

the claim by the regional director (compliance), the copy of ATF Form 2635 (5620.8) will be returned to the manufacturer as notice of such action, which copy shall be retained by the manufacturer.

(72 Stat. 1419, as amended, 26 U.S.C. 5707)

*Lost or Destroyed*

**§270.475 Action by claimant.**

Where cigarette papers and tubes are lost (other than by theft) or destroyed, by fire, casualty, or act of God, and the manufacturer desires to file claim under the provisions of §270.472 or §270.473, the manufacturer shall indicate on the claim the nature, date, and extent of such loss or destruction. The claim shall be accompanied by such evidence as necessary to establish to the satisfaction of the regional director (compliance) that the claim is valid.

(72 Stat. 1419; 26 U.S.C. 5705)

*Withdrawn From the Market.*

**§270.476 Action by Claimant.**

Where cigarette papers and tubes are withdrawn from the market and the manufacturer desires to file claim under the provisions of §270.472 or §270.473, the manufacturer shall assemble the articles in or adjacent to a factory if they are to be retained in or received into such factory, or at any suitable place if they are to be destroyed. The manufacturer shall group the articles according to the rate of tax applicable thereto, and shall prepare and submit a schedule of the articles, on ATF Form 3069 (5200.7) in accordance with the instructions, on the form. All copies of the schedule shall be forwarded to the regional director (compliance) for the region in which the articles are assembled.

(72 Stat. 1419; 26 U.S.C. 5705)

**§270.477 Action by regional director (compliance).**

Upon receipt of a schedule of cigarette papers and tubes withdrawn from the market, the regional director (compliance) may assign an ATF officer to verify the schedule and supervise disposition of the cigarette papers and tubes, or may authorize the manufac-

turer to dispose of the articles without supervision by so stating on the original and one copy of the schedule returned to the manufacturer.

(72 Stat. 1419; 26 U.S.C. 5705)

**§270.478 Disposition of cigarette papers and tubes and schedule.**

When so authorized, as evidenced by the regional director's (compliance) statement on the schedule, the manufacturer shall dispose of the cigarette papers and tubes as specified in the schedule. After the articles are disposed of, the manufacturer shall execute a certificate on both copies of the schedule received from the regional director (compliance), to show the disposition and the date of disposition of the articles. In connection with a claim for credit or refund, the manufacturer shall attach the original of the schedule to the claim for credit or refund, ATF Form 2635 (5620.8), filed under §270.473. When an ATF officer is assigned to verify the schedule and supervise disposition of the cigarette papers and tubes, such officer shall, upon completion of the assignment, execute a certificate on all copies of the schedule to show the disposition and the date of disposition of the articles. In connection with a claim for allowance, the officer shall return one copy of the schedule to the manufacturer for the record, and in connection with a claim for credit or refund, the officer shall return the original and one copy of the schedule to the manufacturer, the original of which the manufacturer shall attach to the claim filed under §270.473.

(72 Stat. 1419, as amended; 26 U.S.C. 26 U.S.C. 5705)

**PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES**

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## Bureau of Alcohol, Tobacco and Firearms, Treasury

§ 275.11

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AUTHORITY: 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

#### Subpart A—Scope of Regulations

### § 275.1 Importation of tobacco products and cigarette papers and tubes.

This part contains the regulations relating to tobacco products and cigarette papers and tubes, imported into the United States from a foreign country or brought into the United States from Puerto Rico, the Virgin Islands,

or a possession of the United States; the removal of tobacco products from a customs bonded manufacturing warehouse, class 6; and the release of tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax or customs duty attributable to the internal revenue tax.

[T.D. 6871, 31 FR 40, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

#### Subpart B—Definitions

### § 275.11 Meaning of terms.

When used in this part and in forms prescribed under this part, the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms “includes” and “including” do not exclude things not listed which are in the same general class.

*Associate Director (Compliance Operations).* The Associate Director (Compliance Operations) in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Director.

*ATF officer.* An officer of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

*Bank.* Any commercial bank.

*Banking day.* Any day during which a bank is open to the public for carrying on substantially all its banking functions.

*Business day.* Any day, other than a Saturday, Sunday, or a legal holiday. (The term legal holiday includes all holidays in the District of Columbia and, in the case of bonded manufacturers in Puerto Rico, all legal holidays in the Commonwealth of Puerto Rico.)

*Bonded manufacturer.* A manufacturer of tobacco products in Puerto Rico who has an approved bond, in accordance

with the provisions of this part, authorizing him to defer the payment in Puerto Rico on the internal revenue tax imposed on such products by 26 U.S.C. 7652(a) as provided in this part.

*CFR.* The Code of Federal Regulations.

*Chewing Tobacco.* Any leaf tobacco that is not intended to be smoked.

*Chief, Puerto Rico Operations.* The primary representative in Puerto Rico of the Bureau of Alcohol, Tobacco and Firearms.

*Cigar.* Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of paragraph (2) of the definition for cigarette).

*Cigarette.* (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco, and

(2) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1) of this definition.

*Cigarette paper.* Paper, or any other material except tobacco, prepared for use as a cigarette wrapper.

*Cigarette papers.* Taxable books or sets of cigarette papers, i.e., books or sets of cigarette papers containing more than 25 papers each.

*Cigarette tube.* Cigarette paper made into a hollow cylinder for use in making cigarettes.

*Commercial bank.* A bank, whether or not a member of the Federal Reserve System, which has access to the Federal Reserve Communications System (FRCS) or Fedwire. The "FRCS" or "Fedwire" is a communications network that allows Federal Reserve System member banks to effect a transfer of funds for their customers (or other commercial banks) to the Treasury Account at the Federal Reserve Bank in New York.

*Computation or computed.* When used with respect to the tax on tobacco products of Puerto Rican manufacture, computation or computed shall mean that the bonded manufacturer has ascertained the quantity and kind (small cigars, large cigars, small ciga-

rettes, large cigarettes, chewing tobacco, snuff or pipe tobacco) of tobacco products and the wholesale price of large cigars being shipped to the United States; that adequate bond has been posted to cover the payment, in Puerto Rico, of the tax on such products to be deferred under subpart G of this part; that the tax imposed on such products by 26 U.S.C. 7652(a) has been calculated; that the bonded manufacturer has executed an agreement to pay the internal revenue tax which will become due with respect to such products, as provided in this part; and that an ATF officer has verified and executed a certification of such calculation.

*Determined or Determination.* When used with respect to the internal revenue tax on tobacco products and cigarette papers and tubes, determined or determination shall mean that the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes, chewing tobacco, snuff, or pipe tobacco) of tobacco products and the wholesale price of large cigars, or the number of books or sets of cigarette papers of each different numerical content, or the number of cigarette tubes, to be removed subject to internal revenue tax, has been established as prescribed by this part so that the internal revenue tax payable with respect thereto may be calculated.

*Director.* The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

*District director.* A district director of internal revenue.

*District director of customs.* The district director of customs at the headquarters port of the district (except the district of New York, N.Y.); the area directors of customs in the district of New York, N.Y.; and the port director at a port not designated as a headquarters port.

*Electronic fund transfer or EFT.* Any transfer of funds effected by a bonded manufacturer's commercial bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Treasury Account at the Federal Reserve Bank of New York.

*Factory.* The premises of a manufacturer of tobacco products or cigarette papers or tubes in which he carries on such business.

*Fiscal year.* The period which begins October 1 and ends on the following September 30.

*HTS.* The Harmonized Tariff Schedule of the United States, as published by the United States International Trade Commission.

*Importer.* Any person in the United States to whom non-taxpaid tobacco products or cigarette papers or tubes manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned; any person who removes cigars for sale or consumption in the United States from a Customs bonded manufacturing warehouse; and any person who smuggles or otherwise unlawfully brings tobacco products or cigarette papers or tubes into the United States.

*Large cigarettes.* Cigarettes weighing more than three pounds per thousand.

*Large cigars.* Cigars weighing more than three pounds per thousand.

*Manufacturer of cigarette papers and tubes.* Any person who makes up cigarette paper into books or sets containing more than 25 papers each, or into tubes, except for his own personal use or consumption.

*Manufacturer of tobacco products.* Any person who manufactures cigars, cigarettes, smokeless tobacco or pipe tobacco, except that such term shall not include (a) a person who produces tobacco products solely for his own personal consumption or use; or (b) a proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

*Package.* The container in which tobacco products or cigarette papers or tubes are put up by the manufacturer or the importer for delivery to the consumer.

*Person.* An individual, partnership, association, company, corporation, estate, or trust.

*Pipe tobacco.* Any tobacco which because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

*Region.* A Bureau of Alcohol, Tobacco and Firearms Region.

*Regional Director (compliance).* The principal regional official responsible for administering regulations in this part.

*Removal or remove.* The removal of tobacco products or cigarette papers or tubes from the factory or release from customs custody, including the smuggling or other unlawful importation of such articles into the United States.

*Small cigarettes.* Cigarettes weighing not more than three pounds per thousand.

*Small cigars.* Cigars weighing not more than three pounds per thousand.

*Smokeless tobacco.* Any chewing tobacco or snuff.

*Snuff.* Any finely cut, ground, or powdered tobacco that is not intended to be smoked.

*This chapter.* Chapter I, title 27, Code of Federal Regulations.

*Tobacco products.* Cigars, cigarettes, smokeless tobacco, and pipe tobacco. The term does not include smoking tobacco that is not suitable for use or likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

*Treasury Account.* The Department of the Treasury's General Account at the Federal Reserve Bank of New York.

*United States.* When used in a geographical sense shall include only the States and the District of Columbia.

*U.S.C.* The United States Code.

*Wholesale price.* The manufacturer's or importer's suggested delivered price at which the cigars are to be sold to retailers, inclusive of the tax imposed by 26 U.S.C. chapter 52 or section 7652, but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Associate

## § 275.21

Director (Compliance Operations) under § 275.39(i).

(Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6301); June 29, 1956, ch. 462, 70 Stat. 391 (26 U.S.C. 6301))

[T.D. ATF-48, 43 FR 13554, Mar. 31, 1978; 44 FR 55855, Sept. 28, 1979, as amended by T.D. ATF-77, 46 FR 3009, Jan. 13, 1981; T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987; T.D. ATF-284, 54 FR 12190, Mar. 24, 1989; T.D. ATF-289, 54 FR 48840, Nov. 27, 1989]

### Subpart C—General

#### § 275.21 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part. When a return, form, claim, or other document called for under this part is required by this part, or by the document itself, to be executed under penalties of perjury, it shall be executed under penalties of perjury.

(b) Requests for forms should be mailed to the AFT Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

(5 U.S.C. 552(a) (80 Stat. 383, as amended)

[T.D. ATF-92, 46 FR 46922, Sept. 23, 1981, as amended by T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-372, 61 FR 20725, May 8, 1996]

#### § 275.22 Retention of records.

All records required to be kept under this part, including copies of claims and schedules, authorizations, notices of release, reports, and returns, shall be retained for three years following the close of the year in which filed or made, or in the case of an authorization, for three years following the close of the calendar year in which the operation under such authorization is concluded. Such records shall be made

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available for inspection by any ATF officer upon his request.

(72 Stat. 1423; 26 U.S.C. 5741)

[26 FR 8189, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975]

#### § 275.23 Authority of ATF officers to enter premises.

Any ATF officer may enter in the daytime any premises where tobacco products or cigarette papers or tubes are produced or kept so far as it may be necessary for the purpose of examining such articles. When such premises are open at night, any ATF officer may enter them, while so open, in the performance of his official duties. The owner of such premises, or person having the superintendence of the same, who refuses to admit any ATF officer or permit him to examine such articles shall be liable to the penalties prescribed by law for the offense.

(68A Stat. 872, 903; 26 U.S.C. 7342, 7606)

[T.D. 6871, 31 FR 40, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

#### § 275.24 Interference with administration.

Whoever, corruptly or by force or threats of force, endeavors to hinder or obstruct the administration of this part, or endeavors to intimidate or impede any ATF officer acting in his official capacity, or forcibly rescues or attempts to rescue or causes to be rescued any property, after it has been duly seized for forfeiture to the United States in connection with a violation of the internal revenue laws, shall be liable to the penalties prescribed by law.

(68A Stat. 855; 26 U.S.C. 7212)

[26 FR 8189, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975]

#### § 275.25 Disposal of forfeited, condemned, and abandoned tobacco products and cigarette papers and tubes.

When any Federal, State, or local officer having custody of forfeited, condemned, or abandoned tobacco products or cigarette papers or tubes, upon

which the Federal tax has not been paid, is of the opinion that the sale thereof will not bring a price equal to the tax due and payable thereon, and the expenses incident to the sale thereof, he shall not sell, nor cause to be sold, such articles for consumption in the United States. Where the articles are not sold, the officer may deliver them to a Federal or State hospital or institution (if they are fit for consumption) or cause their destruction by burning completely or by rendering them unfit for consumption. Where such articles are sold, they shall not be released by the officer having custody thereof until they are properly packaged and taxpaid, which tax shall be considered as a portion of the sales price. Except where the tax is to be paid to district directors of customs in accordance with Part 20, Customs Regulations (19 CFR part 20), on sales of articles by customs officers, the payment of tax on such articles shall be evidenced by presentation, to the officer having custody of the articles, of a receipt from the district director showing such payment. In the case of such articles held by or for the Federal Government, the sale thereof shall be subject to the applicable provisions of the Regulations of the General Services Administration, Title 1, Personal Property Management.

(68A Stat. 872, 903; 26 U.S.C. 7342, 7606)

[T.D. 6871, 31 FR 40, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

**§ 275.26 Alternate methods or procedures.**

An importer, on specific approval by the Director as provided in this section, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when he finds that—

(a) Good cause has been shown for the use of the alternate method or procedure,

(b) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the

specifically prescribed method or procedure, and affords equivalent security to the revenue, and

(c) The alternate method of procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this part.

No alternate method or procedure relating to the giving of any bond or to the assessment, payment, or collection of tax, shall be authorized under this section. When an importer desires to employ an alternate method or procedure, he shall submit a written application to do so, in triplicate, to the regional director (compliance) for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the Director. The importer shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this part is hindered. The importer shall retain, as part of his records, any authorization of the Director under this section.

[26 FR 8190, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975]

**§ 275.27 Emergency variations from requirements.**

The Director may approve methods of operation other than as specified in this part, where he finds that an emergency exists and the proposed variations from the specified requirements are necessary, and the proposed variations—

(a) Will afford the security and protection to the revenue intended by the prescribed specifications,

(b) Will not hinder the effective administration of this part, and

(c) Will not be contrary to any provision of law.

Variations from requirements granted under this section are conditioned on

compliance with the procedures, conditions, and limitations set forth in the approval of the application. Failure to comply in good faith and with such procedures, conditions, and limitations shall automatically terminate the authority for such variations and the importer thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variations may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such variation. Where an importer desires to employ such variation, he shall submit a written application to do so, in triplicate, to the regional director (compliance) for transmittal to the Director. The application shall describe the proposed variations and set forth the reasons therefor. Variations shall not be employed until the application has been approved. The importer shall retain, as part of his records, any authorization of the Director under this section.

[26 FR 8190, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975]

**§ 275.28 Penalties and forfeitures.**

Anyone who fails to comply with the provisions of this part becomes liable to the civil and criminal penalties, and forfeitures, provided by law.

(72 Stat. 1425, 1426; 26 U.S.C. 5761, 5762, 5763)  
[26 FR 8190, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975]

**Subpart D—Taxes**

TAX RATES

**§ 275.30 Pipe tobacco.**

On pipe tobacco imported or brought into the United States after January 1, 1993, the tax imposed by law is 67.5 cents per pound and a proportionate tax at the like rate on fractional parts of a pound. (See 26 U.S.C. 5701(f).)

[T.D. ATF-381, 61 FR 37004, July 16, 1996]

**§ 275.31 Cigar tax rates.**

(a) On cigars imported or brought into the United States on or after January 1, 1993, the taxes imposed by law are:

- (1) Small cigars. \$1.125 per thousand.
- (2) Large cigars. 12.75 percent of the sale price, but not more than \$30 per thousand.

(b) Cigars not exempt from tax under this part which are removed but not intended for sale are taxed at the same rate as similar cigars removed for sale. (See 26 U.S.C. 5701(a).)

[T.D. ATF-381, 61 FR 37004, July 16, 1996]

**§ 275.32 Cigarette tax rates.**

(a) On cigarettes imported or brought into the United States on or after January 1, 1993, the taxes imposed by law are:

- (1) Small cigarettes. \$12 per thousand.
- (2) Large cigarettes. \$25.20 per thousand.

(b) Special rule for large cigarettes. If large cigarettes are more than 6½ inches in length, the rate of tax is the rate prescribed for small cigarettes, counting each 2 ¾ inches, or fraction thereof, of the length of each as one cigarette. (See 26 U.S.C. 5701(b).)

[T.D. ATF-381, 61 FR 37004, July 16, 1996]

**§ 275.33 Smokeless tobacco tax rates.**

On smokeless tobacco imported or brought into the United States, the following taxes are imposed by law:

(a) Snuff. Snuff removed on or after January 1, 1993, 36 cents per pound and a proportional tax at a like rate on fractional parts of a pound.

(b) Chewing tobacco. Chewing tobacco removed on or after January 1, 1993, 12 cents per pound and a proportional tax at the like rate on fractional parts of a pound. (See 26 U.S.C. 5701(e).)

[T.D. ATF-381, 61 FR 37004, July 16, 1996]

**§ 275.34 Cigarette papers.**

(a) On each book or set of cigarette papers containing more than 25 papers imported or brought into the United States on or after January 1, 1993, the taxes imposed by law are 0.75 cent for each 50 papers or fractional part thereof.

(b) Where cigarette papers measure more than 6½ inches in length, they shall be taxable at the above rates, counting each 2¾ inches, or fraction

thereof, of the length of each as one cigarette paper. (See 26 U.S.C. 5701(c).)

[T.D. ATF-381, 61 FR 37004, July 16, 1996]

**§ 275.35 Cigarette tubes.**

(a) On cigarette tubes imported or brought into the United States on or after January 1, 1993, the taxes imposed by law are 1.5 cents for each 50 tubes or fractional part thereof.

(b) Where cigarette tubes measure more than 6½ inches in length, they shall be taxable at the above rates, counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube. (See 26 U.S.C. 5701(d).)

[T.D. ATF-381, 61 FR 37004, July 16, 1996]

CLASSIFICATION OF LARGE CIGARS AND CIGARETTES

**§ 275.37 Statistical classification of large cigars.**

Large cigars are divided into eight classes for statistical purposes, according to the wholesale price or sale price, as applicable. The eight classes are as follows:

(a) *Class A.* Large cigars with a wholesale price or sale price, as applicable of not more than \$33.00 per thousand,

(b) *Class B.* Large cigars with a wholesale price or sale price, as applicable of more than \$33.00 per thousand but not more than \$51.00 per thousand,

(c) *Class C.* Large cigars with a wholesale price or sale price, as applicable of more than \$51.00 per thousand but not more than \$66.00 per thousand,

(d) *Class D.* Large cigars with a wholesale price or sale price, as applicable of more than \$66.00 per thousand but not more than \$105.00 per thousand,

(e) *Class E.* Large cigars with a wholesale price or sale price, as applicable of more than \$105.00 per thousand but not more than \$120.00 per thousand,

(f) *Class F.* Large cigars with a wholesale price or sale price, as applicable of more than \$120.00 per thousand but not more than \$154.00 per thousand,

(g) *Class G.* Large cigars with a wholesale price or sale price, as applicable of more than \$154.00 per thousand but not more than \$235.294 per thousand, and

(h) *Class H.* Large cigars with a wholesale price or sale price, as appli-

cable of more than \$235.294 per thousand.

[T.D. ATF-40, 42 FR 5003, Jan. 26, 1977; as amended by T.D. ATF-307, 55 FR 52744, Dec. 21, 1990]

**§ 275.38 Cigarettes.**

For internal revenue tax purposes, small cigarettes are designated Class A and large cigarettes are designated Class B.

(72 Stat. 1414; 26 U.S.C. 5701)

[26 FR 8191, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975]

**§ 275.39 Determination of sale price of large cigars removed on or after January 1, 1991.**

(a) *General rule.* The tax imposed on large cigars is computed based on the price for which the large cigars are sold by the manufacturer. Large cigars are taxed at a percentage of the sale price, as prescribed by 270.21. For example, for cigars removed during 1991 and 1992, if the price for which they are sold is \$235.294 per thousand or less, the tax imposed will be 10.625% of such price. For large cigars sold for a price of more than \$235.294 per thousand, the minimum tax is \$25 per thousand for removals during 1991 and 1992. A similar computation, with the increased percent figure and maximum tax rate, is applicable for removals on or after January 1, 1993.

(b) *Price for which sold.* The "price" for which cigars are sold includes the total consideration paid for the cigars. Any charge which is made incident to placing the cigars in condition ready for use is included in the sale price. Similar rules to 26 U.S.C. 4216(a) and the regulations thereunder, relating to charges to be included in the price and excluded from the price, shall apply.

(c) *Exclusions from price.* The tax imposed by 26 U.S.C. chapter 52 or section 7652 is excluded in determining the price for which large cigars are sold. The amount of any retail sales tax imposed by any state or political subdivision thereof or the District of Columbia is likewise excluded (whether the liability for such tax is imposed on the vendor or vendee), if the retail sales tax is stated as a separate charge.

(d) *Constructive sale price rules.* Rules similar to the constructive sale price

rules set forth in 26 U.S.C. 4216(b) and the implementing regulations in 26 CFR 48.4216(b)-1 through 48.4216(b)-4 shall be applied for purposes of determining the price for which large cigars are sold.

(e) *Readjustments in sale price.* Anticipated downward readjustments in sale price are not taken into account in computing the tax. The tax must be based upon the original price for which the cigars were sold unless the readjustments have actually been made prior to the close of the period for which the tax return is filed. However, if the price upon which the tax was computed is subsequently readjusted, credit may be taken against the tax due on a subsequent return or a claim for refund filed as provided in § 270.286.

[T.D. ATF-307, 55 FR 52744, Dec. 21, 1990. Redesignated by T.D. ATF-381, 61 FR 37004, July 16, 1996]

LIABILITY FOR AND PAYMENT OF TAXES

**§ 275.40 Persons liable for tax.**

The importer of tobacco products cigarette papers and tubes shall be liable for the internal revenue taxes imposed thereon by 26 U.S.C. 5701 or 7652: *Provided*, That when tobacco products or cigarette papers or tubes are released in bond from customs custody for transfer to the bonded premises of a manufacturer of tobacco products or of a manufacturer of cigarette papers and tubes, the transferee shall become liable for the internal revenue tax on such articles upon release from customs custody and the importer shall thereupon be relieved of his liability for such tax.

(Aug. 16, 1954, Chapter 736, 68A Stat. 907, as amended (26 U.S.C. 7652); sec. 201, Pub. L. 85-859, Stat. 1417, as amended (26 U.S.C. 5703))

[T.D. 6871, 31 FR 41, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

**§ 275.41 Determination of tax and method of payment.**

Tobacco products and cigarette papers and tubes, imported or brought into the United States, on which internal revenue taxes are due and payable, shall not be released from customs custody until such taxes have been deter-

mined and paid. The taxes on such articles which are determined to be due shall be paid on the basis of a return in accordance with the provisions of this part.

(68A Stat. 907, as amended, 72 Stat. 1417; 26 U.S.C. 7652, 5703)

[T.D. 6871, 31 FR 41, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

EXEMPTIONS FROM TAXES

**§ 275.50 Exemptions.**

The Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and Customs Regulations, 19 CFR, chapter I, provide for certain exemptions from internal revenue taxes with respect to tobacco products and cigarette papers and tubes imported into the United States. These exemptions include, but are not limited to, certain importations in passengers' baggage, for use of crew members, and by foreign officials.

[T.D. 6871, 31 FR 41, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986; T.D. ATF-284, 54 FR 12190, Mar. 24, 1989]

ASSESSMENT OF TAXES

**§ 275.60 Assessment.**

Whenever any person required by law to pay internal revenue tax on tobacco products or cigarette papers or tubes fails to pay such tax, the tax shall be ascertained and assessed against such person, subject to the limitations prescribed in 26 U.S.C. 6501. The tax so assessed shall be in addition to the penalties imposed by law for failure to pay such tax when required. Except in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error, no such assessment shall be made until and after notice has been afforded such person to show cause against assessment. The person will be allowed 45 days from the

date of such notice to show cause, in writing, against such assessment.

(72 Stat. 1417; 26 U.S.C. 5703)

[T.D. 6871, 31 FR 41, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

#### CUSTOMS' COLLECTION OF TAXES

### **§ 275.62 Customs' collection of internal revenue taxes on tobacco products and cigarette papers and tubes, imported or brought into the United States.**

Internal revenue taxes on tobacco products and cigarette papers and tubes, imported or brought into the United States, which are to be paid to a district director of customs, in accordance with this part, shall be collected, accounted for, and deposited as internal revenue collections by the district director of customs, in accordance with customs procedures and regulations:

*Provided*, That the district director of customs shall deposit the taxes collected on tobacco products and cigarette papers and tubes brought into the United States from Puerto Rico or the Virgin Islands in the internal revenue account designated for the deposit of taxes collected on articles of Puerto Rican manufacture, or the deposit of taxes collected on articles coming from the Virgin Islands, as the case may be.

[T.D. 6871, 31 FR 41, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

### **§ 275.63 Payment of tax by electronic fund transfer.**

(a) Each importer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 270 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of such taxes during the succeeding calendar year. Payment of such taxes by cash, check, or money order is not authorized for an importer who is required, by this sec-

tion, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including similar products brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer.

(b) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place it appears in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of determining who is required to make remittances by EFT.

(c) For the purposes of this section, (1) electronic fund transfer or EFT means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer of magnetic tape, so as to order, instruct, or authorize a financial institution to either debit or credit an account, in accordance with procedures established by the U.S. Customs Service, and (2) electronic fund transfer or EFT does not have the meaning defined in § 275.11 for use elsewhere in this part.

(d) An importer who is required by this section to make remittances by EFT, shall make the EFT remittance

in accordance with the requirements of the U.S. Customs Service.

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); Sec. 202, Pub. L. 85-859, 72 Stat. 1417, as amended (26 U.S.C. 5703)) [T.D. ATF-245, 52 FR 534, Jan. 7, 1987, as amended by T.D. ATF-384, 61 FR 54095, Oct. 17, 1996]

### Subpart E—Packages

#### § 275.71 Package.

All tobacco products, cigarette papers and tubes, except as provided in § 275.75, shall, before removal subject to internal revenue tax, be put up in packages which shall be of such construction as will securely contain the articles therein and maintain the notice thereon as required by this subpart. No package of tobacco products or cigarette papers or tubes shall have contained in, attached to, or stamped, marked, written, or printed thereon (a) any certificate, coupon, or other device purporting to be or to represent a ticket, chance, share, or an interest in, or dependent on, the event of a lottery, (b) any indecent or immoral picture, print, or representation, or (c) any statement or indication that United States tax has been paid.

(72 Stat. 1422; 26 U.S.C. 5723)

[T.D. 6871, 31 FR 41, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

#### § 275.72 Notice for smokeless tobacco.

(a) *Product designation.* Every package of chewing tobacco or snuff shall, before removal subject to internal revenue tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation “chewing tobacco” or “snuff.” As an alternative, packages of chewing tobacco may be designated “Tax Class C,” and packages of snuff may be designated “Tax Class M.”

(b) *Product weight.* Every package of chewing tobacco or snuff shall, before removal subject to internal revenue tax, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual pounds and ounces of the product contained therein. As an alternative, the

shipping cases containing packages of chewing tobacco or snuff may, before removal, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement, in pounds and ounces, of the total weight of the product, the tax class of the product, and the total number of the packages of product contained therein.

(Approved by the Office of Management and Budget under control number 1512-0488)

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723))

[T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

#### § 275.72a Notice for pipe tobacco.

(a) *Product designation.* Every package of pipe tobacco shall, before removal subject to internal revenue tax, have adequately imprinted thereon, or on a label securely fixed thereto, the designation “pipe tobacco.” As an alternative, packages of pipe tobacco may be designated “Tax Class L.”

(b) *Product weight.* Every package of pipe tobacco shall, before removal subject to internal revenue tax, have adequately imprinted thereon, or on a label securely affixed thereto, a clear statement of the actual pounds and ounces of the product contained therein.

[T.D. ATF-289, 54 FR 48841, Nov. 27, 1989. Redesignated by T.D. ATF-381, 61 FR 37004, July 16, 1996]

#### § 275.73 Notice for cigars.

Before removal subject to internal revenue tax, every package of cigars, except as provided in § 275.75, shall have adequately imprinted on it, or on a label securely affixed to it—

- (a) The designation “cigars”;
- (b) The quantity of cigars contained in the package; and
- (c) For small cigars, the classification of the product for tax purposes (i.e., either “small” or “little”).

(Sec. 202, Pub. L. 85-859, 72 Stat. 1422 (26 U.S.C. 5723))

[T.D. ATF-80, 46 FR 18310, Mar. 24, 1981]

#### § 275.74 Notice for cigarettes.

Every package of cigarettes, except as provided in § 275.75, shall, before removal subject to internal revenue tax, have adequately imprinted thereon, or

on a label securely affixed thereto, the designation "cigarettes", the quantity of such product contained therein; and the classification for tax purposes, i.e., for small cigarettes either "small" or "Class A", and for large cigarettes, either "large" or "Class B".

(72 Stat. 1422; 26 U.S.C. 5723)

[26 FR 8192, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975]

#### § 275.75 Exemptions.

The provisions of this subpart requiring that tobacco products and cigarette papers and tubes be put up in packages and that proper notice be placed on such packages shall not apply to imported tobacco products and cigarette papers and tubes authorized to be released from customs custody, without payment of internal revenue tax, pursuant to § 275.50, and shall not apply to tobacco products imported in passengers' baggage, or by mail where the value does not exceed \$250, where such products are solely for the personal consumption of the importer or for disposition as his bona fide gift.

(72 Stat. 1422; 26 U.S.C. 5723)

[T.D. 6871, 31 FR 41, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-232, 51 FR 28085, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

### Subpart F—Tobacco Products and Cigarette Papers and Tubes, Imported Into or Returned to the United States

#### § 275.81 Taxpayment.

(a) *General.* The provisions of this section apply to tobacco product, cigarette papers, and cigarette tubes upon which internal revenue tax is payable, and which are imported into the United States from a foreign country or are brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States.

(b) *Method of payment.* The internal revenue tax shall be determined and paid to the district director of customs before the tobacco products, cigarette papers, or cigarette tubes are removed from customs custody. The tax shall be paid on the basis of a return on the customs form by which the tobacco products, cigarette papers, or cigarette

tubes are released from customs custody.

(c) *Required information.* When tobacco products, cigarette papers, or cigarette tubes enter the United States for consumption, or when they are removed for consumption, the importer shall include on the customs form internal revenue tax information. The internal revenue tax information will consist of the following:

(1) *For cigarette papers:* For books or sets of each different numerical content, the importer will show the number of books or sets, the number of papers in each book or set, the rate of tax, and the tax due.

(2) *For cigarette tubes:* The importer will show the number of tubes, the rate of tax, and the tax due.

(3) *For cigarettes:* The importer will show whether the cigarettes are small (class A) or large (class B), the number of cigarettes, the rate of tax, and the tax due.

(4) *For cigars.* The importer will show:

(i) The number imported under each HTS item number;

(ii) For large cigars with a wholesale price or sale price, as applicable, of not more than \$235.294 per thousand, the number and total wholesale price or sale price, as applicable, of such cigars;

(iii) For large cigars with a wholesale price or sale price, as applicable, of more than \$235.294 per thousand, the number of cigars;

(iv) The applicable tax rate, as specified by § 275.31; and

(v) The tax due.

(5) *For smokeless tobacco:* The importer will show whether the product is chewing tobacco or snuff, the number of pounds and ounces, the rate of tax and the tax due.

(6) *For pipe tobacco:* The importer will show the designation "pipe tobacco" or "Tax Class L," the number of pounds and ounces, the rate of tax and the tax due.

(d) *Exceptions.* The provisions of this section shall not apply to:

(1) Tobacco products, cigarette papers, or cigarette tubes released from customs custody and transferred in bond to a U.S. manufacturer of tobacco products or cigarette papers and tubes (see §§ 275.85, 275.85a, or 275.135);

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(2) Puerto Rican products on which the tax is prepaid or deferred (see Subpart G); and

(3) Tax payments of cigars from class 6, customs bonded manufacturing warehouses (see § 275.151).

(68A Stat. 907, as amended (26 U.S.C. 7652); sec. 202, Pub. L. 85-859, 72 Stat. 1417 (26 U.S.C. 5703))

[T.D. ATF-27, 41 FR 23951, June 14, 1976, as amended by T.D. ATF-40, 42 FR 5005, Jan. 26, 1977; T.D. ATF-232, 51 FR 28085, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-246, 52 FR 669, Jan. 8, 1987; T.D. ATF-284, 54 FR 12190, Mar. 24, 1989; T.D. ATF-289, 54 FR 48841, Nov. 27, 1989; T.D. ATF-307, 55 FR 52744, Dec. 21, 1990]

RELEASE FROM CUSTOMS CUSTODY OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES WITHOUT PAYMENT OF TAX OR CERTAIN DUTY

**§ 275.85 Release from customs custody of imported articles.**

The provisions of this section apply only to cigars, cigarettes, cigarette papers, and cigarettes tubes imported or brought into the United States prior to December 16, 1986. Tobacco products manufactured in a foreign country, the Virgin Islands, or a possession of the United States may be released by the district director of Customs from Customs custody, without payment of internal revenue tax, for transfer to the factory of a manufacturer of tobacco products under the bond of such manufacturer. Cigarette papers and tubes manufactured in a foreign country, the Virgin Islands, or a possession of the United States may be released by the district director of customs from customs custody, without payment of internal revenue tax, for transfer, under the bond of the manufacturer to whom such articles are released, to the factory of (a) a manufacturer of cigarette papers and tubes; or (b) a manufacturer of tobacco products solely for use in the manufacture of cigarettes. Releases under this section shall be in accordance with § 275.86:

*Provided, however,* That a manufacturer of tobacco products or a manufacturer of cigarette papers and tubes who desires to obtain the release of Virgin Islands tobacco products or cigarette papers or tubes from customs custody,

without payment of internal revenue tax, under his bond, shall, in addition, file an extension of coverage of his bond on Form 2105 in the same manner and form as prescribed for Puerto Rican articles in § 275.136. Articles received into the factory of a manufacturer under the provisions of this section are subject to the provisions of part 270 of this chapter. (For provisions relating to release of Puerto Rican tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax, see subpart G of this part.)

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

[T.D. 6871, 31 FR 42, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28085, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-246, 52 FR 669, Jan. 8, 1987; T.D. ATF-384, 61 FR 54095, Oct. 17, 1996]

**§ 275.85a Release from customs custody of returned articles.**

Domestically produced tobacco products (classifiable under item 9801.00.80 of the Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202) exported from and returned unchanged to the United States may if entered, or withdrawn from warehouse, for consumption after June 30, 1964, be released from customs custody without payment of that part of the duty attributable to the internal revenue tax for delivery to the factory of a manufacturer of tobacco products under his bond. Domestically produced cigarette papers and tubes (classifiable under item 9801.00.80 of the Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202) exported from and returned unchanged to the United States may if entered, or withdrawn from warehouse, for consumption after June 30, 1964, be released from customs custody without payment of that part of the duty attributable to the internal revenue tax for delivery, under the bond of the manufacturer to whom such articles are released, to the factory of (a) a manufacturer of cigarette papers and tubes; or (b) a manufacturer of tobacco products solely for use in the manufacture of cigarettes. Releases under this section shall be in accordance with the procedures set forth in § 275.86. Upon such release, the tobacco products and

cigarette papers and tubes shall be subject to the tax and all other provisions of chapter 52, I.R.C., and, as applicable, subject to the provisions of the regulations in part 270 of this chapter as if they had not been exported or otherwise removed from internal revenue bond.

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

[T.D. 6871, 31 FR 42, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28085, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-284, 54 FR 12190, Mar. 24, 1989; T.D. ATF-384, 61 FR 54095, Oct. 17, 1996]

#### § 275.86 Procedure for release.

Every manufacturer of tobacco products and cigarette papers and tubes who desires to obtain the release of tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax, under his bond, as provided in § 275.85 or § 275.85a, shall prepare a notice of release, Form 2145, in triplicate, and file the three copies of the form with the regional director (compliance) for the region wherein the manufacturer is located. The regional director (compliance) will not certify Form 2145 covering the release of tobacco products and cigarette papers and tubes unless the manufacturer is authorized, under part 270 of this chapter, to receive, without payment of tax, the kinds of articles set forth in the form. After certification by the regional director (compliance), all copies shall be presented by the manufacturer to the district director of customs having custody of the tobacco products and cigarette papers and tubes prior to release thereof. The district director of customs may release such articles upon completion of the notice of release and, after release, he will retain one copy of the form, transmit one copy to the regional director (compliance) shown thereon, and return one copy to the

manufacturer, which shall be retained by the manufacturer.

(72 Stat. 1418, as amended, 1423, as amended; 26 U.S.C. 5704, 5741)

[T.D. 6871, 31 FR 42, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28085, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-246, 52 FR 669, Jan. 8, 1987; T.D. ATF-384, 61 FR 54095, Oct. 17, 1996]

### Subpart G—Puerto Rican Tobacco Products and Cigarette Papers and Tubes, Brought Into the United States

#### § 275.101 General.

(a) Tobacco products and cigarette papers and tubes manufactured in Puerto Rico which are brought into the United States and withdrawn for consumption or sale are subject to the tax imposed by 26 U.S.C. 7652(a), at the rates set forth in 26 U.S.C. 5701.

(b) The excise taxes collected on tobacco products and cigarette papers and tubes manufactured in Puerto Rico are covered into the Treasury of Puerto Rico. Tobacco products and cigarette papers and tubes are considered as manufactured in Puerto Rico for purposes of 26 U.S.C. 7652(a)(3) if the sum of the cost or value of the materials produced in Puerto Rico, plus the direct costs of processing operations performed in Puerto Rico, equals or exceeds 50 percent of the value of the product when it is brought into the United States.

(c) The excise tax on tobacco products and cigarette papers and tubes of Puerto Rican manufacture may be prepaid in Puerto Rico prior to shipment of such articles to the United States in accordance with § 275.105. In the case of tobacco products such tax may be paid in Puerto Rico on the basis of a semi-monthly return in accordance with the applicable provisions of this subpart.

(d)(1) Prior to December 16, 1986, cigars and cigarettes may be brought into the United States without payment of excise tax, for transfer to the

factory of a manufacturer of tobacco products, under the bond of such manufacturer, in accordance with §275.135.

(2) Prior to December 16, 1986, cigarette paper and tubes may be brought into the United States without payment of excise tax, for transfer to the factory of a manufacturer or cigarette paper and tubes, or for transfer to a manufacturer of tobacco products solely for use in the manufacture of cigarettes, under the bond of such manufacturer bringing in such articles, in accordance with §275.135.

(e) Tobacco products and cigarette papers and tubes of Puerto Rican manufacture on which excise tax has not been paid or computed in Puerto Rico and which are not to be released from customs custody without payment of excise tax, under bond, shall not be withdrawn from customs custody until the excise tax has been paid in accordance with §275.81.

(68A Stat. 907, as amended, 72 Stat. 1417, 1418, as amended (26 U.S.C. 7652, 5703, 5704))

[T.D. ATF-206, 50 FR 15888, Apr. 23, 1985, as amended by T.D. ATF-232, 51 FR 28085, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986; T.D. ATF-246, 52 FR 669, Jan. 8, 1987]

PREPAYMENT OF TAX IN PUERTO RICO ON TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

**§275.105 Prepayment of tax.**

To repay, in Puerto Rico, the internal revenue tax imposed by 26 U.S.C. 7652(a), on tobacco products and cigarette paper and tubes of Puerto Rican manufacture which are to be shipped to the United States, the shipper shall file, or cause to be filed, with the Chief, Puerto Rico Operations, a tax return, ATF Form 5000.25, in duplicate, with full remittance of tax which will become due on such tobacco products and cigarette papers and tubes. The Chief, Puerto Rico Operations will present a receipted copy of the return to the person filing the return and paying the tax and retain the original.

(Approved by the Office of Management and Budget under control number 1512-0497)

[T.D. ATF-277, 53 FR 45269, Nov. 9, 1988]

**§275.106 Inspection of shipment and certification of prepayment by ATF officer.**

The taxpayer will prepare ATF Form 3075 (5200.9), in quintuplicate, identifying the tobacco products and cigarette papers and tubes released in each shipment, for certification by the ATF officer that the tax has been prepaid. The ATF officer assigned to inspect the shipment shall obtain the receipted copy of the tax return from the taxpayer and verify with ATF Form 3075 (5200.9) that the proper tax has been prepaid. After verification of the tax return with ATF Form 3075 (5200.9), the ATF officer will return the receipted copy of the tax return to the taxpayer. The ATF officer will then present one copy of ATF Form 3075 (5200.9) to the taxpayer for attachment to the bill of lading to accompany the shipment (in custody of the carrier) for presentation to the district director of customs at the port of entry; promptly mail two copies to the district director of customs at the port of entry; mail one copy to the regional director (compliance) of the region wherein the customs collection headquarters is located; and retain the remaining copy. The ATF officer, will then prepare for each shipping container, a statement on ATF Form 3074 (5200.6) that the tax has been prepaid, and show the other information required by that form. The shipper shall affix the completed ATF Form 3074 (5200.6) to the outside of each shipping container in which the articles are packed. Such statement, ATF Form 3074 (5200.6), shall be affixed to the outside container used in the shipment of freight in bulk (crate, packingbox, van, trailer, etc.) and not on the individual cartons, cases, etc., included in such outer container. Non-commercial mail shipments of tobacco products and cigarette papers and tubes to the United States are exempt from the provisions of this section, except that the ATF officer in Puerto Rico receiving a payment of internal revenue tax on mail shipments of such articles will prepare a certificate to be affixed to the container stating that the United States internal revenue tax has been prepaid on the articles contained therein.

[T.D. ATF-277, 53 FR 45269 Nov. 9, 1988]

**§ 275.107 Procedure at port of entry.**

The district director of customs at the port of entry will inspect the shipment to determine whether the quantity specified on the Form 3075 is contained in the shipment. He will then execute his certificate on the three copies of the Form 3075 in his possession, and indicate on each copy any exceptions found at the time of release. The statement of exceptions shall identify each shipping container which sustained a loss; the tobacco products and cigarette papers and tubes reported shipped in such container; and the tobacco products and cigarette papers and tubes lost from such container. Losses occurring as the result of missing packages, cases, or shipping containers shall be listed separately from losses caused by damage. Where the statement is made on the basis of tobacco products or cigarette papers or tubes missing or damaged, the district director of customs shall show (a) the numbers of small cigarettes, large cigarettes, and small cigars, (b) the number and total wholesale price of large cigars with a wholesale price of not more than \$235.294 per thousand, (c) the number of large cigars with a wholesale price of more than \$235.294 per thousand, (d) the number of books or sets of cigarette papers of each different numerical content, (e) the number of cigarette tubes, (f) the pounds and ounces of chewing tobacco and snuff, and (g) the pounds and ounces of pipe tobacco.

If the district director of customs finds that the full amount of the tax has not been prepaid, he will require the difference due to be paid to him prior to release of the tobacco products and cigarette papers and tubes. When the inspection of the shipment has been effected, and any additional tax found to be due has been paid to the district director of customs, the shipment may be released.

[T.D. ATF-40, 42 FR 5005, Jan. 26, 1977, as amended by T.D. ATF-232, 51 FR 28085, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-289, 54 FR 48841, Nov. 27, 1989]

**§ 275.108 Disposition of forms by district director of customs.**

One copy of the Form 3075 will be forwarded to the Chief, Puerto Rico Oper-

ations, one copy will be furnished the consignee, and one copy of this form will be retained by the district director of customs.

[26 FR 8194, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19340, May 22, 1987]

DEFERRED PAYMENT OF TAX IN PUERTO  
RICO ON TOBACCO PRODUCTS

**§ 275.109 Bond required for deferred taxpayment.**

Where a manufacturer of tobacco products in Puerto Rico desires to defer payment in Puerto Rico of the internal revenue tax imposed by 26 U.S.C. 7652(a), on tobacco products of Puerto Rican manufacture coming into the United States, he shall file a bond, Form 2986, with the regional director (compliance), in accordance with the provisions of this subpart. Such bond shall be conditioned on the payment, at the time and in the manner prescribed in this subpart, of the full amount of tax computed under the provisions of this subpart with respect to tobacco products which are released for shipment to the United States on computation of tax. All taxes which are computed under the provisions of this subpart shall be chargeable against the bond, until such taxes are paid, as provided in § 275.112. The bond shall show the location of the factory from which the tobacco products to which it relates are to be shipped.

[T.D. 6871, 31 FR 43, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-232, 51 FR 28085, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987]

**§ 275.110 Computation of tax and execution of agreement to pay tax.**

Where tobacco products are to be shipped to the United States on computation of internal revenue tax in Puerto Rico (involving deferred taxpayment), the bonded manufacturer shall calculate the tax and shall prepare an original and five copies of Form 2987 (5210.8). He shall enter on such form under the penalties of perjury (a) the numbers of small cigarettes, large cigarettes, and small cigars to shipped, (b) the number and

total wholesale price or sale price, as applicable, of large cigars with a price of not more than \$235.294 per thousand to be shipped; (c) the number of large cigars with a wholesale price or sale price, as applicable, of more than \$235.294 per thousand to be shipped, (d) the pounds and ounces of chewing tobacco or snuff to be shipped, (e) the pounds and ounces of pipe tobacco to be shipped, (f) the amount of the tax to be paid on such products under the provisions of this subpart, and (g) the name and address of the consignee in the United States to whom such products are being shipped; and shall date and execute the agreement to pay the amount of tax which shall be computed on such products covered by the Form 2987. The Form 2987 shall be serially numbered by the bonded manufacturer beginning with the number "1" on January 1 of each year. The bonded manufacturer shall then request the Chief, Puerto Rico Operations, to assign an ATF officer to inspect the tobacco products, verify the tax calculation with respect to such products, and release such products for shipment in accordance with § 275.111. The bonded manufacturer shall present all copies of the prepared Form 2987 to the ATF officer assigned. The date of certification of Form 2987 by the ATF officer shall be treated as the date of computation of tax. Tobacco products may be released for shipment to the United States in accordance with the provisions of this section only after computation of tax.

[T.D. ATF-40, 42 FR 5006, Jan. 26, 1977, as amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987; T.D. ATF-289, 54 FR 48841, Nov. 27, 1989; T.D. ATF-307, 55 FR 52744, Dec. 21, 1990]

**§ 275.111 Inspection of shipment and certification by ATF officer.**

On receipt of the original and five copies of the Form 2987 (5210.8) completed and executed by the bonded manufacturer in accordance with § 275.110, an ATF officer will inspect the tobacco products covered by the form, verify the tax calculation made with respect to such products, date and execute the certification on such form, and release the tobacco products for

shipment to the United States. Such officer will then promptly distribute the certified Form 2987 by (a) mailing two copies to the district director of customs at the port of entry; (b) mailing one copy to the regional director (compliance) of the region wherein the customs collection headquarters is located; (c) returning two copies to the bonded manufacturer who will attach one copy to the bill of lading to accompany the shipment (in custody of the carrier) for presentation to the district director of customs at the port of entry; and (d) submitting the original to the Chief, Puerto Rico Operations. The ATF officer will also prepare, for each shipping container, a statement on Form 2989 that the tax on the tobacco products to be shipped to the United States has been computed and show the name and address of the bonded manufacturer, date of tax computation, and the other information required by that form. The bonded manufacturer shall affix the completed Form 2989 to the outside of each shipping container in which the products are packed. Such statement, Form 2989, shall be affixed to the outer container used in the shipment of freight in bulk (crate, packing box, van, trailer, etc.) and not on the individual cartons, cases, etc., included in such outer container.

[T.D. ATF-40, 42 FR 5006, Jan. 26, 1977, as amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987]

**§ 275.112 Tax return.**

The internal revenue taxes imposed by 26 U.S.C. 7652(a), with respect to tobacco products manufactured in Puerto Rico and shipped to the United States on computation of tax under the provisions of this subpart shall be paid on the basis of a semimonthly tax return. The bonded manufacturer of such products shall prepare ATF Form 5000.25 in duplicate, and file the original with the Chief, Puerto Rico Operations, and maintain one copy for the file for each semimonthly return period. The bonded manufacturer shall execute the return, ATF Form 5000.25, under the penalties of perjury. He shall file a return for each return period at the time specified in § 275.114, regardless of whether

tax is due for that return period. However, where the Regional Director (compliance), Bureau of Alcohol, Tobacco and Firearms, Atlanta, GA, grants specific authorization, the bonded manufacturer need not file a tax return during the term of such authorization for any period in which tax liability was not incurred under the provisions of this subpart.

(Approved by the Office of Management and Budget under control number 1512-0497)

[T.D. ATF-40, 42 FR 5006, Jan. 26, 1977, as amended by T.D. ATF-125, 48 FR 2123, Jan. 18, 1983; T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987; T.D. ATF-277, 53 FR 45269, Nov. 9, 1988]

#### § 275.113 Return periods.

Except as provided by § 275.114, the periods to be covered in the semi-monthly tax returns shall be from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month.

[T.D. ATF-365, 60 FR 33675, June 28, 1995]

#### § 275.114 Time for filing.

(a) *General rule.* Semimonthly tax returns under this subpart shall be filed by the bonded manufacturer, for each return period, not later than the 14th day after the last day of the return period, except as provided by paragraph (b) of this section. The tax shall be paid in full by remittance at the time the return is filed as prescribed in § 275.115 or § 275.115a.

(b) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1) The second semi-monthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The bonded manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16-26, no later than September 29. The bonded manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 27-30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 275.115a,

the second semi-monthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The bonded manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16-25, no later than September 28. The bonded manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 26-30, no later than October 14.

(3) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (b)(1) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semi-monthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph (b)(2) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semi-monthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(4) *Last day for payment.* If the required due date for taxpayment for the periods September 16-25 or September 16-26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(c) *Postmark.* If the return, and remittance as the case may be, are delivered by U.S. Mail to the office of the Chief, Puerto Rico Operations, the date of the official postmark of the U.S. Postal Service stamped on the cover in which the return, and remittance as the case may be, were mailed shall be treated as the date of delivery.

(d) *Weekends and holidays.* Except as provided in paragraph (b)(4) of this section, if the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which

## § 275.114a

is not a Saturday, Sunday, or legal holiday.

(Approved by the Office of Management and Budget under control number 1512-0467)

[T.D. ATF-246, 52 FR 669, Jan. 8, 1987, as amended by T.D. ATF-251, 52 FR 19340, May 22, 1987; T.D. ATF-365, 60 FR 33675, June 28, 1995]

### § 275.114a Qualification for extended deferral.

NOTE: This section applies only to removals made before January 1, 1983.

(a) *Bonded manufacturers with bonds executed before September 1, 1973.* Bonded manufacturers with bonds on Form 2936 executed before September 1, 1973, who desire to file returns under this subpart with benefit of the extended deferral permitted by § 275.114 shall file with the regional director (compliance) an extension of coverage of bond on Form 2105. Such extension of coverage shall identify the particular bond to which it applies and shall contain a statement of purpose as follows:

To continue in effect said bond (including all extensions or limitations of terms and conditions previously consented to and approved) notwithstanding that the time for payment of the tax may be deferred by the extended deferral period permitted by regulations in 27 CFR 275.114.

If the bond on Form 2986 is in an amount insufficient to cover an extended deferral period, according to the requirements of § 275.121, the bonded manufacturer must either file a new bond or file a strengthening bond to increase the total amount of the bonds then in force to a sufficient amount.

(b) *Bonded manufacturers with bonds executed after September 1, 1973.* Bonded manufacturers operating under original or superseding bonds executed after September 1, 1973, are automatically qualified for the extended deferral permitted by § 275.114 (unless found in default as provided in § 275.116). Such bonds must be executed in an amount sufficient to cover an extended deferral period, according to the requirements of § 275.121.

(c) *Commencement of extended deferral.* Bonded manufacturers may file returns with benefit of extended deferral only after the applicable bonds and extensions of coverage required by this sec-

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tion have been filed with and approved by the regional director (compliance).

(68A Stat. 847, as amended, 907, as amended; 26 U.S.C. 7101, 7652(a); 26 U.S.C. 7805)

[T.D. ATF-5, 38 FR 19688, July 23, 1973. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-125, 48 FR 2123, Jan. 18, 1983; T.D. ATF-251, 52 FR 19340, May 22, 1987]

### § 275.115 Remittance with return.

Remittance of the full amount of internal revenue tax computed during the return period shall accompany the return, except as prescribed in § 275.115a. Such remittance may be in any form the Chief, Puerto Rico Operations is authorized to accept under the provisions of § 70.61 of this chapter (Payment by check or money order) and which is acceptable to that officer. In paying the tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(Aug. 16, 1954, Ch. 736, 68A Stat. 778 (26 U.S.C. 6313) Aug. 16, 1954, ch. 736, 68A Stat. 775 (26 U.S.C. 6301); June 29, 1956, ch. 462, 70 Stat. 391 (26 U.S.C. 6301))

[26 FR 8195, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-77, 46 FR 3009, Jan. 13, 1981; T.D. ATF-251, 52 FR 19340, May 22, 1987; T.D. ATF-301, 55 FR 47658, Nov. 14, 1990]

### § 275.115a Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 270 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of taxes on tobacco products, cigarette papers, and cigarette tubes during the succeeding calendar year. Payment of taxes on tobacco products, cigarette papers, and cigarette tubes by cash, check, or money order, as described in § 275.115, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this

section, the dollar amount of tax liability is defined as the gross tax liability of all taxes which are paid in accordance with this subpart, taxable withdrawals from premises in the United States, and importations during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place it appears in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of determining who is required to make remittances by EFT.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate tax return for each factory which tobacco products, or cigarette papers, or cigarette tubes are withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 270 of this chapter during the previous calendar year, shall notify, in writing, the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an

electronic fund transfer in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in §275.105 or §275.114. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in taxes on tobacco products, cigarette papers, and cigarette tubes during the preceding calendar year, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by §275.115. On the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to the tax return, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the tax return, information about remitting the tax for that return by EFT and shall file the return with the Chief, Puerto Rico Operations.

(2) Remittances shall be considered as made when the taxpayment by electronic fund transfer is received by the Treasury Account. For purposes of this section, a taxpayment by electronic fund transfer shall be considered as received by the Treasury Account when it is paid to a Federal Reserve Bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) *Failure to make a taxpayment by EFT.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5761, 6651, or 6656, as applicable, for failure to make a taxpayment by EFT on or before the

close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(Approved by the Office of Management and Budget under Control Number 1512-0457)

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 202, Pub. L. 85-859, 72 Stat. 1417, as amended (26 U.S.C. 5703))

[T.D. ATF-185, 49 FR 37583, Sept. 25, 1984, as amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-245, 52 FR 534, Jan. 7, 1987; T.D. ATF-251, 52 FR 19340, May 22, 1987; T.D. ATF-262, 52 FR 47560, Dec. 15, 1987; T.D. ATF-277, 53 FR 45269, Nov. 9, 1988; T.D. ATF-384, 61 FR 54095, Oct. 17, 1996]

#### § 275.116 Default.

Where a check or money order tendered with a semimonthly return for payment of internal revenue tax under the provisions of this subpart is not paid on presentment, where a bonded manufacturer fails to remit with the semimonthly return the full amount of tax due thereunder, or where a bonded manufacturer is otherwise in default in payment of tax under the provisions of this subpart, he shall not ship tobacco products to the United States on computation of tax, until the regional director (compliance) finds that the revenue will not be jeopardized by deferred payment of tax under the provisions of this subpart.

[T.D. 6871, 31 FR 44, Jan 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987]

#### § 275.117 Procedure at port of entry.

The district director of customs at the port of entry will inspect the shipment to determine whether the quantity specified on the Form 2987 is con-

tained in the shipment. He will then execute his certificate on the three copies of the Form 2987 in his possession, and indicate on each copy any exceptions found at the time of release. The statement of exceptions shall identify each shipping container which sustained a loss, the tobacco products reported shipped in such container, and the tobacco products lost from such container. Losses occurring as the result of missing packages, cases, or shipping containers shall be listed separately from losses caused by damage. Where the statement is made on the basis of tobacco products missing or damaged, the district director of customs shall show (a) the numbers of small cigarettes, large cigarettes, and small cigars, (b) the number and total wholesale price of large cigars with a wholesale price of not more than \$235.294 per thousand, (c) the number of large cigars with a wholesale price of more than \$235.294 per thousand, (d) the pounds and ounces of chewing tobacco and snuff, and (e) the pounds and ounces of pipe tobacco.

If the district director of customs finds that the full amount of tax has not been computed, he will require the difference due to be paid to him prior to release of the tobacco products. When the inspection of the shipment has been effected, and any additional tax found to be due has been paid to the district director of customs, the shipment may be released.

[T.D. ATF-40, 42 FR 5006, Jan. 26, 1977, and amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-289, 54 FR 48841, Nov. 27, 1989]

#### § 275.118 Disposition of forms by district director of customs.

One copy of the Form 2987 will be forwarded to the Chief, Puerto Rico Operations, one copy will be furnished the consignee, and one copy of this form will be retained by the district director of customs.

[26 FR 8195, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19341, May 22, 1987]

#### § 275.119 Corporate surety.

(a) Surety bonds, required under the provisions of this subpart, may be given only with corporate sureties

holding certificates of authority from the Secretary of the Treasury as acceptable sureties on Federal bonds. Limitations concerning corporate sureties are prescribed by the Secretary in the current revision of Treasury Department Circular No. 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies). The surety shall have no interest whatever in the business covered by the bond.

(b) Treasury Department Circular No. 570 is published in the FEDERAL REGISTER annually as of the first workday of July. As they occur, interim revisions of the circular are published in the FEDERAL REGISTER. Copies may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, DC 20226.

(July 30, 1947, ch. 390, 61 Stat. 648, as amended (6 U.S.C. 6, 7))

[T.D. ATF-92, 46 FR 46922, Sept. 23, 1981]

**§ 275.120 Deposit of securities in lieu of corporate surety.**

In lieu of corporate surety, the manufacturer of tobacco products in Puerto Rico may pledge and deposit, as security for his bond, securities which are transferrable and are guaranteed both as to interest and as to principal by the United States, in accordance with the provisions of 31 CFR part 225.

(61 Stat. 650; 6 U.S.C. 15)

[T.D. 6871, 31 FR 44, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

**§ 275.121 Amount of bond.**

In order that tobacco products may be shipped to the United States on computation of tax under the provisions of this subpart, the total amount of the bond or bonds shall at all times be in an amount not less than the amount of unpaid tax chargeable at any one time against the bond: *Provided*, That the amount of any such bond need not exceed \$250,000 where payment of tax on cigarettes or on any combination of tobacco products is deferred; and need not exceed \$150,000 where the tax on cigars, smokeless to-

bacco or pipe tobacco is deferred. The amount of the bond shall in no case be less than \$1,000. Where the amount of a bonded manufacturer's bond is less than the maximum prescribed, the bonded manufacturer shall maintain a running account accurately reflecting all outstanding taxes with which his bond is chargeable. He shall charge such account with the amount of tax he agreed to pay on Forms 2987 and shall credit the account for the amount he paid with his return, Form 2988, at the time he files such return.

[T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF-289, 54 FR 48841, Nov. 27, 1989]

**§ 275.122 Strengthening bond.**

Where the amount of any bond is no longer sufficient under the provisions of § 275.121, the bonded manufacturer shall immediately file a strengthening bond in an appropriate amount with the same surety as that on the bond already in effect, unless a superseding bond is filed pursuant to § 275.123. A strengthening bond will not be approved where any notation is made thereon which is intended, or which may be construed, as a release of any former bond, or as limiting the amount of either bond to less than its full amount.

[26 FR 8195, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975]

**§ 275.123 Superseding bond.**

A bonded manufacturer shall immediately file a new bond to supersede his current bond when (a) the corporate surety on the current bond becomes insolvent, (b) the regional director (compliance) approves a request from the surety on the current bond to terminate his liability under the bond, (c) the payment of any liability under a bond is made by the surety thereon, (d) the amount of the bond is no longer sufficient under the provisions of § 275.121 and a strengthening bond has not been filed, or (e) the regional director (compliance) considers a superseding bond necessary for the protection of the revenue.

[26 FR 8195, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19341, May 22, 1987]

**§ 275.124 Extension of coverage of bond.**

An extension of coverage of the bond of a bonded manufacturer shall be required (a) as provided in § 275.114a, and (b) in the case of any change in the location of the factory as set forth in the bond. Such extension of coverage of the bond shall be manifested on Form 2105 by the bonded manufacturer and by the surety on the bond with the same formality and proof of authority as required for the execution of the bond.

[T.D. ATF-5, 38 FR 19689, July 23, 1973. Redesignated at 40 FR 16835, Apr. 15, 1975]

**§ 275.125 Approval of bond and extension of coverage of bond.**

The regional director (compliance) is authorized to approve all bonds and extensions of coverage of bonds (except under § 275.136) filed under this subpart. No manufacturer of tobacco products in Puerto Rico shall defer taxes under this subpart until he receives from the regional director (compliance) notice of approval of the bond or of an appropriate extension of coverage of the bond required under this subpart. Upon receipt of the duplicate copy of an approved bond or extension of coverage of bond from the regional director (compliance), such copy of the bond or extension of coverage of bond shall be retained by the bonded manufacturer and shall be made available for inspection by any ATF officer upon his request.

[T.D. 6871, 31 FR 45, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19341, May 22, 1987]

**§ 275.126 Termination of bond.**

Any bond given under the provisions of this subpart may be terminated as to future transactions, by the regional director (compliance), (a) pursuant to application of surety as provided in § 275.127; (b) on approval of a superseding bond; (c) on notification by the bonded manufacturer to the regional director (compliance) that he has discontinued the deferral of taxes under the bond; or (d) on notification by the bonded manufacturer to the regional director (compliance) that he has discontinued business. When any bond is

terminated, the regional director (compliance) shall notify both the bonded manufacturer and surety on such bond, in writing, of such action.

[26 FR 8196, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19341, May 22, 1987]

**§ 275.127 Application of surety for relief from bond.**

A surety on any bond given under the provisions of this subpart may at any time in writing notify the bonded manufacturer and the regional director (compliance) that he desires, after a date named, to be relieved of liability under said bond. Such date shall be not less than 10 days after the date the notice is received by the regional director (compliance). The surety shall also file with the regional director (compliance) an acknowledgement or other proof of service on the bonded manufacturer. If such notice is not thereafter in writing withdrawn, the rights of the bonded manufacturer as supported by said bond shall be terminated on the date named in the notice, and the surety shall be relieved from liability to the extent set forth in § 275.128.

[26 FR 8196, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19341, May 22, 1987]

**§ 275.128 Relief of surety from bond.**

Where the surety on a bond given under the provisions of this subpart has filed application for relief from liability as provided in § 275.127, the surety shall be relieved from liability for transactions occurring wholly subsequent to the date specified in the notice, or the effective date of a new bond, if one is given.

[26 FR 8196, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975]

**§ 275.129 Release of pledged securities.**

Securities of the United States, pledged and deposited as provided in § 275.120, shall be released only in accordance with the provisions of 31 CFR part 225. Such securities will not be released by the regional director (compliance) until the liability under the bond for which they were pledged has been terminated. When the regional director (compliance) is satisfied that they may

be released, he shall fix the date or dates on which a part or all of such securities may be released. At any time prior to the release of such securities, the regional director (compliance) may extend the date of release for such additional length of time as he deems necessary.

(61 Stat. 650; 6 U.S.C. 15)

[26 FR 8196, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-251, 52 FR 19341, May 22, 1987]

RELEASE OF PUERTO RICAN TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES FROM CUSTOMS CUSTODY, WITHOUT PAYMENT OF TAX

**§ 275.135 Release from customs custody, without payment of tax.**

The provisions of this section, as well as those of §§ 275.136—275.141, apply only to tobacco products, cigarette papers, and cigarette tubes brought into the United States from Puerto Rico prior to December 16, 1986. Puerto Rican tobacco products and cigarette papers and tubes may not be released from customs custody, without payment of internal revenue tax, under the provisions of § 275.101, unless the manufacturer in the United States has filed an extension of coverage of his bond in accordance with § 275.136, and obtains the release of such articles as provided in this subpart.

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

[T.D. 6871, 31 FR 45, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-246, 52 FR 670, Jan. 8, 1987]

**§ 275.136 Extension of coverage of bond.**

Every manufacturer of tobacco products in the United States who desires to obtain the release of Puerto Rican tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax, under his bond, and every manufacturer of cigarette papers and tubes who desires to obtain the release of Puerto Rican cigarette papers and tubes from customs custody, without payment of internal revenue tax, under his bond, shall file an extension of coverage of his bond on Form 2105 with, and receive

a notice of approval from, the regional director (compliance) of the region in which his factory is located. This extension of coverage shall be executed by the principal and the surety and shall be in the following form:

Whereas, the purpose of this extension is to bind the obligors for the payment of the tax imposed by 26 U.S.C. 7652(a), on tobacco products and/or cigarette papers and tubes manufactured in Puerto Rico and released in the United States from customs custody without payment of tax, for delivery to the principal on said bond.

Now, therefore, the said bond is further specifically conditioned that the principal named therein shall pay all taxes imposed by 26 U.S.C. 7652(a) (plus penalties, if any, and interest), for which he may become liable with respect to tobacco products and/or cigarette papers and tubes manufactured in Puerto Rico which are released to him in the United States from customs custody without payment of tax thereon, and comply with all provisions of law and regulations with respect thereto.

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

[T.D. 6871, 31 FR 45, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

**§ 275.137 Notice of release.**

Every manufacturer of tobacco products and cigarette papers and tubes in the United States who desires under the provisions of this subpart to obtain the release of Puerto Rican tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax, under his bond, shall prepare a notice of release, Form 3072, in quintuplicate, and file the five copies of the form with the regional director (compliance) for the region wherein the manufacturer is located. The regional director (compliance) will not certify Form 3072 covering the release of tobacco products and cigarette papers and tubes unless the manufacturer is authorized, under part 270 of this chapter, to receive, without payment of tax, the kinds of articles set forth in the form. After certification by the regional director (compliance), the manufacturer shall forward all five copies of the form to the

shipper in Puerto Rico. The shipper in Puerto Rico shall execute Part I on all copies of the form, forward four copies to the Chief, Puerto Rico Operations, and retain the remaining copy for his records. The ATF officer assigned to inspect the tobacco products and cigarette papers and tubes to be shipped, after determining that the shipment has been correctly described in Part I, will execute Part II on all four copies of the form, and will (a) present one copy to the shipper for attachment to the bill of lading to accompany the shipment (in custody of the carrier) for presentation to the district director of customs at the port of entry; (b) promptly mail two copies to the district director of customs at the port of entry in the United States; and (c) retain the remaining copy.

(72 Stat. 1418, as amended; 26 U.S.C. 5704)

[T.D. 6871, 31 FR 45, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19341, May 22, 1987; T.D. ATF-384, 61 FR 54095, Oct. 17, 1996]

**§ 275.138 Action by district director of customs.**

The district director of customs at the port of entry will note in Part III, on the three copies of the notice of release, Form 3072, in his possession, any exceptions found, showing the numbers and marks on each shipping container from which a loss was sustained, the quantity of tobacco products or cigarette papers or tubes reported shipped in such shipping container, and the quantity of the articles lost. The district director of customs will execute the Notice of Release on each such copy of the form, release the shipment with one copy to the consignee, mail one copy to the regional director (compliance) shown on the form, and retain the remaining copy for his records.

[T.D. 6871, 31 FR 45, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

**§ 275.139 Records.**

Every manufacturer of tobacco products and cigarette papers and tubes in the United States who receives tobacco

products or cigarette papers or tubes or Puerto Rican manufacture, without payment of internal revenue tax, under his bond, shall keep separate records of all items received, removed subject to tax, removed for tax-exempt purposes, and otherwise disposed of, showing the following information:

(a) Date, quantity, kind of cigars, cigarettes, smokeless tobacco and pipe tobacco (number of small cigars—large cigars; number of small cigarettes—large cigarettes; pounds and ounces of chewing tobacco—snuff; pounds and ounces of pipe tobacco).

(b) The wholesale price or sale price, as applicable, of large cigars removed subject to tax, except that if the price is more than \$235.294 per thousand, it may be shown as if it were \$236 per thousand.

(c) The date and number of books or sets of cigarette papers of each different numerical content.

(d) The date and number of cigarette tubes.

(Approved by the Office of Management and Budget under control number 1512-0362)

(Sec. 2128(c), Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5741))

[T.D. ATF-80, 46 FR 18311, Mar. 24, 1981, as amended by T.D. ATF-172, 49 FR 14943, Apr. 16, 1984; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-289, 54 FR 48841, Nov. 27, 1989; T.D. ATF-307, 55 FR 52745, Dec. 21, 1990]

**§ 275.140 Taxpayment in the United States.**

Every manufacturer of tobacco products in the United States who receives Puerto Rican tobacco products from customs custody, without payment of internal revenue tax, under his bond, and subsequently removes such products, subject to tax, shall pay the tax imposed on such products by 26 U.S.C. 7652(a), at the rates prescribed in 26 U.S.C. 5701, on the basis of a return under the provisions of part 270 of this chapter applicable to the taxpayment of tobacco products. Similarly, every manufacturer of cigarette papers and tubes in the United States who receives Puerto Rican cigarette papers and tubes and subsequently removes such articles, shall pay the tax imposed on such articles by 26 U.S.C. 7652(a), at the rates prescribed in 26 U.S.C. 5701, on

the basis of a return under the provisions of part 270 of this chapter applicable to taxpayment of cigarette papers and tubes. Such tobacco products and cigarette papers and tubes shall be separately listed and identified as articles of Puerto Rican manufacture on the returns, Form 3071 and Form 2137, and the amount of tax paid on such articles shall be separately stated on such forms.

[T.D. 6871, 31 FR 45, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-384, 61 FR 54095, Oct. 17, 1996]

#### § 275.141 Reports.

Every manufacturer of tobacco products and cigarette papers and tubes in the United States who receives Puerto Rican tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax, under his bond, shall report the receipt and disposition of such tobacco products and cigarette papers and tubes on supplemental monthly reports. Such supplemental reports shall be made on Form 3068 or Form 2138 and shall have inserted thereon the heading, "Cigars and Cigarettes of Puerto Rican Manufacture" or "Cigarette Papers and Tubes of Puerto Rican Manufacture," as the case may be. The original of such supplemental report shall be attached to the manufacturer's regular monthly report when filed.

(72 Stat. 1422; 26 U.S.C. 5722)

[T.D. 6871, 31 FR 46, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

### Subpart H—(§§ 275.151—275.153) [Reserved]

### Subpart I—Claims

#### GENERAL

#### § 275.161 Abatement of assessment.

A claim for abatement of the unpaid portion of the assessment of any tax on tobacco products and cigarette papers and tubes, or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in

amount, is assessed after expiration of the applicable period of limitation, or is erroneously or illegally assessed. Any claim under this section shall be prepared on Form 2635 (5620.8), in duplicate, and shall set forth the particulars under which the claim is filed. The original of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the regional director (compliance) that the claim is valid, shall be filed with the regional director (compliance) for the region in which the tax or liability was assessed, and the duplicate of the claim shall be retained by the claimant.

(68A Stat. 792; 26 U.S.C. 6404)

[T.D. 6871, 31 FR 46, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19341, May 22, 1987]

#### § 275.162 Losses caused by disaster occurring after September 2, 1958.

Claims involving internal revenue tax paid or determined and customs duty paid on tobacco products and cigarette papers and tubes removed, which are lost, rendered unmarketable, or condemned by a duly authorized official by reason of a "major disaster" occurring in the United States after September 2, 1958, shall be filed in accordance with the provisions of subpart C of part 296 of this chapter.

(72 Stat. 1420; 26 U.S.C. 5708)

[T.D. 6871, 31 FR 46, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

#### § 275.163 Refund of tax.

The taxes paid on tobacco products and cigarette papers and tubes imported or brought into the United States may be refunded (without interest) to the taxpayer on proof satisfactory to the regional director (compliance) that the taxpayer has paid the tax on tobacco products and cigarette papers and tubes lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such taxpayer, or withdrawn by him from the market. Any claim for refund of tax under this section shall be prepared on Form 2635

(5620.8), in duplicate, and shall include a statement that the tax imposed on tobacco products and cigarette papers and tubes by 26 U.S.C. 7652 or chapter 52, as applicable, has been paid in respect to the articles covered in the claim, and that the articles were lost, destroyed, or withdrawn from the market, within six months preceding the date the claim is filed and shall be executed under the penalties of perjury. A claim for refund relating to articles lost or destroyed shall be supported as prescribed in § 275.165, and a claim relating to articles withdrawn from the market shall include a schedule prepared and verified as prescribed in §§ 275.170 and 275.171 or §§ 275.172 and 275.173. The original of the claim shall be filed with the regional director (compliance) for the region in which the tax was paid, or, where the tax was paid in more than one region, with the regional director (compliance) for any one of the regions in which the tax was paid. The duplicate of the claim, with the copy of any verified supporting schedules, shall be retained by the claimant.

(68A Stat. 907, as amended, 72 Stat. 1419, as amended; 26 U.S.C. 7652, 5705)

[T.D. 6871, 31 FR 46, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19341, May 22, 1987]

TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES LOST OR DESTROYED

**§ 275.165 Action by taxpayer.**

Where tobacco products and cigarette papers and tubes which have been imported or brought into the United States are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, and the taxpayer desires to file claim for refund of the tax on such articles, he shall, in addition to complying with the requirements of § 275.163, indicate on the claim the nature, date, place, and extent of such loss or destruction. The claim shall be accompanied by such evidence as is necessary to establish to the satisfac-

tion of the regional director (compliance) that the claim is valid.

(72 Stat. 1419, as amended; 26 U.S.C. 5705)

[T.D. 6871, 31 FR 46, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES WITHDRAWN FROM THE MARKET

**§ 275.170 Reduction of tobacco products to materials; action by regional director (compliance).**

(a) *General.* Where tobacco products and cigarette papers and tubes which have been imported or brought into the United States are withdrawn from the market and the taxpayer desires to file claim for refund of the tax on the articles, he shall, in addition to the requirements of § 275.163, assemble the articles at any suitable place, if they are to be destroyed or reduced to tobacco. The taxpayer shall group the articles according to the rates of tax applicable to the articles, and shall prepare a schedule of the articles on ATF Form 3069 (5200.7), in triplicate. All copies of the schedule shall be forwarded to the regional director (compliance) for the region in which the tobacco products and cigarette papers and tubes are assembled.

(b) *Large cigars.* Refund or credit of tax on large cigars withdrawn from the market is limited to the minimum amount applicable to that brand and size of cigar during the required record retention period (see § 275.22) except where the importer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market the importer shall include a certification on either ATF Form 3069 (5200.7) or ATF Form 2635 (5620.8) to read as follows:

The amounts claimed relating to large cigars are based on the lowest (insert either "wholesale price" or "sale price", as applicable) applicable to the cigars during the required record retention period, except where specific documentation is submitted with

the claim to establish that any greater amount of tax claimed was actually paid.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1419, as amended (26 U.S.C. 5705))

[T.D. ATF-80, 46 FR 18311, Mar. 24, 1981, as amended by T.D. ATF-232, 51 FR 28086, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19341, May 22, 1987; T.D. ATF-307, 55 FR 52745, Dec. 21, 1990]

**§ 275.171 Reduction of tobacco products to materials, action by regional director (compliance).**

Upon receipt of a schedule of tobacco products and cigarette papers and tubes which have been imported or brought into the United States and which are withdrawn from the market by a taxpayer who desires to destroy such articles or, in the case of tobacco products, reduce them to tobacco, the regional director (compliance) may assign an ATF officer to verify the schedule and supervise destruction of the articles (and stamps, if any) or the reduction of tobacco products to tobacco, or the regional director (compliance) may authorize the taxpayer to destroy the articles (and stamps, if any) or reduce tobacco products to tobacco without supervision by so stating on the original and one copy of the schedule returned to the taxpayer.

(72 Stat. 1419, as amended; 26 U.S.C. 5705)

[T.D. 6871, 31 FR 46, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28087, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

**§ 275.172 Return to nontaxpaid status, action by taxpayer.**

(a) *General.* Where tobacco products and cigarette papers and tubes which have been imported or brought into the United States are withdrawn from the market and the taxpayer desires to file a claim for refund of the tax on the articles and return them to a nontaxpaid status, he shall, in addition to the requirements of § 275.163, assemble the articles in or adjacent to the factory in which the articles are to be retained or received in a nontaxpaid status. The taxpayer shall group the articles according to the rates of tax applicable to the articles, and shall prepare a schedule of the articles, on ATF Form 3069 (5200.7), in triplicate. All copies of the schedule shall be forwarded to the

regional director (compliance) for the region in which the tobacco products and cigarette papers and tubes are assembled.

(b) *Large cigars.* Refund or credit of tax on large cigars withdrawn from the market is limited to the minimum amount applicable to that brand and size of cigar during the required record retention period (see § 275.22) except where the importer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market the importer shall include a certification on either ATF Form 3069 (5200.7) or ATF Form 2635 (5620.8) to read as follows:

The amounts claimed relating to large cigars are based on the lowest (insert either "wholesale price" or "sale price", as applicable) applicable to the cigars during the required record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid.

(Sec. 202, Pub. L. 85-859, 72 Stat. 1419, as amended (26 U.S.C. 5705))

[T.D. ATF-80, 46 FR 18311, Mar. 24, 1981, and amended by T.D. ATF-232, 51 FR 28087, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19341, May 22, 1987; T.D. ATF-307, 55 FR 52745, Dec. 21, 1990]

**§ 275.173 Return to nontaxpaid status, action by regional director (compliance).**

Upon receipt of a schedule of tobacco products and cigarette papers and tubes which have been imported or brought into the United States and which are withdrawn from the market by a taxpayer who desires to return such articles to a nontaxpaid status, the regional director (compliance) may assign an ATF officer to verify the schedule and supervise disposition of the articles (and destruction of the stamps, if any) or the regional director (compliance) may authorize the receiving manufacturer to verify the schedule and disposition of the articles (and destruction of the stamps, if any) covered therein, without supervision, by so stating on the original and one copy of the schedule returned to the manufacturer. Where the receipt in a factory of tobacco products and cigarette papers and tubes has been verified, such articles shall be treated by the receiving manufacturer as nontaxpaid and

shall be covered by the manufacturer's bond.

(72 Stat. 1419, as amended; 26 U.S.C. 5705)

[T.D. 6871, 31 FR 47, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28087, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

**§ 275.174 Disposition of tobacco products and cigarette papers and tubes, and schedule.**

When an ATF officer is assigned to verify the schedule and supervise destruction or other disposition of tobacco products and cigarette papers and tubes which have been imported or brought into the United States, such officer shall, upon completion of his assignment, execute a certificate on all copies of the schedule to show the disposition and the date of disposition of such articles. The ATF officer shall return the original and one copy of the certified schedule to the taxpayer. When a taxpayer destroys such articles (and stamps, if any) or reduces tobacco products to materials, or a receiving manufacturer verifies the schedule and disposition of such articles (and stamps, if any), he shall execute a certificate on the original and the copy of the schedule returned to him, to show the disposition and the date of disposition of the articles. The taxpayer shall attach the original of the certified schedule to his claim for refund.

(72 Stat. 1419, as amended; 26 U.S.C. 5705)

[T.D. 6871, 31 FR 47, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28087, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

**Subpart J—Records and Reports**

SOURCE: T.D. ATF-40, 42 FR 5007, Jan. 26, 1977, unless otherwise noted.

**§ 275.181 Records of large cigars.**

Every person who imports large cigars for sale within the United States shall keep the records required by this section.

(a) *Wholesale prices*—(1) *Basic record.* The importer shall keep a record to show each wholesale price (suggested delivery price to retailers or wholesale price as determined by the Associate

Director (compliance operations) under § 275.39(i)), which is applicable to large cigars removed (entered or withdrawn). No later than the tenth business day in January of each year the importer shall prepare such a record to show the wholesale price in effect on the first day of that year for each brand and size of his large cigars. However, for the year 1977 the record shall be prepared no later than the tenth business day in February, to show the prices in effect as of February 1, 1977. The importer shall thereafter enter in the record the wholesale price and its effective date for any large cigar removed (entered or withdrawn) which was not previously entered in the record, and any change in a price from that shown in the record, within ten business days after such removal or change in price. The record shall be a continuing one for each brand and size of cigar (and type of packaging, if pertinent), so that the taxable price on any date may be readily ascertained.

(2) *Copies of price announcements.* The importer shall retain a copy of each general announcement which he issues within his organization or to the trade about establishment or change of large cigar wholesale prices. If the copy does not show the actual date when issued it shall be annotated to show this information, and it shall also be annotated to show the date on which a copy was submitted to the Associate Director (compliance operations) in accordance with § 275.183.

(3) *Copies of entry and withdrawal forms.* The importer shall keep a copy of each customs entry or withdrawal form on which internal revenue tax for large cigars is declared pursuant to § 275.81.

(4) *Alternative record.* If an importer has so few import transactions and/or brands and sizes of large cigars that retention of an appropriate copy of each entry and withdrawal form required under paragraph (a)(3) of this section will provide an adequate record of wholesale prices, then the record required under paragraph (a)(1) of this section need not be kept. In such case the entry and withdrawal forms must identify the brands and sizes of cigars covered and show the corresponding quantity and wholesale price for each.

If such information was not originally entered on the form it may be included by annotation. Whenever the regional director (compliance) finds that alternative records being kept pursuant to this paragraph are inadequate for the intended purpose, he may so notify the importer in writing, after which time the importer shall keep the record required under paragraph (a)(1) of this section.

(b) *Basic record of sale prices.* The importer shall keep such records as are necessary to establish and verify the sale price which applies to the large cigars removed (entered or withdrawn). The record shall be a continuing one for each brand and size of cigar so that the price on which the tax is based may be readily ascertained.

(Approved by the Office of Management and Budget under control number 1512-0368)

[T.D. ATF-40, 42 FR 5007, Jan. 26, 1977, as amended by T.D. ATF-172, 49 FR 14943, Apr. 16, 1984; T.D. ATF-307, 55 FR 52745, Dec. 21, 1990]

#### § 275.182 Availability of records.

The records required under § 275.181 shall be kept by the importer at his usual place of business unless otherwise authorized in writing by the regional director (compliance), and shall be made available for inspection by any ATF officer upon his request. (For retention period, see § 275.22.)

#### § 275.183 [Reserved]

### PART 285—RESERVED

## PART 290—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

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Sec.

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