAIR) available at <https://www.cbp.gov/document/guidance/ace-abi-catair-entry-summary-createupdate>. See also "ACE CBMA Tax Rates Table," <https://www.cbp.gov/trade/program-administration/entry-summary/cbma-2017/ace-cbma-tax-rates-table> (last modified February 16, 2021).

For shipments entered on or after January 1, 2023, the ACE CBMA claim indicator and associated data elements will continue to be required by TTB, as reflected in these temporary regulations and in the CATAIR, which will be updated. Importers may view the definitional updates that will be effective in 2023 in future CBP revisions to the CATAIR, available at <https://www.CBP.gov>. The updated requirements are integral to TTB's plans for electronic processing of CBMA import refund claims, as this information will allow TTB to associate a foreign producer's assignment of CBMA rates with an importer's entry of products subject to that assignment.

This approach is also intended to be least disruptive to importers, providing a bridge between the CBMA requirements prior to 2023 and those applicable starting on January 1, 2023. TTB will consider the utility of the data elements as it begins administering the amended CBMA provisions, to determine whether changes are needed.

Importers intending to file a CBMA refund claim on alcohol products entered for consumption on or after January 1, 2023, will be required to include the claim indicator code "C" at the time of entry summary or PSC. This "C" indicator will signify that the importer has or reasonably expects to have a CBMA tax benefit assignment from the foreign producer and expects to file a refund claim with TTB based on the assigned reduced rate or credit. When designating an entry summary with the "C" indicator, importers will also be required to provide the following information for each line item on which they intend to claim a CBMA refund:

(1) Controlled Group Name. This is the name, for purposes of CBMA, that identifies the Controlled Group (*e.g.*, parent company name) and was previously collected by CBP through the CBMA Spreadsheet, Controlled Group Spreadsheet, and the CBP ACE data elements.<sup>26</sup> Importers that have received assignments from the same controlled group in calendar years prior to 2023 should continue to report the same controlled group name to TTB in 2023.

(2) Foreign Producer Identifier. This is the identifying code provided to the foreign producer by TTB when the foreign producer registers with TTB. The Foreign Producer Identifier identifies the foreign producer who made or is reasonably expected to make the CBMA tax benefit assignment applicable to the line item. This will differ from the identifier reported to CBP in prior years.

(3) Foreign Producer Name. This is the name of the foreign producer, registered with TTB, who made or is reasonably expected to make the CBMA tax benefit assignment.

<sup>26</sup> TTB understands that, when a foreign producer is not under common ownership with other alcohol producers, importers currently report to CBP the foreign producer's name in this field, consistent with the statutory provisions at 26 U.S.C. 5001(c)(3)(C), 5041(c)(6)(C), and 5051(a)(4)(C) stating that any importer electing to receive assigned tax benefits is "deemed to be a member of the controlled group" of the foreign producer. TTB does not interpret these provisions as imposing any overall limitation on the quantity of tax benefits that may be assigned to an importer by multiple unrelated foreign producers. As set forth in these regulations, controlled group limitations apply only to foreign and/or domestic producers under common ownership.



(4) Flavor Content Credit Indicator (for certain distilled spirits only). This is an indicator that the importer is using an eligible flavor content “credit.” This is used when depositing tax on imported distilled spirits at an effective tax rate based on eligible wine and/or flavor content, pursuant to 27 CFR 27.76 and 27.77.<sup>27</sup>

(5) CBMA Rate Designation Code. This is an ACE code that specifies the CBMA rate for purposes of the TTB refund claim. The CBMA Rate Designation Codes are provided in the ‘CBMA Rate Designation Code’ column on the ‘ACE CBMA Rate Table’ spreadsheet publicly available at [TTB.gov](https://www.ttb.gov).

(6) TTB Tax Rate (Confirmation). This is an ACE code that serves as a validation of the CBMA Rate Designation Code to ensure that the CBMA refund claim is based on the appropriate reduced tax rate or tax credit category. The TTB Tax Rate codes are provided in the “TTB Tax Rate (Confirmation)” column on the “ACE CBMA Rate Table” spreadsheet publicly available at [TTB.gov](https://www.ttb.gov).

TTB recognizes that, in order to provide this information accurately for the specific quantities of imported alcohol that will be subject to refund claims based on foreign producer assignments, the importer may need to report a shipment of a single product as multiple line items on the entry summary. For example, assume that a foreign winery assigns to an importer the entire 30,000 wine gallon allotment of the \$1.00 credit and the entire 100,000 wine gallon allotment of the \$0.90 credit. If the importer’s first shipment from that foreign producer consists of 40,000 wine gallons of a single wine product, its entry summary will need two separate line items to account for the two different CBMA tax credits assigned to it—one line item for 30,000 wine gallons with the \$1.00 credit and one line item for the remaining 10,000 gallons with the \$0.90 credit.

## ii. Quarterly Submission of CBMA Import Refund Claims

After a foreign producer has made an assignment of CBMA tax benefits to an importer, the importer has imported and entered for consumption the products subject to the assignment, and the importer has paid to CBP the tax due on those products, the importer is generally entitled to seek a refund from TTB based on the assigned CBMA tax

benefits. The CBMA import refund claim provisions of the IRC provide that amounts allowed as a refund may be determined no less frequently than quarterly. See 26 U.S.C.

5001(c)(4)(A)(ii), 5041(c)(7)(A)(ii), and 5051(a)(6)(A)(ii). TTB’s temporary regulations establish a quarterly refund determination period, as TTB believes that setting this refund period is necessary to provide TTB an opportunity to analyze entry data for potential over-assignment of CBMA tax benefits based on noncompliance with controlled group limitations. Consistent with this quarterly refund period, the temporary regulations provide that the calendar quarter must end before CBMA import refund claims may be filed for any consumption entries made during that quarter.

To minimize delay in issuing refunds on valid claims, TTB’s temporary regulations and electronic filing systems are intended to facilitate electronic processing of CBMA import refund claims. By the end of each calendar quarter, or shortly thereafter, the foreign producer will have had the opportunity to submit its assignment to the importer and the importer will have filed its entry summary and paid the tax—the vast majority of the information required to substantiate the importer’s CBMA import refund claim. That is, two key elements of a prospective CBMA import refund claim are (1) the foreign producer’s assignment of the CBMA tax benefit and (2) the importer’s entry data for the products subject to the foreign producer’s assignment (including payment of tax to CBP). As a result, the process for an importer to submit a claim will primarily consist of electing to receive tax benefit assignments by logging in to the myTTB system for submitting CBMA importer refund claims, identifying the applicable claim period and the lines on the customs entry summary for which a claim will be filed, and otherwise verifying information the importer already submitted through ACE for the consumption entry. Importers are responsible for ensuring that the data that they have filed in ACE is accurate before submitting their claims through myTTB.

Importers may begin filing claims for each calendar quarter after that calendar quarter comes to an end. For example, claims for the first calendar quarter ending March 31 may be filed beginning on April 1. There are, however, factors that could delay an importer’s ability to file a claim. First, the importer must have actually paid the tax due on the imported alcohol before filing a claim for the refund of the tax. Second, for

purposes of processing the claim, particularly for automation of such processing, TTB intends to use ACE data. The data transfer from ACE to TTB’s CBMA importer refund claims system is not instantaneous, and entry data may even take several days to become available.

CBMA importer refund claims will be treated in the same manner as an overpayment of tax. See 26 U.S.C. 5001(c)(4)(A)(ii), 5041(c)(7)(A)(ii), and 5051(a)(6)(A)(ii). Under the electronic submission process described above, TTB envisions that most valid claims will be paid shortly after they are filed. As with any claim related to an overpayment, if TTB determines that the importer is entitled to the amount claimed, TTB will pay the claim along with any required interest.<sup>28</sup> Because these claims are treated in the same manner as an overpayment of tax, the temporary regulations provide that the limitations periods set forth in 26 U.S.C. 6511 apply to CBMA importer refund claims.<sup>29</sup> The general rule in section 6511(a) requires a claim for refund of an overpayment to be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever period expires later.

## iii. Electronic Submission of Claims

The temporary regulations require CBMA import refund claims to be filed

<sup>28</sup> Interest is allowed at an established overpayment rate, which is applied to the excess tax amount determined under statute “for the number of days in the filing period for which the refund . . . is being determined.” See 26 U.S.C. 5001(c)(4)(B)(ii); 5041(c)(7)(B)(ii); and 5051(a)(6)(B)(ii) (effective January 1, 2023). Interest is disallowed in the case of refunds made within 90 days. See 26 U.S.C. 5001(c)(4)(D); 5041(c)(7)(D); and 5051(a)(6)(D) (“Rules For Refunds Within 90 Days”) (effective January 1, 2023). Thus, TTB will not pay interest if a refund is issued within 90 days after a claim is filed.

TTB will calculate the 90-day period and allowable interest starting with the date a complete and valid claim for refund is filed with TTB rather than the date of tax payment to CBP because no overpayment exists at entry as importers are not eligible for the tax benefits at the time of entry. In addition, until the importer submits a claim, no “amount determined” exists to be treated as an overpayment. Absent an importer’s claim, TTB would not know how much tax would have been imposed at entry if the importer had been eligible for the tax benefits at the time of entry. As a result, interest will be applied to the lump-sum amount determined for each filing period rather than to varying amounts paid with individual entries.

<sup>29</sup> While in its June 2021 Report to Congress on Administration of Craft Beverage Modernization Act Refund Claims for Imported Alcohol, Treasury noted the potential for ambiguity with respect to the intersection between the Internal Revenue Code (IRC) and the Tariff Act, TTB interprets the statutory language to require the application of IRC statutes of limitations. This is also consistent with TTB’s current practice of applying IRC statutes of limitations to importer claims that fall within TTB’s delegated authority.

<sup>27</sup> If an importer uses an eligible wine and/or flavor content credit, the allowable refund will not exceed the tax paid.

electronically through myTTB. We understand that this is consistent with CBP's implementation of the National Customs Automation Program, through which almost all imported alcohol entry and entry summary documentation is now filed electronically, in that case, in ACE. TTB recognizes that there may be times when unforeseen circumstances prevent an importer from filing entry or entry summary data electronically in ACE and/or perfecting a claim through the procedure established in the temporary regulations. TTB will publish alternate procedures governing electronic uploads of claims and supporting documentation for manual review to address these circumstances.

#### *D. Procedures for Revocation of Eligibility*

The statute requires the establishment of procedures for revoking the eligibility of a foreign producer to assign, and an importer to receive, CBMA tax benefits in cases where the foreign producer provides any erroneous or fraudulent information that TTB deems to be material to the foreign producer's qualification for such rates and credits. See 26 U.S.C. 5051(a)(4)(B)(iv) (beer); 5041(c)(6)(B)(iv) (wine); and 5001(c)(3)(B)(iv) (distilled spirits). Consistent with procedural due process principles, the temporary regulations set forth the procedures by which foreign producers will be notified of a contemplated revocation and by which such entities will be given an opportunity to be heard.

The temporary regulations provide that TTB may revoke a foreign producer's eligibility for CBMA tax benefits if the foreign producer—including anyone acting on its behalf—provides erroneous or fraudulent information in a foreign producer registration or in an assignment of CBMA tax benefits, and such erroneous or fraudulent information is determined by TTB to be material to qualification for CBMA tax benefits. Where TTB has reason to believe that the foreign producer has provided material erroneous or fraudulent information, TTB will provide written notice to the affected foreign producer of TTB's intent to revoke their eligibility for CBMA tax benefits. This notice will set forth the facts supporting TTB's contemplated revocation, specifically the information TTB believes to be erroneous or fraudulent and an explanation of its materiality to qualifying for CBMA tax benefits. This notice will be provided to the foreign producer's representatives registered with TTB.

Once a notice of contemplated revocation has been issued to a foreign producer the temporary regulations require the foreign producer to provide their written response within 45 days. This response should explain why the foreign producer believes the information at issue was not erroneous or fraudulent, or why such information is not material to the foreign producer's eligibility for CBMA tax benefits. The temporary regulations require this response to be submitted electronically through means prescribed by the appropriate TTB officer.

TTB will review the foreign producer response to the notice of contemplated revocation and come to an initial revocation determination. The contemplated revocation action will either be dismissed, or TTB will issue an order of revocation setting forth the facts and analysis supporting revocation. This revocation of eligibility is not to exceed three years, except where the foreign producer has previously had their eligibility revoked (in which case any subsequent revocation may be permanent). Further, in any case where a criminal conviction results from the provision of erroneous or fraudulent information, eligibility will be permanently revoked.

A foreign producer may appeal an order of revocation by submitting a written appeal to the appropriate TTB officer within 45 days of receipt of the order of revocation. The written appeal should explain why the foreign producer believes its revocation of eligibility is in error, supported by facts and analysis. The foreign producer must submit the appeal electronically through means prescribed by the appropriate TTB officer. TTB will review the appeal and, within 90 days of receipt, notify the requestor whether the appeal has been granted or denied. Consistent with the Administrative Procedure Act, the temporary regulations require a foreign producer to first exhaust its administrative appeals provided by regulation before seeking judicial review of a revocation. See 5 U.S.C. 704.

### **III. Public Participation**

For submitting comments, please refer to the notice of proposed rulemaking on this subject published in the "Proposed Rules" section of this issue of the **Federal Register**.

### **IV. Regulatory Analysis and Notices**

#### *A. Executive Order 12866*

It has been determined that this rule is not a significant regulatory action as defined by Executive Order 12866.

Therefore, a regulatory impact assessment is not required.

#### *B. Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), TTB has analyzed the potential economic effects of this action on small entities. In lieu of the initial regulatory flexibility analysis required to accompany proposed rules under 5 U.S.C. 603, section 605 allows the head of an agency to certify that a rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The following analysis provides the factual basis for TTB's certification under section 605.

#### *i. Impact on Small Entities*

While TTB believes the majority of businesses subject to the regulations are small businesses, the regulations in this document will not have a significant impact on those small entities. TTB is requiring the minimum information necessary to administer the statutory requirements of The Tax Relief Act concerning the CBMA tax benefits for imported alcohol. To the extent that any burden exists, such burden flows from the statute itself and the shift to the refund method of obtaining CBMA tax benefits. The electronic systems established by TTB will not pose a significant burden because the majority of the foreign producers and importers already file electronically with FDA and CBP respectively.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), TTB certifies that the regulations will not have a significant economic impact on a substantial number of small entities. The rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. TTB expects that the regulations will not have significant secondary or incidental effects on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Pursuant to 26 U.S.C. 7805(f), TTB will submit the regulations to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the regulations on small businesses.

#### *C. Paperwork Reduction Act*

As noted previously in this document, TTB will administer the CBMA import refund program through two information collection components in its online filing system, "myTTB." As described in new 27 CFR part 27, subpart P, Craft Beverage Modernization

Act Import Refund Claims, foreign producers will use the foreign producer interface to register with TTB, receive a TTB-issued Foreign Producer ID, and make assignments of CBMA tax benefits to importers. The information collection requirements relevant to foreign producer registration and assignments of CBMA benefits are described in new sections 27 CFR 27.254 through 27.264. Importers will use the CBMA importer claims interface to review and receive CBMA tax benefits assigned to them by foreign producers, review and select the ACE entries they identified as intended to be subject to a CBMA import refund claim, and submit refund claims pertaining to those assignments and entries. The information collection requirements relevant to CBMA importer claims are described in new sections 27 CFR 27.264 and 27.266.

For the foreign producer interface, TTB estimates that 19,000 respondents will respond an average of once per year to that information collection, resulting in 19,000 total annual responses, with each response taking an estimated 0.75 hours to 2 hours to complete, for a total estimated annual burden of 14,250 to 38,000 hours. This includes the time for reviewing instructions, searching existing information sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

For CBMA importer claims interface, TTB estimates that 7,000 respondents will respond 4 times per year, resulting in 28,000 total annual responses. TTB further estimates that each response will require 0.5 to 2 hours to complete, resulting in an estimated total of 14,000 to 56,000 annual burden hours. This includes the time for reviewing instructions, searching existing information sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As noted above, TTB has submitted the new information collection requirements to the Office of Management and Budget (OMB) for review and approval under one OMB control number, titled “Information Related to Imported Alcohol Tax Refund Claims.” The total annual burden for this new information collection request, which will contain the two components—for foreign producer registration and assignment and for importer claims—noted above, is estimated as follows:

- *Number of Respondents:* 26,000.
- *Number of Responses:* 47,000.
- *Total Burden Hours:* 28,250 to 94,000 hours.

Comments on these new recordkeeping and reporting requirements should be sent to OMB at Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503 or by email to [OIRA\\_submissions@omb.eop.gov](mailto:OIRA_submissions@omb.eop.gov). A copy should also be sent to TTB by any of the methods previously described. Comments on the information collections should be submitted no later than November 22, 2022. Comments are specifically requested concerning:

- Whether the collections of information submitted to OMB are necessary for the proper performance of the functions of the Alcohol and Tobacco Tax and Trade Bureau, including whether the information will have practical utility;
- The accuracy of the estimated burdens associated with the collections of information submitted to OMB;
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology; and
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

#### *D. Inapplicability of Prior Notice*

TTB is issuing this temporary rule without notice and prior opportunity for public comment because it is a rule of agency procedure exempt from notice and comment under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(A)). This temporary rule sets forth the procedures governing TTB’s processing and administration of claims for CBMA tax benefits, including through establishing electronic systems designed to authenticate foreign producers, applying statutory limitations on the tax benefits that may be assigned, accelerating the approval and payment of valid refund claims, and mitigating revenue risks associated with the processing of claims. The rule prescribes the procedures for importers to receive CBMA tax benefits from TTB based on an assignment by foreign producers, as well as the procedures through which TTB may revoke foreign producers’ eligibility to make assignments when erroneous or fraudulent information is submitted. The rule does not address the substance of the reduced tax rates or tax credits available under the CBMA.

In accordance with 26 U.S.C. 7805(e), TTB is soliciting public comment on the regulatory provisions contained in this temporary rule in a concurrently issued notice of proposed rulemaking.

#### **List of Subjects**

##### *27 CFR Part 26*

Alcohol and alcoholic beverages, Beer, Excise taxes, Imports, Liquors, Notice requirements, Reporting and recordkeeping requirements, Wine.

##### *27 CFR Part 27*

Alcohol and alcoholic beverages, Beer, Excise taxes, Imports, Liquors, Notice requirements, Reporting and recordkeeping requirements, Wine.

#### **Amendments to the Regulations**

For the reasons discussed above in the preamble, TTB amends 27 CFR parts 26 and 27 as follows:

#### **PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS**

- 1. The authority citation for part 26 is revised to read as follows:

**Authority:** 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5111–5114, 5121, 5122–5124, 5131–5132, 5207, 5232, 5271, 5275, 5301, 5314, 5555, 6001, 6038E, 6065, 6109, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

- 2. Add § 26.208 to read as follows:

##### **§ 26.208 Craft Beverage Modernization Act Tax benefits.**

The procedures set forth in 27 CFR part 27, subpart P, apply to the application of Craft Beverage Modernization Act tax benefits for products produced in and imported from the Virgin Islands and entered for consumption subject to tax, except as subpart P would be manifestly incompatible with the intent of the other regulations in this part.

#### **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, 6038E, 6065, 6109, 6302, 7805.

##### **§ 27.221 [Amended]**

- 4. Section 27.221 is amended by:
- a. Adding the phrase “or foreign producer” after the word “importer” in paragraph (a) introductory text; and

■ b. Adding the phrase “or Foreign Producer ID of the foreign producer” after the word “importer” in paragraph (a)(1).

**§§ 27.223 through 27.249 [Reserved]**

■ 5. Add reserved §§ 27.223 through 27.249.

■ 6. Add subpart P, consisting of §§ 27.250 through 27.268, to read as follows:

**Subpart P—Craft Beverage Modernization Act Import Refund Claims**

Sec.

- 27.250 Scope.
- 27.252 Meaning of terms.
- 27.254 Registration of foreign producer.
- 27.256 Foreign producer ownership information.
- 27.258 Changes to foreign producer registration.
- 27.260 Persons authorized to act on behalf of foreign producer.
- 27.262 Foreign producer's assignment of CBMA tax benefits.
- 27.264 CBMA import refund claim submission.
- 27.266 Importer reference number.
- 27.268 Revocation of eligibility for CBMA tax benefits.

**§ 27.250 Scope.**

This subpart contains procedural requirements relative to the refunds of internal revenue tax for imported alcohol made available under the Craft Beverage Modernization Act provisions of the Internal Revenue Code of 1986 at 26 U.S.C. 5001(c)(4), 5041(c)(7), and 5051(a)(6). The refunds available under this subpart apply only to imported products entered for consumption on or after January 1, 2023.

**§ 27.252 Meaning of terms.**

When used in this subpart and in forms prescribed under this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms have the meaning ascribed in this section. Words in the plural form include the singular, and vice versa.

**CBMA.** The Craft Beverage Modernization Act provisions (sections 13801–13808) of the law commonly known as the Tax Cuts and Jobs Act (Pub. L. 115–97), as amended.

**CBMA importer refund claims system.** The electronic system established by TTB for the collection and review of claims for refund of internal revenue tax authorized under § 27.264. The CBMA importer refund claim system is available at <https://www.TTB.gov>.

**CBMA tax benefits.** The reduced tax rates or tax credits made available under CBMA at 26 U.S.C. 5001(c)(1) (distilled

spirits), 5041(c)(1) (wine), and 5051(a)(1) (beer), and made assignable to importers by foreign distilled spirits operations, wineries, and brewers pursuant to sections 5001(c)(3), 5041(c)(6), and 5051(a)(4), respectively.

**Foreign producer.** A foreign distilled spirits operation, wine producer, or brewer.

**Foreign Producer ID.** The identification number issued to a foreign producer registered with TTB under § 27.254.

**Foreign producer registration and assignment system.** The electronic system established by TTB for the collection of information related to the registration of a foreign producer under §§ 27.254 through 27.260 and the assignment of CBMA tax benefits by such foreign producer under § 27.262. The foreign producer registration and assignment system is available at <https://www.TTB.gov>.

**§ 27.254 Registration of foreign producer.**

(a) *General.* A foreign producer electing to assign CBMA tax benefits to one or more importers must first register with TTB and receive a Foreign Producer ID.

(b) *Information required in registration.* A foreign producer must provide the following information through the foreign producer registration and assignment system to register with TTB and receive a Foreign Producer ID:

- (1) The name, country of residence, and principal business address of the foreign producer;
- (2) The name, title, country of residence, phone number, and email address of an employee or individual owner of the business who has authority to act for the business;
- (3) If different than the individual identified in paragraph (b)(2) of this section, the name, address, phone number, and email address of the individual submitting the registration and authorized to act on the foreign producer's behalf;

(4) The Food Facility Registration number(s) obtained from the U.S. Food and Drug Administration (FDA) under 21 CFR 1.225 that may be reported to FDA under 21 CFR 1.281(a)(6)(ii) for the purposes of importing into the United States the foreign producer's alcohol products;

(5) Identifying information for the individuals and/or entities with ownership interests in the foreign producer as required by § 27.256, or a certification that § 27.256 does not require the foreign producer to provide such identifying information;

(6) Any prescribed certifications attesting to the authority of the individual submitting the registration and the truthfulness of the information submitted, the acknowledgement by the person submitting the registration that providing erroneous or fraudulent information may cause TTB to revoke the foreign producer's eligibility to assign CBMA tax benefits, and consent to receive electronically any written notice of contemplated revocation;

(7) Any additional information required by the appropriate TTB officer (including, through the foreign producer registration and assignment system) in order to verify a submitter's identity. Such information may include identifying numbers (e.g., Employer Identification Number, Social Security Number) as provided in 26 U.S.C. 6109; and

(8) Any additional information required by the appropriate TTB officer on a case-by-case basis, to administer CBMA.

(c) *Language.* All registration information must be submitted in the English language except an individual's name, the name of a company, and the name of a street may be submitted in a foreign language. All information, including these items, must be submitted using the English alphabet.

(d) *Electronic registration required.* The foreign producer must submit the information required by paragraph (b) of this section electronically using the format provided by TTB.

**§ 27.256 Foreign producer ownership information.**

(a) *When required.* A foreign producer must provide, as part of the registration required by § 27.254, the identifying information set forth in paragraph (b) of this section only when one or more of the individuals or entities holding an ownership interest in the foreign producer of 10 percent or more also holds an ownership interest in any distilled spirits operation, winery, or brewery in the United States or in any other foreign producer that has assigned or will assign CBMA tax benefits for any calendar year in which the registering foreign producer also assigns such benefits. Otherwise, the foreign producer must only certify that this scenario does not apply.

(b) *Identifying information—(1) Individual owner.* For each individual holding an ownership interest of 10 percent or more in the foreign producer, the foreign producer must provide the following information when required by paragraph (a) of this section:

- (i) The name, address, and phone number of the individual.

(ii) [Reserved]

(2) *Other entity.* For each entity (other than an individual) holding an ownership interest of 10 percent or more in the foreign producer, the foreign producer must provide the following information when required by paragraph (a) of this section:

(i) The name, address, and phone number of the entity;

(ii) If the entity is a U.S. entity, and if the entity has such a number, the entity's Employer Identification Number issued by the U.S. Internal Revenue Service; and

(iii) If the entity is a foreign entity, and if the entity has such a number, the Dun & Bradstreet Data Universal Numbering System number of the entity.

#### **§ 27.258 Changes to foreign producer registration.**

Whenever there is a change to any of the information submitted by the foreign producer under § 27.254, the foreign producer must update its registration with the new information within 60 days. Whenever the appropriate TTB officer determines that a foreign producer has failed to update its registration information as required, the foreign producer's registration is deemed invalid and the foreign producer will be unable to assign CBMA tax benefits until the foreign producer updates its registration as required or the appropriate TTB officer is satisfied that no such update is required.

#### **§ 27.260 Persons authorized to act on behalf of foreign producer.**

(a) *General.* A foreign producer registered with TTB to assign CBMA tax benefits must identify at least one person authorized to act on its behalf. The person who initially registers a foreign producer under § 27.254 must have authorization from the foreign producer to provide the required registration information, edit the foreign producer's registration information, designate additional persons who are also authorized by the foreign producer to act on the foreign producer's behalf or cancel the designations of authorized persons, and make assignments of CBMA tax benefits. All authorized representatives of the foreign producer must have authority to receive and respond to communications from TTB, including notice of contemplated revocation under § 27.268(b).

(b) *Authorization of additional persons.* (1) A foreign producer may authorize more than one person to act on its behalf within the foreign producer registration and assignment system. To designate an additional person as

described above, the foreign producer must provide the following information:

(i) The name and email address of the person; and

(ii) The appropriate system role for the person, based on the functions in paragraph (a) of this section that the person is authorized to carry out.

(2) TTB may collect additional information from the additional person, as needed, to verify their identity. Such information may include identifying numbers (e.g., Social Security Number) as provided in 26 U.S.C. 6109.

(c) *Proof of authority.* An individual acting on behalf of the foreign producer in the foreign producer registration and assignment system must maintain documentation establishing the individual's authority to act for the foreign producer and provide this documentation to TTB upon request. Any representative must be authorized by the foreign producer pursuant to a duly executed power of attorney or other document deemed acceptable to the appropriate TTB officer.

#### **§ 27.262 Foreign producer's assignment of CBMA tax benefits.**

(a) *General.* A foreign producer who has registered with TTB under § 27.254 and received a Foreign Producer ID may assign its CBMA tax benefits to importers, subject to the quantity limitations established by law.

(b) *Information required in assignment.* A foreign producer must provide the following information through the foreign producer registration and assignment system to make an assignment of CBMA tax benefits to an importer:

(1) The calendar year for which the CBMA tax benefits are being assigned;

(2) The TTB importer permit number or TTB-assigned reference number of the importer to whom the assignment is made;

(3) The Internal Revenue Code classification of the product for which the assignment is made, either distilled spirits, wine, or beer;

(4) The reduced tax rate or tax credit being assigned, either:

(i) For distilled spirits:

(A) The reduced tax rate of \$2.70 per proof gallon on the first 100,000 proof gallons imported in the calendar year; or

(B) The reduced tax rate of \$13.34 per proof gallon on the next 22.13 million proof gallons imported in the calendar year;

(ii) For wine:

(A) The tax credit of \$1 per wine gallon on the first 30,000 wine gallons of wine imported in the calendar year (or credit of 6.2 cents per wine gallon for wine classified as "hard cider");

(B) The tax credit of 90 cents per wine gallon on the next 100,000 wine gallons imported in the calendar year (or credit of 5.6 cents per wine gallon for wine classified as "hard cider"); or

(C) The tax credit of 53.5 cents per wine gallon on the next 620,000 wine gallons imported in the calendar year (or credit of 3.3 cents per wine gallon for wine classified as "hard cider");

(iii) For beer, the reduced tax rate of \$16 per barrel on the first 6,000,000 barrels imported in the calendar year;

(5) The quantity by proof gallons, wine gallons, or beer barrels of the reduced tax rate or tax credit being assigned; and

(6) Any prescribed certifications attesting to the submitter's authority and the submitter's acknowledgement of statutory limitations on the quantities of assignments that may be made; and

(7) Any additional information required by the appropriate TTB officer on a case-by-case basis to administer CBMA.

(c) *Limitations—(1) General.* Quantities that may be assigned are limited to the number of proof gallons, wine gallons, and beer barrels in paragraph (b)(4) of this section, and also cannot exceed the quantities of the foreign producer's distilled spirits, wine, and beer that are reasonably projected to be imported into the United States during the specified calendar year by the importer receiving the assignment.

(2) *Controlled group rules.* Foreign and/or domestic producers under common ownership are grouped together when applying the quantity limitations in paragraph (c)(1) of this section. The quantity limitations apply to:

(i) Foreign and/or domestic producers in a "parent-subsidiary controlled group," as defined in 26 U.S.C. 1563 and as modified by 26 U.S.C. 5051(5)(A)–(B);

(ii) Foreign and/or domestic producers in a "brother-sister controlled group," as defined in 26 U.S.C. 1563 and as modified by 26 U.S.C. 5051(5)(A)–(B);

(iii) Foreign and/or domestic producers in a "combined group," as defined in 26 U.S.C. 1563 and as modified by 26 U.S.C. 5051(5)(A)–(B);

(iv) Shared ownership structures similar to those described in paragraphs (c)(2)(i) through (iii) of this section, but where one or more producers under common ownership is not a corporation.

(d) *Timing.* Assignments of CBMA tax benefits may be submitted to TTB beginning no earlier than October 1st of the calendar year prior to the year for which the CBMA tax benefits are to be

assigned. Assignments of CBMA tax benefits must be submitted on or before December 31st of the calendar year for which the CBMA tax benefits are assigned.

(e) *Changes to assignments.* Once made, a foreign producer may not revoke or reduce an assignment of CBMA tax benefits unless the assignee importer has rejected the assignment.

(f) *Electronic registration required.* The foreign producer must submit the information required by paragraph (b) of this section electronically using the format provided by TTB.

#### **§ 27.264 CBMA import refund claim submission.**

(a) *General.* An importer who has elected to receive an assignment of CBMA tax benefits from a foreign producer may file a claim in accordance with this section for a partial refund of the tax paid to Customs and Border Protection (CBP) on alcohol produced by the assigning foreign producer and imported into the United States by that importer. Refunds are to be determined no more frequently than quarterly. The amount of refund is calculated as provided at 26 U.S.C. 5001(c)(4)(B) for distilled spirits, 5041(c)(7)(B) for wine, and 5051(a)(6)(B) for beer, on such products entered for consumption within the calendar quarter and for which the importer has received an assignment of CBMA tax benefits and paid to CBP the tax determined on such products.

(b) *Election to receive CBMA tax benefits.* An importer who has been assigned CBMA tax benefits by a foreign producer is presumed to have elected to receive such assignment unless and until the importer rejects the assignment through the online system prior to filing a claim for a refund based on that assignment.

(c) *Information required at entry summary.* To be eligible for a refund described in paragraph (a) of this section, the importer must submit electronically the information required by § 27.48(a)(2) for distilled spirits, wines, and beer imported into the United States subject to tax (in satisfaction of § 27.48(a)(2), an importer who does not have and is not required to obtain an FAA Act basic permit must instead submit its TTB-assigned reference number obtained under § 27.266). The importer must also indicate its intent to claim a refund on the entry summaries of the consumption entries for the alcohol subject to the prospective claim, either at the time of entry summary or through post-summary correction. These entry summaries must include the following

information for each line item to be included in a claim for refund, in the electronic format prescribed by CBP:

(1) The TTB-issued Foreign Producer ID of the foreign producer who assigned CBMA tax benefits to the importer;

(2) The name of the foreign producer who assigned CBMA tax benefits to the importer;

(3) A statement of whether the importer is using an eligible flavor content credit pursuant to §§ 27.76 and 27.77; and

(4) An indicator or set of indicators specifying the particular CBMA reduced tax rate or tax credit assigned by the foreign producer of the alcohol.

(d) *Information required in claim submission.* To submit a claim for a refund described in paragraph (a) of this section, the importer must submit and/or verify, as appropriate, within the CBMA importer refund claims system the following information for each consumption entry line item to be included in the claim:

(1) The date of the entry for consumption;

(2) The year of importation, if different than the year of the entry for consumption;

(3) The entry summary number and the entry summary line number;

(4) The particular CBMA reduced tax rate or tax credit assigned by the foreign producer of the alcohol;

(5) The quantity of proof gallons, wine gallons, or beer barrels entered for consumption subject to the rate or credit identified in paragraph (d)(4) of this section;

(6) The TTB-issued Foreign Producer ID of the foreign producer who assigned CBMA tax benefits to the importer;

(7) The amount of tax determined and paid by the importer;

(8) The amount of the refund sought by the importer;

(9) Information allowing the appropriate TTB officer to arrange payment to the importer of the refund;

(10) Any prescribed certifications attesting to submitter's authority and the truthfulness of the information submitted; and

(11) Any additional information, as needed by TTB on a case-by-case basis, to administer CBMA.

(e) *Timing of claim submission.* Claims under this section may be submitted only after the end of the calendar quarter in which the entries for consumption were filed. The calendar quarters end on March 31, June 30, September 31, and December 31. Claims must be filed within the limitations period set forth at 26 U.S.C. 6511.

(f) *Authorization.* Each person authorized to sign or act on behalf of the

importer must be authorized pursuant to a duly executed power of attorney. TTB may collect additional information from the authorized person, as needed, to verify their identity. Such information may include identifying numbers (e.g., Social Security Number) as provided in 26 U.S.C. 6109.

(g) *Electronic filing required.* To be eligible for a refund under this section, an importer must submit the information required by paragraphs (c) and (d) of this section electronically in the formats prescribed by CBP and TTB, respectively.

#### **§ 27.266 Importer reference number.**

An importer who does not have and is not required to obtain an FAA Act basic permit must request and receive a reference number from the appropriate TTB officer before receiving assignments of CBMA tax benefits from foreign producers under § 27.262. The importer must provide this reference number to any foreign producers that will assign CBMA tax benefits to the importer.

#### **§ 27.268 Revocation of eligibility for CBMA tax benefits.**

(a) *Revocation of foreign producer's eligibility.* A foreign producer who provides erroneous or fraudulent information that the appropriate TTB officer determines is material to the eligibility of the foreign producer to assign CBMA tax benefits under § 27.262 may have such eligibility revoked, for a period not to exceed three calendar years following the year of revocation, under the procedures set forth in paragraphs (b) through (e) of this section. If the foreign producer has previously had its eligibility revoked under this section, any subsequent revocation may instead be permanent. In any case where a criminal conviction results from the foreign producer's providing of erroneous or fraudulent information as described above, eligibility will be permanently revoked.

(b) *Notice of contemplated revocation.* Where the appropriate TTB officer has reason to believe that a foreign producer, including anyone acting on behalf of a foreign producer, has provided erroneous or fraudulent information as described in paragraph (a) of this section, such officer will provide a written notice of contemplated revocation to the foreign producer. Such notice will set forth the facts and analysis supporting the contemplated revocation, as well as the period of contemplated revocation. Written notice will be provided electronically to persons authorized to act on behalf of the foreign producer

within the online foreign producer registration and assignment system as provided in § 27.260.

(c) *Response to contemplated revocation.* A foreign producer in receipt of a notice of contemplated revocation, or its representative, may submit a written response to the appropriate TTB officer explaining why the foreign producer believes the information at issue was not erroneous or fraudulent, or why such information is not material to the foreign producer qualifying for CBMA tax benefits. This response must be submitted within 45 days of receipt of the written notice of contemplated revocation and must be submitted electronically through means specified in such notice. Any representative of the foreign producer in these proceedings must be authorized by the foreign producer pursuant to a duly executed power of attorney or other document deemed acceptable to the appropriate TTB officer. If the foreign producer does not submit a response within 45 days, the appropriate TTB officer will issue an order of revocation as set forth in paragraph (d) of this section.

(d) *Revocation determination.* Following receipt of a foreign producer's response to a contemplated revocation, the appropriate TTB officer will consider the arguments raised in the response and issue an order either dismissing the contemplated revocation or imposing a revocation as authorized under paragraph (a) of this section. Any order imposing revocation will set forth the facts and analysis supporting the revocation, taking into consideration any response provided by the foreign producer under paragraph (c) of this section. The order will be provided electronically to the foreign producer or the foreign producer's representative in the matter.

(e) *Review*—(1) *Appeal.* A foreign producer may appeal an order of revocation issued under paragraph (d) of this section by submitting a written appeal to the appropriate TTB officer within 45 days of receipt of such order. The appeal must explain why the foreign producer believes its revocation is in error, supported by facts and analysis. The appeal must be submitted electronically through the means specified in the order of revocation. The appropriate TTB officer will issue a final decision by notifying the foreign producer within 90 days of receipt of the appeal whether the appeal is granted or denied, and the reasons for the determination. The appropriate TTB officer may extend this period of time once by an additional 90 days if the appropriate TTB officer requires

additional time to consider the issues presented by an appeal and must notify the foreign producer of the extension within the initial 90-day period. If the appropriate TTB officer fails to issue a decision granting or denying the appeal within the applicable deadline, the appeal is denied and such denial will be considered a final decision.

(2) *Judicial review.* A final decision from the appropriate TTB officer following appeal is required prior to application to the Federal courts for review of any order of revocation.

(f) *Notice to affected importers.* In any instance where an order imposing revocation of a foreign producer's eligibility for CBMA tax benefits is issued under paragraph (d) of this section, the appropriate TTB officer will notify any importer having an assignment of CBMA tax benefits from that foreign producer of the revocation. In the event that the revocation is appealed and the appeal is granted pursuant to paragraph (e) of this section, the appropriate TTB officer will notify any importer having an assignment from that foreign producer of the dismissal of such revocation.

Signed: September 14, 2022.

**Mary Ryan,**  
*Administrator.*

Approved: September 14, 2022.

**Thomas C. West, Jr.,**  
*Deputy Assistant Secretary (Tax Policy).*  
[FR Doc. 2022–20412 Filed 9–22–22; 8:45 am]  
**BILLING CODE 4810–31–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket No. USCG–2022–0065]

#### Special Local Regulation; Kailua Bay, Ironman World Championship, Kailua-Kona, Hawaii

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Notification of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce a special local regulation for the Ironman Ho'ala practice swim and Ironman World Championship Triathlon on October 2, 6, and 8, 2022, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Fourteenth Coast Guard District identifies the regulated area for this event on certain waters of Kailua Bay,

Kailua-Kona, Hawaii. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

**DATES:** The regulations in 33 CFR 100.1402 will be enforced from 3:45 through 11 a.m. each day on October 2, 6, and 8, 2022.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notification of enforcement, call or email Chief Bradley Lindsey, Waterways Management Division, U.S. Coast Guard Sector Honolulu; telephone (808) 541–4363, email [Bradley.w.lindsey@uscg.mil](mailto:Bradley.w.lindsey@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the special local regulation for the Ironman Ho'ala practice swim and Ironman World Championship Triathlon on October 2, 6, and 8, 2022. The regulated area covers all navigable waters of Kailua Bay within 100 yards adjacent to the 2.4 mile (4,224 yards) swim course, starting at the shoreline northeast of Kailua Pier at 19°38.341' N, 155°59.782' W; thence southeast to 19°37.416' N, 155°59.444' W; thence southwest to 19°37.397' N, 155°59.500' W; thence northwest to 19°38.150' N, 155°59.760' W, thence north and back to Kailua Pier at 19°38.398' N, 155°59.816' W, and returning along the pier to the originating point on the shoreline at 19°38.341' N, 155°59.782' W. All datum are North American Datum of 1983 (NAD 83).

Entry into, transiting, or anchoring within the special local regulation is prohibited unless authorized by the Captain of the Port Honolulu or their designated on-scene representative. The Captain of the Port's designated on-scene representative may be contacted via VHF Channel 16.

This document is issued under authority of 33 CFR 100.1402 and 5 U.S.C. 552 (a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement of this special local regulation via Broadcast Notice to Mariners. The Captain of the Port Honolulu or their on-scene representative may be contacted via VHF Channel 16.

Dated: September 11, 2022.

**A.L. Kirksey,**  
*Captain, U.S. Coast Guard, Captain of the Port Honolulu.*

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