

DEPARTMENT OF HOMELAND SECURITY

U.S. CUSTOMS and BORDER PROTECTION

DEPARTMENT OF THE TREASURY

19 CFR Part 24

USCBP-2020-0017

CBP Dec. 20-05

RIN 1515-AE54

Temporary Postponement of the Time to Deposit Certain Estimated Duties, Taxes, and Fees During the National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak

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

ACTION: Temporary Final Rule.

SUMMARY: In light of the President’s Proclamation Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) (Presidential Proclamation 9994) under the National Emergencies Act on March 13, 2020, and the President’s Executive Order entitled “National Emergency Authority to Postpone The Time to Deposit Certain Estimated Duties, Taxes, and Fees” authorizing the Secretary of the Treasury to exercise the authority under section 318(a) of the Tariff Act of 1930, issued on April 18, 2020, the Secretary of the Treasury, in consultation with the designee of the Secretary of Homeland Security (U.S. Customs and Border Protection (CBP)), is amending the CBP regulations to temporarily postpone the deadline for importers of record with a significant financial hardship to deposit certain estimated duties,

taxes, and fees that they would ordinarily be obligated to pay as of the date of entry, or withdrawal from warehouse, for consumption, for merchandise entered in March or April 2020, for a period of 90 days from the date that the deposit would otherwise have been due but for this emergency action. This temporary postponement does not permit return of any deposits of estimated duties, taxes, and/or fees that have been paid. This temporary postponement also does not apply to entries, or withdrawals from warehouse, subject to certain specified trade remedies, and any entry summary that includes merchandise subject to those trade remedies is not eligible under this rule.

DATES: Effective date: **[INSERT DATE OF FILING FOR PUBLIC INSPECTION AT THE FEDERAL REGISTER]**. Comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF FILING FOR PUBLIC INSPECTION AT THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by *docket number* USCBP–2020–0017, by *one* of the following methods:

- *Federal eRulemaking Portal* at <http://www.regulations.gov>. Follow the instructions for submitting comments via Docket No. USCBP–2020–0017.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed

instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Due to the relevant COVID-19-related restrictions, CBP has temporarily suspended its on-site public inspection of the public comments.

FOR FURTHER INFORMATION CONTACT: Randy Mitchell, Director, Commercial Operations Revenue Entry Division, Office of Trade, U.S. Customs and Border Protection, 202-325-6532 or by email at otentrysummary@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this temporary final rule. See **ADDRESSES** above for information on how to submit comments. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this regulatory change. Comments that will provide the most assistance to CBP will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Background

On March 13, 2020, the President issued Proclamation 9994, Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19), under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) and found and proclaimed that the COVID-19 outbreak in the United States constitutes a national emergency, beginning March 1, 2020. On

April 18, 2020, the President issued the Executive Order entitled “National Emergency Authority to Postpone The Time to Deposit the Payment of Certain Estimated Duties, Taxes, and Fees” (hereinafter “Postponement of Deposit EO”) authorizing the Secretary of the Treasury to respond to the national emergency declared by Presidential Proclamation 9994, pursuant to the authority in section 318(a) of the Tariff Act of 1930 (19 U.S.C. 1318(a)). Upon consultation by the Secretary of the Treasury with the designee of the Secretary of Homeland Security (U.S. Customs and Border Protection (CBP)), and for the reasons set forth below, CBP is amending its regulations to respond to the ongoing national emergency.

Due to the COVID-19 pandemic, local, state and national restrictions have forced the closure of offices of the importing community and those businesses have limited their operations and procedures. Many importers of record will be receiving diminished or no revenue during this time while still incurring costs, including the duties, taxes, and fees associated with imported merchandise for their clients and supply chains. Aggravating matters, many major retail chains and other businesses are closing for business—either voluntarily in response to the President’s call or following state or local government requirements.

As a result, many importers of record are undergoing significant financial hardship with operations fully or partially suspended during March or April 2020 due to orders from competent governmental authorities imposing limits on commerce, travel, or group meetings because of COVID-19. Many importers of record are also having difficulty authorizing payments for duties, taxes, and fees on imported merchandise. Employees are having difficulty getting to work or are having technical issues with working remotely, making it difficult to contact the individuals responsible for the release of funds, which is leading to delays in payments of duties, taxes, and fees.

Under 19 U.S.C. 1318(a), whenever the President shall by proclamation declare an emergency to exist by reason of a state of war, or otherwise, he may authorize the Secretary of the Treasury to extend during the continuance of such emergency the time prescribed for the performance of any act. To address the specific circumstances created by the COVID-19 pandemic, and without creating, for the avoidance of doubt, a binding precedent for future exercises of the authority granted by 19 U.S.C. 1318(a), the Secretary of the Treasury, in consultation with the designee of the Secretary of Homeland Security (U.S. Customs and Border Protection (CBP)), under 19 U.S.C. 1318(a) and as authorized by the Postponement of Deposit EO, is amending the CBP regulations by adding a new section 24.1a to title 19 of the Code of Federal Regulations (19 CFR 24.1a) to temporarily postpone the deadline for importers of record to deposit certain estimated duties, taxes, and fees that they would ordinarily be obligated to pay as of the date of entry, or withdrawal from warehouse, for consumption, for merchandise entered in March or April 2020, for a period of 90 days from the date that the deposit would otherwise have been due but for this emergency action. In addition, no interest that would otherwise accrue upon such estimated duties, taxes, and fees will accrue during the 90-day postponement period.

This emergency action is being taken in response to the extraordinary challenges facing U.S. individuals and businesses during the COVID-19 national emergency (which significantly affects the trade community), and is consistent with the Secretary of the Treasury's decision to postpone due dates for Federal income tax payments under section 7508A(a) of the Internal Revenue Code (available at <https://www.irs.gov/coronavirus>).

This temporary postponement is limited. This temporary postponement does not permit return of any deposits of estimated duties, taxes, and/or fees that have been paid. This temporary postponement also does not apply to any entry, or withdrawal from warehouse, for consumption,

or any deposit of estimated duties, taxes, or fees for the entry, or withdrawal from warehouse, for consumption, where the entry summary includes any merchandise subject to one or more of the following: antidumping duties (assessed pursuant to 19 U.S.C. 1673 *et seq.*), countervailing duties (assessed pursuant to 19 U.S.C. 1671 *et seq.*), duties assessed pursuant to Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), duties assessed pursuant to Section 201 of the Trade Act of 1974 (19 U.S.C. 2251 *et seq.*), and duties assessed pursuant to Section 301 of the Trade Act of 1974 (19 U.S.C. 2411 *et seq.*). Accordingly, CBP anticipates that importers will file separate entries when a shipment contains both merchandise that is eligible for temporary postponement and merchandise that is ineligible (because of the above-specified trade remedies).

To qualify for this temporary postponement, an importer must demonstrate a significant financial hardship. An eligible importer's operation must be fully or partially suspended during March or April 2020 due to orders from a competent governmental authority limiting commerce, travel, or group meetings because of COVID-19, and as a result of such suspension, the gross receipts of such importer for March 13-31, 2020 or April 2020 are less than 60 percent of the gross receipts for the comparable period in 2019. An eligible importer need not file additional documentation with CBP to be eligible for this relief but must maintain documentation as part of its books and records establishing that it meets the requirements for relief.

This temporary postponement does not apply to deadlines for the payment of other debts to CBP, including but not limited to deadlines for the payment of bills for duties, taxes, fees, and interest determined to be due upon liquidation or reliquidation, deadlines for the payment of fees authorized pursuant to 19 U.S.C. 58c (except for merchandise processing fees and dutiable mail fees), or deadlines for the payment of any penalty or liquidated damages due to CBP.

CBP notes that for some types of entries, the time of entry is contingent (in part) upon the deposit of estimated duties, taxes, and fees. See, e.g., 19 CFR 141.68(b). To ensure clarity in the application of the temporary postponement vis-à-vis the time of entry, this emergency action includes a waiver of the regulatory requirement to deposit estimated duties, taxes, and fees for the purpose of establishing the time of entry in those instances where it would otherwise be required under 19 CFR 141.68. The time of entry can thus be established in the absence of the deposit of estimated duties, taxes, and fees postponed in accordance with this emergency action.

III. Statutory and Regulatory Requirements

A. Inapplicability of Notice and Delayed Effective Date

The Administrative Procedure Act (APA) requirements in 5 U.S.C. 553 govern agency rulemaking procedures. Section 553(b) of the APA generally requires notice and public comment before issuance of a final rule. In addition, section 553(d) of the APA requires that a final rule have a 30-day delayed effective date. The APA, however, provides exceptions from the prior notice and public comment requirement and the delayed effective date requirements, when an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B), (d)(3). CBP finds that prior notice and comment are impracticable and contrary to the public interest and that good cause exists to issue this rule immediately.

As noted above, the ongoing unprecedented situation related to COVID-19 is having a nationwide impact, as demonstrated by the declaration of a national emergency by the President. The postponement of the payment period for the deposit of certain estimated duties, taxes, and fees as of the date of entry, or withdrawal from warehouse, for consumption, of merchandise imported into the United States supports American workers and businesses who are currently

affected by COVID-19. To protect our public interests during the ongoing national emergency, the Secretary of the Treasury, in consultation with CBP, concludes, pursuant to 5 U.S.C. 553(b)(B), that there is good cause to dispense with prior public notice and the opportunity to comment on this rule before finalizing this rule. For the same reasons, the Secretary of the Treasury, in consultation with CBP, has determined, consistent with section 553(d)(3) of the APA, that there is good cause to make this temporary final rule effective immediately.

B. Executive Orders 13563, 12866 and 13771

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

This temporary final rule is a “significant regulatory action,” under section 3(f) of Executive Order 12866, but not an “economically significant regulatory action.” Accordingly, the Office of Management and Budget (OMB) has reviewed this regulation. This regulation has been prepared under the emergency flexibilities provided under section 6(a)(3)(D) of Executive Order 12866. The costs of this rule are considered de minimis for purposes of Executive Order 13771. *See* OMB’s Memorandum titled “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’ ” (April 5, 2017).

C. Regulatory Flexibility Act

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

D. Paperwork Reduction Act

This temporary final rule does not impose an additional information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and does not involve any material change to the existing approved information collection by OMB under assigned OMB control number 1651–0078. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

E. Signing Authority

This document is being issued by CBP in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects in 19 CFR Part 24

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

Amendments to the Regulations

For the reasons stated above, part 24 of title 19 of the Code of Federal Regulations (19 CFR part 24) is amended as set forth below:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for part 24 continues to read and a new specific authority is added as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

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Section 24.1a also issued under 19 U.S.C. 1318;

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2. Part 24 is amended by adding section 24.1a, to read as follows:

§ 24.1a Temporary Postponement of Deadline to Deposit Certain Estimated Duties, Taxes, and Fees Because of the COVID-19 National Emergency

(a) General. Pursuant to the authority of 19 U.S.C. 1318(a), subject to the conditions in paragraphs (1) through (4) below, the deadline for the deposit of estimated duties, taxes, and fees that an importer of record would ordinarily be obligated to pay as of the date of entry, or withdrawal from warehouse, for consumption, of imported merchandise into the United States is postponed for a period of 90 days from the date that the deposit would otherwise have been due. No interest will accrue for the delayed deposit of such estimated duties, taxes, and fees during this 90-day temporary postponement.

(1) This temporary postponement applies only to entries, or withdrawals from warehouse, for consumption, made on or after March 1, 2020 and no later than April 30, 2020 by

importers of record with a significant financial hardship. This temporary postponement does not permit return of any deposits of estimated duties, taxes, and/or fees that have been paid.

(2) *Importers with a significant hardship.* An importer will be considered to have a significant financial hardship if the operation of such importer is fully or partially suspended during March or April 2020 due to orders from a competent governmental authority limiting commerce, travel, or group meetings because of COVID-19, and as a result of such suspension, the gross receipts of such importer for March 13-31, 2020 or April 2020 are less than 60 percent of the gross receipts for the comparable period in 2019. An eligible importer need not file additional documentation with CBP to be eligible for this relief but must maintain documentation as part of its books and records establishing that it meets the requirements for relief.

(3) No penalty, liquidated damages claim, or other sanction will be imposed for the delayed deposit of estimated duties, taxes, and fees in accordance with a deadline postponed under this section.

(4) This temporary postponement does not apply to any entry, or withdrawal from warehouse, for consumption, or any deposit of estimated duties, taxes, or fees for the entry, or withdrawal from warehouse, for consumption, where the entry summary includes any merchandise subject to one or more of the following: antidumping duties (assessed pursuant to 19 U.S.C. 1673 *et seq.*), countervailing duties (assessed pursuant to 19 U.S.C. 1671 *et seq.*), duties assessed pursuant to Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), duties assessed pursuant to Section 201 of the Trade Act of 1974 (19 U.S.C. 2251 *et seq.*), and duties assessed pursuant to Section 301 of the Trade Act of 1974 (19 U.S.C. 2411 *et seq.*).

(b) Time of entry. For entries eligible for the temporary postponement of deposits under paragraph (a) of this section, the requirement to deposit estimated duties, taxes, and fees for the purpose of establishing the time of entry stated in 19 CFR 141.68 is waived.

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Mark A. Morgan,
Acting Commissioner,
U.S. Customs and Border Protection

Approved:

Timothy E. Skud,
Deputy Assistant Secretary of the Treasury