AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Title 27—Alcohol, Tobacco Products and Firearms

(This book contains part 200 to End)

Part

CHAPTER I—Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury—Continued 200

CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY—Continued

EDITORIAL NOTE: The regulations appearing in this title were originally issued by the Federal Alcohol Administration which was abolished by Reorganization Plan No. III, Apr. 2, 1940, 5 FR 2107, 3 CFR, 1940 Supp. Treasury Order 30, June 12, 1940, 5 FR 2212, issued under sections 2 and 8 of Reorganization Plan No. III (54 Stat. 1232) provided that these regulations continue in effect as regulations of the Bureau of Alcohol, Tobacco and Firearms.

SUBCHAPTER M—ALCOHOL, TOBACCO AND OTHER EXCISE TAXES—Continued

Part		*Page*
200	Rules of practice in permit proceedings	5
250	Liquors and articles from Puerto Rico and the Virgin Islands	23
251	Importation of distilled spirits, wines, and beer	76
252	Exportation of liquors	93
270	Manufacture of tobacco products and cigarette papers and tubes	140
275	Importation of tobacco products and cigarette papers and tubes	197
285	[Reserved]	
290	Exportation of tobacco products and cigarette papers and tubes, without payment of tax, or with drawback of tax	231
295	Removal of tobacco products and cigarette papers and tubes, without payment of tax for use of the United States	271
296	Miscellaneous regulations relating to tobacco products and cigarette papers and tubes	278

SUPPLEMENTARY PUBLICATIONS: Additional supplementary publications are issued covering individual parts of the *Alcohol, Tobacco and Firearms Regulations*, the *Tobacco Tax Guide*, and *Regulations Under Tax Conventions*.

CROSS REFERENCES: U.S. Customs Service, Department of the Treasury: See 19 CFR chapter I.

Federal Trade Commission: See 16 CFR chapter I.

Food and Drug Administration, Department of Health and Human Services: See 21 CFR chapter I.

Foreign Trade Statistics, Bureau of the Census, Department of Commerce: See 15 CFR part 30.

Postal Service: See 39 CFR 111.5(a)(2)(iii) or Domestic Mail Manual 123.3.

Other regulations issued by the Department of the Treasury appear in title 26 and 31 CFR chapter I.

ABBREVIATIONS:

The following abbreviations are used in this chapter:

ATF = *Alcohol, Tobacco and Firearms.*

TD = *Treasury Decision.*

SUBCHAPTER M—ALCOHOL, TOBACCO AND OTHER EXCISE TAXES—Continued

PART 200—RULES OF PRACTICE IN PERMIT PROCEEDINGS

Subpart A—Scope and Construction of Regulations

Sec.
200.1 Scope of part.
200.2 Liberal construction.
200.3 Forms prescribed.

Subpart B—Definitions

200.5 Meaning of terms.

Subpart C—General

200.25 Communications and pleadings.
200.26 Service on applicant or respondent.
200.27 Service on the director of industry operations or Director.

TIME

200.28 Computation.
200.29 Continuances and extensions.

REPRESENTATION AT HEARINGS

200.30 Personal representation.
200.31 Attorneys and other representatives.

Subpart D—Compliance and Settlement

200.35 Opportunity for compliance.

INFORMAL SETTLEMENT

200.36 General.
200.37 Notice of contemplated action.
200.38 Limitation on informal settlement.

Subpart E—Grounds for Citation

200.45 Basic permits.
200.46 Tobacco permits.
200.48 Operating permits and industrial use permits.
200.49 Applications for basic permits.
200.49a Applications for operating permits and industrial use permits.
200.49b Applications for tobacco permits.

Subpart F—Hearing Procedure

CITATIONS

200.55 Content.
200.56 Form.
200.57 Execution and disposition.
200.58 Designated place of hearing.

REQUEST FOR HEARING

200.59 Application cases.
200.60 Suspension, revocation, or annulment proceedings.
200.61 Notice of hearing.

NON-REQUEST FOR HEARING

200.62 Application.
200.63 Suspension, revocation, or annulment proceedings.

ANSWERS

200.64 When required.
200.65 Answer admitting facts.
200.66 Prehearing conferences.

FAILURE TO APPEAR

200.67 Applications.
200.68 [Reserved]
200.69 Suspension, revocation, or annulment.

WAIVER OF HEARING

200.70 Application proceedings.
200.71 Adjudication based upon written submissions.

SURRENDER OF PERMIT

200.72 Before citation.
200.73 After citation.

MOTIONS

200.74 General.
200.75 Prior to hearing.
200.76 At hearing.

HEARING

200.77 General.
200.78 Applications.
200.79 Suspension, revocation, or annulment.

BURDEN OF PROOF

200.80 Applications.
200.81 Suspension, revocation, or annulment.

GENERAL

200.82 Stipulations at hearing.
200.83 Evidence.
200.84 Closing of hearings; arguments, briefs and proposed findings.
200.85 Reopening of the hearing.

RECORD OF TESTIMONY

200.86 Stenographic record.
200.87 Oath of reporter.

Subpart G—Administrative Law Judges

200.95 Responsibilities of administrative law judges.
200.96 Disqualification.
200.97 Powers.
200.98 Separation of functions.
200.99 Conduct of hearing.
200.100 Unavailability of administrative law judge.

Subpart H—Decisions

200.105 Administrative law judge's finding and decision or recommended decision.
200.106 Certification and transmittal of record and decision.

ACTION BY DIRECTOR OF INDUSTRY OPERATIONS

200.107 Application proceedings.
200.107a Director of Industry Operations' decision.
200.108 Suspension, revocation, or annulment proceedings.
200.109 Notice to Director.
200.110 Proceedings involving violations not within region of issuance of permit.

Subpart I—Review

200.115 Appeal on petition to the Director.
200.116 Review by Director.
200.117 Permit privileges, exceptions.
200.118 Court review.
200.119 [Reserved]

Subpart J—Miscellaneous

200.125 Depositions.
200.126 Subpoenas.
200.127 Witnesses and fees.

RECORD

200.128 What constitutes record.
200.129 Availability.

AUTHORITY: 26 U.S.C. 7805, 27 U.S.C. 204.

SOURCE: 21 FR 1441, Mar. 6, 1956, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

EDITORIAL NOTE: Nomenclature changes to part 200 appear at T.D. ATF–414, 64 FR 49084, Sept. 10, 1999.

Subpart A—Scope and Construction of Regulations

§ 200.1 Scope of part.

The regulations in this part govern the procedure and practice in connection with the disapproval of applications for basic permits, and for the suspension, revocation and annulment of such permits under sections 3 and 4 of the Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*) and disapproval, suspension, and revocation of permits under title 26 of the U.S. Code. The regulations in this part shall also govern, insofar as applicable, any adversary proceeding involving adjudication required by statute to be determined on the record after opportunity for hearing, under laws administered by the Bureau of Alcohol, Tobacco and Firearms.

[21 FR 1441, Mar. 6, 1956, as amended by T.D. 6389, 24 FR 4790, June 12, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 200.1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 200.2 Liberal construction.

The regulations in this part shall be liberally contrued to secure just, expeditious, and efficient determination of the issues presented. The Rules of Civil Procedure for the U.S. District Courts (28 U.S.C. appendix), where applicable, shall be a guide in any situation not provided for or controlled by this part but shall be liberally construed or relaxed when necessary.

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

[T.D. ATF–92, 46 FR 46917, Sept. 23, 1981]

§ 200.3 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.

(b) Requests for forms should be mailed to the ATF 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 46918, Sept. 23, 1981, as amended by T.D. ATF–372, 61 FR 20725, May 8, 1996]

Subpart B—Definitions

§ 200.5 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this subpart. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms ''include'' and ''including'' do not exclude things not enumerated which are in the same general class.

Administrative law judge. The person appointed pursuant to 5 U.S.C. 3105, designated to preside over any administrative proceedings under this part.

Applicant. Any person who has filed an initial application for a permit under the Federal Alcohol Administration Act or the Internal Revenue Code (26 U.S.C.).

Application. Any application for a permit under the Federal Alcohol Administration Act or the Internal Revenue Code (26 U.S.C.) for operations not covered by an existing permit.

Attorney for the Government. The attorney in the appropriate office of Chief Counsel authorized to represent the Director of Industry Operations in the proceeding.

CFR. The Code of Federal Regulations.

Citation. Includes any notice contemplating the disapproval of an application or any order to show cause why a permit should not be suspended, revoked or annulled.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, D.C.

Director of Industry Operations. The principal ATF official in a field operations division responsible for administering the regulations in this part.

Initial decision. The decision of the Director of Industry Operations or administrative law judge in a proceeding on the suspension, revocation or annulment of a permit.

Other term. Any other term defined in the Federal Alcohol Administration Act (27 U.S.C. 201), the Internal Revenue Code (26 U.S.C.) or the Administrative Procedure Act (5 U.S.C. 1001), where used in this part, shall have the meaning assigned to it therein.

Permit—(a) *Alcohol fuel permit*. The document issued under 26 U.S.C. 5181, authorizing the person named therein to engage in the business described therein.

(b) *Basic permit*. The document authorizing the person named therein to engage in a designated business or activity under the Federal Alcohol Administration Act.

(c) *Industrial use permit*. The document issued under 26 U.S.C. 5271(a), authorizing the person named therein to withdraw and use distilled spirits free of tax in accordance with part 22 of this chapter, or withdraw and deal in or use specially denatured spirits in accordance with part 20 of this chapter, as described therein.

(d) *Operating permit*. The document issued under 26 U.S.C. 5171, authorizing the person named therein to engage in the business described therein.

(e) *Tobacco permit*. The document issued under 26 U.S.C. 5713(a), authorizing the person named therein to engage in the business described therein.

Permittee. Any person holding a basic permit under the Federal Alcohol Administration Act or the Internal Revenue Code (26 U.S.C.).

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

Recommended decision. The advisory decision of the administrative law judge in any proceeding on an initial application for a permit.

Respondent. Any person holding a permit against which an order has been issued to show cause why such permit should not be suspended, revoked or annulled.

[T.D. ATF–48, 43 FR 13543, Mar. 31, 1978; 44 FR 55845, Sept. 28, 1978, and amended by T.D. ATF–62, 44 FR 71696, Dec. 11, 1979; T.D. ATF–199, 50 FR 9196, Mar. 6, 1985; T.D ATF–244, 51 FR 45762, Dec. 22, 1986; T.D. ATF–374, 61 FR 29956, June 13, 1996; T.D. ATF–414, 64 FR 49084, Sept. 10, 1999]

Subpart C—General

§ 200.25 Communications and pleadings.

All communications to the Government regarding the procedures set forth in this part and all pleadings, such as answers, motions, requests, or other papers or documents required or permitted to be filed under this part, relating to a proceeding pending before an administrative law judge, shall be addressed to the administrative law judge, at his post of duty or to the administrative law judge, in care of the director of industry operations of the region in which the business of the applicant or respondent is operated or proposed to be operated to be forwarded to the examiner. Communications concerning proceedings not pending before an administrative law judge, should be addressed to the Director of Industry Operations (DIO) or Director, as the case may be. All pleadings should be filed in quadruplicate.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.26 Service on applicant or respondent.

All orders, notices, citations, motions and other formal documents, except subpoenas, required to be served under the regulations in this part may be served by mailing a signed duplicate original copy thereof to the permittee or applicant by registered mail, with request for return receipt card, at the address stated in his permit or application or at his last known address, or by delivery of such original copy to the permittee or applicant personally, or in the case of a corporation, partnership, or other unincorporated association, by delivering the same to an officer, or manager, or general agent thereof, or to its attorney of record. Such personal service may be made by any employee of the Bureau of Alcohol Tobacco and Firearms or by any employee of the Treasury Department designated by the Secretary. A certificate of mailing and the return receipt card, or certificate of service signed by the person making such service, shall be filed as a part of the record.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55846, Sept. 28, 1979]

§ 200.27 Service on the director of industry operations or Director.

Pleadings, motions, notices, and other formal documents, except subpoenas, may be served, by registered mail or personally, on the director of industry operations (or upon the attorney for the Government on behalf of the director of industry operations, or on the Director, if the proceeding is before him for review on appeal.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

TIME

§ 200.28 Computation.

In computing any period of time prescribed or allowed by this part, the day of the act, event or default after which the designated period of time is to run, is not to be included. The last day of the period to be computed is to be included, unless it be a Saturday, Sunday or legal holiday, in which event the period runs until the next day which is neither a Saturday, Sunday or legal holiday. Pleading, requests, or other papers or documents required or permitted to be filed under this part must be received for filing at the appropriate office within the time limits, if any, for such filing.

§ 200.29 Continuances and extensions.

For good cause shown, the administrative law judge, Director, director of industry operations, or the administrative law judge, as the case may be, may grant continuances and as to all matters pending before him extend any time limit prescribed by the regulations in this part (except where the time limit is statutory).

(26 U.S.C. 7805 (68A Stat. 917), 27 U.S.C. 205 (49 Stat. 981 as amended), 18 U.S.C. 926 (82 Stat. 959), and Sec. 38, Arms Export Control Act (22 U.S.C. 2778, 90 Stat. 744))

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 43 FR 13531, Mar. 31, 1978; T.D. ATF–374, 61 FR 29957, June 13, 1996]

REPRESENTATION AT HEARINGS

§ 200.30 Personal representation.

Any individual or member of a partnership may after adequate identification, appear for himself, or such partnership, and a corporation or association may be represented by a bona fide officer of such corporation or association, upon showing of adequate authorization.

§ 200.31 Attorneys and other representatives.

A respondent or applicant may be represented by an attorney, certified public accountant, or other person enrolled to practice before the Bureau of Alcohol, Tobacco and Firearms under 31 CFR part 8—Practice Before the Bureau of Alcohol, Tobacco and Firearms. The representative shall file in the proceeding a duly executed power of attorney to represent the applicant or respondent. See 26 CFR 601.501 through 601.527 (conference and practice requirements). The director of industry operations shall be represented in proceedings under this part by the attorney for the Government who is authorize to execute and file motions, briefs, and other papers in the proceeding, on behalf of the director of industry operations, in his own name as ''Attorney for the Government''.

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

[T.D. ATF–48, 44 FR 55846, Sept. 28, 1979, as amended by T.D. ATF–92, 46 FR 46918, Sept. 23, 1981; T.D. ATF–374, 61 FR 29957, June 13, 1996]

Subpart D—Compliance and Settlement

§ 200.35 Opportunity for compliance.

Except in proceedings involving willfulness or those in which the public interest requires otherwise, and the director of industry operations so alleges in his citation, stating his reasons therefor, no permit shall be suspended, revoked or annulled, unless, prior to the institution of proceedings, facts or conduct warranting such action shall have been called to the attention of the permittee by the director of industry operations, in writing, and the permittee shall have been accorded an opportunity to demonstrate or achieve compliance with all lawful requirements, as set forth in section 9(b) of the Administrative Procedure Act. If the permittee fails to meet the requirements of the law and regulations within such reasonable time as may be specified by the director of industry operations, proceedings for suspension, revocation or annulment of the permit shall be initiated.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9196, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

INFORMAL SETTLEMENT

§ 200.36 General.

In all proceedings in which a permittee is cited to show cause why the permit should not be suspended, revoked or annulled, the permittee shall be afforded opportunity for the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment, where time, the nature of the proceeding, and the public interest permit. Such submittals should be made to the director of industry operations, but may be made through the attorney for the Government. Where necessary, the date of the hearing may be postponed, pending consideration of such proposals, when they are made in good faith and not for the purpose of delay. If proposals of settlement are submitted, and they are considered unsatisfactory, the director of industry operations may reject the proposals and may, either directly or through the attorney for the Government, inform the permittee of any conditions on which the alleged violations may be settled. If the proposals of settlement are considered satisfactory to the director of industry operations, the permittee shall be notified thereof and the proceeding shall be dismissed, unless such proposals of settlement include a monetary offer in compromise considered satisfactory to the director of industry operations, in which event the proceeding shall be held in abeyance pending final action on such monetary offer in compromise.

[T.D. ATF–244, 51 FR 45762, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.37 Notice of contemplated action.

Where the director of industry operations believes that the matter may be settled informally, i.e., without formal administrative proceedings, he shall, in accordance with section 5 (b) of the Administrative Procedure Act, prior to the issuance of a citation, inform the permittee of the contemplated issuance of an order to show cause why his permit should not be suspended, revoked or annulled, and that he is being given an opportunity for the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment. The notice should inform the permittee of the charges on which the citation would be based, if issued, and afford him a period of 10 days from the date of the notice, or such longer period as the director of industry operations deems necessary, in which to submit proposals of settlement to the director of industry operations. Where informal settlement is not reached promptly because of inaction of the permittee or proposals are made for the purpose of delay, a citation shall be issued in accordance with §§ 200.55 and 200.56.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9196, Mar. 6, 1985; T.D. ATF–244, 51 FR 45763, Dec. 22, 1986; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.38 Limitation on informal settlement.

Where the evidence is conclusive and the nature of the violation is such as to preclude any settlement short of suspension, revocation or annulment, or the violation is of a continuing character that necessitates immediate action to protect the public interest, or where the director of industry operations believes that any informal settlement of the alleged violation will not insure future compliance with the laws and regulations, or in any similar case where the circumstances are such as to clearly preclude informal settlement, and the director of industry operations so finds and states his reasons therefor as provided in § 200.35, he may restrict settlement to that provided in § 200.71.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

Subpart E—Grounds for Citation

§ 200.45 Basic permits.

Whenever the director of industry operations has reason to believe that any person has willfully violated any of the conditions of his basic permit, or has not in fact or in good faith engaged in the operations authorized by such permit for a period of more than two years, or that such permit was procured through fraud, misrepresentation or concealment of material facts, he shall issue a citation for the suspension, revocation or annulment of such permit, as the case may be.

[21 FR 1441, Mar. 6, 1956, as amended by T.D. 6389, 24 FR 4790, June 12, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.46 Tobacco permits.

Whenever the director of industry operations has reason to believe that any person has not in good faith complied with any of the provisions of 26 U.S.C. chapter 52 or regulations issued thereunder, or has not complied with any provision of 26 U.S.C. which involves intent to defraud, or has violated any of the conditions of his permit, or has failed to disclose any material information required, or has made any materially false statement, in the application for his permit, or has failed to maintain his premises in such manner as to protect the revenue, the director of industry operations shall issue a citation for the revocation or suspension of such permit.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55846, Sept. 28, 1979; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.48 Operating permits and industrial use permits.

Whenever the director of industry operations has reason to believe that any person who has an operating permit or an industrial use permit:

(a) Has not in good faith complied with the provisions of 26 U.S.C. chapter 51 or enabling regulations; or

(b) Has violated the conditions of such permit; or

(c) Has made any false statement as to any material fact in his application therefor; or

(d) Has failed to disclose any material information required to be furnished; or

(e) Has violated or conspired to violate any law of the United States relating to intoxicating liquor or has been convicted of any offense under 26 U.S.C. punishable as a felony or of any conspiracy to commit such an offense; or

(f) Is (in the case of any person who has a permit to procure or use distilled spirits free of tax for nonbeverage purposes and not for resale or use in the manufacture of any product for sale, or to procure, deal in, or use specially denatured distilled spirits) by reason of his operations, no longer warranted in procuring or using the distilled spirits or specially denatured distilled spirits authorized by his permit; or

(g) Has, in the case of any person who has a permit to procure, deal in, or use specially denatured distilled spirits, manufactured articles which do not correspond to the descriptions and limitation prescribed by law and regulations; or

(h) Has not engaged in any of the operations authorized by the permit for a period of more than 2 years;

He may issue a citation for the revocation or suspension of such permit.

(72 Stat. 1349, 1370; 26 U.S.C. 5171, 5271)

[T.D. 6389, 24 FR 4790, June 12, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55846, Sept. 28, 1979; T.D. ATF–199, 50 FR 9196 and 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.49 Applications for basic permits.

If, upon examination of any application (including a renewal application) for a basic permit, the director of industry operations has reason to believe that the applicant is not entitled to such permit he shall issue a citation for the contemplated disapproval of the application.

[T.D. 6954, 33 FR 6814, May 4, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975; as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.49a Applications for operating permits and industrial use permits.

If, on examination of an application for an operating permit or an industrial use permit, the director of industry operations has reason to believe:

(a) In case of an application to withdraw and use distilled spirits free of tax, the applicant is not authorized by law or regulations issued pursuant thereto to withdraw or use such distilled spirits; or

(b) The applicant (including in the case of a corporation, any officer, director, or principal stockholder and, in the case of a partnership, a partner) is, by reason of the applicant's business experience, financial standing, or trade connections, not likely to maintain operations in compliance with 26 U.S.C. chapter 51 or implementing regulations; or

(c) The applicant has failed to disclose any material information required, or has made any false statement as to any material fact, in connection with his application; or

(d) The premises on which the applicant proposes to conduct the business are not adequate to protect the revenue;

He may issue a citation for the contemplated disapproval of the application.

(72 Stat. 1349, 1370; 26 U.S.C. 5171, 5271)

[T.D. 6389, 24 FR 4791, June 12, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55846, Sept. 28, 1979; T.D. ATF–199, 50 FR 9196 and 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.49b Applications for tobacco permits.

If, on examination of an application for a tobacco permit provided for in 26 U.S.C. 5713, the director of industry operations has reason to believe—

(a) The premises on which it is proposed to conduct the business are not adequate to protect the revenue; or

(b) The applicant for a permit does not meet the minimum manufacturing and activity requirements in 27 CFR 270.61; or

(c) The applicant (including, in the case of a corporation, any officer, director, or principal stockholder and, in the case of a partnership, a partner) is, by reason of his business experience, financial standing, or trade connections, not likely to maintain operations in compliance with 26 U.S.C. chapter 52, or has failed to disclose any material information required or made any material false statement in the application; the director of industry operations may issue a citation for the contemplated disapproval of the application.

(72 Stat. 1421; 26 U.S.C. 5712)

[T.D. 6389, 24 FR 4791, June 12, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55846, Sept. 28, 1979; T.D. ATF–374, 61 FR 29957, June 13, 1996; T.D. ATF–421, 64 FR 71923, Dec. 22, 1999]

Subpart F—Hearing Procedure

CITATIONS

§ 200.55 Content.

(a) Citation for the suspension, revocation or annulment of a permit shall be issued by the director of industry operations and shall set forth (1) the sections of law and regulations relied upon for authority and jurisdiction, (2) in separate paragraphs, the matters of fact constituting the violations specified, dates, places, section of law and regulations violated, and (3) the permittee has 15 days within which to request a hearing before an administrative law judge.

(b) Citations for the disapproval of an application for a permit shall set forth (1) the sections of law and regulations relied upon for authority and jurisdiction, (2) in separate paragraphs, the matters of fact and law relied upon for the contemplated disapproval of the application, and (3) that the application will be disapproved unless a hearing is requested within 15 days.

[T.D. ATF–244, 51 FR 45763, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.56 Form.

Citations shall be issued on the following forms:

(a) Form 5000.6. ''Order To Show Cause'', shall be used for all citations for the suspension, revocation, or annulment, as the case may be, of permits under the Internal Revenue Code or the Federal Alcohol Administration Act.

(b) Forms 5000.17. ''Notice of Contemplated Disapproval of Application For Basic Permit,'' shall be used to issue notice of contemplated disapproval of applications for permit.

[21 FR 1441, Mar. 6, 1956, as amended by T.D. 6389, 24 FR 4791, June 12, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 200.56, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 200.57 Execution and disposition.

Forms 5000.6 and 5000.17 shall be executed in quintuplicate. A signed duplicated original shall be served on the permittee. If a hearing is requested, one copy shall be sent to the administrative law judge designated to conduct the hearing. The original copy containing the certificate of service shall be placed in the official record of the proceeding; and the remaining copies shall be retained for the office of the director of industry operations.

[T.D. ATF–244, 51 FR 45763, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.58 Designated place of hearing.

The designated place of hearing shall be such as meets the convenience and necessity of the parties.

[T.D. 6389, 24 FR 4791, June 12, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975]

REQUEST FOR HEARING

§ 200.59 Application cases.

If the applicant for a permit desires a hearing, he shall file a request therefor, in writing, with the director of industry operations within fifteen days

after receipt of notice of the contemplated disapproval, in whole or in part, of his application.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.60 Suspension, revocation, or annulment proceedings.

(a) If a hearing is desired, the respondent shall file a request, in writing, with the director of industry operations within 15 days after receipt of the citation or within such time as the director of industry operations may allow.

(b) Where a respondent requests a hearing, the director of industry operations shall forward a copy of the request together with a copy of the citation to the Director for the assignment of an administrative law judge.

(c) After the Director notifies the director of industry operations of the assignment of the administrative law judge, the director of industry operations shall serve a notice of designation of the administrative law judge on the respondent.

(d) The administrative law judge shall set a time and place for a hearing and shall serve notice thereof on the parties at least 10 days in advance of the hearing date.

[T.D. ATF–244, 51 FR 45763, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.61 Notice of hearing.

In case a request for a hearing is filed by the applicant within the required time, the director of industry operations shall refer the matter to the administrative law judge and the administrative law judge shall set a time and place for a hearing and shall serve notice thereof upon the parties at least ten days in advance of the hearing date.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

NON-REQUEST FOR HEARING

§ 200.62 Application.

In the case of an application, if the applicant does not request a hearing within the time specified in § 200.59, or within such further time as the director of industry operations may in his discretion allow, the director of industry operations will by order, stating the findings upon which it is based, disapprove the application, and will serve signed duplicate original of such order on the applicant.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.63 Suspension, revocation, or annulment proceedings.

If the respondent does not request a hearing within the time specified in § 200.60, and does not file an answer as required in § 200.64, the district director shall make the initial decision in the case in accordance with § 200.79.

[T.D. ATF–244, 51 FR 45763, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

ANSWERS

§ 200.64 When required.

(a) Where the respondent requests a hearing in accordance with § 200.60, a written answer shall be filed with the administrative law judge and served on the director of industry operations within 15 days after service of the designation of the administrative law judge.

(b) Where no hearing is requested, the respondent shall file a written answer with the director of industry operations within 15 days after service of a citation.

(c) An answer shall contain a concise statement of the facts that constitute his grounds for defense. The hearing may be limited to the issues contained in the citation and the answer. The administrative law judge, or director of industry operations as the case may be, may, as a matter of discretion, waive any requirement of this section.

(d) Answers need not be filed in application proceedings.

[T.D. ATF–244, 51 FR 45763, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.65 Answer admitting facts.

If the respondent desires to waive the hearing on the allegations of fact set forth in the order to show cause, and does not contest the facts, the answer may consist of a statement that the respondent admits all material allegations of fact charged in the citation to be true. The director of industry operations shall thereupon base the decision on the citation and such answer although such an answer shall not affect the respondent's right to submit proposed findings of fact and conclusions of law, or the right to appeal.

[T.D. ATF–244, 51 FR 45763, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.66 Prehearing conferences.

In any proceeding the administrative law judge may, upon his own motion or upon the motion of one of the parties or their qualified representatives, in his discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider:

(a) The simplifications of the issues;

(b) The necessity of amendments to the pleadings;

(c) The possibility of obtaining stipulations, admissions of facts and of documents;

(d) The limitation of the number of expert witnesses; and

(e) Such other matters as may aid in the disposition of the proceeding. As soon as practicable after such conference, the administrative law judge shall issue an order which recites the action taken thereat, the amendments allowed to the pleadings and the agreements made by the parties or their qualified representatives as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admission or agreement; and such order shall control the subsequent course of the proceedings, unless modified for good cause by a subsequent order.

FAILURE TO APPEAR

§ 200.67 Applications.

Where the applicant on an application for a permit has requested a hearing and does not appear at the appointed time and place, and evidence has not been offered to refute or explain the grounds upon which disapproval of the application is contemplated, this shall be construed as a waiver of the hearing, a default will be entered and the administrative law judge shall recommend disapproval of said application.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985]

§ 200.68 [Reserved]

§ 200.69 Suspension, revocation, or annulment.

If on the date set for the hearing respondent does not appear and no evidence has been offered, the attorney for the Government will proceed ex parte and offer for the record sufficient evidence to make a prima facie case. At such hearing, documents, statements and affidavits may be submitted in lieu of testimony of witnesses.

WAIVER OF HEARING

§ 200.70 Application proceedings.

At any time prior to final action thereon the applicant may, by filing written notice with the director of industry operations, withdraw his application. If such a notice is filed after referral to the administrative law judge of a proceeding on an application for a permit and prior to issuance of his recommended decision or decision thereon, the director of industry operations shall move the administrative law judge to dismiss the proceedings as moot. If such a notice is filed while the proceeding is before the director of industry operations and prior to final action thereon, that is, either (a) after issuance of a notice of contemplated disapproval and before referral of the proceeding to the administrative law

judge or (b) after issuance by the administrative law judge of his recommended decision and prior to the director of industry operations' order disapproving the application, the director of industry operations shall, by order, dismiss the proceeding.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.71 Adjudication based upon written submissions.

The respondent may waive the hearing before the administrative law judge, and stipulate that the matter will be adjudicated by the director of industry operations based upon written submissions. Written submissions may include stipulations of law or facts, proposed findings of fact and conclusions of law, briefs, or any other documentary material. The pleadings together with the written submissions of both the attorneys for the Government and the respondent shall constitute the record on which the initial decision shall be based. The election to contest the citation without a hearing under this section does not affect the respondent's right to appeal.

[T.D. ATF–244, 51 FR 45763, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

SURRENDER OF PERMIT

§ 200.72 Before citation.

If a respondent surrenders the permit before citation, the director of industry operations may accept the surrender. But if the evidence, in the opinion of the director of industry operations, warrants citation for suspension, revocation or annulment, the surrender shall be refused and the director of industry operations shall issue the citation.

[T.D. ATF–244, 51 FR 45764, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.73 After citation.

If a respondent surrenders the permit after citation and prior to an initial decision, the director of industry operations may accept the surrender of the permit and dismiss the proceeding as moot. If, however, in the opinion of the director of industry operations, the evidence is such as to warrant suspension, revocation or annulment, as the case may be, the surrender of the permit shall be refused, and the proceeding shall continue.

[T.D. ATF–244, 51 FR 45764, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

MOTIONS

§ 200.74 General.

All motions shall be made and addressed to the officer before whom the proceeding is pending, and copies of all motion papers shall be served upon the other party or parties. Such officer may dispose of any motion without oral argument, but he may, if he so desires, set it down for hearing and request argument. He may dispose of such motion prior to the hearing on the merits or he may postpone the disposition until the hearing on the merits. No appeal may be taken from any ruling on a motion until the whole record is certified for review. Examples of typical motions may be found in the Rules of Civil Procedure referred to in § 200.2.

§ 200.75 Prior to hearing.

All motions which should be made prior to the hearing, such as motion directed to the sufficiency of the pleadings or of preliminary orders, shall be filed in writing with the director of industry operations issuing the citation or the administrative law judge if the matter has been referred to him, and shall briefly state the order or relief applied for and the grounds for such motion, and shall be filed within 15 days after service of the citation.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.76 At hearing.

Motions at the hearing may be made in writing to the administrative law judge or stated orally on the record.

HEARING

§ 200.77 General.

If a hearing is requested, it shall be held at the time and place stated in the notice of hearing unless otherwise ordered by the administrative law judge.

[T.D. ATF–244, 51 FR 45764, Dec. 22, 1986]

§ 200.78 Applications.

The administrative law judge who presides at the hearing on applications shall recommend a decision to the director of industry operations who shall make the initial decision as provided in § 200.107. The applicant may be directed by the director of industry operations to produce such records as may be deemed necessary for examination. All hearings on applications shall be open to the public subject to such restrictions and limitations as may be consistent with orderly procedure.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.79 Suspension, revocation, or annulment.

(a) The administrative law judge who presides at the hearing in proceedings for the suspension, revocation and annulment of permits shall make the initial decision.

(b) If no hearing is requested, the director of industry operations shall make the initial decision.

[T.D. ATF–244, 51 FR 45764, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

BURDEN OF PROOF

§ 200.80 Applications.

In hearings on the contemplated disapproval of applications there may be incorporated in the record sufficient testimony, reports, affidavits and other documents to be considered only for the limited purpose of establishing probable cause for the issuance of the notice of contemplated disapproval by showing that the director of industry operations had reason to believe that the applicant is not entitled to a permit. The burden of proof shall be upon the applicant to produce evidence to show he is entitled to a permit. The director of industry operations may, instead of following the aforementioned procedure, assume the burden of going forward.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.81 Suspension, revocation, or annulment.

In hearings on the suspension, revocation, or annulment of a permit, the burden of proof is on the Government.

[T.D. ATF–199, 50 FR 9197, Mar. 6, 1985]

GENERAL

§ 200.82 Stipulations at hearing.

If there has been no prehearing conference under § 200.66, the administrative law judge shall at the beginning of the hearing, require that the parties attempt to arrive at such stipulations as will eliminate the necessity of taking evidence with respect to allegations of fact concerning which there is no substantial dispute. The administrative law judge should take similar action, where it appears appropriate, throughout the hearing and should call and conduct any conferences which he deems advisable with a view to the simplification, clarification, and disposition of any of the issues involved.

§ 200.83 Evidence.

Any evidence which would be admissible under the rules of evidence governing proceedings in matters not involving trial by jury in the Courts of the United States, shall be admissible and controlling as far as possible: *Provided*, That the administrative law judge may relax such rules in any hearing when in his judgment such relaxation would not impair the rights of either party and would more speedily conclude the hearing, or would better serve the ends of justice. Except as provided in § 200.81, the proponent of an order shall have the burden of proof. Every party shall have the right to present his case or defense by oral or documentary evidence, depositions, duly authenticated copies of records and documents, to submit rebuttal evidence, and to conduct such reasonable

cross-examination as may be required for a full and true disclosure of the facts. The administrative law judge shall have the right in his discretion to limit the number of witnesses whose testimony may be merely cumulative and shall, as a matter of policy, not only exclude irrelevant, immaterial, or unduly repetitious evidence but shall also limit the cross-examination of witnesses to reasonable bounds so as not to unnecessarily prolong the hearing and unduly burden the record. Material and relevant evidence shall not be excluded, because it is not the best evidence, unless its authenticity is challenged, in which case reasonable time shall be given to establish its authenticity. When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the administrative law judge and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document should be made available for examination and for use by opposing counsel for purposes of cross-examination. Compilations, charts, summaries of data and photostatic copies of documents may be admitted in evidence if the proceedings will thereby be expedited, and if the material upon which they are based is available for examination by the parties. Objections to the evidence shall be in short form, stating the grounds relied upon. The transcript shall not include argument or debate on objections, except as ordered by the administrative law judge, but shall include the rulings thereon.

§ 200.84 Closing of hearings; arguments, briefs and proposed findings.

Before closing a hearing, the administrative law judge shall inquire of each party whether he has any further evidence to offer, which inquiry and the response thereto shall be shown in the record. The administrative law judge may hear arguments of counsel and may limit the time of such arguments at his discretion, and may, in his discretion, allow briefs to be filed on behalf of either party but shall closely limit the time within which the briefs for both parties shall be filed, so as to avoid unreasonable delay. The administrative law judge shall also ascertain whether the parties desire to submit proposed findings and conclusions, together with supporting reasons, and if so a period of not more than 15 days (unless extended by the administrative law judge)—after the close of the hearing or receipt of a copy of the record, if one is requested—will be allowed for such purpose.

§ 200.85 Reopening of the hearing.

The Director, the director of industry operations or the administrative law judge, as the case may be, may, as to all matters pending before him, in his discretion reopen the hearing (a) in case of default where applicant failed to request a hearing or to appear after one was set, upon petition setting forth reasonable grounds for such failure, and (b) in case any party desires leave to adduce additional evidence upon petition summarizing such evidence, establishing its materiality and stating reasonable grounds why such party with due diligence was unable to produce such evidence at the hearing.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 43 FR 13531, Mar. 31, 1978; 44 FR 55846, Sept. 28, 1979; T.D. ATF–374, 61 FR 29957, June 13, 1996]

RECORD OF TESTIMONY

§ 200.86 Stenographic record.

A stenographic record shall be made of the testimony and proceedings, including stipulations and admissions of fact (but not arguments of counsel unless otherwise ordered by the administrative law judge) in all proceedings. A transcript of the evidence and proceedings at the hearing shall be made in all cases.

§ 200.87 Oath of reporter.

The reporter making the stenographic record shall subscribe an oath before the administrative law judge, to be filed in the record of the case, that he will truly and correctly report the oral testimony and proceedings at such

hearing and accurately transcribe the same to the best of his ability.

Subpart G—Administrative Law Judges

§ 200.95 Responsibilities of administrative law judges.

Administrative law judges shall be under the administrative control of the Director. They shall be responsible for the conduct of hearings and shall render their decisions as soon as is reasonably possible after the hearing is closed. Administrative law judges shall also be responsible for the preparation, certification and forwarding of reports of hearings, and the administrative work relating thereto, and, by arrangement with directors of industry operations and representatives of the Chief Counsel, shall have access to facilities and temporary use of personnel at such times and places as are needed in the prompt dispatch of official business.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 43 FR 13531, Mar. 31, 1978; 44 FR 55846, Sept. 28, 1979; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.96 Disqualification.

An administrative law judge shall, at any time, withdraw from any proceeding if he deems himself disqualified; and upon the filing in good faith by the applicant or respondent, or by the attorney for the Government, of a timely and sufficient affidavit of facts showing personal bias or otherwise warranting the disqualification of any administrative law judge, the Director shall upon appeal as provided in § 200.115, if the administrative law judge fails to disqualify himself, determine the matter as a part of the record and decision in the proceeding. If he decides the administrative law judge should have declared himself disqualified, he will remand the record for hearing de novo before another administrative law judge. If the Director should decide against the disqualification of the administrative law judge, the proceeding will be reviewed on its merits.

§ 200.97 Powers.

Administrative law judges shall have authority to (a) administer oaths and affirmations; (b) issue subpoenas authorized by law; (c) rule upon offers of proof and receive relevant evidence; (d) take or cause depositions to be taken whenever the ends of justice would be served thereby; (e) regulate the course of the hearing; (f) hold conferences for the settlement or simplification of the issues by consent of the parties; (g) dispose of procedural requests or similar matters; (h) render recommended decisions in proceedings on applications for permits, and in suspension, revocation, or annulment proceedings against permits; (i) call, examine and cross-examine witnesses, including hostile or adverse witnesses when he deems such action to be necessary to a just disposition of the cause, and introduce into the record documentary or other evidence; and (j) take any other action authorized by rule of the Bureau of Alcohol, Tobacco and Firearms consistent with the Administrative Procedure Act.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55846, Sept. 28, 1979; T.D. ATF–119, 50 FR 9197, Mar. 6, 1985]

§ 200.98 Separation of functions.

Administrative law judges shall perform no duties inconsistent with their duties and responsibilities as such. Administrative law judges may be assigned duties not inconsistent with the performance of their functions as administrative law judges. Save to the extent required for the disposition of ex parte matters as required by law, no administrative law judge shall consult any person or party as to any fact in issue unless upon notice and opportunity for all parties to participate. The functions of the administrative law judge shall be entirely separated from the general investigative functions of the agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions in any proceeding shall, in that or a factually related proceeding, participate or advise in the administrative law judge's or Director's decision, or in the agency review

on appeal, except as a witness or counsel in the proceedings. The administrative law judge may not informally obtain advice or opinions from the parties or their counsel, or from any officer or employee of the Bureau of Alcohol, Tobacco and Firearms, as to the facts or the weight or interpretation to be given to the evidence. He may, however, informally obtain advice on matters of law from officers or employees who were not engaged in the performance of investigative or prosecuting functions in that or a factually related proceeding. This limitation does not apply to the Director, and the administrative law judge may, at any time, consult with and obtain instructions from him on questions of law and policy.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 43 FR 13531, Mar. 31, 1978; 44 FR 55846, Sept. 28, 1979]

§ 200.99 Conduct of hearing.

The administrative law judge is charged with the duty of conducting a fair and impartial hearing and of maintaining order in form and manner consistent with dignity. In the event that counsel or any person or witness in any proceeding shall refuse to obey the orders of the administrative law judge, or be guilty of disorderly or contemptuous language or conduct in connection with any hearing, the administrative law judge may, for good cause stated in the record, suspend the hearing, and, in the case of an attorney, recommend that the Director report the matter to the Director of Practice for disciplinary action. The refusal of a witness to answer any question which has been ruled to be proper shall be considered by the administrative law judge in determining the weight to be given all the testimony of that witness.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 43 FR 13531, Mar. 31, 1978; 44 FR 55846, Sept. 28, 1979]

§ 200.100 Unavailability of administrative law judge.

In the event that the administrative law judge designated to conduct a hearing becomes unavailable before the filing of his findings and decision or recommended decision, the Director may assign the case to another administrative law judge for the continuance of the proceeding, in accordance with the regulations in this part in the same manner as if he had been designated administrative law judge at the commencement of the proceeding.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 43 FR 13531, Mar. 31, 1978; 44 FR 55846, Sept. 28, 1979]

Subpart H—Decisions

§ 200.105 Administrative law judge's finding and decision or recommended decision.

Within a reasonable time after the conclusion of the hearing, and as expeditiously as possible, the administrative law judge shall render his decision or recommended decision, as the case may be. All decisions shall become a part of the record and, if proposed findings and conclusions have been filed, shall show the administrative law judge's ruling upon each of such proposed findings and conclusions. Decisions shall consist of (a) a brief statement of the issues of fact involved in the proceeding; (b) the administrative law judge's findings and conclusions, as well as the reasons or basis therefor with record references, upon all the material issues of fact, law or discretion presented on the record (including, when appropriate, comment as to the credibility and demeanor of the witnesses); and (c) the administrative law judge's determination or recommended determination on the record. Where the administrative law judge determines that the imposition of a period of suspension of the permit is appropriate, his decision shall state the length of such period of suspension, to commence at such time as the director of industry operations shall specify.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975. as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.106 Certification and transmittal of record and decision.

After reaching his decision, the administrative law judge shall certify to the complete record of the proceeding before him and (a) in proceedings on an

application, shall immediately forward the complete certified record together with four copies of his recommended decision to the director of industry operations for initial decision, or (b) in revocation, suspension or annulment proceedings, shall immediately forward the complete certified record, together with two copies of his decision, to the regional director (compliance), serve one copy of his decision on the respondent or his counsel and transmit a copy of his decision to the attorney for the Government.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

ACTION BY DIRECTOR OF INDUSTRY OPERATIONS

§ 200.107 Application proceedings.

If, upon receipt of the record and the recommended decision of the administrative law judge, the director of industry operations decides that the permit should be issued, he shall thereupon approve the application briefly stating, for the record, his reasons therefor, but if he contemplates the disapproval of the application he shall serve a copy of the administrative law judge's recommended decision on the applicant, informing the applicant of his contemplated action and affording the applicant not more than 10 days in which to submit proposed findings and conclusions or exceptions to the recommended decision with reasons in support thereof. If the director of industry operations, after consideration of the record of the hearing and of any proposed findings, conclusions or exceptions filed with him by the applicant, approves the findings, conclusions and recommended decision of the administrative law judge, he shall by order approve or disapprove of the application in accordance therewith. If, after such consideration, he disapproves of the findings, conclusions and recommended decision of the administrative law judge, in whole or in part, he shall by order make such findings and conclusions as in his opinion are warranted by the law and facts in the record. Any decision of the director of industry operations ordering the disapproval of an application for a permit shall state the findings and conclusions upon which it is based, including his ruling upon each proposed finding, conclusion and exception to the administrative law judge's recommended decision, together with a statement of his findings and conclusions, and reasons or basis therefor, upon all material issues of fact, law or discretion presented on the record. A signed duplicate original of the decision shall be served upon the applicant and the original copy containing certificate of service shall be placed in the official record of the proceeding.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.107a Director of Industry Operations' decision.

(a) When the director of industry operations issues an initial decision in accordance with § 200.79, the decision shall become a part of the record. The decision shall consist of

(1) A brief statement of the issues involved in the proceedings;

(2) The director of industry operations' findings and conclusions, as well as the reasons therefor; and

(3) The director of industry operations' determination on the record.

[T.D. ATF–244, 51 FR 45764, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.108 Suspension, revocation, or annulment proceedings.

(a) Upon receipt of the complete certified record of the hearing the director of industry operations shall enter an order suspending, revoking, or annulling the permit (Form 1430–B) or dismissing the proceedings in accordance with the administrative law judge's findings and decision, unless he disagrees with such findings and decision and files a petition with the Director, for review thereof, as provided in § 200.115. If the director of industry operations files such petition, he shall withhold issuance of the order, pending the decision of the Director, upon receipt of which he shall issue the order

in accordance therewith. A signed duplicate original of the order of the director of industry operations shall be served upon the respondent and the original copy containing certificate of service shall be placed in the official record of the proceeding. In all proceedings in which a suspension is imposed, the director of industry operations' order shall state the time when the suspension period set forth in the administrative law judge's decision shall commence and terminate.

(b) In a case where the initial decision is made by the director of industry operations in accordance with § 200.79, the director of industry operations will also issue an order suspending, revoking or annulling the permit (on Form 5000.5), or dismissing the proceedings in accordance with his initial decision. A signed duplicated original of the decision and order of the director of industry operations shall be served upon the respondent and the original copy placed in the official record of the proceeding. In all proceedings in which a suspension is imposed, the director of industry operations' order shall state the time when the suspension period set forth in the initial decision shall commence and terminate.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9196 and 9197, Mar. 6, 1985; T.D. ATF–244, 51 FR 45764, Dec. 22, 1986; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.109 Notice to Director.

When the director of industry operations makes an order suspending, revoking or annulling a permit, he will furnish a copy of the order and of the decision on which it is based to the Director. Should such order be subsequently set aside on review by the courts, the director of industry operations will so advise the Director.

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.110 Proceedings involving violations not within region of issuance of permit.

In the event violations occurred at a place not within the region of issuance of a permit, the director of industry operations of the region of issuance will take jurisdiction over any proceeding including issuing the citation, and taking appropriate action in accordance with § 200.108.

[T.D. ATF–244, 51 FR 45764, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

Subpart I—Review

§ 200.115 Appeal on petition to the Director.

An appeal to the Director is required prior to application to the Federal courts for review. An appeal may be taken by the applicant or respondent or by the director of industry operations. Such appeal shall be taken by filing a petition for review on appeal with the Director within 15 days of the service of the order disapproving an application for a permit or the initial decision suspending, revoking or annulling a permit. The petition must set forth facts tending to show action of an arbitrary nature, or action without reasonable warrant in fact, or action contrary to law and regulations. A copy of the petition shall be filed with the director of industry operations or served on the respondent or applicant as the case may be. In the event of such appeal, the director of industry operations shall immediately certify and forward the complete original record, by certified mail, to the Director, for his consideration and review.

[T.D. ATF–244, 51 FR 45764, Dec. 22, 1986, as amended by T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.116 Review by Director.

The Director, on appeal on petition for review, shall afford a reasonable opportunity for the submission of proposed findings, conclusions or exceptions with reasons in support thereof and an opportunity for oral argument. He may alter or modify any finding of the administrative law judge (or of the director of industry operations in application proceedings) and may affirm, reverse, or modify the decision of the administrative law judge (or of the director of industry operations in initial application proceedings), or he may remand the case for further hearing, but

he shall not consider evidence which is not a part of the record. Appeals and petitions for review shall not be decided by the Director in any proceeding in which he has engaged in investigation or prosecution, and in such event he shall so state his disqualification in writing and refer the record to the Under Secretary for appropriate action. The Under Secretary may designate an Assistant Secretary or one of his principal aides to consider any proceeding instead of the Director. The original copy of the decision on review shall be placed in the official record of the proceeding, a signed duplicate original shall be served upon the applicant or respondent and a copy shall be transmitted to the director of industry operations. When, on appeal, the Director affirms the decision of the director of industry operations or the administrative law judge, as the case may be, disapproving an application or suspending, revoking or annulling a permit, such action shall not supersede the decision of the director of industry operations or the administrative law judge and such decision shall be final.

(26 U.S.C. 7805 (68A Stat. 917), 27 U.S.C. 205 (49 Stat. 981 as amended), 18 U.S.C. 926 (82 Stat. 959), and Sec. 38, Arms Export Control Act (22 U.S.C. 2778, 90 Stat. 744))

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 43 FR 13531, Mar. 31, 1978; T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.117 Permit privileges, exceptions.

Pending final determination of any timely appeal in revocation, suspension, or annulment proceeding to the Director, the permit involved shall continue in force and effect except that, in the case of industrial use permits, any time after a citation has been issued withdrawals of tax-free spirits or specially denatured spirits by such permittee may, in the discretion of the director of industry operations or Director, be restricted to the quantity which, together with the quantity then on hand, is necessary to carry on legitimate operations under such permit. The director of industry operations may, in restricting the permittee to his legitimate needs, refuse to issue any withdrawal permit.

[T.D. 6389, 24 FR 4791, June 12, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF–199, 50 FR 9197, Mar. 6, 1985; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.118 Court review.

If an applicant or respondent files an appeal in Federal court of the Director's decision, the Director, upon notification that an appeal has been taken, shall prepare the record for submission to the court in accordance with the applicable court rules.

[T.D. ATF–244, 51 FR 45764, Dec. 22, 1986]

§ 200.119 [Reserved]

Subpart J—Miscellaneous

§ 200.125 Depositions.

The administrative law judge may take or order the taking of depositions by either party to the proceeding at such time and place as he may designate before a person having the power to administer oaths, upon application therefor and notice to the parties to the action. The testimony shall be reduced to writing by the person taking the deposition, or under his direction, and the deposition shall be subscribed by the deponent unless subscribing thereof is waived in writing by the parties. Any person may be subpoenaed to appear and depose and to produce documentary evidence in the same manner as witnesses at hearings.

§ 200.126 Subpoenas.

On written application by a party to a proceeding, the attendance and testimony of any person, or the production of documentary evidence in proceedings instituted under this part may be required by personal subpoena (Form 5600.10) or by subpoena duces tecum (Form 5600.11). Application should be addressed to, and subpoenas should be issued by, the administrative law judge before whom the proceedings are pending, but may be issued by the director of industry operations or by the Director, if the administrative law judge is unavailable. Both the application and the subpoena shall set forth the title of the proceedings, the name

and address of the person whose attendance is required, the date and place of his attendance and, if documents are to be produced, a description thereof; and the application must have reasonable scope and specify as exactly as possible the documents required, if any, and show their general relevance. Subpoenas shall be served in person. When issued on behalf of the United States, service shall be made by an officer, employee, or agent of the Treasury Department; when issued on behalf of a permittee or applicant, service shall be made by any person who is not a party to the proceeding and is not less than 18 years of age.

(49 Stat. 977, 72 Stat. 1372; 27 U.S.C. 202, 26 U.S.C. 5274)

[21 FR 1441, Mar. 6, 1956, as amended by T.D. 6389, 24 FR 4791, June 12, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–244, 51 FR 45764, Dec. 22, 1986; T.D. ATF–374, 61 FR 29957, June 13, 1996]

§ 200.127 Witnesses and fees.

Witnesses summoned before the administrative law judge may be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear and the person taking the deposition shall be paid by the party at whose instance the deposition is taken.

RECORD

§ 200.128 What constitutes record.

The transcript of testimony, pleadings and exhibits, all papers and requests filed in the proceeding, together with all findings, decisions and orders, shall constitute the exclusive record. Where the decision rests on official notice of material fact not appearing in the record, the administrative law judge shall so state in his findings and any party shall, on timely request, be afforded an opportunity to show facts to the contrary.

§ 200.129 Availability.

A copy of the record shall be available for inspection by the parties to the proceedings during business hours at the office of the administrative law judge or the director of industry operations or, pending administrative review, at the office of the Director. Copies of the record desired by the respondent or applicant may be purchased from the contract reporter or may be obtained in accordance with part 71 of this chapter.

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

[21 FR 1441, Mar. 6, 1956. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–92, 46 FR 46918, Sept. 23, 1981; T.D. ATF–374, 61 FR 29957, June 13, 1996]

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Subpart A—Scope of Regulations

Sec.
250.1 Alcoholic products coming into the United States from Puerto Rico and the Virgin Islands.
250.2 Forms prescribed.

Subpart B—Definitions

250.11 Meaning of terms.

Subpart C [Reserved]

Subpart Ca—Rum Imported Into the United States From Areas Other Than Puerto Rico and the Virgin Islands

250.30 Excise taxes.
250.31 Formula.

Subpart Cb—Products Coming into the United States From Puerto Rico

250.35 Taxable status.
250.36 Products exempt from tax.
250.36a–250.36b [Reserved]
250.36c Shipments of bulk distilled spirits to the United States without payment of tax.
250.37 United States Bureau of Alcohol, Tobacco and Firearms office.
250.38 Containers of distilled spirits.
250.39 Labels.
250.40 Marking containers of distilled spirits.
250.41 Destruction of marks and brands.
250.43 Samples.

SPECIAL (OCCUPATIONAL) TAXES

250.44 Liquor dealer's special taxes.
250.45 Warehouse receipts covering distilled spirits.
250.46 Distilled spirits plant proprietor's special (occupational) tax.
250.47 Specially denatured spirits user's and dealer's special (occupational) taxes.

Subpart D—Formulas for Products From Puerto Rico

250.50 Formulas for liquors.
250.50a Verfication of eligible flavors.
250.51 Formulas for articles, eligible articles, and products manufactured with denatured spirits.
250.52 Still wines containing carbon dioxide.
250.53 Changes of formulas.
250.54 Filing and disposition of formulas.
250.55 Previously approved formulas.

Subpart E—Taxpayment of Liquors and Articles in Puerto Rico

BONDS

250.61 General.
250.62 Corporate surety.
250.62a Filing of powers of attorney.
250.62b Execution of powers of attorney.
250.63 Deposit of securities in lieu of corporate surety.
250.64 Consents of surety.
250.65 Authority to approve bonds and consents of surety.
250.66 Bond, ATF Form 5110.50—Distilled spirits.
250.67 Bond, Form 2897—Wine.
250.68 Bond, Form 2898—Beer.
250.68a Bond account.
250.69 Strengthening bonds.
250.70 New or superseding bonds.
250.70a Notice of approval of bonds.

TERMINATION OF BONDS

250.71 Termination of bonds.
250.72 Application of surety for relief from bond.
250.73 Relief of surety from bond.
250.74 Release of pledged securities.
250.75 Form 1490, Notice of Termination of Bond.

PERMITS REQUIRED

250.76 Insular permits.

DISTILLED SPIRITS

250.77 Subject to tax.
250.78 Application and permit, ATF Form 5110.51.
250.79 Inspection or gauge and computation of tax.
250.79a Computation of effective tax rate.
250.80 Deferred payment of tax—release of spirits.
250.81 Prepayment of tax and release of spirits.
250.82 Permit to ship.

PACKAGES OF DISTILLED SPIRITS

250.86 Authority for shipment.
250.87 Evidence of taxpayment.

WINE

250.92 Subject to tax.
250.93 Application and permit, Form 2900.
250.94 Computation of tax.
250.95 Deferred payment of tax—release of wine.
250.96 Prepayment of tax—release of wine.
250.96a [Reserved]
250.96b Permit to ship.
250.97 Marking containers of wine.

BEER

250.101 Subject to tax.
250.102 Application and permit, Form 2900.
250.103 Computation of tax.
250.104 Deferred payment of tax—release of beer.
250.105 Prepayment of tax—release of beer.
250.105a Permit to ship.
250.106 Marking containers of beer.

ARTICLES

250.107 Taxable status.
250.108 Application for permit, ATF Form 5110.51 and/or Form 2900.
250.109 Taxpayment.
250.110 Release of articles or liquors.

PAYMENT OF TAX BY RETURN

250.111 General.
250.112 Returns for semimonthly periods.
250.112a Payment of tax by electronic fund transfer.
250.113 Returns for prepayment of taxes.

PERMIT TO SHIP LIQUORS AND ARTICLES

250.114 Permit to ship required.
250.115 Application, Form 487B.
250.116 Issuance of permit, Form 487B, and customs inspection.

PROCEDURE AT PORT OF ARRIVAL

250.117 Action by carrier.
250.118 Inspection by district director of customs at port of arrival.
250.119 Disposition of forms by district director of customs.

Subpart F—Liquors and Articles Purchased by Tourists in Puerto Rico

250.125 Taxable.
250.126 Taxpayment in Puerto Rico.
250.128 Taxpayment at port of arrival.

Subpart G—Closures for Distilled Spirits From Puerto Rico

250.135 Containers of distilled spirits to bear closures.
250.136 Affixing closures.

Subpart H—Records and Reports of Liquors From Puerto Rico

250.163 General requirements.
250.164 Proprietors of taxpaid premises.
250.164a Package gauge record.
250.165 Certificate of effective tax rate computation.

Subpart I—Claims for Drawback on Eligible Articles From Puerto Rico

250.170 Drawback of tax.
250.171 Special tax.
250.172 Bonds.
250.173 Claims for drawback.
250.174 Records.

Subpart Ia—Shipment of Denatured Spirits and Products Made With Denatured Spirits to the United States From Puerto Rico

250.191 Notice of shipment.
250.192 Samples and analysis.
250.193 Notification of tax liability.
250.194 Detention of articles.

Subpart Ib—Shipment of Bulk Distilled Spirits From Puerto Rico, Without Payment of Tax, for Transfer From Customs Custody to Internal Revenue Bond

250.196 General.
250.197 Furnishing formula to consignee.
250.198 [Reserved]
250.199 Application and permit to ship, ATF Form 5110.31.
250.199a Action by revenue agent.
250.199b Issuance and disposition of permit.
250.199c Action by carrier.
250.199d Customs inspection and release.
250.199e [Reserved]
250.199f Consignee premises.

Subpart J—Products Coming Into the United States From the Virgin Islands

250.200 Taxable status.
250.201 Products exempt from tax.
250.201a Production in the Virgin Islands for tax-free shipment to the United States.
250.201b [Reserved]
250.201c Shipments of bulk distilled spirits to the United States without payment of tax.
250.202 Requirements of the Federal Alcohol Administration Act.
250.203 Containers of 1 gallon (3.785 liters) or less.
250.203a Containers in excess of 1 gallon (3.785 liters).
250.204 Regauge.
250.204a Verification of eligible wines and eligible flavors.
250.205 Certificate.
250.206 Marking packages and cases.
250.207 Destruction of marks and brands.
250.209 Samples.

SPECIAL (OCCUPATIONAL) TAXES

250.210 Liquor dealer's special taxes.
250.211 Warehouse receipts covering distilled spirits.

Subpart K—Formulas for Products From the Virgin Islands

250.220 Formulas for liquors.
250.221 Formulas for articles, eligible articles, and products manufactured with denatured spirits.
250.222 Still wines containing carbon dioxide.
250.223 Changes of formulas.
250.224 Filing and disposition of formulas.
250.225 Previously approved formulas.

Subpart L—Closures for Distilled Spirits From the Virgin Islands

GENERAL

250.230 Containers of distilled spirits to bear closures.
250.231 Affixing closures.

Subpart M—Procedure at Port of Entry From the Virgin Islands

250.260 Certificate.
250.261 Action by district director of customs.
250.262 Determination of tax on distilled spirits.
250.262a Computation of effective tax rate.
250.263 Determination of tax on beer.
250.264 Determination of tax on wine.
250.265 Determination of tax on articles.
250.266 Tax payment.
250.267 Payment of tax by electronic fund transfer.

Subpart N—Records and Reports of Liquors From the Virgin Islands

RECORD AND REPORT OF LIQUORS BROUGHT INTO THE UNITED STATES

250.272 General requirements.
250.273 Proprietors of taxpaid premises.
250.273a Transfer record.
250.273b Package gauge record.

FILING AND RETENTION OF RECORDS AND REPORTS

250.275 Filing.
250.276 Retention.

REPORT OF DISPOSITION OF RED STRIP STAMPS ON DISCONTINUANCE OF BUSINESS

250.277 Procedure.

Subpart O—Tax-Free Shipments to the United States From the Virgin Islands

250.291 General.

SHIPMENT OF INDUSTRIAL SPIRITS AND SPECIALLY DENATURED SPIRITS

250.292 Copy of consignee's permit under part 20 or 22.
250.293 Marks on containers.
250.294 Record of shipment.

SHIPMENT OF COMPLETELY DENATURED ALCOHOL AND PRODUCTS MADE WITH DENATURED SPIRITS

250.295 Marks on containers.
250.296 Record of shipment.

ARRIVAL IN THE UNITED STATES

250.297 General.

Subpart Oa—Shipment of Bulk Distilled Spirits From the Virgin Islands, Without Payment of Tax, for Transfer From Customs Custody to Internal Revenue Bond

250.300 General.
250.301 Preparation of transfer record.
250.302 Gauge and certification.
250.303 Customs inspection and release.
250.304 Bulk conveyances to be sealed.
250.305 Receipt by consignee.

Subpart Ob—Claims for Drawback on Eligible Articles From the Virgin Islands

250.306 Drawback of tax.
250.307 Special tax.
250.308 Bonds.
250.309 Claims for drawback.
250.310 Records.

Subpart P—Requirements for Liquor Bottles

250.311 Scope of subpart.
250.312 Standards of fill.
250.314 Distinctive liquor bottles.
250.315 [Reserved]
250.316 Bottles not constituting approved containers.
250.317 Bottles to be used for display purposes.
250.318 Liquor bottles denied entry.
250.319 Used liquor bottles.

Subpart Q—Miscellaneous Provisions

250.331 Alternate methods or procedures.

AUTHORITY: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

SOURCE: 20 FR 6077, Aug. 20, 1955, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

Subpart A—Scope of Regulations

§ 250.1 Alcoholic products coming into the United States from Puerto Rico and the Virgin Islands.

This part, ''Liquors and Articles from Puerto Rico and the Virgin Islands,'' relates to:

(a) The production, bonded warehousing, and withdrawal of distilled spirits and denatured spirits, and the manufacture of articles in Puerto Rico and the Virgin Islands to be brought into the United States free of tax;

(b) The collection of internal revenue taxes on taxable alcoholic products coming into the United States from Puerto Rico and the Virgin Islands;

(c) The transfer, without payment of tax, of Puerto Rican and Virgin Islands spirits in bulk containers or by pipeline from customs custody to the bonded premises of a distilled spirits plant qualified under part 19 of this chapter;

(d) The deposit of the distilled spirits excise taxes, limited to the lesser of $10.50 or the rate in section 5001(a)(1) per proof gallon, into the Treasuries of Puerto Rico and the Virgin Islands on all articles containing distilled spirits as defined in section 7652, produced by those two U.S. possessions, and transported into the United States (less certain amounts); and

(e) The deposit of the distilled spirits excise taxes, limited to the lesser of $10.50 or the rate in section 5001(a)(1) per proof gallon, into the Treasuries of Puerto Rico and the Virgin Islands on all rum imported into the United States (including rum from possessions other than Puerto Rico and the Virgin Islands), less certain amounts.

(Approved by the Office of Management and Budget under control number 1512–0277)

(Sec. 221, Pub. L. 98–67, 97 Stat. 369 (26 U.S.C. 7652)

[T.D. ATF–175, 49 FR 20803, May 16, 1984, as amended by T.D. ATF–203, 50 FR 15887, Apr. 23, 1985]

§ 250.2 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part, including applications, reports, returns, and records. 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.

(b) Requests for forms should be mailed to the ATF 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 46920, Sept. 23, 1981, as amended by T.D. ATF–249, 52 FR 5963, Feb. 27, 1987; T.D. ATF–372, 41 FR 20725, May 8, 1996]

Subpart B—Definitions

§ 250.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular and vice versa, and words importing the masculine gender shall include the feminine. The terms ''includes'' and ''including'' do not exclude things not enumerated which are in the same general class.

Article. Any preparation unfit for beverage use, made with or containing:

(1) Wine or beer;

(2) Distilled spirits or industrial spirits; or

(3) Denatured spirits when such preparation is not manufactured under the provisions of this chapter.

ATF officer. An officer or employee 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.

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed, or produced from malt, wholly or in part, or from any substitute therefor.

Bottler. Any person required to hold a basic permit as a bottler under 27 U.S.C. 203(b)(1).

Bulk container. Any container having a capacity of more than 1 gallon.

Bulk distilled spirits. The term ''bulk distilled spirits'' means distilled spirits in a container having a capacity in excess of 1 gallon.

Bureau of Alcoholic Beverage Taxes. Bureau of Alcoholic Beverage Taxes of the Commonwealth of Puerto Rico.

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 all legal holidays in the Commonwealth of Puerto Rico.)

Chief, Puerto Rico Operations. The primary representative in Puerto Rico of the Bureau of Alcohol, Tobacco and Firearms. His complete address is: Chief, Puerto Rico Operations, Bureau of Alcohol, Tobacco and Firearms, U.S. Courthouse and Federal Building, Room 659, Avenida Carlos Chardon, Hato Rey, Puerto Rico 00919.

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 of New York.

Customs officer. Any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person authorized by law or designated by the Secretary of the Treasury to perform any duties of an officer of the Customs Service.

Denatured spirits. Industrial spirits denatured in accordance with approved formulas in distilled spirits plants established and operated under the provisions of this chapter relating to the establishment and operation of plants qualified to denature spirits in the

United States or, in respect of a product of the Virgin Islands, shall also mean spirits denatured in accordance with approved formulas in plants established under the provisions of the Virgin Islands regulations and shall include, unless otherwise limited, both completely and specially denatured spirits.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, D.C.

Director of the service center. A director of an internal revenue service center.

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine, in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced), but shall not include industrial spirits as defined in this part except when used in reference to such spirits which would be subject to tax if brought into the United States.

District director. A district director of internal revenue.

District director of customs. The district director of customs at a 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.

Effective tax rate. The net tax rate after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content at which the tax imposed on distilled spirits by 26 U.S.C. 7652 is paid or determined.

Electronic fund transfer or EFT. Any transfer of funds effected by a proprietor'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.

Eligible article. Any medicine, medicinal preparation, food product, flavor, flavoring extract or perfume which contains distilled spirits, is unfit for beverage purposes, and has been or will be brought into the United States from Puerto Rico or the Virgin Islands under the provisions of 26 U.S.C. 7652(g).

Eligible flavor. A flavor which:

(1) Is of a type that is eligible for drawback of tax under 26 U.S.C. 5134,

(2) Was not manufactured on the premises of a distilled spirits plant, and

(3) Was not subjected to distillation on distilled spirits plant premises such that the flavor does not remain in the finished product.

Eligible wine. Wine on which tax would be imposed by paragraph (1), (2), or (3) of 26 U.S.C. 5041(b) but for its removal to distilled spirits plant premises and which has not been subject to distillation at a distilled spirits plant after receipt in bond.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, claim, form, or other document, or where no form of declaration is prescribed, with the declaration: ''I declare under the penalties of perjury that this _____ (insert type of document, such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete.''

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

Gallon or wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

Importer. Any person who imports distilled spirits, wines, or beer into the United States.

Industrial spirits. As to products of Puerto Rico, distilled spirits produced and warehoused at and withdrawn from distilled spirits plants established and operated under the provisions of this chapter relating to the establishment of such plants and the production, bonded warehousing, and withdrawal from bond of distilled spirits in the United States, or as to products of the Virgin Islands, distilled spirits produced, warehoused, and withdrawn under Virgin Islands regulations.

Kind. As applied to spirits, kind shall mean class and type as prescribed in 27

CFR part 5. As applied to wines, kind shall mean the classes and types of wines as prescribed in 27 CFR part 4.

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Director to adequately protect the revenue.

Liquors. Industrial spirits, distilled spirits, liqueurs, cordials and similar compounds, wines, and beer or any alcoholic preparation fit for beverage use.

Permit. A formal written authorization of the Secretary of the Treasury of Puerto Rico.

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

Proof gallon. A gallon of liquid at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity or the alcoholic equivalent thereof.

Rectifier. Any person required to hold a rectifier's basic permit under 27 U.S.C. 203(b)(1).

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

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

Revenue Agent. Any duly authorized Commonwealth Internal Revenue Agent of the Department of the Treasury of Puerto Rico.

Secretary. The Secretary of the Treasury of Puerto Rico.

Secretary or his delegate. The Secretary or any officer or employee of the Department of the Treasury of Puerto Rico duly authorized by the Secretary to perform the function mentioned or described in this part.

Taxpaid. As used in this part with respect to liquors or articles of Puerto Rican manufacture, includes liquors or articles on which the tax was computed but with respect to which payment was deferred under the provisions of subpart E of this part.

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

United States. The States and the District of Columbia.

U.S.C. The United States Code.

United States Bureau of Alcohol, Tobacco and Firearms office. The Bureau of Alcohol, Tobacco and Firearms office in Puerto Rico operating under the direction of the Regional Director (Compliance), North Atlantic Region, New York, NY 10048.

Virgin Islands regulations. Regulations issued or adopted by the Governor of the Virgin Islands, or his duly authorized agents, with the concurrence of the Secretary of the Treasury of the United States, or his delegate, under the provisions of 26 U.S.C. 5314, as amended, and § 250.201a.

Wine. Still wine, vermouth, or other aperitif wine, imitation, substandard, or artificial wine, compounds designated as wine, flavored, rectified, or sweetened wine, champagne or sparkling wine, and artificially carbonated wine, containing not over 24 percent of alcohol by volume. Wines containing more than 24 percent of alcohol by volume are classed and taxed as distilled spirits.

(68A Stat. 917, as amended (26 U.S.C. 7805); 49 Stat. 981, as amended (27 U.S.C. 205) 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))

[T.D. ATF–48, 43 FR 13551, Mar. 31, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 250.11, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart C [Reserved]

Subpart Ca—Rum Imported Into the United States From Areas Other Than Puerto Rico and the Virgin Islands

§ 250.30 Excise taxes.

Distilled spirits excise taxes, less the estimated amounts necessary for payment of refunds and drawbacks, collected on all rum imported into the United States (including rum from possessions other than Puerto Rico and the Virgin Islands), will be deposited

into the Treasuries of Puerto Rico and the Virgin Islands according to the formula described in § 250.31. The amount deposited into the Treasuries of Puerto Rico and the Virgin Islands shall be the lesser of $10.50, or the rate imposed by 26 U.S.C. 5001(a)(1) (including adjustments to the effective tax rate under 26 U.S.C. 5010), on each proof gallon of rum imported into the United States.

(Aug. 16, 1954, Chapter 736, 68A Stat. 907, as amended (26 U.S.C. 7652))

[T.D. ATF–203, 50 FR 15888, Apr. 23, 1985]

§ 250.31 Formula.

(a) The amount of excise taxes collected on rum that is imported into the United States from areas other than Puerto Rico and the Virgin Islands shall be deposited into the Treasuries of Puerto Rico and the Virgin Islands at the rate prescribed in 26 U.S.C. 7652(f). The distribution of such amount between Puerto Rico and the Virgin Islands shall be computed by using a permanent base percentage, which represents the excise taxes collected on rum brought into the United States from Puerto Rico and the Virgin Islands during fiscal year 1983. This base percentage is 87.626889 percent for Puerto Rico and 12.373111 percent for the Virgin Islands. The formula shall be as follows:

(1) Multiply the total excise taxes collected on rum brought into the United States (including rum from Puerto Rico and the Virgin Islands) during the previous fiscal year (October 1–September 30) by the base percentages to determine the relative shares of the entire U.S. rum market that will be allotted to Puerto Rico and the Virgin Islands;

(2) Subtract each of these shares from the excise taxes collected on rum transported to the United States from Puerto Rico and the Virgin Islands, respectively, during the previous fiscal year to determine each possession's loss or gain in relation to the previous fiscal year's U.S. rum market. Divide these results by the excise taxes collected on rum imported during the previous fiscal year from areas other than Puerto Rico and the Virgin Islands.

(b) Notwithstanding the formula prescribed in paragraph (a) above, the Virgin Islands' share of the excise taxes on rum imported into the United States from areas other than Puerto Rico and the Virgin Islands shall not exceed 49 percent nor drop below 12.373111 percent. Puerto Rico's share of the excise taxes on rum imported into the United States from areas other than Puerto Rico and the Virgin Islands shall not exceed 87.626889 percent nor drop below 51 percent.

(c) The percentage for the distribution of the excise taxes collected on rum imported into the United States from areas other than Puerto Rico and the Virgin Islands, that will be paid over to the Treasuries of Puerto Rico and the Virgin Islands, shall be effective on March 1 of each year, and shall remain in effect until March 1 of the following year.

(d) The method for transferring the excise tax collections on rum imported from areas other than Puerto Rico and the Virgin Islands, into the Treasuries of Puerto Rico and the Virgin Islands shall be the same as the method used for transferring excise taxes into the Treasury of Puerto Rico on distilled spirits (with an alcohol content of at least 92 percent rum) brought into the United States from Puerto Rico.

(e) The formula prescribed in this section shall take effect on March 1, 1987. Prior to that date, Puerto Rico shall continue to receive 86.4 percent of the eligible excise taxes on rum imported from areas other than Puerto Rico and the Virgin Islands. The Virgin Islands shall continue to receive 13.6 percent of these eligible excise taxes until March 1, 1987.

(Aug. 16, 1954, Chapter 736, 68A Stat. 907, as amended (26 U.S.C. 7652))

[T.D. ATF–233, 51 FR 28078, Aug. 5, 1986; 52 FR 2222, Jan. 21, 1987]

Subpart Cb—Products Coming Into the United States From Puerto Rico

§ 250.35 Taxable status.

(a) Liquors coming into the United States from Puerto Rico, except as provided in § 250.36, are subject to a tax equal to the internal revenue tax imposed on the production in the United States of like liquors. Articles coming

into the United States from Puerto Rico, except as provided in § 250.36, are subject to tax on the liquors contained therein at the rates imposed in the United States on like liquors of domestic production.

(b) The excise taxes collected on distilled spirits or articles containing distilled spirits shall be deposited into the Treasury of Puerto Rico only if at least 92 percent of the alcoholic content of such products is rum. The amount deposited into the Treasury of Puerto Rico shall not exceed the lesser of $10.50, or the rate imposed by 26 U.S.C. 5001(a)(1) (including adjustments to the effective tax rate under 26 U.S.C. 5010), on each proof gallon of such distilled spirits or articles, other than eligible articles, containing distilled spirits coming into the United States or consumed on the island. Such excise tax deposits will be reduced by the estimated amount necessary for payment of refunds and drawbacks.

(c) Except for products described in 26 U.S.C. 7652(c), no excise taxes shall be deposited into the Treasury of Puerto Rico if an excise tax subsidy is provided by Puerto Rico that is of a kind different from, or in an amount per value or volume of production greater than, any subsidy offered by Puerto Rico to industries manufacturing products not subject to Federal excise tax.

(Sec. 2682, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 7652))

[T.D. ATF–175, 49 FR 20804, May 16, 1984, as amended by T.D. ATF–203, 50 FR 15888, Apr. 23, 1985; T.D. ATF–263, 52 FR 46593, Dec. 9, 1987]

§ 250.36 Products exempt from tax.

(a) *General.* Industrial spirits, denatured spirits, and products made with denatured spirits in Puerto Rico may be brought into the United States without incurring tax liability imposed by 26 U.S.C. 5001 or 7652.

(b) *Industrial spirits.* A distiller of industrial spirits who registers, files a bond, and pays special (occupational) tax as a distilled spirits plant in accordance with part 19 of this chapter may ship industrial spirits to a tax-free alcohol user in the United States who holds a permit and has paid special (occupational) tax under part 22 of this chapter. These shipments shall be made in accordance with the requirements of parts 19 and 22 of this chapter.

(c) *Denatured spirits.* A distiller who registers, files a bond, and pays special (occupational) tax as a distilled spirits plant in accordance with part 19 of this chapter and who denatures spirits in accordance with parts 19 and 21 of this chapter may ship (1) completely denatured alcohol to anyone in the United States, and/or (2) specially denatured spirits to a dealer or user of specially denatured spirits in the United States or Puerto Rico who holds a permit and has paid special (occupational) tax under part 20 of this chapter. These shipments shall be made in accordance with the requirements of parts 19 and 20 of this chapter, and subpart Ia of this part.

(d) *Products made with denatured spirits.* (1) A person in Puerto Rico who manufactures products with completely denatured alcohol in accordance with the requirements of part 20 of this chapter may ship those products to the United States in accordance with the requirements of part 20 of this chapter, and subpart Ia of this part.

(2) A person in Puerto Rico who manufactures products with specially denatured spirits may ship those products to the United States if that person (i) obtains a permit to use specially denatured spirits, and pays special (occupational) tax, under part 20 of this chapter, and (ii) complies with the requirements of part 20 of this chapter and subpart Ia of this part relating to the manufacture and shipment of those products.

[T.D. ATF–199, 50 FR 9198, Mar. 6, 1985; T.D. ATF–199, 50 FR 20099, May, 14, 1985, as amended by T.D. ATF–271, 53 FR 17559, May 17, 1988]

§§ 250.36a–250.36b [Reserved]

§ 250.36c Shipments of bulk distilled spirits to the United States without payment of tax.

Bulk distilled spirits may be brought into the United States from Puerto Rico without payment of tax for transfer from customs custody to the bonded premises of a distilled spirits plant qualified under part 19 of this chapter.

Such shipments are subject to the provisions of subpart Ib.

[T.D. ATF–62, 44 FR 71709, Dec. 11, 1979]

§ 250.37 United States Bureau of Alcohol, Tobacco and Firearms office.

The United States Bureau of Alcohol, Tobacco and Firearms office is authorized to collect internal revenue taxes on liquors and articles subject to tax, which are to be shipped to the United States. Whenever the internal revenue tax is paid in Puerto Rico, other than by tourists in accordance with subpart F of this part, the tax shall be paid to the United States Bureau of Alcohol, Tobacco and Firearms office as defined in this part and as provided in subpart E of this part.

[T.D. ATF–251, 52 FR 19338, May 22, 1987]

§ 250.38 Containers of distilled spirits.

Containers of distilled spirits brought into the United States from Puerto Rico, having a capacity of not more than 1 gallon (3.785 liters), shall conform to the requirements of subpart P of this part.

[T.D. ATF–34, 41 FR 46863, Oct. 26, 1976]

§ 250.39 Labels.

All labels affixed to bottles of liquors coming into the United States shall conform to the requirements of the Federal Alcohol Administration Act and implementing regulations (parts 4, 5, and 7 of this chapter).

[T.D. ATF–48, 44 FR 55851, Sept. 28, 1979]

§ 250.40 Marking containers of distilled spirits.

The distiller, rectifier, or bottler shall serially number each case, barrel, cask, or similar container of distilled spirits filled for shipment to the United States. In addition to the serial number of the container, the distiller, rectifier, or bottler shall plainly print, stamp, or stencil with durable coloring material, in letters and figures not less than one-half inch high, on the head of each barrel, cask or similar container or on one side of each case, as follows:

(a) The name of the distiller, rectifier, or bottler.

(b) The brand name and kind of liquor;

(c) The wine and proof gallon contents; or, for bottles filled according to the metric standards of fill prescribed by § 5.47a, of this chapter, the contents in liters and the proof of the spirits; and

(d) In the case of barrels or casks, the serial number of the permit to ship, Form 487–B, prefixed by the number of such form (e.g., ''487–B–61–1'')

(e) In the case of bulk containers shipped to the United States under subpart Ib, the serial number of the application and permit to ship, ATF Form 5110.31, instead of the serial number of Form 487–B.

[T.D. ATF–43, 42 FR 30836, June 17, 1977; as amended by T.D. ATF–62, 44 FR 71709, Dec. 11, 1979]

§ 250.41 Destruction of marks and brands.

The marks, brands, and serial numbers required by this part to be placed on barrels, casks, or similar containers, or cases, shall not be removed or obscured or obliterated before the contents thereof have been removed.

(Sec. 201, Pub. L. 85–859, 1358, as amended, 26 U.S.C. 5205)

[T.D. ATF–198, 50 FR 8548, Mar. 1, 1985]

§ 250.43 Samples.

The Director may require samples of liquors and articles to be submitted whenever desired for laboratory analysis in order to determine the rates of tax applicable thereto.

[20 FR 6077, Aug. 20, 1955, as amended by T.D. 7006, 34 FR 2250, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

SPECIAL (OCCUPATIONAL) TAXES

§ 250.44 Liquor dealer's special taxes.

Every person bringing liquors into the United States from Puerto Rico, who sells, or offers for sale, such liquors shall file Form 5630.5 with ATF in accordance with the instructions of the form, and pay special (occupational) tax as a wholesale dealer in liquor or as a retail dealer in liquor in accordance with the law and regulations governing

the payment of such special taxes (part 194 of this chapter).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340 as amended, 1343 as amended, 1344 as amended (26 U.S.C. 5111, 5112, 5121, 5122))

[T.D. ATF–70, 45 FR 33980, May 21, 1980, as amended by T.D. ATF–251, 52 FR 19338, May 22, 1987]

§ 250.45 Warehouse receipts covering distilled spirits.

Since the sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits, every person bringing distilled spirits into the United States from Puerto Rico, who sells, or offers for sale, warehouse receipts for distilled spirits stored in warehouses, or elsewhere, incurs liability to special tax as a dealer in liquors at the place where such warehouse receipts are sold, or offered for sale, and must file return and pay occupational tax as provided in § 250.44.

(68A Stat. 618, 620, 621; 26 U.S.C. 5111, 5112, 5121, 5122)

§ 250.46 Distilled spirits plant proprietor's special (occupational) tax.

Every proprietor of a distilled spirits plant producing industrial spirits, denatured spirits, or products made with denatured spirits, for shipment to the United States, shall file Form 5630.5 with ATF in accordance with instructions on the form and pay special (occupational) tax as a distilled spirits plant proprietor in accordance with part 19 of this chapter.

(26. U.S.C. 5081, 5314)

[T.D. ATF–271, 53 FR 17559, May 17, 1988]

§ 250.47 Specially denatured spirits user's and dealer's special (occupational) taxes.

Every user of specially denatured spirits who manufactures products made with such spirits for shipment to the United States, and every dealer in specially denatured spirits who ships such spirits to the United States, who is required by § 250.36 to obtain a permit under part 20 of this chapter, shall file Form 5630.5 with ATF in accordance with instructions on the form and pay special (occupational) tax as a user or dealer in specially denatured spirits under part 20 of this chapter.

(.S.C. 5271, 5276, 5314)

[T.D. ATF–271, 53 FR 17559, May 17, 1988]

Subpart D—Formulas for Products From Puerto Rico

SOURCE: 44 FR 71709, Dec. 11, 1979, unless otherwise noted.

§ 250.50 Formulas for liquors.

(a) *Distilled spirits products*. Except for products which are exempt from tax, as specified in § 250.36, formulas are required by part 5 of this chapter for distilled spirits products shipped to the United States from Puerto Rico. If a formula is submitted to cover only the production of spirits which are to be transferred to the bonded premises of a DSP under 26 U.S.C. 5232, the formula shall include a statement to that effect. If any product contains liquors made outside of Puerto Rico, the country of origin for each such liquor shall be stated on the formula. These formulas shall be submitted on ATF Form 5110.38, in accordance with § 250.54.

(b) *Wine*. Persons in Puerto Rico who ship wine to the United States shall comply with the formula requirements of 27 CFR part 240. If any wine contains liquors made outside of Puerto Rico, the country of origin for each such liquor shall be stated on the formula. All formulas required by this paragraph shall be submitted on ATF Form 698 Supplemental, in accordance with § 250.54.

(Approved by the Office of Management and Budget under control number 1512–0204)

[T.D. ATF–198, 50 FR 8549, Mar. 1, 1985]

§ 250.50a Verification of eligible flavors.

(a) Any person who, after December 1, 1990, ships to the United States any distilled spirits on which the tax has been or is to be paid or determined at an effective tax rate based in part on the alcohol content derived from any eligible flavor not previously approved on ATF Form 5530.5 (1678) or 5150.19 shall, before the first tax determination at that rate, request and receive a statement of eligibility for each flavor

to be used in the computation of the effective tax rate.

(b) To receive a statement of eligibility, the person shipping the distilled spirits shall submit to the ATF National Laboratory, 1401 Research Boulevard, Rockville, MD 20850, the following:

(1) An 8-ounce sample; and

(2) A statement of composition listing the—

(i) Name and percentage of alcohol by volume of the flavor; and

(ii) Name and quantity of each ingredient used in the manufacture of the flavor.

(Approved by Office of Management and Budget under control number 1512–0203)

(Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652); Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001); Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

[T.D. ATF–297, 55 FR 18066, Apr. 30, 1990]

§ 250.51 Formulas for articles, eligible articles and products manufactured with denatured spirits.

(a) *Formulas for articles and eligible articles*. Formulas for articles made with distilled spirits must show the quantity and proof of the distilled spirits used, and the percentage of alcohol by volume contained in the finished product. Formulas for articles made with beer or wine must show the kind and quantity thereof (liquid measure), and the percent of alcohol by volume of such beer or wine. Formulas and samples for eligible articles are required in accordance with subpart F of part 17 of this chapter.

(b) *Formulas for products manufactured with denatured spirits*. Products manufactured with denatured spirits shall be manufactured in accordance with the formula requirements of part 20 of this chapter for similar products made in the United States.

(1) Products may be made with completely denatured alcohol for sale under brand names under part 20 of this chapter without obtaining an approved formula. If ingredients are added in sufficient quantities to materially change the composition and character of the completely denatured alcohol, the product is not classified as completely denatured alcohol and may not be marked, branded, or sold as completely denatured alcohol.

(2) Products made with specially denatured spirits shall be made in accordance with (i) a general-use formula approved as provided in part 20 of this chapter, or (ii) an approved formula on Form 5150.19, or previously approved on ATF Form 1479–A or 27–B Supplemental.

(c) *Formulas required*. Formulas required by this section shall be submitted on Form 5150.19, except that formulas for eligible articles shall be submitted on Form 5154.1 (formerly 1678). Formulas shall be submitted in accordance with § 250.54. Any formula for an eligible article approved on Form 5150.19 prior to October 23, 1986 shall continue to be valid until revoked or voluntarily surrendered. Any person holding such a formula is not required to submit a new formula.

(Approved by the Office of Management and Budget under control number 1512–0494)

[44 FR 71709, Dec. 11, 1979, as amended by T.D. ATF–199, 50 FR 9198, Mar. 6, 1985; T.D. ATF–263, 52 FR 46593, Dec. 9, 1987; T.D. ATF–379, 61 FR 31427, June 20, 1996]

§ 250.52 Still wines containing carbon dioxide.

(a) *General*. Still wines may contain not more than 0.392 gram of carbon dioxide per 100 milliliters of wine; except that a tolerance to this maximum limitation, not to exceed 0.009 gram of carbon dioxide per 100 milliliters of wine, will be allowed where the amount of carbon dioxide in excess of 0.392 gram per 100 milliliters of wine was due to mechanical variations which could not be completely controlled under good commercial practices. Such tolerance will not be allowed where it is found that the limitation of 0.392 gram of carbon dioxide per 100 milliliters of wine is continuously or intentionally exceeded, or where the variation results from the use of methods or equipment not in accord with good commercial practices.

(b) *Notice required*. Proprietors intending to add carbon dioxide to, or retain carbon dioxide in, still wines to be shipped to the United States shall submit a notice to the Chief, Puerto Rican Operations. The notice shall show the name and address of the proprietor and

shall identify the method or process, the kinds (class and type) of wine, and the type of equipment to be used. A corrected notice shall be filed if there is any change (except for minor changes) in the information contained in the notice.

(c) *Filing and disposition of notice.* The notice required by paragraph (b) of this section shall be submitted in quadruplicate to the Chief, Puerto Rican Operations, who shall retain one copy, forward one copy to the Secretary, and one copy to the revenue agent at the proprietor's premises, and return one copy to the proprietor. The proprietor shall keep the notice available for examination by revenue agents.

(Approved by the Office of Management and Budget under control number 1512–0352)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C 5041))

[20 FR 6077, Aug. 20, 1955. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–172, 49 FR 14943, Apr. 16, 1984; T.D. ATF–251, 52 FR 19338, May 22, 1987]

§ 250.53 Changes of formulas.

Any change in the ingredients composing a product covered by an approved formula will necessitate the submission of a new formula.

§ 250.54 Filing and disposition of formulas.

Prior to shipment, formulas required by this subpart shall be submitted in quadruplicate to and approved by the Director. The Director shall retain one copy, forward one copy to the Secretary, and one copy to the revenue agent at the premises of the applicant, and return one copy to the applicant. The applicant shall maintain copies of approved formulas available for examination by revenue agents.

[44 FR 71709, Dec. 11, 1979, as amended by T.D. ATF–251, 52 FR 19338, May 22, 1987]

§ 250.55 Previously approved formulas.

Any formula approved on Form 27–B Supplemental prior to January 1, 1980, shall continue to be valid until revoked or voluntarily surrendered. Any person holding such a formula is not required to submit a new formula. If an approved formula on Form 27–B Supplemental indicates that carbon dioxide will be added to, or retained in, still wine, the notice requirement of § 250.52 shall not apply.

Subpart E—Taxpayment of Liquors and Articles in Puerto Rico

SOURCE: T.D. 6551, 26 FR 1490, Feb. 22, 1961, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

BONDS

§ 250.61 General.

Every person filing a bond under this subpart, or consent of surety on such bond, shall file it with the regional director (compliance). Any bond or consent of surety approved prior to July 1, 1987, by the Officer-in-Charge, United States Internal Revenue Service shall continue to be valid until terminated as provided in this subpart.

[T.D. ATF–251, 52 FR 19338, May 22, 1987]

§ 250.62 Corporate surety.

(a) Surety bonds may be given only with corporate sureties holding certificates of authority from, and subject to the limitations prescribed by, the Secretary of the Treasury, as set forth in the current revision of U.S. Treasury Department Circular No. 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies).

(b) Treasury Department Circular No. 570 is published in the FEDERAL REGISTER annually as of the first workday in July. As they occur, interim revisions of the circular are published in the FEDERAL REGISTER. Copies of the circular 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 46921, Sept. 23, 1981]

§ 250.62a Filing of powers of attorney.

Each bond, and each consent to changes in the terms of a bond, shall be accompanied by a power of attorney authorizing the agent or officer who executed the bond or consent to so act on behalf of the surety. The regional

director (compliance) who is authorized to approve the bond may, when he deems it necessary, require additional evidence of the authority of the agent or officer to execute the bond or consent.

(61 Stat. 648; 6 U.S.C. 6, 7)

[T.D. ATF–2, 37 FR 22736, Oct. 21, 1972. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–251, 52 FR 19338, May 22, 1987]

§ 250.62b Execution of powers of attorney.

The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed original, it shall be accompanied by certification of its validity.

(61 Stat. 648; 6 U.S.C. 6, 7)

[T.D. ATF–2, 37 FR 22736, Oct. 21, 1972. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 250.63 Deposit of securities in lieu of corporate surety.

In lieu of corporate surety, the principal may pledge and deposit, as surety for his bond, securities which are transferable and are guaranteed as to both interest and principal by the United States, in accordance with the provisions of 31 CFR part 225—Acceptance of Bonds, Notes or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

(5 U.S.C. 552(a) (80 Stat. 383, as amended); 61 Stat. 650; 6 U.S.C. 15)

[T.D. 6551, 26 FR 1490, Feb. 22, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–92, 46 FR 46921, Sept. 23, 1981]

§ 250.64 Consents of surety.

Consents of surety to changes in the terms of bonds shall be executed on Form 1533 by the principal and by the surety with the same formality and proof of authority as is required for the execution of bonds.

§ 250.65 Authority to approve bonds and consents of surety.

The regional director (compliance) is authorized to approve all bonds and consents of surety filed under this part.

[T.D. 6551, 26 FR 1490, Feb. 22, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19338, May 22, 1987]

§ 250.66 Bond, ATF Form 5110.50—Distilled spirits.

(a) *General.* If any person intends to ship to the United States, distilled spirits products of Puerto Rican manufacture from bonded storage in Puerto Rico on computation, but before payment, of the tax imposed by 26 U.S.C. 7652(a), equal to the tax imposed in the United States by 26 U.S.C. 5001(a)(1), he shall, before making any such shipment, furnish a bond ATF Form 5110.50, for each premises from which shipment will be made, to secure payment of such tax, at the time and in the manner prescribed in this subpart, on all distilled spirits products shipped. The bond shall be executed in a penal sum not less than the amount of unpaid tax which, at any one time, is chargeable against the bond. The penal sum of such bond shall not exceed $1,000,000, but in no case shall the penal sum be less than $1,000.

(b) *Blanket bond.* Any person who is the proprietor of more than one premises in Puerto Rico from which shipment of spirits to the United States will be made, may, in lieu of furnishing two or more separate bonds on ATF Form 5110.50 as required by paragraph (a) of this section, furnish a blanket bond on ATF Form 5110.50. The penal sum of such blanket bond shall be equal to the sum of the penal sums of all the bonds in lieu of which it is given. Such blanket bond on ATF Form 5110.50 shall show each bonded warehouse and/or bonded processing room and/or rectifying plant to be covered by the bond, and the part of the total penal sum (computed in accordance with paragraph (a) of this section) to be allocated to each of the designated premises. If the penal sum of the bond allocated to a designated premises is in an amount less than the maximum prescribed in paragraph (a) of this section, transactions at such premises shall not

exceed the quantity permissible, as reflected by the penal sum allocated in the bond to such premises. Such blanket bond shall contain the terms and conditions of the bonds in lieu of which it is given and shall be conditioned that the total amount of the bond shall be available for satisfaction of any liability incurred under the terms and conditions of such bond.

(Act of August 16, 1954, 68A Stat. 847, as amended, 907, as amended (26 U.S.C 7101, 7102, 7652))

[T.D. ATF–62, 44 FR 71710, Dec. 11, 1979]

§ 250.67 Bond, Form 2897—Wine.

Where a proprietor intends to withdraw, for purpose of shipment to the United States, wine of Puerto Rican manufacture from bonded storage in Puerto Rico on computation, but before payment, of the tax imposed by 26 U.S.C. 7652(a), equal to the tax imposed in the United States by 26 U.S.C. 5041, he shall, before making any such withdrawal, furnish a bond, Form 2897, to secure payment of such tax, at the time and in the manner prescribed in this subpart, on all wine so withdrawn. The bond shall be executed in a penal sum not less than the amount of unpaid tax which, at any one time, is chargeable against the bond: *Provided*, That the penal sum of such bond shall not exceed $250,000, but in no case shall the penal sum be less than $500.

(Aug. 16, 1954, Chapter 736, 68A Stat. 775, as amended, 847, as amended, 906, 907, as amended (26 U.S.C. 6302, 7101, 7102, 7651(2)(B), 7652(a)))

[T.D. 6551, 26 FR 1490, Feb. 22, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55852, Sept. 28, 1979]

§ 250.68 Bond, Form 2898—Beer.

Where a brewer intends to withdraw, for purpose of shipment to the United States, beer of Puerto Rican manufacture from bonded storage in Puerto Rico on computation, but before payment, of the tax imposed by 26 U.S.C. 7652(a), equal to the tax imposed in the United States by 26 U.S.C. 5051, he shall, before making any such withdrawal, furnish a bond, Form 2898, to secure payment of such tax, at the time and in the manner prescribed in this subpart, on all beer so withdrawn. The bond shall be executed in a penal sum not less than the amount of unpaid tax which, at any one time, is chargeable against the bond: *Provided*, That the penal sum of such bond shall not exceed $500,000, but in no case shall the penal sum be less than $1,000.

(Aug. 16, 1954, Chapter 736, 68A Stat. 775, as amended, 847, as amended, 906, 907, as amended (26 U.S.C. 6302, 7101, 7102, 7651(2)(B), 7652(a)))

[T.D. 6551, 26 FR 1490, Feb. 22, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55852, Sept. 28, 1979]

§ 250.68a Bond account.

Every person who files a bond under this subpart shall keep an account of the charges against and credits to the bond if the penal sum of his bond is less than the maximum prescribed in §§ 250.66(a), 250.67, or § 250.68, or if the penal sum allocated to his premises under § 250.66(b) is less than the prescribed maximum. He shall charge the bond with the amount of liability he accepts at the time he executes ATF Form 5110.51 or 2900, and shall credit the bond with the amount of the tax paid at the time he files each return, ATF Form 5110.32, 2927, or 2929, and remittance. The account shall also show the balance available under the bond at any one time.

[T.D. ATF–62, 44 FR 71710, Dec. 11, 1979]

§ 250.69 Strengthening bonds.

In all cases where the penal sum of any bond becomes insufficient, the principal shall either give a strengthening bond with the same surety to attain a sufficient penal sum, or give a new bond to cover the entire liability. Strengthening bonds 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 any bond to less than its full penal sum. Strengthening bonds shall show the current date of execution and the effective date.

§ 250.70 New or superseding bonds.

New bonds shall be required in case of insolvency or removal of any surety,

and may, at the discretion of the regional director (compliance), be required in any other contingency affecting the validity or impairing the efficiency of an existing bond. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity, continuing or liquidating the business of the principal, shall execute and file a new bond or obtain the consent of the surety or sureties on the existing bond or bonds. Where, under the provisions of § 250.72, the surety on any bond given under this subpart has filed an application to be relieved of liability under said bond and the principal desires or intends to continue the operations to which such bond relates, he shall file a valid superseding bond to be effective on or before the date specified in the surety's notice. New or superseding bonds shall show the current date of execution and the effective date.

[T.D. 6551, 26 FR 1590, Feb. 22, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19338, May 22, 1987]

§ 250.70a Notice of approval of bonds.

Upon approval of an original, a strengthening, or a superseding bond, the regional director (compliance) shall notify the Secretary, and the revenue agent at the premises, of the total penal sum of the bond or bonds, and in the case of a blanket bond, the amount of the penal sum allocated to the premises.

[T.D. 6695, 28 FR 12932, Dec. 5, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19338, May 22, 1987]

TERMINATION OF BONDS

§ 250.71 Termination of bonds.

Any bond given under the provisions of this subpart may be terminated as to future transactions—

(a) Pursuant to application of surety as provided in § 250.72;

(b) On approval of a superseding bond;

(c) On notification by the principal to the regional director (compliance) that he has discontinued transactions under the bond; or

(d) On notification by the principal to the regional director (compliance) that he has discontinued business.

[T.D. 6695, 28 FR 12932, Dec. 5, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19338, May 22, 1987]

§ 250.72 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 principal 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 acknowledgment or other proof of service on the principal. If such notice is not thereafter in writing withdrawn, the rights of the principal 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 § 250.73.

(Approved by the Office of Management and Budget under control number 1512–0352)

[T.D. 6551, 26 FR 1490, Feb. 22, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–172, 49 FR 14943, Apr. 16, 1984; T.D. ATF–251, 52 FR 19338, May 22, 1987]

§ 250.73 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 § 250.72, 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.

§ 250.74 Release of pledged securities.

Securities of the United States pledged and deposited as provided in § 250.63, 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)

[T.D. 6551, 26 FR 1590, Feb. 22, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19338, May 22, 1987]

§ 250.75 Form 1490, Notice of Termination of Bond.

When the regional director (compliance) is satisfied that any bond given under the provisions of this subpart may be terminated, he shall issue Form 1490, Notice of Termination of Bond, and shall forward copies to the principal and to the surety. The regional director (compliance) shall, prior to the termination date, notify the Secretary and the revenue agent of the proposed termination of any bond given under this part and the date of such termination.

[T.D. 6695, 28 FR 12932, Dec. 5, 1963, as amended by T.D. ATF–2, 37 FR 22736, Oct. 21, 1972. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended bt T.D. ATF–251, 52 FR 19338, May 22, 1987]

PERMITS REQUIRED

§ 250.76 Insular permits.

Before liquors or articles of Puerto Rican manufacture may be shipped to the United States, an insular permit, ATF Form 5110.51 (for distilled spirits) or Form 2900 (for wine or beer), to compute the taxes imposed by 26 U.S.C. 7652(a), and to withdraw the products from the bonded establishment where they may be deposited, must be obtained from the Secretary, and such products may not be shipped to the United States until a permit to ship, on Form 487B, is applied for and obtained from the Secretary.

[T.D. 6551, 26 FR 1490, Feb. 22, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 250.76, see the List of CFR Sections Affected in the Finding Aids section of this volume.

DISTILLED SPIRITS

§ 250.77 Subject to tax.

(a) Distilled spirits of Puerto Rican manufacture, and any products containing such distilled spirits, brought into the United States and withdrawn for consumption or sale are subject to a tax equal to the tax imposed in the United States by 26 U.S.C. 5001.

(b) A credit against the tax imposed on distilled spirits by 26 U.S.C. 7652 is allowable under 26 U.S.C. 5010 on each proof gallon of alcohol derived from eligible wine or from eligible flavors which do not exceed 2½ percent of the finished product on a proof gallon basis. The credit is allowable at the time the tax is payable as if it constituted a reduction in the rate of tax.

(c) Where credit against the tax is desired, the person liable for the tax shall establish an effective tax rate in accordance with § 250.79a. The effective tax rate established will be applied to each withdrawal or other disposition of the distilled spirits for consumption or sale within the United States.

(Approved by Office of Management and Budget under control number 1512–0203)

(Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652); Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001); Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

[T.D. ATF–297, 55 FR 18066, Apr. 30, 1990]

§ 250.78 Application and permit, ATF Form 5110.51.

Application for permit to compute the tax on, and to withdraw, distilled spirits shall be made on ATF Form 5110.51, in quintuplicate, by the proprietor. The proprietor shall forward all copies of the form to the Secretary. If the application is properly prepared and is otherwise in order, the Secretary or his delegate shall execute the permit, retain one copy, and forward the original and remaining copies of the form to the revenue agent at the premises where the products are located.

[T.D. ATF–62, 44 FR 71711, Dec. 11, 1979, as amended by T.D. ATF–251, 52 FR 19338, May 22, 1987]

§ 250.79 Inspection or gauge and computation of tax.

On receipt of permit to compute the tax on ATF Form 5110.51, the revenue agent shall:

(a) In the case of spirits in packages, prepare a gauge record as provided in § 250.164a in quadruplicate, compute the tax thereon, and attach all copies of the gauge record to ATF Form 5110.51;

(b) In the instance of spirits in cases, verify by inspection the quantity of spirits described on the form; or

(c) In the case of spirits in a bulk conveyance, verify by gauge or inspection the quantity of spirits described on the form.

If the revenue agent determines any variation between his gauge and the quantity of spirits described on Form 5110.51, he shall amend and initial the data in part I of the form. The revenue agent shall deliver all copies of Form 5110.51 and any accompanying package gauge record to the proprietor. The proprietor shall then compute and enter the amount of tax on all copies of Form 5110.51.

(Approved by the Office of Management and Budget under control number 1512–0250)

[T.D. ATF–198, 50 FR 8549, Mar. 1, 1985]

§ 250.79a Computation of effective tax rate.

(a) The proprietor shall compute the effective tax rate for distilled spirits containing eligible wine or eligible flavors as the ratio of the numerator and denominator as follows:

(1) the numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed by 26 U.S.C. 5001;

(ii) The wine gallons of each eligible wine used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5041(b) (1), (2), or (3), as applicable; and

(iii) The proof gallons of all distilled spirits derived from eligible flavors used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5001, but only to the extent that such distilled spirits exceed 2½% of the denominator prescribed in paragraph (a)(2) of this section.

(2) The denominator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product, including distilled spirits derived from eligible flavors; and

(ii) The wine gallons of each eligible wine used in the product, multiplied by twice the percentage of alcohol by volume of each, divided by 100.

(b) In determining the effective tax rate, quantities of distilled spirits, eligible wine, and eligible flavors will be expressed to the nearest tenth of a proof gallon. The effective tax rate may be rounded to as many decimal places as the proprietor deems appropriate, provided that, such rate is expressed no less exactly than the rate rounded to the nearest whole cent, and the effective tax rates for all products will be consistently expressed to the same number of decimal places. In such case, if the number is less than five it will be dropped; if it is five or over, a unit will be added.

(c) The following is an example of the use of the formula.

BATCH RECORD

Distilled spirits	2249.1 proof gallons.
Eligible wine (14% alcohol by volume).	2265.0 wine gallons
Eligible wine (19% alcohol by volume).	1020.0 wine gallons
Eligible flavors	100.9 proof gallons

[1] Proof gallons by which distilled spirits derived from eligible flavors exceed 2½% of the total proof gallons in the batch (100.9 − (2½%) × 3.371.8 = 16.6).

$$\frac{2249.1(\$12.50)+[2265.0(\$.17)+1020(\$.67)]+16.6^{1}(\$12.50)}{2249.1+100.9+[2265.0(.28)+1020.0(.38)]}=$$

$$\frac{2249.1(\$13.50)+[2265.0(\$1.07)+1020(\$1.57)]+16.6^{1}(\$13.50)}{2249.1+100.9+(2265.0\times.28)+(1020\times.38)}=$$

$$\frac{\$30{,}362.85+\$2{,}423.55+\$1{,}601.40+\$224.10}{2{,}350.0+634.2+387.6}=$$

$$\frac{\$34{,}611.90}{3{,}371.8}=\$10.27,\ \text{the effective tax rate.}$$

(Approved by Office of Management and Budget under control number 1512–0203)

(Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

[T.D. ATF–297, 55 FR 18066, Apr. 30, 1990, as amended by T.D. ATF–307, 55 FR 52741, Dec 21, 1990]

§ 250.80 Deferred payment of tax—release of spirits.

(a) *Action by proprietor*. Where the proprietor has furnished bond on ATF Form 5110.50, and payment of the tax is to be deferred, he shall execute an agreement on ATF Form 5110.51 to pay the amount of tax which has been computed and entered on the form. He shall also certify, under the penalties of perjury, that he is not in default of any payment of tax chargeable against his bond, and that his bond is in the maximum penal sum, or that it is sufficient to cover the amount of tax on the distilled spirits described on the form in addition to all other amounts chargeable agains this bond. The proprietor shall deliver all copies of ATF Form 5110.51 and any package gauge record as provided in §250.164a to the revenue agent.

(b) *Action by revenue agent*. On receipt of ATF Form 5110.51 and any package gauge record, the revenue agent shall verify the computation of the tax entered on the ATF Form 5110.51, and if the proprietor has on file a good and sufficient bond, ATF Form 5110.50, so indicate on ATF Form 5110.51. The revenue agent shall then execute his report of release on the ATF Form 5110.51 and release the spirits for shipment to the United States. He shall distribute ATF Form 5110.51 and any package gauge record according to the instructions of ATF Form 5110.51. Where the revenue agent finds that the proprietor does not have good and sufficient bond coverage, or where the revenue agent has received information that the proprietor is in default of payment of any taxes previously charged to his bond, he shall return all copies of ATF Form 5110.51 and any package gauge record to the proprietor, giving his reasons for such action.

(Approved by the Office of Management and Budget under control number 1512–0250)

[T.D. ATF–198, 50 FR 8549, Mar. 1, 1985]

§ 250.81 Prepayment of tax and release of spirits.

(a) *Action by proprietor*. Where the distilled spirits are to be released after payment of the computed tax, the proprietor shall enter the amount of such computed tax on all copies of ATF Form 5110.51 and execute the statement that such tax is being prepaid. The proprietor shall then prepare ATF Form 5000.25 in duplicate, and send the original with all copies of ATF Form 5110.51 and any package gauge record as provided in § 250.164a and the remittance in full for the tax, to the Chief, Puerto Rico Operations.

(b) *Action by Chief, Puerto Rico Operations*. On receipt of ATF Forms 5110.51, 5000.25 and any package gauge record, with remittance covering prepayment of tax, the Chief, Puerto Rico Operations shall execute the receipt on ATF Form 5000.25 and execute the report of prepaid taxes on all copies of ATF Form 5110.51. The Chief, Puerto Rico Operations shall then retain the originals of ATF Forms 5110.51 and 5000.25 and forward the remaining copies of

ATF Form 5110.51 in accordance to the instructions on the form.

(c) *Action by revenue agent.* On receipt of ATF Form 5110.51 executed by the Chief, Puerto Rico Operations to show receipt of ATF Form 5000.25 and remittance, the revenue agent shall execute the report of release on the ATF Form 5110.51 and release the spirits for shipment to the United States. The completed ATF Form 5110.51 shall be distributed according to the instructions on the form.

(Approved by the Office of Management and Budget under control number 1512–0210 and 1512–0497)

[T.D. ATF–277, 53 FR 45267, Nov. 9, 1988]

§ 250.82 Permit to ship.

Distilled spirits may not be shipped to the United States until permit for such shipment has been obtained from the Secretary as provided in §§ 250.114 through 250.116.

[T.D. 6695, 28 FR 12932, Dec. 5, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71711, Dec. 11, 1979]

PACKAGES OF DISTILLED SPIRITS

§ 250.86 Authority for shipment.

Where distilled spirits of Puerto Rican manufacture are to be shipped to the United States in containers having a capacity of more than one gallon, the laws and regulations of the Commonwealth of Puerto Rico require that prior approval for such shipment be obtained from the Secretary.

[T.D. 6695, 28 FR 12933, Dec. 5, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 250.87 Evidence of taxpayment.

Where, under the provisions of § 250.86, a person has made application to the Secretary for authority to ship distilled spirits of Puerto Rican manufacture to the United States in containers having a capacity of more than one gallon, he shall, at the same time, submit sworn evidence to the Secretary that the distilled spirits tax has been paid as provided in § 250.81 or deferred as provided in § 250.80, or he shall submit application, ATF Form 5110.51, for permit to pay such taxes, as provided in § 250.78. When satisfied that the shipper has complied with all provisions of this part relating to the payment of taxes on such distilled spirits, the Secretary or his delegate, shall note his approval on both copies of the sworn application, and return one copy to the shipper. On receipt of the approved application, the shipper shall submit application for permit to ship, Form 487B, as prescribed in §§ 250.114 through 250.116.

[T.D. 6695, 28 FR 12933, Dec. 5, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71711, Dec. 11, 1979]

WINE

§ 250.92 Subject to tax.

(a) Wine of Puerto Rican manufacture coming into the United States and withdrawn for consumption or sale is subject to a tax equal to the internal revenue tax imposed in the United States on wine by 26 U.S.C. 5041.

(b) The excise taxes collected on wine of Puerto Rican manufacture shall be deposited in the Treasury of Puerto Rico only 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 wine when it is brought into the United States.

(Aug. 16, 1954, Chapter 736, 68A Stat. 907, as amended (26 U.S.C. 7652))

[T.D. ATF–206, 50 FR 15888, Apr. 23, 1985]

§ 250.93 Application and permit, Form 2900.

When wine of Puerto Rican manufacture is to be withdrawn for shipment to the United States, or for use in an article made with wine only or with wine and beer only, for shipment to the United States, application for permit to compute the tax on, and to withdraw, the wine shall be made on Form 2900, in quintuplicate, by the proprietor of the bonded premises where the wine is stored. If the withdrawal is to be made in casks, barrels, kegs or similar containers, the proprietor shall enter the name of the winemaker producing the wine, the serial numbers of the packages, the total number of wine gallons contained therein, and the taxable grade of the wine, for example, ''not

more than 14 percent'' if the wine contains not more than 14 percent of alcohol by volume, ''14–21 percent'' if the wine contains more than 14 percent and not exceeding 21 percent of alcohol by volume, ''21–24 percent'' if the wine contains more than 21 percent but not exceeding 24 percent of alcohol by volume. If the application covers more than one taxable grade of wine, the quantity in each taxable grade shall be reported separately. If the withdrawal is to consist of bottled wine, the proprietor shall show the number of cases, size of the bottles, the number of bottles per case, the total quantity in wine gallons, and the taxable grade of the wine in the manner stated above. The proprietor shall forward all copies of the form to the Secretary. If the application is properly prepared and is otherwise in order, the Secretary or his delegate shall execute the permit, retain one copy, and return the original and three copies to the proprietor.

[T.D. ATF–62, 44 FR 71712, Dec. 11, 1979, as amended by T.D. ATF–251, 52 FR 19338, May 22, 1987]

§ 250.94 Computation of tax.

On receipt of permit to compute the tax on Form 2900, the proprietor shall compute and enter the amount of the tax on all copies of the form.

[T.D. 6695, 28 FR 12934, Dec. 5, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 250.95 Deferred payment of tax—release of wine.

(a) *Action by proprietor*. Where the proprietor has furnished bond, on Form 2897, and payment of the tax is to be deferred, he shall execute the agreement on Form 2900 to pay the amount of tax which has been computed and entered on the form. He shall also certify under the penalties of perjury that he is not in default of any payment of tax chargeable against his bond, and that his bond is in the maximum penal sum, or that it is sufficient to cover the amount of tax on the wine described on the form in addition to all other amounts chargeable against his bond. The proprietor shall deliver all copies of Form 2900 to the revenue agent.

(b) *Action by revenue agent*. On receipt of Form 2900, the revenue agent shall verify the computation of the tax entered on the form, and if the proprietor has on file a good and sufficient bond, Form 2897, so indicate on Form 2900. The revenue agent shall then execute his report of release on the Form 2900 and release the wine for the purpose authorized on the form. The completed form shall be distributed in the same manner as provided for ATF Form 5110.51 in § 250.80(b). Where the revenue agent finds that the proprietor does not have good and sufficient bond coverage, or that the proprietor is in default of payment of any taxes previously charged to his bond, he shall return all copies of Form 2900 to the proprietor, giving his reasons for such action.

[T.D. 6695, 28 FR 12934, Dec. 5, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71712, Dec. 11, 1979]

§ 250.96 Prepayment of tax—release of wine.

(a) *Action by proprietor*. Where the wine is to be withdrawn from bonded storage after payment of the computed tax, the proprietor shall enter the amount of such computed tax on all copies of ATF Form 2900 (5100.21) and execute the statement that such tax is being prepaid. The proprietor shall then prepare ATF Form 5000.25 in duplicate and send the original with all copies of ATF Form 2900 (5100.21) and the remittance in full for the tax, to the Chief, Puerto Rico Operations.

(b) *Action by Chief, Puerto Rico Operations*. On receipt of ATF Forms 2900 (5100.21) and 5000.25, and remittance covering prepayment of tax, the Chief, Puerto Rico Operations shall execute the receipt on ATF Form 5000.25 and execute the report of prepaid taxes on all copies of ATF Form 2900 (5100.21). The Chief, Puerto Rico Operations shall then retain the originals of ATF Forms 2900 (5100.21) and 5000.25 and forward the remaining copies of ATF Form 2900 (5100.21) in accordance with the instructions on the form.

(c) *Action by revenue agent*. On receipt of ATF Form 2900 (5100.21) executed by the Chief, Puerto Rico Operations to show receipt of ATF Form 5000.25 and remittance, the revenue agent shall execute the report of release on the

ATF Form 2900 (5100.21) and release the wine for the purpose authorized on the form. The completed ATF Form 2900 (5100.21) shall be distributed according to the instructions on the form.

(Approved by the Office of Management and Budget under control number 1512–0149 and 1512–0497)

[T.D. ATF–277, 53 FR 45267, Nov. 9, 1988]

§ 250.96a [Reserved]

§ 250.96b Permit to ship.

Wine released from bonded storage under § 250.95 or § 250.96 may not be shipped to the United States until permit for such shipment has been obtained from the Secretary as provided in §§ 250.114 through 250.116.

[T.D. 6695, 28 FR 12934, Dec. 5, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 250.97 Marking containers of wine.

Containers of wine of Puerto Rican manufacture which are to be shipped to the United States must be marked with the name of the winemaker, the serial number of the container, the kind and taxable grade of the wine, the gallon content, and the serial number of the withdrawal permit, Form 487B, prefixed by the number of such form, e.g., ''487B–61–3.''

BEER

§ 250.101 Subject to tax.

(a) Beer of Puerto Rican manufacture coming into the United States and withdrawn for consumption or sale is subject to a tax equal to the internal revenue tax imposed on beer in the United States by 26 U.S.C. 5051.

(b) The excise taxes collected on beer of Puerto Rican manufacture shall be deposited in the Treasury of Puerto Rico only 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 beer when it is brought into the United States.

(Aug. 16, 1954, Chapter 736, 68A Stat. 907, as amended (26 U.S.C. 7652))

[T.D. ATF–206, 50 FR 15888, Apr. 23, 1985]

§ 250.102 Application and permit, Form 2900.

When beer of Puerto Rican manufacture is to be withdrawn for shipment to the United States, or for use in making an article for shipment to the United States, application for permit to compute the tax on, and to withdraw, the beer shall be made by the brewer on Form 2900, in quintuplicate. If the withdrawal is to be made in hogsheads, barrels, or kegs, the brewer shall enter the total number of each size, according to capacity, of containers which it is desired to withdraw. If the withdrawal is to be made in bottles, the brewer shall enter the number of cases, size of bottles, number of bottles per case, the total contents thereof in gallons (liquid measure), and the equivalent thereof in barrels and fractions of barrels of 31 gallons each. The brewer shall forward all copies of the Form 2900 to the Secretary. If the application is properly prepared and is otherwise in order, the Secretary or his delegate shall execute the permit, retain one copy, and return the original and three copies to the brewer.

[T.D. 6695, 28 FR 12934, Dec. 5, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19338, May 22, 1987]

§ 250.103 Computation of tax.

On receipt of permit to compute the tax on Form 2900 the brewer shall compute and enter the amount of the tax on all copies of the form.

[T.D. 6695, 28 FR 12934, Dec. 5, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 250.104 Deferred payment of tax—release of beer.

(a) *Action by brewer*. Where the brewer has furnished bond on Form 2898, and payment of the tax is to be deferred, he shall execute the agreement on Form 2900 to pay the amount of tax which has been computed and entered on the form. He shall also certify under the penalties of perjury that he is not in default of any payment of tax chargeable against his bond, and that his bond is in the maximum penal sum, or that it is sufficient to cover the amount of tax on the beer described on the form in addition to all other

amounts chargeable against his bond. The brewer shall deliver all copies of Form 2900 to the revenue agent.

(b) *Action by revenue agent*. On receipt of Form 2900, the revenue agent shall verify the computation of the tax entered on the form, and if the proprietor has on file a good and sufficient bond, Form 2898, so indicate on Form 2900. The revenue agent shall then execute his report of release on the Form 2900 and release the beer for the purpose authorized on the form. The completed form shall be distributed in the same manner as provided for ATF Form 5110.51 in § 250.80(b). Where the revenue agent finds that the proprietor does not have good and sufficient bond coverage, or that the proprietor is in default of payment of any taxes previously charged to his bond, he shall return all copies of Form 2900 to the proprietor, giving his reasons for such action.

[T.D. 6695, 28 FR 12934, Dec. 5 1963. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71712, Dec. 11, 1979]

§ 250.105 Prepayment of tax—release of beer.

(a) *Action by brewer*. Where the beer is to be withdrawn from bonded storage after payment of the computed tax the brewer shall enter the amount of such computed tax on all copies of ATF Form 2900 (5100.21) and execute the statement that such tax is being prepaid. The brewer shall then prepare ATF Form 5000.25 in duplicate and send the original with all copies of ATF Form 2900 (5100.21) and the remittance in full for the tax, to the Chief, Puerto Rico Operations.

(b) *Action by Chief, Puerto Rico Operations*. On receipt of ATF Forms 2900 (5100.21) and 5000.25, and remittance covering prepayment of tax, the Chief, Puerto Rico Operations shall execute the receipt on ATF Form 5000.25 and execute the report of prepaid taxes on all copies of ATF Form 2900 (5100.21). The Chief, Puerto Rico Operations shall then retain the originals of ATF Forms 2900 (5110.21) and 5000.25 and forward the remaining copies of ATF Form 2900 (5100.21) in accordance with the instructions of the form.

(c) *Action by revenue agent*. On receipt of ATF Form 2900 (5100.21) executed by the Chief, Puerto Rico Operations to show receipt of ATF Form 5000.25 and remittance, the revenue agent shall execute the report of release on the ATF Form 2900 (5100.21) and release the beer for the purpose authorized on the form. The completed ATF Form 2900 (5100.21) shall be distributed according to the instructions on the form.

(Approved by the Office of Management and Budget under control number 1512–0149 and 1512–0497)

[T.D. ATF–277, 53 FR 45268, Nov. 9, 1988]

§ 250.105a Permit to ship.

Beer released from bonded storage under § 250.104 or § 250.105 may not be shipped to the United States until permit for such shipment has been obtained from the Secretary as provided in §§ 250.114 through 250.116.

[T.D. 6695, 28 FR 12935, Dec. 5, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 250.106 Marking containers of beer.

Containers of beer of Puerto Rican manufacture which are to be shipped to the United States must be marked with the name of the brewer; the serial number, capacity, and size of the container; the kind of beer; and the serial number of the withdrawal permit, Form 487B, prefixed by the number of such form, e.g., ''487B–61–3.''

ARTICLES

§ 250.107 Taxable status.

Articles of Puerto Rican manufacture which are to be shipped to the United States and which are not exempt fom tax under the provisions of § 250.36 are subject, under section 7652(a) to a tax equal to the tax imposed by the internal revenue laws of the United States. If such articles contain distilled spirits, the tax will be collected at the rate prescribed by 26 U.S.C. 5001(a)(1) on all alcohol contained therein, regardless of the source. Such articles containing only wine and/or beer will be taxed at the rates prescribed by 26 U.S.C. 5041 and/or 5051, respectively. A formula covering the manufacture of each article shall

be filed by the manufacturer in accordance with subpart D of this part.

[T.D. ATF–62, 44 FR 71712, Dec. 11, 1979]

§ 250.108 Application for permit, ATF Form 5110.51 and/or Form 2900.

(a) *Distilled spirits*. Where distilled spirits of Puerto Rican manufacture are to be used in the manufacture of the articles to be shipped to the United States, the manufacturer shall make application on Form 5110.51, in accordance with the applicable provisions of § 250.78.

(b) *Wine and/or beer*. Where wine and/or beer of Puerto Pican manufacture is to be used in the manufacture of the articles to be shipped to the United States, the manufacturer shall make application on Form 2900, in accordance with the applicable provisions of §§ 250.93 and/or 250.102. Wine and beer may be included in the same application.

(c) *Approval of applications*. The Secretary, or his delegate, shall approve and dispose of the applications in the manner prescribed in §§ 250.78, 250.93, and/or § 250.102, as the case may be.

[T.D. 6551, 26 FR 1490, Feb. 22, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71712, Dec. 11, 1979]

§ 250.109 Taxpayment.

(a) *Distilled spirits*. The tax on distilled spirits contained in articles to be shipped to the United States, equal to the tax imposed in the United States by 26 U.S.C. 5001(a)(1), shall be computed in accordance with § 250.79 and paid in accordance with the applicable provisions of §§ 250.80, 250.81, and 250.111 through 250.113.

(b) *Wine*. The tax on wine used in the manufacture of articles to be shipped to the United States, equal to the tax imposed in the United States by 26 U.S.C. 5041, shall be computed in accordance with § 250.94 and paid in accordance with the applicable provisions of §§ 250.95, 250.96, and 250.111 through 250.113.

(c) *Beer*. The tax on beer used in the manufacture of articles to be shipped to the United States, equal to the tax imposed in the United States by 26 U.S.C. 5051, shall be computed in accordance with § 250.103 and paid in accordance with the applicable provisions of §§ 250.104, 250.105, and 250.111 through 250.113.

[T.D. ATF–62, 44 FR 71712, Dec. 11, 1979]

§ 250.110 Release of articles or liquors.

After determining that the proprietor has good and sufficient bond coverage, or, in the case of prepayment, on receipt of ATF Form 5110.51 or Form 2900 executed by the Chief, Puerto Rico Operations to show receipt of ATF Form 5000.25, and remittance, the revenue agent shall execute his report of release on ATF Form 5110.51 or Form 2900 and release the articles containing distilled spirits, or release the wine and/or beer for use in the manufacture of articles. He shall forward one copy of ATF Form 5110.51 or Form 2900, and any package gauge record as provided in § 250.164a, to the Bureau of Alcoholic Beverage Taxes and one copy of each to the District Revenue Agent (Commonwealth of Puerto Rico), deliver one copy of each to the applicant, and retain one copy. A permit shall be obtained as provided in §§ 250.114 through 250.116 before the articles manufactured from such liquors may be shipped to the United States.

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

[T.D. ATF–198, 50 FR 8550, Mar. 1, 1985, as amended by T.D. ATF–251, 52 FR 19338, May 22, 1987; T.D. ATF–277, 53 FR 45268, Nov. 9, 1988]

PAYMENT OF TAX BY RETURN

§ 250.111 General.

All taxes imposed by 26 U.S.C. 7652(a), and which, under the provisions of this part, are paid in Puerto Rico, shall be paid and collected on the basis of a tax return as provided in this subpart. Any tax which has been paid in accordance with the provisions of this part in effect at the time of such payment, and before provision was made in the part for payment of such tax by return, shall be deemed to have been prepaid as prescribed in this part.

[T.D. 6551, 26 FR 1490, Feb. 22, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55852, Sept. 28, 1979; T.D. ATF–277, 53 FR 45268, Nov. 9, 1988]

§ 250.112 Returns for semimonthly periods.

(a) *Returns*. The taxes imposed by 26 U.S.C. 7652(a), (equal to the taxes imposed in the United States by 26 U.S.C. 5001(a)(1), 5041, or 5051), the payment of which has been deferred under the provisions of §§ 250.80, 250.95 or 250.104 of this part, shall be paid pursuant to a return on ATF Form 5000.25 prepared in accordance with the instructions on the form.

(b) *Periods*. Except as provided for in paragraph (d) of this section, the periods to be covered by returns on ATF Form 5000.24 shall be semimonthly; such periods to run from the 1st day through the 15th day of each month and from the 16th day through the last day of each month.

(c) *Filing*. (1) The original of ATF Form 5000.25, with remittance covering the full amount of the tax, shall be filed with the Chief, Puerto Rico Operations not later than the 14th day after the last day of the return period except as provided by paragraph (d) 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 is not a Saturday, Sunday, or legal holiday, except as provided by paragraph (d) of this section.

(2) The tax shall be paid in full by remittance at the time the return is filed, unless the proprietor is required to make remittances by electronic fund transfer in accordance with § 250.112a.

(3) The 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 the Chief, Puerto Rico Operations. A remittance by check or money order, shall be made payable to the ''Bureau of Alcohol, Tobacco and Firearms.''

(4) When the return and remittance 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 were mailed shall be treated as the date of delivery.

(d) *Special rule for taxes due for the month of September (effective after December 31, 1994)*. (1) The second semimonthly 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 taxpayer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The taxpayer 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 § 250.112a, the second semimonthly 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 taxpayer shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The taxpayer 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 (d)(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 semimonthly 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 (d)(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 semimonthly 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.

(e) *Default.* Where a taxpayer has defaulted in any payment of tax under this section, during the period of such default and until the regional director (compliance) finds that the revenue will not be jeopardized by deferred payment of tax under this section, the tax shall be prepaid by such taxpayer in accordance with the provisions of § 250.113. During such period, distilled spirits, wine, or beer shall not be released from the proprietor's bonded premises before the proprietor has paid the tax thereon. In the event of default, the Chief, Puerto Rico Operations shall immediately notify the Secretary and the revenue agent at the premises that tax is to be prepaid until further notice, and upon a finding that the revenue will not be jeopardized by resumption of deferred payment or tax under this section, the Chief, Puerto Rico Operations shall notify the Secretary and the revenue agent that deferred payment may be resumed.

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

(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))

[T.D. ATF–277, 53 FR 45268, Nov. 9, 1988, as amended by T.D. ATF–301, 55 FR 47658, Nov. 14, 1990; T.D. ATF–365, 60 FR 33674, June 28, 1995]

§ 250.112a 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 distilled spirits taxes combining tax liabilities incurred under this part and parts 19 and 251 of this chapter, a gross amount equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and parts 240 and 251 of this chapter, or a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and parts 25 and 251 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 by cash, check, or money order, of distilled spirits taxes, wine taxes, or beer taxes, as described in § 250.112, 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 to be summarized separately for distilled spirits taxes, wine taxes, or beer taxes, and is defined as the gross tax liability on each type of product for which taxes are paid in accordance with this subpart, taxable withdrawals from premises in the United States, and importation during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises at which tax liabilities are incurred 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 premises from which distilled spirits, wine, or beer is 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 distilled spirits taxes combining tax liabilities incurred under this part and parts 19 and 251 of this chapter, a gross amount

equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and parts 240 and 251 of this chapter, or a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and parts 245 and 251 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 § 250.112 or § 250.113. 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 distilled spirits taxes combining tax liabilities incurred under this part and parts 19 and 251 of this chapter, less than five million dollars in wine taxes combining tax liabilities incurred under this part and parts 240 and 251 of this chapter, or less than five million dollars in beer taxes combining tax liabilities incurred under this part and parts 245 and 251 of this chapter 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 § 250.112. Upon filing 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. 5684, 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. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

[T.D. ATF–185, 49 FR 37580, Sept. 25, 1984, as amended by T.D. ATF–245, 52 FR 532, Jan. 7, 1987; T.D. ATF–251, 52 FR 19339, May 22, 1987; T.D. ATF–262, 52 FR 47560, Dec. 15, 1987; T.D. ATF–277, 53 FR 45268, Nov. 9, 1988]

§ 250.113 Returns for prepayment of taxes.

(a) *General.* If a proprietor does not have on file with the Chief, Puerto Rico Operations an approved bond covering the deferred payment of taxes, or if such bond is in an insufficient penal

sum, or if there is default by him in any payment of tax under this subpart, liquors shall not be released from bonded storage before the proprietor has paid the tax thereon.

(b) *Remittances.* Remittances submitted to cover prepayment of taxes under this subpart shall be in cash, United States postal money orders, certified checks, or cashier's checks.

(c) *Distilled spirits.* In all cases where taxes equal to the taxes imposed in the United States by 26 U.S.C. 5001(a)(1) are to be paid before distilled spirits may be released for shipment, the proprietor shall pay such taxes pursuant to a return on ATF Form 5000.25, as prescribed in § 250.81.

(d) *Wine.* In all cases where taxes equal to the taxes imposed in the United States by 26 U.S.C. 5041, are to be paid before wine may be withdrawn from bonded storage, the proprietor shall pay such taxes pursuant to a return on ATF Form 5000.25, and as prescribed in § 250.96.

(e) *Beer.* In all cases where taxes equal to the taxes imposed in the United States by 26 U.S.C. 5051, are to be paid before beer may be withdrawn from bonded storage, the brewer shall pay such taxes pursuant to a return on ATF Form 5000.25, and as prescribed in § 250.105.

(f) *Applicable procedures.* The procedures of § 250.112(c) with respect to returns delivered by United States mail shall apply to returns and remittances filed under the provisions of this section.

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

[20 FR 6077, Aug. 20, 1955 as amended by T.D. 6821, 30 FR 6217, May 4, 1965. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 250.113, see the List of CFR Sections Affected in the Finding Aids section of this volume.

PERMIT TO SHIP LIQUORS AND ARTICLES

§ 250.114 Permit to ship required.

Before liquors and articles of Puerto Rican manufacture, upon which all internal revenue taxes have been paid or deferred as prescribed in this subpart, may be shipped to the United States, a permit to ship, Form 487B, must be obtained from the Secretary as provided in §§ 250.115 and 250.116.

§ 250.115 Application, Form 487B.

Application for permit to ship to the United States liquors and articles of Puerto Rican manufacture on which all taxes have been paid or deferred as prescribed in this subpart shall be made by the shipper on Form 487B, in sextuple. Each Form 487B will be given a serial number, by the applicant, beginning with ''1'' for the first day of January of each year and running consecutively thereafter to December 31, inclusive. This serial number will be prefixed by the last two digits of the calendar year, e.g. ''61–1.'' All copies of the form shall be delivered to the revenue agent for execution of his certification thereon and forwarding of all copies to the Secretary within sufficient time to allow for the issuance of the permit and customs inspection as provided in § 250.116.

§ 250.116 Issuance of permit, Form 487B, and customs inspection.

If the application has been properly executed and the Secretary, or his delegate, finds that all internal revenue taxes imposed under 26 U.S.C. 7652(a), have been computed under the provisions of this part and have been paid or, pursuant to a sufficient bond, have been deferred under the applicable provisions of this part, he will execute his permit on all copies thereof, retain one copy of the form, return two copies to the shipper, and send three copies to the district director of customs in Puerto Rico. The shipper will submit the two copies of the Form 487B to the district director of customs at least six hours prior to the intended lading of the merchandise. The district director of customs will then inspect the merchandise covered by the Form 487B after which he will execute his certificate on each copy of Form 487B indicating all exceptions. If discrepancies appear indicating differences between the quantity covered by Form 487B and the quantity actually contained in the shipment or the improper tax payment of the merchandise, he will withhold release of the shipment and notify the

Secretary of such discrepancies. Thereupon, such discrepancies must be corrected in the shipping documents and additional tax paid, if required, prior to release of the merchandise. The district director of customs, upon release of the merchandise for shipment, will retain one copy of the Form 487B, return two copies to the shipper, and send two copies to the district director of customs at the port of arrival in the United States, one of which should be mailed and the other dispatched on the vessel concerned for the guidance of the ATF officer who will handle the cargo. After the shipment has been cleared by the district director of customs in Puerto Rico, the shipper shall retain one copy of the Form 487B and send one copy thereof, with other shipping documents, to the district director of customs at the port of arrival.

[20 FR 6077, Aug. 20, 1955, as amended by T.D. 7006, 34 FR 2249, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 250.116, see the List of CFR Sections Affected in the Finding Aids section of this volume.

PROCEDURE AT PORT OF ARRIVAL

§ 250.117 Action by carrier.

The carrier of the merchandise specified on the Form 487B shall, at the time of unlading at the port of arrival in the United States, segregate and arrange the cases of liquors or articles for convenient customs examination and will assume any expense incurred in connection therewith.

§ 250.118 Inspection by district director of customs at port of arrival.

On receipt of properly executed Form 487B from the shipper and the copies of Form 487B from the district director of customs in Puerto Rico, the district director of customs at the port of arrival shall inspect the merchandise to determine whether the quantity specified on the Form 487B is contained in the shipment. He will then execute his certificate on each copy of Form 487B received and indicate thereon any exceptions found at the time of discharge. The statement of exceptions should show the serial number of each case or other shipping container which sustained a loss, the quantity of liquor reported shipped in such container and the quantity lost. Losses occurring as the result of missing bottles, cases, or other containers should be listed separately from empty containers and containers which have sustained losses due to breakage. Where the statement is made on the basis of bottles missing or lost due to other cause, the number and size of bottles lost should be shown. If the director finds that the full amount of the taxes due has not been paid, he will require the difference due to be paid prior to release of the merchandise in accordance with the applicable provisions of this part. When the proper inspection of the merchandise has been effected, and any additional taxes found to be due on the liquors or articles collected, the merchandise will be released.

[20 FR 6077, Aug. 20, 1955, as amended by T.D. 7006, 34 FR 2249, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 250.119 Disposition of forms by district director of customs.

Two copies of the Form 487B will be forwarded to the Chief, Puerto Rico Operations, and one copy of the form will be retained by the district director of customs and be available for inspection by ATF officers. If the taxpayer files a claim for refund of tax on losses, the Chief, Puerto Rico Operations will forward to the regional director (compliance) of the region in which the port of arrival is located a copy of the completed Form 487B with the claim for refund.

[20 FR 6077, Aug. 20, 1955, as amended by T.D. 7006, 34 FR 2249, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–251, 52 FR 19339, May 22, 1987]

Subpart F—Liquors and Articles Purchased by Tourists in Puerto Rico

§ 250.125 Taxable.

When liquors and articles subject to tax are brought into the United States by tourists, the tax thereon shall be paid as provided in this subpart.

§ 250.126 Taxpayment in Puerto Rico.

Liquors upon which all Federal internal revenue taxes have been paid in Puerto Rico may be brought into the United States for personal consumption without payment of additional taxes. When distilled spirits, wines, or beer are purchased by a tourist for consumption in the United States, the internal revenue tax due may be paid to the Chief, Puerto Rico Operations, and an ATF receipt obtained, or the tax may be paid to the U.S. Customs authorities, who will issue a customs receipt. The tax on articles purchased by tourists may be paid in the same manner. The receipt received from the Chief, Puerto Rico Operations or from the customs officer shall be presented, as required, as evidence that the tax has been paid.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended, 1358, as amended (26 U.S.C. 5061, 5205))

[T.D. ATF–206, 50 FR 23954, June 7, 1985, as amended by T.D. ATF–251, 52 FR 19339, May 22, 1987]

§ 250.128 Taxpayment at port of arrival.

If the internal revenue tax on liquors and articles is not paid in Puerto Rico, it shall be paid by the tourist at the port of arrival prior to release of the liquors or articles from customs custody. The tax may be paid to the regional director (compliance), and an ATF receipt obtained, or the tax may be paid to the director of customs, who will issue a customs receipt. If payment is to be made to the regional director (compliance), the director of customs will notify the region of the amount of tax due. On payment of the tax to the director of customs, or on submission of the ATF receipt for the tax, the director of customs will release the liquors or articles.

[T.D. ATF–251, 52 FR 19339, May 22, 1987]

Subpart G—Closures for Distilled Spirits From Puerto Rico

§ 250.135 Containers of distilled spirits to bear closures.

Containers of 1 gallon (3.785 liters) or less of distilled spirits, upon which all Federal internal revenue taxes have been paid or deferred in Puerto Rico under provisions of this part, shall have closures or other devices affixed in accordance with the provisions of this part, prior to shipment to the United States.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5301))

[T.D. ATF–206, 50 FR 23954, June 7, 1985]

§ 250.136 Affixing closures.

Closures or other devices shall be securely affixed to containers having capacity of 1 gallon (3.785 liters) or less so as to leave a portion remaining on the container when it is opened. In addition, the closures or other devices shall be constructed in such a manner as to require that they be broken to gain access to the contents of the containers.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5301))

[T.D. ATF–206, 50 FR 23954, June 7, 1985]

Subpart H—Records and Reports of Liquors From Puerto Rico

§ 250.163 General requirements.

Except as provided in § 250.164, every person, other than a tourist, bringing liquor into the United States from Puerto Rico shall keep records and render reports of the physical receipt and disposition of such liquors in accordance with part 194 (''Liquor Dealers'') of this chapter: *Provided,* That if the person who is responsible for release of the liquors from customs custody does not take physical possession of the liquors, he shall keep commercial records reflecting such release; such records shall identify the kind and quantity of the liquors released, the name and address of the person receiving the liquors from customs custody, and shall be filed chronologically by release dates. Records and reports will not be required under this part with respect of liquors while in customs custody.

(Approved by the Office of Management and Budget under control number 1512–0352)

(72 Stat. 1342, 1395; 26 U.S.C. 5114, 5555)

[T.D. ATF–2, 37 FR 22736, Oct. 21, 1972. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–172, 49 FR 14943, Apr. 16, 1984]

§ 250.164 Proprietors of taxpaid premises.

Transactions involving the bringing of liquors into the United States from Puerto Rico by proprietors of distilled spirits plants in the United States qualified under the provisions of this chapter shall be recorded and reported in accordance with the regulations governing the operations of such premises in the United States.

[T.D. 6402, 24 FR 6090, July 30, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–198, 50 FR 8551, Mar. 1, 1985]

§ 250.164a Package gauge record.

When required in this part, with respect to Puerto Rican spirits, a package gauge record shall be prepared to show:

(a) The date prepared;

(b) The related transaction form and its serial number;

(c) The producer or rectifier (processor) of the spirits, and his name, address, and plant registration number; and

(d) For each package, the:

(1) Package identification or serial number;

(2) Kind of spirits;

(3) Gross weight;

(4) Tare;

(5) Net weight;

(6) Proof gallons; and

(7) Proof.

(Approved by the Office of Management and Budget under control number 1512–0250)

[T.D. ATF–198, 50 FR 8551, Mar. 1, 1985]

§ 250.165 Certificate of effective tax rate computation.

(a) Where distilled spirits of Puerto Rican manufacture which contain eligible wine or eligible flavors are to be tax determined for shipment to the United States or are to be shipped to the United States without payment of tax for transfer from customs custody to ATF bond, the consignor shall prepare a certificate of effective tax rate computation showing the:

(1) The serial number of ATF Form 5110.31 or 5110.51;

(2) Elements necessary to compute the effective tax rate in accordance with § 250.79a as follows—

(i) Proof gallons of distilled spirits (exclusive of distilled spirits derived from eligible flavors);

(ii) Wine gallons of each eligible wine and the percentage of alcohol by volume of each; and

(iii) Proof gallons of distilled spirits derived from each eligible flavor;

(3) Date of the statement of eligibility for each eligible flavor (see § 250.50a).

(4) Effective tax rate applied to the product.

(5) Signature and title of the consignor.

(b) If the spirits are tax determined for shipment to the United States, the proprietor shall retain the certificate for a period of not less than three years after the last tax determination to which the certificate is applicable. If the spirits are shipped to the United States for transfer from Customs custody to the bonded premises of a distilled spirits plant, the proprietor shall forward the original to the consignee distilled spirits plant in the United States and retain a copy for his files.

(Approved by Office of Management and Budget under control number 1512–0203)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1366, as amended (26 U.S.C. 5232); Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

[T.D. ATF–297, 55 FR 18067, Apr. 30, 1990]

Subpart I—Claims for Drawback on Eligible Articles From Puerto Rico

SOURCE: T.D. ATF–263, 52 FR 46594, Dec. 9, 1987, unless otherwise noted.

§ 250.170 Drawback of tax.

Any person who brings eligible articles into the United States from Puerto Rico may claim drawback of the distilled spirits excise taxes paid on such articles as provided in this subpart.

§ 250.171 Special tax.

Any person filing claim for drawback of tax on eligible articles brought into the United States from Puerto Rico shall pay special tax as required by 26 U.S.C. 5131. For purposes of special tax, subparts C and D of part 17 of this chapter shall apply as if the use and tax determination occurred in the

United States at the time the article was brought into the United States and, each business location from which entry of eligible articles is caused or effected shall be treated as a place of manufacture. If special tax is paid for any such business location under part 197 of this chapter, as a place where nonbeverage products are manufactured for purposes of drawback, then no additional special tax need be paid for that location under this section.

[T.D. ATF-263, 52 FR 46594, Dec. 9, 1987, as amended by T.D. ATF-271, 53 FR 17559, May 17, 1988; T.D. ATF–379, 61 FR 31427, June 20, 1996]

§ 250.172 Bonds.

(a) *General*. Persons bringing eligible articles into the United States from Puerto Rico and intending to file monthly claims for drawback under the provisions of this subpart shall obtain a bond on Form 5154.3. When the limit of liability under a bond given in less than the maximum amount has been reached, further drawback on monthly claims may be suspended until a strengthening or superseding bond in a sufficient amount has been furnished. For provisions relating to bonding requirements, subpart E of part 17 of this chapter is incorporated in this part, but references therein to a regional director (compliance) shall apply, for purposes of this part, to the Chief, Puerto Rico Operations.

(b) *Approval required*. No person bringing eligible articles into the United States from Puerto Rico may file monthly claims for drawback under the provisions of this subpart until bond on Form 5154.3 has been approved by the Chief, Puerto Rico Operations. Bonds approved by a regional director (compliance) prior to the effective date of this provision shall remain in effect.

[T.D. ATF–379, 61 FR 31427, June 20, 1996]

§ 250.173 Claims for drawback.

(a) *General*. Persons bringing eligible articles into the United States from Puerto Rico shall file claim for drawback on Form 2635 (5620.8) with the Chief, Puerto Rico Operations. Upon finding that the claimant has satisfied the requirements of this subpart, the regional director (compliance) shall allow the drawback of taxes at a rate of $1 less than the lesser of $10.50 a proof gallon or the rate specified in 26 U.S.C. 5001(a).

(b) *Information on claims*. The claim must set forth the following:

(1) That the special tax has been paid;

(2) That the eligible articles brought into the United States on which drawback is claimed are fully tax paid or tax-determined;

(3) That the eligible articles on which drawback is claimed are nonbeverage products; and

(4) That the eligible articles were manufactured in Puerto Rico in compliance with an approved formula in accordance with § 250.51.

(c) *Supporting data*. Each claim shall be accompanied by supporting data as specified in this paragraph. ATF Form 5154.2, Supporting Data for Nonbeverage Drawback Claims, may be used, or the claimant may use any suitable format that provides the following information:

(1) The control number of the Special Tax Stamp and the tax year for which issued;

(2) A description of each eligible article as follows:

(i) Name and type of each product;

(ii) Name and address of the manufacturer of each product;

(iii) Formula number;

(iv) Alcohol content of each product;

(v) Quantity of each product;

(vi) Proof gallons of distilled spirits contained in each product;

(vii) Date of entry of the eligible product into the United States, and

(viii) The serial number of each ATF Form 487–B (5170.7) covering such articles shipped to the United States.

(d) *Date of filing claim*. Quarterly claims for drawback shall be filed with the Chief, Puerto Rico Operations, within the 6 months next succeeding the quarter in which the eligible products covered by the claim were brought into the United States. Monthly claims for drawback may be filed at any time after the end of the month in which the eligible products covered by the claim were brought into the United States, but must be filed not later than the close of the sixth month succeeding the

quarter in which the eligible products were brought into the United States.

(Approved by the Office of Management and Budget under control number 1512–0494)

[T.D. ATF-263, 52 FR 46594, Dec. 9, 1987, as amended by T.D. ATF–271, 53 FR 17559, May 17, 1988; T.D. ATF–379, 61 FR 31427, June 20, 1996]

§ 250.174 Records.

(a) *General*. Every person intending to file claim for drawback on eligible articles brought into the United States from Puerto Rico shall keep permanent records of the data elements required by this section. Such records shall be maintained at the business premises for which the claim is filed and shall be available for inspection by any ATF officer during business hours.

(b) *Details of records*. Each person intending to claim drawback on eligible articles brought into the United States shall maintain permanent records showing the following data:

(1) The name, description, quantity, and formula number of each such article.

(2) The alcohol content of each such article.

(3) Name and address of the manufacturer and shipper, and date of entry into the United States.

(4) Evidence of taxpayment of distilled spirits in accordance with paragraph (c) of this section.

(c) *Evidence of taxpayment of distilled spirits*. All shipments of eligible articles from Puerto Rico to the United States shall be supported by the vendor's commercial invoice which must bear a certification as to taxpayment by the person who determined or paid the tax, and include the following information:

(1) The name and address of vendor;

(2) The number of the applicable invoice;

(3) The serial or package identification number of the container;

(4) Name, type, and formula number of the product;

(5) The kind of spirits, proof, and proof gallons in the container; and

(6) The serial number of each Form 487–B (5170.7) covering such articles shipped to the United States.

(d) *Form of record*. No particular form of record is prescribed, but the data required to be shown shall be readily ascertainable from the records kept by the drawback claimant.

(e) *Retention of records*. Each drawback claimant shall retain for a period of not less than three years all records required by this subpart, all commercial invoices or shipping documents, and all bills of lading received evidencing receipt and tax determination of the spirits. In addition, a copy of each approved formula returned to the manufacturer of eligible articles shall be retained for not less than three years from the date he files his last claim for drawback under the formula. The records, forms, and formulas shall be readily available during regular business hours for examination by ATF officers.

(Approved by the Office of Management and Budget under control number 1512–0494)

Subpart Ia—Shipment of Denatured Spirits and Products Made With Denatured Spirits to the United States From Puerto Rico

SOURCE: T.D. ATF–199, 50 FR 9198, Mar. 1, 1985, unless otherwise noted.

§ 250.191 Notice of shipment.

At least 5 business days before shipment, each proprietor of a distilled spirits plant in Puerto Rico who intends to ship denatured spirits to the United States in containers larger than 5 gallons, and each person in Puerto Rico who intends to ship products made with denatured spirits to the United States in containers larger than 5 gallons shall notify the chemist of the Treasury of Puerto Rico of the intent to ship.

(Approved by the Office of Management and Budget under control number 1512–0336)

[T.D. ATF–199, 50 FR 9198, Mar. 1, 1985, T.D. ATF–199, 50 FR 20099, May 14, 1985]

§ 250.192 Samples and analysis.

The chemist of the Treasury of Puerto Rico may take samples of the product to be shipped in order to determine that it is eligible for tax-free status.

§ 250.193 Notification of tax liability.

(a) If the chemist of the Treasury of Puerto Rico finds that denatured spirits or products made with denatured spirits are not eligible for tax-free shipment, before the shipment is made, the chemist will immediately notify the shipper that the article is subject to tax, payable in accordance with §§ 250.107 through 250.110.

(b) If the chemist of the Treasury of Puerto Rico finds that denatured spirits or products made with denatured spirits are not eligible for tax-free shipment, after the shipment is made, the chemist will immediately notify the shipper that the tax shall be paid immediately in accordance with § 250.113. The chemist will also notify the regional director (compliance) of the consignee's region.

§ 250.194 Detention of articles.

(a) Upon receiving a notification in accordance with § 250.193(b), the regional director (compliance) will detain the article in accordance with part 20 of this chapter or seize the article in accordance with part 72 of this chapter.

(b) After the shipper furnishes proof that the tax was paid in accordance with § 250.113, the regional director (compliance) will release the article to the consignee.

Subpart Ib—Shipment of Bulk Distilled Spirits From Puerto Rico, Without Payment of Tax, for Transfer From Customs Custody to Internal Revenue Bond

AUTHORITY: Sec. 3, Pub. L. 90–630, 82 Stat. 1328, as amended (26 U.S.C. 5232).

SOURCE: T.D. ATF–62, 44 FR 71714, Dec. 11, 1979, unless otherwise noted.

§ 250.196 General.

Under the provisions of this subpart and § 250.86, distilled spirits brought into the United States from Puerto Rico in bulk containers may be withdrawn by the proprietor of a distilled spirits plant from customs custody and transferred in such bulk containers or by pipeline to the bonded premises of his plant, without payment of the internal revenue tax, if any, imposed on such spirits by 26 U.S.C. 7652. Such spirits so withdrawn and transferred to a distilled spirits plant (a) may be redistilled or denatured only if of 185 degrees or more of proof; and (b) may be withdrawn from internal revenue bond for any purpose authorized by 26 U.S.C. chapter 51, in the same manner as domestic distilled spirits. Spirits transferred from customs custody to the bonded premises of a distilled spirits plant under the provisions of this subpart shall be received and stored thereat, and withdrawn or transferred therefrom, subject to applicable provisions of part 19 of this chapter. The person operating the bonded premises of the distilled spirits plant to which spirits are transferred under the provisions of this subpart shall become liable for the tax on distilled spirits withdrawn from customs custody under 26 U.S.C. 5232, upon release of the spirits from customs custody and the person bringing the spirits into the United States shall thereupon be relieved of liability for the tax.

§ 250.197 Furnishing formula to consignee.

Prior to the first shipment, the person shipping the spirits to the United States shall furnish a reproduced copy of the approved formula covering such spirits to the regional director (compliance) of each region in which a consignee's distilled spirits plant is located, and to the proprietor of each distilled spirits plant to receive the spirits.

(Approved by the Office of Management and Budget under control number 1512–0204)

[T.D. ATF–198, 50 FR 8551, Mar. 1, 1985]

§ 250.198 [Reserved]

§ 250.199 Application and permit to ship, ATF Form 5110.31.

Before spirits of Puerto Rican manufacture may be shipped to the United States without payment of tax for withdrawal from customs custody and transfer to internal revenue bond, an application by the consignor on ATF Form 5110.31 for permit to ship must be approved by the Secretary. All copies of the application (original and five

copies) shall be delivered to the revenue agent.

§ 250.199a Action by revenue agent.

(a) *Gauge*. Puerto Rican spirits to be withdrawn for shipment to the United States as provided in this subpart shall be gauged by the revenue agent prior to withdrawal from the consignor premises. The revenue agent shall record the quantity and proof of the spirits gauged on ATF Form 5110.31. If the spirits are in packages, the revenue agent shall prepare in sextuplicate a package gauge record according to § 250.164a, attach the package gauge record to ATF Form 5110.31, and dispose of the form (and any attachments) according to the instructions thereon.

(b) *Sealing bulk conveyances*. When a shipment is made in a tank, van, or other bulk conveyance (other than barrels, drums, or similar packages that are not containerized), all openings affording access to the spirits shall be sealed by the Puerto Rican revenue agent is such manner as will prevent unauthorized removal of spirits without detection.

(Approved by the Office of Management and Budget under control number 1512–0250)

[T.D. ATF–198, 50 FR 8551, Mar. 1, 1985]

§ 250.199b Issuance and disposition of permit.

When the Secretary receives an application on ATF Form 5110.31 and he finds that the applicant is in compliance with law and regulations, he will execute the permit to ship on all copies of ATF Form 5110.31, retain one copy, and any accompanying package gauge record as provided in § 250.164a, and return the remaining copies to the consignor who shall distribute them in accordance with the instructions on ATF Form 5110.31.

(Approved by the Office of Management and Budget under control number 1512–0250)

[T.D. ATF–198, 50 FR 8552, Mar. 1, 1985]

§ 250.199c Action by carrier.

The carrier of the spirits specified on the ATF Form 5110.31 shall, at the time of unlading at the port of arrival in the United States, segregate and arrange the containers of spirits of convenient customs examination and shall assume any expense incurred in connection therewith.

§ 250.199d Customs inspection and release.

On receipt of a properly executed ATF Form 5110.31 from the consignor, the customs officer at the port of arrival in the United States shall inspect the corresponding shipment of spirits:

(a) If a shipment is in a bulk conveyance, and:

(1) The seals are intact, he shall release the shipment; or

(2) If the seals are broken, he shall, before release of the spirits, affix customs seals.

(b) If a shipment in packages does not arrive in a sealed conveyance, the packages shall be inspected, and if it appears that any package has sustained a loss, the package shall be weighed and its new gross weight shall be entered in contrasting color on the package gauge record attached to the related ATF Form 5110.31. The serial numbers of any seals affixed by the customs officers shall be reported on ATF Form 5110.31 under remarks with an explanation and description of any evidence of loss. After completing his inspection, the customs officer shall execute his certificate on each copy of ATF Form 5110.31 and show thereon any exceptions found at the time of his release for transfer of the spirits to internal revenue bond. Missing packages should be reported separately from packages which have sustained losses. The customs officer shall then release the spirits to the consignee's representative and distribute all forms in accordance with the instructions on ATF Form 5110.31.

(Approved by the Office of Management and Budget under control number 1512–0250)

[T.D. ATF–198, 50 FR 8552, Mar. 1, 1985]

§ 250.199e [Reserved]

§ 250.199f Consignee premises.

(a) *General*. When Puerto Rican spirits are received from customs custody under the provisions of this subpart, the consignee proprietor shall execute the certificate of receipt on ATF Form 5110.31 and examine all containers for evidence of loss. If it appears that spirits were lost by theft or unusual event,

the proprietor shall determine the quantity of spirits lost and report the loss according to 27 CFR 19.562.

(b) *Packages*. Packages shall be received on bonded premises by the proprietor on the basis of the most recent official gauge.

(c) *Distribution of forms*. The proprietor shall retain the original of ATF Form 5110.31 (and any attachments) and submit the copy of each to the regional director (compliance).

(Approved by the Office of Management and Budget under control numbers 1512–0200 and 1512–0250)

[T.D. ATF–198, 50 FR 8552, Mar. 1, 1985]

Subpart J—Products Coming Into the United States From the Virgin Islands

§ 250.200 Taxable status.

(a) Liquors coming into the United States from the Virgin Islands, except as provided in § 250.201, are subject to a tax equal to the internal revenue tax imposed upon the production in the United States of like liquors. Articles coming into the United States from the Virgin Islands, except as provided in § 250.201, are subject to tax on the liquors contained therein at the rates imposed in the United States on like liquors of domestic production.

(b) The excise taxes collected on distilled spirits and articles containing distilled spirits shall be deposited into the Treasury of the Virgin Islands only if at least 92 percent of the alcoholic content of such product is rum. The amount deposited into the Treasury of the Virgin Islands shall not exceed the lesser of $10.50, or the rate imposed by 26 U.S.C. 5001(a)(1) (including adjustments to the effective tax rate under 26 U.S.C. 5010), on each proof gallon of such distilled spirits or article containing distilled spirits coming into the United States. Such excise tax payments to the Treasury of the Virgin Islands will be reduced by one percent and the estimated amount of refunds or credits, and may be further reduced by certain amounts deposited to the U.S. Treasury as miscellaneous receipts. The moneys so transferred and paid over shall constitute a separate fund in the Treasury of the Virgin Islands, and may be expended as the Virgin Islands legislature may determine.

(c) Except for products described in 26 U.S.C. 7652(c), no excise taxes shall be deposited into the Treasury of the Virgin Islands if an excise tax subsidy is provided by the Virgin Islands that is of a kind different from, or in an amount per value or volume of production greater than, any subsidy offered by the Virgin Islands to industries manufacturing products not subject to Federal excise tax.

(Sec. 2682, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 7652))

[T.D. ATF–175, 49 FR 20804, May 16, 1984, as amended by T.D. ATF–206, 50 FR 15888, Apr. 23, 1985]

§ 250.201 Products exempt from tax.

(a) *General*. Industrial spirits, denatured spirits, and products made with denatured spirits in the Virgin Islands may be brought into the United States without incurring tax liability imposed by 26 U.S.C. 5001 or 7652.

(b) *Industrial spirits*. A distiller of industrial spirits who qualifies under regulations issued by the Governor of the Virgin Islands may ship industrial spirits to a tax-free alcohol user in the United States who holds a permit under part 22 of this chapter. Shipments shall be made in accordance with the requirements of subpart O of this part.

(c) *Denatured spirits*. A distiller who qualifies under the regulations issued by the Governor of the Virgin Islands and who denatures spirits in accordance with part 21 of this chapter may ship (1) completely denatured alcohol to anyone in the United States, and/or (2) specially denatured spirits to a dealer or user of specially denatured spirits in the United States or Puerto Rico who holds a permit under part 20 of this chapter. Shipments shall be made in accordance with the requirements of subpart O of this part.

(d) *Products made with denatured spirits*. A person in the Virgin Islands who manufactures products with completely denatured alcohol or specially denatured spirits in accordance with the requirements of part 20 of this chapter and regulations issued by the Governor of the Virgin Islands may ship those products to the United

States in accordance with the requirements of subpart O of this part.

[T.D. ATF–199, 50 FR 9199, Mar. 6, 1985]

§ 250.201a Production in the Virgin Islands for tax-free shipment to the United States.

(a) *Authority of the Governor to issue regulations.* The Governor of the Virgin Islands, or his duly authorized agents, are authorized to issue or adopt such regulations (and to approve such bonds, and to issue, suspend, or revoke such permits, as may be required by such regulations) as are necessary to insure that:

(1) Industrial spirits produced or manufactured in the Virgin Islands and shipped to the United States free of tax for the purposes authorized in 26 U.S.C. 5214(a) (2) and (3);

(2) Denatured spirits manufactured in the Virgin Islands for shipment to the United States free of tax, and

(3) Products manufactured in the Virgin Islands with denatured spirits, for shipment to the United States free of tax, conform in all respects to the requirements of law and this chapter imposed on like products of domestic manufacture.

(b) *Law and regulations applicable.* Regulations having been issued by the Governor of the Virgin Islands and concurred in by the Secretary of the Treasury of the United States to govern the production, warehousing, and denaturation of spirits and the use of denatured spirits in the manufacture of products for shipment to the United States free of tax, such regulations are applicable in the Virgin Islands and the Virgin Islands are hereby exempted from

(1) All provisions of 26 U.S.C. chapter 51, with the exception of 26 U.S.C. 5314(b) and 5687; and

(2) The provisions of this chapter in respect of the production, bonded warehousing, denaturation, and withdrawal of distilled spirits and the use of denatured spirits in the United States:

Provided, That such exemption shall be effective only to the extent that any amendments or revisions of the regulations issued by the Governor of the Virgin Islands, or his duly authorized agents, are concurred in by the Secretary of the Treasury of the United States or his delegate. Otherwise, all provisions of law as provided in 26 U.S.C. 5314(b), and the provisions of this chapter in respect of the production, bonded warehousing, denaturation, and withdrawal from bond of distilled spirits and denatured spirits and the use of denatured spirits in the manufacture of products shall extend to and apply in the Virgin Islands (i) in respect of the production, bonded warehousing, and withdrawal of spirits for shipment to the United States free of tax for the purposes authorized in 26 U.S.C. 5214(a) (2) and (3), and (ii) in respect of the production, bonded warehousing, and denaturation of spirits, and to the withdrawal and use of denatured spirits, where the denatured spirits or products containing denatured spirits are to be shipped to the United States free of tax.

[T.D. 6402, 24 FR 6090, July 30, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55853, Sept. 28, 1979; T.D. ATF–198, 50 FR 8552, Mar. 1, 1985]

§ 250.201b [Reserved]

§ 250.201c Shipments of bulk distilled spirits to the United States without payment of tax.

Bulk distilled spirits may be brought into the United States from the Virgin Islands without payment of tax for transfer from customs custody to the bonded premises of a distilled spirits plant qualified under part 19 of this chapter. Such shipments are subject to the provisions of subpart Oa.

[T.D. ATF–62, 44 FR 71715, Dec. 11, 1979]

§ 250.202 Requirements of the Federal Alcohol Administration Act.

Every person, except an agency of a State or a political subdivision thereof or any officer or employee of any such agency, bringing liquors into the United States from the Virgin Islands for nonindustrial use must obtain an importer's basic permit therefor and file with the district director of customs at the port of entry a certified or photostatic copy thereof, and every

person and any agency of a State or political subdivision thereof or any officer or employee of such agency, bringing liquors into the United States from the Virgin Islands for nonindustrial use must file with the district director of customs at the port of entry a certificate of label approval, in accordance with the requirements of the Federal Alcohol Administration Act and regulations issued pursuant thereto. Tourists bringing liquors into the United States for personal or other noncommercial use are not subject to the provisions of the Federal Alcohol Administration Act or regulations issued pursuant thereto. (Parts 1, 4, 5, and 7 of this chapter)

(Secs. 3, 5, 49 Stat. 978, as amended, 981, as amended; 27 U.S.C. 203, 205)

[20 FR 6077, Aug. 20, 1955, as amended by T.D. 7006, 34 FR 2249, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For Federal Register citations affecting § 250.202, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 250.203 Containers of 1 gallon (3.785 liters) or less.

Containers of distilled spirits brought into the United States from the Virgin Islands, having a capacity of not more than 1 gallon (3.785 liters), shall conform to the requirements of subpart P of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374 (26 U.S.C. 5301))

[T.D. ATF–34, 41 FR 46864, Oct. 26, 1976]

§ 250.203a Containers in excess of 1 gallon (3.785 liters).

Containers of distilled spirits brought into the United States from the Virgin Islands, having a capacity in excess of 1 gallon (3.785 liters), are required to be marked in accordance with customs regulations (19 CFR chapter I).

[T.D. 6695, 28 FR 12936, Dec. 5, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–34, 41 FR 46864, Oct. 26, 1976; T.D. ATF–206, 50 FR 23955, June 7, 1985]

§ 250.204 Regauge.

Distilled spirits withdrawn from insular bonded warehouses for shipment to the United States may be gauged at the time of withdrawal by an insular gauger. When such gauges are made, a record of gauge shall be prepared by the insular gauger showing the name of the distiller; and the serial number, the proof of the spirits, and the wine and proof gallon contents of each package gauged. The report of gauge shall be attached to the certificate prescribed in § 250.205.

(Approved by the Office of Management and Budget under control number 1512–0250)

[T.D. ATF–198, 50 FR 8552, Mar. 1 1985]

§ 250.204a Verification of eligible wines and eligible flavors.

(a) Any person who, after December 1, 1990, brings into the United States from the Virgin Islands any distilled spirits on which the tax is to be paid or determined at an effective tax rate based in part on the alcohol content derived from eligible flavors or eligible wines shall, before the first tax determinaton at that rate, request and receive a statement of eligibility for each wine or flavor to be used in the computation of the effective tax rate.

(b) To receive a statement of eligibility, the person bringing in the distilled spirits shall submit to the ATF National Laboratory, 1401 Research Boulevard, Rockville, MD 20850, the following:

(1) An 8-ounce sample of each distilled spirits, wine and flavor used in the product;

(2) A statement of composition of each flavor, listing—

(i) The name and percentage of alcohol by volume of the flavor; and

(ii) The name and quantity of each ingredient used in the manufacture of the flavor; and

(3) A statement of the kind and alcoholic content of each wine.

(Approved by Office of Management and Budget under control number 1512–0352)

(Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652); Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001); Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

[T.D. ATF–297, 55 FR 18067, Apr. 30, 1990]

§ 250.205 Certificate.

(a) Every person bringing liquors or articles under this part into the United

States from the Virgin Islands, except tourists, shall obtain a certificate in the English language from the manufacturer for each shipment showing the following information:

(1) The name and address of the consignee.

(2) The kind and brand name.

(3) The quantity thereof as follows—

(i) If distilled spirits, the proof gallons or liters and degree of proof;

(ii) If wine, the taxable grade and wine gallons;

(iii) If beer, the gallons (liquid measure) and the percentage of alcohol by volume; and

(iv) If articles, the kind, quantity, and proof of the liquors used therein.

(4) For liquors manufactured under a formula—

(i) The number and date of the approved formula;

(ii) A declaration that the liquors have been manufactured in accordance with the approved formula; and

(iii) The name and address of the person filing the formula.

(5) The name and address of the producer.

(6) For liquors and articles containing liquors produced outside of the Virgin Islands, the country of origin for each such liquor.

(7) For distilled spirits, a certification by the insular gauger as to whether they were regauged when withdrawn from the insular bonded warehouse and, if regauged, whether they were at the time of withdrawal at the proof indicated on the attached record of gauge.

(8) For distilled spirits which contain eligible wine or eligible flavors, the effective tax rate applied to the product and the elements necessary to compute the effective tax rate in accordance with § 250.262a as follows—

(i) Proof gallons of distilled spirits (exclusive of distilled spirits derived from eligible flavors);

(ii) Wine gallons of each eligible wine and the percentage of alcohol by volume of each;

(iii) Proof gallons of distilled spirits derived from eligible flavors; and

(iv) On or after December 1, 1990, the name of the manufacturer, formula number from ATF F 5530.5 (1678) or 5150.19 and date of approval or the date of the statement of eligibility for each eligible flavor (See § 250.204a); and

(v) After December 1, 1990, the date of the statement of eligibility for each eligible wine.

(b) The person bringing the liquors or articles into the United States shall file the certificate and record of gauge with the district director of customs at the port of entry, at the time of entry summary, as provided in §§ 250.260 and 250.302.

(Approved by the Office of Management and Budget under control number 1512–0352.)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1366, as amended (26 U.S.C. 5232); Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

[T.D. ATF–297, 55 FR 18067, Apr. 30, 1990]

§ 250.206 Marking packages and cases.

The distiller, rectifier, or bottler shall serially number each case, barrel, cask, or similar container of distilled spirits filled for shipment to the United States. In addition to the serial number of the container, the distiller, rectifier, or bottler shall plainly print, stamp, or stencil with durable coloring material, in letters and figures not less than one-half inch high, on the head of each barrel, cask or similar container or on one side of each case, as follows:

(a) The name of the manufacturer;

(b) The brand name and kind of liquor; and

(c) The wine and proof gallon contents; or, for bottles filed according to the metric standards of fill prescribed by § 5.47a, of this chapter, the contents in liters and the proof of the spirits.

[T.D. ATF–43, 42 FR 30836, June 17, 1977]

§ 250.207 Destruction of marks and brands.

The marks, brands, and serial numbers required by this part to be placed on barrels, casks, or similar containers, or cases, shall not be removed, obscured or obliterated before the contents thereof have been removed.

[T.D. ATF–198, 50 FR 8552, Mar. 1, 1985]

§ 250.209 Samples.

The Director may require samples of liquors and articles to be submitted

whenever desired for laboratory analyses in order to determine the rate of tax applicable thereto.

[20 FR 6077, Aug. 20, 1955, as amended by T.D. 7006, 34 FR 2250, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

SPECIAL (OCCUPATIONAL) TAXES

§ 250.210 Liquor dealer's special taxes.

Every person bringing liquors into the United States from the Virgin Islands, who sells, or offers for sale, such liquors shall file Form 5630.5 with ATF in accordance with the instruction on the form, and pay special occupational tax as a wholesale dealer in liquor or as a retail dealer in liquor, in accordance with the laws and regulations governing the payment of such special taxes (part 194 of this chapter).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340 as amended, 1343 as amended, 1344 as amended (26 U.S.C. 5111, 5112, 5121, 5122))

[T.D. ATF–70, 45 FR 33981, May, 21, 1980, as amended by T.D. ATF–251, 52 FR 19339, May 22, 1987]

§ 250.211 Warehouse receipts covering distilled spirits.

Since the sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits, every person bringing distilled spirits into the United States from the Virgin Islands, who sells, or offers for sale, warehouse receipts for distilled spirits stored in warehouses, or elsewhere, incurs liability to special tax as a dealer in liquors at the place where such warehouse receipts are sold, or offered for sale, and must file return and pay occupational tax as provided in § 250.210.

(68A Stat. 618, 620, 621; 26 U.S.C. 5111, 5112, 5121, 5122)

Subpart K—Formulas for Products From the Virgin Islands

SOURCE: T.D. ATF–62, 44 FR 71715, Dec. 11, 1979, unless otherwise noted.

§ 250.220 Formulas for liquors.

(a) *Distilled spirits products.* Persons in the Virgin Islands who ship distilled spirits beverage products to the United States shall comply with the formula requirements of part 5 of this chapter. If any product contains liquors made outside of Virgin Islands, the country of origin for each such liquor shall be stated on the formula. All formulas required by this paragraph shall be submitted on ATF Form 5110.38, in accordance with § 250.224.

(b) *Wine.* Persons in the Virgin Islands who ship wine to the United States shall comply with the formula requirements of part 240 of this chapter. If any wines contains liquors made outside of the Virgin Islands, the country of origin for each such liquor shall be stated on the formula. All formulas required by this paragraph shall be submitted on ATF Form 698 Supplemental, in accordance with § 250.224.

[T.D. ATF–62, 44 FR 71715, Dec. 11, 1979, as amended by T.D. ATF–198, 50 FR 8552, Mar. 1, 1985]

§ 250.221 Formulas for articles, eligible articles and products manufactured with denatured spirits.

(a) *Formulas for articles and eligible articles.* Formulas for articles made with distilled spirits must show the quantity and proof of the distilled spirits used, and the percentage of alcohol by volume contained in the finished product. Formulas for articles made with beer or wine must show the kind and quantity thereof (liquid measure), and the percent of alcohol by volume of such beer or wine. Formulas and samples for eligible articles are required in accordance with subpart F of part 17 of this chapter.

(b) *Formulas for products manufactured with denatured spirits.* Products manufactured with denatured spirits shall be manufactured in accordance with the formula requirements of part 20 of this chapter for similar products made in the United States.

(1) Products may be made with completely denatured alcohol for sale under brand names under part 20 of this chapter without obtaining an approved formula. If ingredients are added in sufficient quantities to materially change the composition and character of the completely denatured alcohol, the product is not classified as completely denatured alcohol and may not be marked, branded, or sold as completely denatured alcohol.

(2) Products made with specially denatured spirits shall be made in accordance with (i) a general-use formula approved as provided in part 20 of this chapter, or (ii) an approved formula on Form 5150.19, or previously approved on ATF Form 1479–A or 27–B Supplemental.

(c) *Formulas required.* Formulas required by this section shall be submitted on Form 5150.19, except that formulas for eligible articles shall be submitted on Form 5154.1 (formerly 1678). Formulas shall be submitted in accordance with § 250.224. Any formula for an eligible article approved on Form 5150.19 prior to October 23, 1986, shall continue to be valid until revoked or voluntarily surrendered. Any person holding such a formula is not required to submit a new formula.

(Approved by the Office of Mangement and Budget under control number 1512–0494)

[T.D. ATF–62, 44 FR 71715, Dec. 11, 1979, as amended by T.D. ATF–199, 50 FR 9199, Mar. 6, 1985; T.D. ATF–263, 52 FR 46595, Dec. 9, 1987; T.D. ATF–379, 61 FR 31427, June 20, 1996]

§ 250.222 Still wines containing carbon dioxide.

(a) *General.* Still wines may contain not more than 0.392 gram of carbon dioxide per 100 milliliters of wine; except that a tolerance to this maximum limitation, not to exceed 0.009 gram of carbon dioxide per 100 milliliters of wine, will be allowed where the amount of carbon dioxide in excess of 0.392 gram per 100 milliliters of wine was due to mechanical variations which could not be completely controlled under good commercial practices. Such tolerance will not be allowed where it is found that the limitation of 0.392 gram of carbon dioxide per 100 milliliters of wine is continuously or intentionally exceeded, or where the variation results from the use of methods or equipment not in accord with good commercial practices.

(b) *Notice required.* Proprietors intending to add carbon dioxide to, or retain carbon dioxide in, still wines to be shipped to the United States shall submit a notice to the Chief, Puerto Rican Operations. The notice shall show the name and address of the proprietor and shall identify the method or process, the kinds (class and type) of wine, and the type of equipment to be used. A corrected notice shall be filed if there is any change (except for minor changes) in the information contained in the notice.

(c) *Filing and disposition of notice.* The notice required by paragraph (b) of this section shall be submitted in triplicate to the Chief, Puerto Rican Operations, who shall retain one copy, forward one copy to the Commissioner of Finance of the Virgin Islands, and return one copy to the proprietor. The proprietor shall keep the notice available for examination by insular agents.

(Approved by the Office of Management and Budget under control number 1512–0352)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1331, as amended (26 U.S.C 5041))

[T.D. ATF–62, 44 FR 71715, Dec. 11, 1979, as amended by T.D. ATF–172, 49 FR 14943, Apr. 16, 1984]

§ 250.223 Changes of formulas.

Any change in the ingredients composing a product covered by an approved formula will necessitate the submission of a new formula.

§ 250.224 Filing and disposition of formulas.

Prior to shipment formulas required by this subpart shall be submitted in triplicate to and approved by the Director. The Director shall retain one copy, forward one copy to the Commissioner of Finance of the Virgin Islands, and return one copy to the applicant. The applicant shall maintain copies of approved formulas available for examination by insular agents.

§ 250.225 Previously approved formulas.

Any formula approved on Form 27–B Supplemental prior to January 1, 1980, shall continue to be valid until revoked or voluntarily surrendered. Any person holding such a formula is not required to submit a new formula. If an approved formula on Form 27–B Supplemental indicates that carbon dioxide will be added to, or retained in, still wine, the notice requirement of § 250.222 shall not apply.

Subpart L—Closures for Distilled Spirits From the Virgin Islands

GENERAL

§ 250.230 Containers of distilled spirits to bear closures.

Containers of 1 gallon (3.785 liters) or less of distilled spirits, upon which all Federal internal revenue taxes have been paid or determined under provisions of this part, shall have closures or other devices affixed in accordance with the provisions of this part.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5301))

[T.D. ATF–206, 50 FR 23955, June 7, 1985]

§ 250.231 Affixing closures.

Closures or other devices shall be securely affixed to containers having capacity of 1 gallon (3.785 liters) or less so as to leave a portion remaining on the container when it is opened. In addition, the closures or other devices shall be constructed in such a manner as to require that they be broken to gain access to the contents of the containers.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5301))

[T.D. ATF–206, 50 FR 23955, June 7, 1985]

Subpart M—Procedure at Port of Entry From the Virgin Islands

§ 250.260 Certificate.

Persons (except tourists) bringing liquors or articles from the Virgin Islands into the United States shall file the certificate provided for in § 250.205 with the district director of customs at the port of entry in the United States.

[T.D. ATF–62, 44 FR 71716, Dec. 11, 1979]

§ 250.261 Action by district director of customs.

The district director of customs will direct the proper customs gauger to determine the taxable quantity of liquors contained in the consignment by regauge or inspection and report the result thereof to the district director of customs. Upon receipt of such report the district director of customs will refer to the certificate required by § 250.205 covering the product to determine the rate of internal revenue tax applicable thereto. When the rate of tax applicable to the product has been ascertained, the tax due on the consignment will be determined according to §§ 250.262 through 250.265.

[20 FR 6077, Aug. 20, 1955, as amended by T.D. 7006, 34 FR 2249, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 250.261, see the List of CFR Sections Affected in the Finding Aids section of this volume.

250.262 Determination of tax on distilled spirits.

(a) If the certificate required by § 250.205 covers distilled spirits, and the distilled spirits are not being transferred under subparts 0 or Oa of this part, the tax imposed by 26 U.S.C. 7652 which provides for a tax equal to the tax imposed by 26 U.S.C. 5001 will be collected on each proof gallon, and fractional part thereof, contained in the shipment.

(b) A credit against the tax imposed on distilled spirits by 26 U.S.C. 7652 is allowable under 26 U.S.C. 5010 on each proof gallon of alcohol derived from eligible wine or from eligible flavors which do not exceed 2 ½ percent of the finished product on a proof gallon basis. The credit is allowable at the time the tax is payable as if it constituted a reduction in the rate of tax.

(c) Where credit against the tax is desired, the person liable for the tax shall establish an effective tax rate in accordance with § 250.262a. The effective tax rate established will be applied to each withdrawal or other disposition of the distilled spirits within the United States.

(Approved by the Office of Management and Budget under control number 1512–0352)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201); Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010), Act of August 16, 1954, Pub. L. 591, 68A Stat. 907, as amended (26 U.S.C. 7652))

[T.D. ATF–297, 55 FR 18068, Apr. 30, 1990]

§ 250.262a Computation of effective tax rate.

(a) The proprietor shall compute the effective tax rate for distilled spirits

containing eligible wine or eligible flavors as the ratio of the numerator and denominator as follows:

(1) The numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of distilled spirits derived from eligible flavors), multipled by the tax rate prescribed by 26 U.S.C. 5001;

(ii) The wine gallons of each eligible wine used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5041(b) (1), (2), or (3), as applicable; and

(iii) The proof gallons of all distilled spirits derived from eligible flavors used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5001, but only to the extent that such distilled spirits exceed 2½% of the denominator prescribed in paragraph (a)(2) of this section.

(2) The denominator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product, including distilled spirits derived from eligible flavors; and

(ii) The wine gallons of each eligible wine used in the product, multiplied by twice the percentage of alcohol by volume of each, divided by 100.

(b) In determining the effective tax rate, quantities of distilled spirits, eligible wine, and eligible flavors will be expressed to the nearest tenth of a proof gallon. The effective tax rate may be rounded to as many decimal places as the proprietor deems appropriate, provided that, such rate is expressed no less exactly than the rate rounded to the nearest whole cent, and the effective tax rates for all products will be consistently expressed to the same number of decimal places. In such case, if the number is less than five it will be dropped; if it is five or over, a unit will be added.

(c) The following is an example of the use of the formula.

BATCH RECORD

Distilled spirits	2249.1 proof gallons.
Eligible wine (14% alcohol by volume).	2265.0 wine gallons.
Eligible wine (19% alcohol by volume).	1020.0 wine gallons.
Eligible flavors	100.9 proof gallons.

$$\frac{2249.1(\$13.50)+2265.0(\$1.07)+1020(\$1.57)+16.6^{1}(\$13.50)}{2249.1+100.9+(2265.0\times.28)+(1020\times.38)}=$$

$$\frac{\$30{,}362.85+\$2{,}423.55+\$1{,}601.40+\$224.10}{2{,}350.0+634.2+387.6}=\frac{\$34{,}611.90}{3{,}371.8}=\$10.27,\ \text{the effective tax rate.}$$

(Approved by the Office of Management and Budget under control number1512–0352)

(Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

[T.D. ATF–297, 55 FR 18068, Apr. 30, 1990, as amended by T.D. ATF–307, 55 FR 52741, Dec. 21, 1990]

§ 250.263 Determination of tax on beer.

If the certificate prescribed in § 250.205 covers beer, the beer tax will be collected on the basis of the number of barrels of 31 gallons each, or fractional parts thereof, contained in the shipment.

(68A Stat. 611, as amended; 26 U.S.C. 5051)

§ 250.264 Determination of tax on wine.

If the certificate prescribed in § 250.205 covers wine, the wine tax will be collected at the rates imposed by section 5041, Internal Revenue Code, as amended.

(68A Stat. 609, as amended; 26 U.S.C. 5041)

[1] Proof gallons by which distilled spirits derived from eligible flavors exceed 2½% of the total proof gallons in the batch (100.9 − (2½%)×3,371.8=16.6).

§ 250.265 Determination of tax on articles.

Where articles contain distilled spirits, the tax will be collected at the rate prescribed by 26 U.S.C. 5001(a)(1) on all alcohol contained therein, regardless of the source. Articles containing only wine and/or beer will be taxed at the rates prescribed by 26 U.S.C. 5041 and/or 5051, respectively. The quantities and kinds of liquors will be shown on the certificate prescribed in § 250.205.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001, 5007))

[T.D. ATF–62, 44 FR 71717, Dec. 11, 1979]

§ 250.266 Tax payment.

The internal revenue tax on liquors (except spirits transferred under subparts O or Oa of this part) and articles coming into the United States from the Virgin Islands shall be paid to the district director of customs at the port of entry, as provided by customs regulations. (19 CFR Ch. I)

[20 FR 6077, Aug. 20, 1955, as amended by T.D. 7006, 34 FR 2249, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–198, 50 FR 8554, Mar. 1, 1985]

§ 250.267 Payment of tax by electronic fund transfer.

(a) Each person bringing liquors and articles into the United States from the Virgin Islands who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and parts 19 and 251 of this chapter, a gross amount equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and parts 240 and 251 of this chapter, or a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and parts 25 and 251 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT), as defined in paragraph (c) of this section, of such taxes during the succeeding calendar year. Payment of such taxes by cash, check, or money order is not authorized for a person bringing liquors and articles into the United States from the Virgin Islands who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is to be summarized separately for distilled spirits taxes, wine taxes, or beer taxes, and is defined as the gross tax liability on all taxable withdrawals from premises in the United States and importations (including products of the same tax class 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.

(b) For the purposes of this section, a ''person'' 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 person for the purpose of determining who is required to make remittances by EFT.

(c) 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.

(d) Each person 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.

(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. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

[T.D. ATF–245, 52 FR 532, Jan. 7, 1987]

Subpart N—Records and Reports of Liquors From the Virgin Islands

RECORD AND REPORT OF LIQUORS BROUGHT INTO THE UNITED STATES

§ 250.272 General requirements.

Except as provided in § 250.273, every person, other than a tourist, bringing liquors into the United States from the Virgin Islands shall keep such records and render reports of the physical receipt and disposition of such liquors as are required to be kept by a wholesale or retail dealer, as applicable, under the provisions of part 194 of this chapter. Any importer who is responsible for release of the liquors from customs custody and who does not take physical possession of the liquors shall keep commercial records reflecting such release; such records shall identify the kind and quantity of the liquors released, the name and address of the person receiving the liquors from customs custody, and shall be filed chronologically by release dates. Records and reports will not be required under this part with respect of liquors while in customs custody.

(Approved by the Office of Management and Budget under control number 1512–0352)

(72 Stat. 1342, 1345; 26 U.S.C. 5114, 5124)

[T.D. ATF–2, 37 FR 22739, Oct. 21, 1972. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–172, 49 FR 14943, Apr. 16, 1984]

§ 250.273 Proprietors of taxpaid premises.

Transactions involving the bringing of liquors into the United States from the Virgin Islands by proprietors of distilled spirits plants in the United States qualified under the provisions of this chapter shall be recorded and reported in accordance with the regulations governing the operations of such premises in the United States.

[T.D. 6478, 25 FR 6203, July 1, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 250.273a Transfer record.

The transfer record for Virgin Islands spirits prescribed in § 250.301 shall show the:

(a) Date prepared;

(b) Serial number of the transfer record, beginning with ''1'' each January 1;

(c) Name of the proprietor and distilled spirits plant number to which consigned;

(d) Name and address of the consignor;

(e) Kind of spirits;

(f) Name of the producer;

(g) Age (in years, months and days) of the spirits;

(h) Proof of the spirits;

(i) Type and serial number of containers; and

(j) Proof gallons of spirits in the shipment.

(Approved by the Office of Management and Budget under control number 1512–0250)

(Sec. 807, Pub. L. 96–39, 93 Stat. 284 (26 U.S.C. 5207))

[T.D. ATF–198, 50 FR 8554, Mar. 1, 1985]

§ 250.273b Package gauge record.

When required in this part with respect to Virgin Islands spirits, a package gauge record shall be prepared to show:

(a) The date prepared;

(b) The related transaction record and its serial number;

(c) The producer, his name and address; and

(d) For each package, the:

(1) Package identification or serial number;

(2) Kind of spirits;

(3) Gross weight;

(4) Tare;

(5) Net weight;

(6) Proof gallons; and

(7) Proof.

(Approved by the Office of Management and Budget under control number 1512–0250)

[T.D. ATF–198, 50 FR 8554, Mar. 1, 1985]

FILING AND RETENTION OF RECORDS AND REPORTS

§ 250.275 Filing.

(a) All records and reports required by this part will be maintained separately, by transaction or reporting date, at the importer's place of business. The regional director (compliance) may, pursuant to an application, authorize files, or an individual file, to be maintained at another business location under the control of the importer, it the alternative location does not cause undue inconvenience to ATF or Customs officers desiring to examine the files or delay in the timely submission of documents.

(b) If an importer conducts wholesale operations, one legible copy of each required record of receipt and disposition shall be filed not later than one business day following the date of transaction.

(c) If an importer conducts only retail operations, either loose-leaf or book records may be maintained for the daily receipt of liquors which contain all the required information.

(d) Supporting documents, such as consignors' invoices, delivery receipts, bills or lading, etc., or exact copies of the same, may be filed in accordance with the importer's regular accounting and recordkeeping practices.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1342, as amended, 1395, as amended (26 U.S.C. 5114, 5555))

[T.D. ATF–116, 47 FR 51573, Nov. 16, 1982]

§ 250.276 Retention.

All records required by this part, documents or copies of documents supporting these records, and file copies of reports required by this part to be submitted to the regional director (compliance) or to the district district director of customs shall be retained for not less than three years, and during this period shall be available, during business hours, for inspection and copying by ATF or customs officers. Furthermore, the regional director (compliance) may require these records to be kept for an additional period of not more than three years in any case where he determines retention necessary or advisable. Any records, or copies thereof, containing any of the information required by this part to be prepared, wherever kept, shall also be made available for inspection and copying.

(68A Stat. 731 (26 U.S.C. 6001); Sec. 201, Pub. L. 85–859, 72 Stat. 1342, 1345, 1348, 1361, 1395 (26 U.S.C. 5114, 5124, 5146, 5207, 5555))

[T.D. ATF–50, 43 FR 20494, May 12, 1978]

REPORT OF DISPOSITION OF RED STRIP STAMPS ON DISCONTINUANCE OF BUSINESS

§ 250.277 Procedure.

The importer who discontinues or sells his business shall recall from his agents, and his bottlers or exporters in the Virgin Islands, all unused stamps in their custody. He shall submit his entire stock of unused stamps, accompanied by a report, in duplicate, of inventory, by size and quantity, to the regional director (compliance). The same procedure may be followed by an importer who has unused stamps for which he has no further use for any reason. The regional director (compliance) shall then destroy the stamps and, after such destruction, note the action taken on both copies of the inventory. He shall retain the original and return the copy of the inventory to the importer. In the case of discontinuance or sale of the business, the importer shall, within 5 days of the receipt of the returned copy of the inventory, note the disposition of the stamps on Form 96, mark the report ''Final'', and submit it to the regional director (compliance).

(72 Stat. 1358; 26 U.S.C. 5205)

[T.D. ATF–2, 37 FR 22739, Oct. 21, 1972. Redesignated at 40 FR 16835, Apr. 15, 1975]

Subpart O—Tax-Free Shipments to the United States From the Virgin Islands

SOURCE: T.D. ATF–199, 50 FR 9199, Mar. 6, 1985, unless otherwise noted.

§ 250.291 General.

(a) Industrial spirits may be shipped into the United States to the holder of a permit under part 22 of this chapter, in accordance with § 250.292 through

250.294 and regulations issued by the Governor of the Virgin Islands.

(b)(1) Specially denatured spirits may be shipped into the United States to the holder of a permit under part 20 of this chapter, in accordance with §§ 250.292 through 250.294 and regulations issued by the Governor of the Virgin Islands.

(2) Completely denatured alcohol may be shipped to anyone in the United States in accordance with §§ 250.295 through 250.296 and regulations issued by the Governor of the Virgin Islands.

(3) Denatured spirits shall be denatured in accordance with part 21 of this chapter and regulations issued by the Governor of the Virgin Islands.

(c) Products made with denatured spirits may be shipped to anyone in the United States in accordance with §§ 250.295 through 250.296 and regulations issued by the Governor of the Virgin Islands. These products are also subject to the requirements of § 250.221 of this part.

SHIPMENT OF INDUSTRIAL SPIRITS AND SPECIALLY DENATURED SPIRITS

§ 250.292 Copy of consignee's permit under part 20 or 22.

The consignor or consignee shall file a copy of the consignee's permit issued under part 20 of this chapter (for shipments of specially denatured spirits) or part 22 of this chapter (for shipments of industrial spirits) with the district director of customs of the port of entry. The copy of the permit shall be adequate evidence that the consignee is authorized to enter industrial spirits or specially denatured spirits free of tax.

§ 250.293 Marks on containers.

(a) *Industrial spirits*. The shipper shall mark or label each immediate container of industrial spirits with the following information:

(1) The name or trade name of the distiller or shipper;

(2) The words ''Virgin Islands Industrial Spirits'';

(3) A package identification number as required by subpart R of part 19 of this chapter;

(4) The date filled;

(5) Proof; and

(6) Quantity in proof gallons.

(b) *Specially denatured spirits*. The shipper shall mark or label each immediate container of specially denatured spirits with the following information:

(1) Quantity, in gallons, or in liters and gallons;

(2) A serial number or package identification number;

(3) Name and address of shipper;

(4) The words ''Virgin Islands Specially Denatured Alcohol'' or ''Virgin Islands Specially Denatured Rum,'' as appropriate;

(5) Formula number prescribed by part 21 of this chapter;

(6) Proof, if the spirits were denatured at other than 190 proof;

(7) Denaturants used, if spirits were denatured under an approved formula authorizing a choice of denaturants; and

(8) Quantity of denaturant used, if the approved formula authorizes a choice of quantities of denaturants.

§ 250.294 Record of shipment.

(a) Each shipment of industrial spirits or specially denatured spirits from the Virgin Islands to the United States shall be accompanied by a record of shipment. The record of shipment shall consist of an invoice, bill of lading or similar document which shows the following information:

(1) Consignor's name and address;

(2) Consignee's name, address, and permit number;

(3) For each formula of specially denatured spirits—

(i) The formula number prescribed by part 21 of this chapter,

(ii) The serial numbers or package identification numbers of containers, and

(iii) The total quantity in wine gallons;

(4) For industrial spirits—

(i) The package identification numbers of containers, and

(ii) The total quantity in proof gallons.

(b) The record of shipment shall be made available to custom officers inspecting the shipment.

(Records relating to industrial spirits approved by the Office of Management and Budget under control number 1512–0334; records relating to specially denatured spirits approved by the Office of Management and Budget under control number 1512–0337)

SHIPMENT OF COMPLETELY DENATURED ALCOHOL AND PRODUCTS MADE WITH DENATURED SPIRITS

§ 250.295 Marks on containers.

(a) *Completely denatured alcohol.* (1) For each immediate container of completely denatured alcohol with a capacity exceeding 1 gallon, the shipper shall mark or label on the head or side of the package or on the side of the casing, the following:

(i) The name and address of the person filling the container;

(ii) The contents in gallons;

(iii) The words ''Virgin Islands Completely Denatured Alcohol''; and

(iv) The formula number prescribed by part 21 of this chapter.

(2) In addition, if the container has a capacity of 5 gallons or less, the words ''Completely Denatured Alcohol'' shall be in red letters on white background, and the label shall also have the words ''Caution—contains poisonous ingredients'' in red letters on white background.

(b) *Products made with denatured spirits.* The shipper shall mark or label each immediate container of a product made with denatured spirits with the name, trade name or brand name of the product and the name and address of the shipper.

§ 250.296 Record of shipment.

(a) Each shipment of completely denatured alcohol or products made with denatured spirits shall be accompanied by a record of shipment. The record of shipment shall consist of an invoice, bill of lading or similar document which shows the following information:

(1) Consignor's name and address;

(2) Consignee's name and address;

(3) Capacity and number of containers;

(4) Total quantity shipped; and

(5)(i) For completely denatured alcohol, the words ''Virgin Islands Completely Denatured Alcohol'' and the formula number prescribed by part 21 of this chapter, or

(ii) For products made with denatured spirits, the name, trade name or brand name of the product.

(b) The record of shipment shall be made available to customs officers inspecting the shipment.

(Approved by the Office of Management and Budget under control number 1512–0337)

ARRIVAL IN THE UNITED STATES

§ 250.297 General.

The district director of customs shall inspect each shipment of industrial spirits, specially denatured spirits, completely denatured alcohol, and products made with denatured spirits coming into the United States from the Virgin Islands. If the shipment complies with the requirements of this part, the products may be released free of tax.

Subpart Oa—Shipment of Bulk Distilled Spirits From the Virgin Islands, Without Payment of Tax, for Transfer From Customs Custody to Internal Revenue Bond

AUTHORITY: Sec. 3, Pub. L. 90–630, 82 Stat. 1328, as amended (26 U.S.C. 5232).

SOURCE: T.D. ATF–62, 44 FR 71717, Dec. 11, 1979, unless otherwise noted.

§ 250.300 General.

Distilled spirits brought into the United States from the Virgin Islands in bulk containers may, under the provisions of this subpart, be withdrawn by the proprietor of a distilled spirits plant from customs custody and transferred in such bulk containers or by pipeline to the bonded premises of his plant, without payment of the internal revenue tax imposed on such spirits by 26 U.S.C. 7652. Such spirits so withdrawn and transferred to a distilled spirits plant (a) may be redistilled or denatured only if 185 degrees or more of proof, and (b) may be withdrawn from internal revenue bond for any purpose authorized by 26 U.S.C. chapter 51, in

the same manner as domestic distilled spirits. Spirits transferred from customs custody to the bonded premises of a distilled spirits plant under the provisions of this subpart shall be received and stored thereat, and withdrawn or transferred therefrom, subject to the provisions of part 19 of this chapter. The person operating the bonded premises of the distilled spirits plant to which spirits are transferred under the provisions of this subpart shall become liable for the tax on distilled spirits withdrawn from customs custody under 26 U.S.C. 5232, upon release of the spirits from customs custody, and the person bringing the spirits into the United States shall thereupon be relieved of his liability for such tax.

§ 250.301 Preparation of transfer record.

The person bringing spirits into the United States from the Virgin Islands under this subpart shall prepare a transfer record, in triplicate, according to § 250.273a, and present the record to the customs officer responsible for inspection and release of the spirits. A separate transfer record shall be prepared for each conveyance.

(Approved by the Office of Management and Budget under control number 1512–0250)

[T.D. ATF–198, 50 FR 8555, Mar. 1, 1985]

§ 250.302 Gauge and certification.

(a) *Gauge*. If Virgin Islands spirits to be transferred from customs custody to internal revenue bond as provided in this subpart are not gauged by an insular gauger at the time of their withdrawal from an insular bonded warehouse, as provided in § 250.204 of this chapter, the insular consignor shall effect a gauge of each bulk container and shall prepare a record of such gauge, in duplicate, and attach both copies to the certificate required by § 250.205 of this chapter. If the gauge is made by the insular gauger his record of gauge shall be prepared in duplicate and both copies shall be attached to the certificate.

(b) *Certification*. The certification prescribed by § 250.205 of this chapter shall be prepared in duplicate if the Virgin Islands spirits are to be transferred from customs custody to internal revenue bond. Both copies of the certificate, with the applicable record of gauge attached, shall be filed with the district director of customs at the port of entry. The original of the certificate and related record of gauge shall be attached by the customs officer to the original of the transfer record received as provided in § 250.301 from the importer.

(Approved by the Office of Management and Budget under control number 1512–0250)

[T.D. ATF–198, 50 FR 8555, Mar. 1, 1985]

§ 250.303 Customs inspection and release.

The customs officer shall not release distilled spirits under this subpart until he inspects the spirits, and, if it appears that losses in transit were sustained from any container, he shall gauge the spirits in such container. If the spirits are in a bulk conveyance, the customs officer shall record the elements of his gauge on the transfer record, or, if the spirits are in packages, on the gauge record required by § 250.302, and attach it to the transfer record. The customs officer shall also record on the transfer record the port of entry, carrier identification, and warehouse entry number. When the consignee has complied with all customs requirements, the customs officer shall release the spirits for transfer to the distilled spirits plant, by dating and signing the transfer record with his title the statement: ''To the best of my knowledge the information hereon is accurate and the spirits are released''. The customs officer shall retain a copy of the transfer record and any attachment, forward a copy of the transfer record and any attachments to the regional director (compliance), and give the original of the transfer record with any attachments to the consignee.

[T.D. ATF–198, 50 FR 8555, Mar. 1, 1985]

§ 250.304 Bulk conveyances to be sealed.

When a shipment of distilled spirits from customs custody to the distilled spirits plant is made in a tank, tank barge, cargo container, tank car, tank truck, or similar bulk conveyance, all openings affording access to the spirits

shall be sealed by the customs officer with customs seals in such manner as will prevent unauthorized removal of spirits through such openings without detection.

§ 250.305 Receipt by consignee.

Proprietors of distilled spirits plants who receive Virgin Islands spirits under this subpart shall follow the requirements in 27 CFR part 19 for spirits received by transfer in bond. However, proprietors are not required to file application on ATF Form 5100.16 to receive Virgin Islands spirits from customs custody.

[T.D. ATF–198, 50 FR 8555, Mar. 1, 1985]

Subpart Ob—Claims for Drawback on Eligible Articles From the Virgin Islands

SOURCE: T.D. ATF–263, 52 FR 46595, Dec. 9, 1987, unless otherwise noted.

§ 250.306 Drawback of tax.

Any person who brings eligible articles into the United States from the Virgin Islands may claim drawback of the distilled spirits excise taxes paid on such articles as provided in this subpart.

§ 250.307 Special tax.

Any person filing claim for drawback of tax on eligible articles brought into the United States from the Virgin Islands shall pay special tax as required by 26 U.S.C. 5131. For purposes of special tax, subparts C and D of part 17 of this chapter shall apply as if the use and tax determination occurred in the United States at the time the article was brought into the United States, and each business location from which entry of eligible articles is caused or effected shall be treated as a place of manufacture. If special tax is paid for any such business location under part 17 of this chapter, as a place where nonbeverage products are manufactured for purposes of drawback, then no additional special tax need be paid for that location under this section.

[T.D. ATF-263, 52 FR 46595, Dec. 9, 1987, as amended by T.D. ATF-271, 53 FR 17559, May 17, 1988; T.D. ATF–379, 61 FR 31427, June 20, 1996]

§ 250.308 Bonds.

(a) *General*. Persons bringing eligible articles into the United States from the Virgin Islands and intending to file monthly claims for drawback under the provisions of this subpart shall obtain a bond on Form 5154.3. When the limit of liability under a bond given in less than the maximum amount has been reached, further drawback on monthly claims may be suspended until a strengthening or superseding bond in a sufficient amount has been furnished. For provisions relating to bonding requirements, subpart E of part 17 of this chapter is incorporated in this part, but references therein to a regional director (compliance) shall apply, for purposes of this part, to the Chief, Puerto Rico Operations.

(b) *Approval required*. No person bringing eligible articles into the United States from the Virgin Islands may file monthly claims for drawback under the provisions of this subpart until bond on Form 5154.3 has been approved by the Chief, Puerto Rico Operations. Bonds approved by a regional director (compliance) prior to the effective date of this provision shall remain in effect.

[T.D. ATF–379, 61 FR 31427, June 20, 1996]

§ 250.309 Claims for drawback.

(a) *General*. Persons bringing eligible articles into the United States from the Virgin Islands shall file claim for drawback on Form 2635 (5620.8) with the Chief, Puerto Rico Operations. Upon finding that the claimant has satisfied the requirements of this subpart, the regional director (compliance) shall allow the drawback of taxes at a rate of $1 less than the lesser of $10.50 a proof gallon or the rate specified in 26 U.S.C. 5001(a).

(b) *Information on claims*. The claim must set forth the following:

(1) That the special tax has been paid;

(2) That the eligible articles brought into the United States on which drawback is claimed are fully taxpaid or tax-determined;

(3) That the eligible articles on which drawback is claimed are nonbeverage products; and

(4) That the eligible articles were manufactured in the Virgin Islands in compliance with approved formulas in accordance with § 250.221.

(c) *Supporting data.* Each claim shall be accompanied by supporting data as specified in this paragraph. ATF Form 5154.2, Supporting Data for Nonbeverage Drawback Claims, may be used, or the claimant may use any suitable format that provides the following information:

(1) The control number of the Special Tax Stamp and the tax year for which issued;

(2) A description of each eligible article as follows:

(i) Name and type of each product;

(ii) Name and address of the manufacturer of each product;

(iii) Formula number under which each product was manufactured;

(iv) Alcohol content of each product;

(v) Quantity of each product;

(vi) Proof gallons of distilled spirits contained in each product;

(vii) Date of entry of the eligible product into the United States; and

(viii) Evidence of taxpayment of distilled spirits in accordance with § 250.266.

(d) *Date of filing claim.* Quarterly claims for drawback shall be filed with the Chief, Puerto Rico Operations, within the 6 months next succeeding the quarter in which the eligible products covered by the claim were brought into the United States. Monthly claims for drawback may be filed at any time after the end of the month in which the eligible products covered by the claim were brought into the United States, but must be filed not later than the close of the sixth month succeeding the quarter in which the eligible products were brought into the United States.

(Approved by the Office of Management and Budget under control number 1512–0494)

[T.D. ATF-263, 52 FR 46595, Dec. 9, 1987, as amended by T.D. ATF-271, 53 FR 17559, May 17, 1988; T.D. ATF–379, 61 FR 31427, June 20, 1996]

§ 250.310 Records.

(a) *General.* Every person intending to file claim for drawback on eligible articles brought into the United States from the Virgin Islands shall keep permanent records of the data elements required by this section. Such records shall be maintained at the business premises for which the claim is filed and shall be available for inspection by any ATF officer during business hours.

(b) *Details of records.* Each person intending to claim drawback on eligible articles brought into the United States shall maintain permanent records showing the following data:

(1) The name, description, quantity, and formula number of each such article.

(2) The alcohol content of each such article.

(3) Name and address of the manufacturer and shipper, and date of entry into the United States.

(4) Evidence of taxpayment of distilled spirits in accordance with paragraph (e) of this section.

(c) *Form of record.* No particular form of record is prescribed, but the data required to be shown shall be readily ascertainable from the records kept by the drawback claimant.

(d) *Evidence of taxpayment of distilled spirits.* Evidence of taxpayment of eligible articles (such as Customs Forms 7501 and 7505 receipted to indicate payment of tax) shall be maintained as evidence of taxpayment to support information required to be furnished in the supporting data filed with a claim.

(e) *Retention of records.* Each drawback claimant shall retain for a period of not less than three years all records required by this subpart, all commercial invoices or shipping documents, and all bills of lading received evidencing receipt and tax determination of the spirits. In addition, a copy of each approved formula returned to the manufacturer of eligible articles shall be retained for not less than three years from the date he files his last claim for drawback under the formula. The records, forms, and formulas shall be readily available during regular business hours for examination by ATF officers.

(Approved by the Office of Management and Budget under control number 1512–0494)

Subpart P—Requirements for Liquor Bottles

AUTHORITY: Sec. 5301, 72 Stat. 1374; 26 U.S.C. 5301.

SOURCE: T.D. 6954, 33 FR 6818, May 4, 1968, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

§ 250.311 Scope of subpart.

The provisions of this subpart shall apply only to liquor bottles having a capacity of 200 ml. or more except where expressly applied to liquor bottles of less than 200 ml. capacity.

[T.D. 6954, 33 FR 6818, May 4, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–34, 41 FR 46864, Oct. 26, 1976]

§ 250.312 Standards of fill.

Distilled spirits brought into the United States from Puerto Rico or the Virgin Islands in containers of 1 gallon (3.785 liters) or less for sale shall be in liquor bottles, including liquor bottles of less than 200 ml capacity, which conform to the applicable standards of fill provided in § 5.47 or § 5.47a of this chapter. Empty liquor bottles, including liquor bottles of less than 200 ml capacity, which conform to the provisions of subpart E of part 5 or part 19 of this chapter, may be brought into the United States for packaging distilled spirits as provided in part 19 of this chapter.

[T.D. ATF–34, 41 FR 46864, Oct. 26, 1976, as amended by T.D. ATF–62, 44 FR 71718, Dec. 11, 1979]

§ 250.314 Distinctive liquor bottles.

(a) *Application.* Liquor bottles of distinctive shape or design, including bottles of less than 200 ml. capacity, may be brought into the United States from Puerto Rico or the Virgin Islands by an importer (filled bottles) or a bottler (empty bottles). For filled bottles, the importer shall submit ATF Form 5100.31 to the Director for approval prior to bringing such bottles into the United States. For empty bottles, the bottler shall obtain approval from the Director on ATF Form 5100.31 prior to using the bottles. The importer or bottler, as applicable, shall certify as to the total capacity of a representative sample bottle before closure (expressed in milliliters) on each copy of the form. In addition, the applicant shall affix a readily legible photograph (both front and back of the bottle) to the front of each copy of ATF Form 5100.31, along with the label(s) to be used on the bottle. The applicant shall not submit an actual bottle or an authentic model unless specifically requested to do so.

(b) *Approval.* Properly submitted ATF Forms 5100.31 to bring distinctive liquor bottles (filled) into the United States from Puerto Rico or the Virgin Islands, or, properly submitted ATF Forms 5100.31 to use distinctive liquor bottles (empty) which have been brought into the United States from Puerto Rico or the Virgin Islands, shall be approved provided such bottles are found by the Director to—

(1) Meet the requirements of 27 CFR part 5;

(2) Be distinctive;

(3) Be suitable for their intended purpose;

(4) Not jeopardize the revenue; and

(5) Not be deceptive to the consumer.

The applicant shall keep a copy of the approved ATF Form 5100.31, including an approved photograph (both front and back) of the distinctive liquor bottle, on file at his premises. If ATF Form 5100.31 is disapproved, the applicant shall be notified of the Director's decision and the reasons therefor. The applicant importer is responsible for furnishing a copy of the approved ATF Form 5100.31, including a photograph of the distinctive liquor bottle, to Customs officials at each affected port of entry where the merchandise is examined.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

[T.D. ATF–114, 47 FR 43950, Oct. 5, 1982, as amended by T.D. ATF–242, 51 FR 39526, Oct. 29, 1986]

§ 250.315 [Reserved]

§ 250.316 Bottles not constituting approved containers.

The Director is authorized to disapprove any bottle, including a bottle of less than 200 ml. capacity, for use as a liquor bottle which he determines to be deceptive. The Customs officer at

the port of entry shall deny entry of any such bottle containing distilled spirits upon advice from the Director that such bottle is not and approved container for distilled spirits for consumption in the United States.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

[T.D. ATF–114, 47 FR 43950, Oct. 5, 1982]

§ 250.317 Bottles to be used for display purposes.

Empty liquor bottles may be brought into the United States and may be furnished to liquor dealers for display purposes, provided each bottle is marked to show that it is to be used for such purpose. Any paper strip used to seal the bottle shall be of solid color and without design or printing, except that a border or a design, formed entirely of the legend ''not genuine—for display purposes only'' is permissible. Records shall be kept of the receipt and disposition of such bottles, showing the names and addresses of consignees, dates of shipment, and size, quantity, and description of bottles.

§ 250.318 Liquor bottles denied entry.

Filled liquor bottles not conforming to the provisions of this subpart shall be denied entry into the United States: *Provided*, That, upon letterhead application, in triplicate, the regional director (compliance) of the region in which the port of entry is situated may, in nonrecurring cases, authorize the release from customs custody of distilled spirits in bottles, except those coming under the provisions of § 250.316, which, through unintentional error, do not conform to the provisions of this subpart, if he finds that such release will not afford jeopardy to the revenue.

§ 250.319 Used liquor bottles.

The Director may pursuant to letterhead application filed in triplicate, authorize an importer to receive liquor bottles assembled for him as provided in § 194.263 of this chapter. Used liquor bottles so received may be stored at any suitable location pending return to Puerto Rico or the Virgin Islands. Records shall be kept of the receipt and disposition of such bottles.

[T.D. 6954, 33 FR 6818, May 4, 1968, as amended by T.D. 7006, 34 FR 2250, Feb, 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

Subpart Q—Miscellaneous Provisions

§ 250.331 Alternate methods or procedures.

(a) *Application*. A person bringing liquors into the United States from Puerto Rico or the Virgin Islands who desires to use an alternate method or procedure in lieu of a method or procedure prescribed by this part shall file application, in triplicate, with the regional director (compliance) of the region in which his place of business is located. If such person has several places of business at which he desires to use such alternate method or procedure, a separate application shall be submitted for each. Each application shall:

(1) Specify the name, address, and permit number of the person to which it relates;

(2) State the purpose for which filed; and

(3) Specifically describe the alternate method or procedure and set forth the reasons therefor.

No alternate method or procedure relating to the assessment, payment, or collection of tax shall be authorized under this paragraph.

(b) *Approval*. When an application for use of an alternate method or procedure is received, the regional director (compliance) shall determine whether the approval thereof would unduly hinder the effective administration of this part or would result in jeopardy to the revenue. The regional director (compliance) shall forward two copies of the application to the Director, together with a report of his findings and his recommendation. The Director, may approve the alternate method or procedure if he finds that:

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) 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

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

No alternate method or procedure shall be used until approval has been received from the Director. Authorization for the 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 by the continuation of such authorization.

(Approved by the Office of Management and Budget under control number 1512–0352)

[T.D. ATF–2, 37 FR 22739, Oct. 21, 1972. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–172, 49 FR 14943, Apr. 16, 1984]

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

Subpart A—Scope of Regulations

Sec.
251.1 Imported distilled spirits, wines, and beer.
251.2 Forms prescribed.

Subpart B—Definitions

251.11 Meaning of terms.

Subpart C—Special (Occupational) Taxes

251.30 Special (occupational) tax.
251.31 Warehouse receipts covering distilled spirits.

Subpart D—Tax on Imported Distilled Spirits, Wines, Beer, and Imported Perfumes Containing Distilled Spirits

DISTILLED SPIRITS AND PERFUMES

251.40 Distilled spirits.
251.40a Computation of effective tax rate.
251.41 Perfumes containing distilled spirits.

WINES

251.42 Wines.
251.42a Still wines containing carbon dioxide.

LIQUEURS, CORDIALS, AND OTHER COMPOUNDS AND PREPARATIONS

251.43 Liqueurs, cordials, and similar compounds.
251.44 Other compounds and preparations.

BEER

251.45 Rate of tax.
251.46 Computation of tax.

COLLECTION OF INTERNAL REVENUE TAXES

251.48 Imported distilled spirits, wines, and beer.
251.48a Payment of tax by electronic fund transfer.

EXEMPTION OF CERTAIN SAMPLES FROM INTERNAL REVENUE TAXES

251.49 Commercial samples of alcoholic beverages.

Subpart E—General Requirements

PERMIT FOR IMPORTATION OF DISTILLED SPIRITS, WINES AND BEER

251.55 Federal Alcohol Administration Act permit.

PACKAGING AND MARKING OF DISTILLED SPIRITS

251.56 Distilled spirits containers of a capacity of not more than 1 gallon.
251.57 Containers in excess of 1 gallon.

LABELING OF DISTILLED SPIRITS

251.58 Containers of 1 gallon (3.785 liters) or less.

MARKING AND LABELING OF WINES AND BEER

251.59 Wines.
251.60 Beer.

CLOSURES FOR CONTAINERS OF DISTILLED SPIRITS

251.61 Containers of distilled spirits to bear closures.
251.62 Affixing closures.

EXEMPTIONS

251.74 Exemption from requirements pertaining to marks, bottles, and labels.
251.75 Samples of distilled spirits, wine, and beer for quality control purposes.

WINE AND FLAVORS CONTENT OF DISTILLED SPIRITS

251.76 Approval and certification of wine and flavors content.
251.77 Standard effective tax rate.

Subparts F–G [Reserved]

Subpart H—Importation of Distilled Spirits in Bulk

251.120 Persons authorized to receive distilled spirits imported in bulk.
251.121 Containers.

Subpart I—Importer's Records and Reports

251.130–251.132 [Reserved]

RECORD AND REPORT OF IMPORTED LIQUORS

251.133 General requirements.
251.134 Proprietors of qualified premises.

FILING AND RETENTION OF RECORDS AND REPORTS

251.136 Filing.
251.137 Retention.

OTHER RECORDS

251.138 Transfer record.
251.139 Package gauge record.

Subparts J–K [Reserved]

Subpart L—Transfer of Distilled Spirits From Customs Custody to Bonded Premises of Distilled Spirits Plant

251.171 General provisions.
251.172 Preparation of transfer record and package gauge record.
251.173 Inspection and release.
251.174 Tank cars and tank trucks to be sealed.
251.175 Receipt by consignee.

Subpart M—Withdrawal of Imported Distilled Spirits From Customs Custody Free of Tax For Use of the United States

251.181 General.
251.182 Application and permit, Form 5150.33.
251.183 Use of permit, Form 5150.33.
251.184 Entry documents.
251.185 Customs release.

Subpart N—Requirements for Liquor Bottles

251.201 Scope of subpart.
251.202 Standards of fill.
251.204 Distinctive liquor bottles.
251.205 [Reserved]
251.206 Bottles not constituting approved containers.
251.207 Bottles to be used for display purposes.
251.208 Liquor bottles denied entry.
251.209 Used liquor bottles.

Subpart O—Miscellaneous Provisions

251.221 Alternate methods or procedures.

AUTHORITY: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805.

SOURCE: 20 FR 3561, May 21, 1955; unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

CROSS REFERENCE: For regulations with respect to distilled spirits, wines, and beer arriving in the United States from Puerto Rico and the Virgin Islands, see part 250 of this subchapter.

Subpart A—Scope of Regulations

§ 251.1 Imported distilled spirits, wines, and beer.

This part, ''Importation of Distilled Spirits, Wines, and Beer'', contains procedural and substantive requirements relative to the importation of distilled spirits, wines, and beer into the United States from foreign countries including special (occupational) and commodity taxes, permits, marking, branding, closing and labeling of containers and packages, and records and reports.

NOTE: Distilled spirits, wines, and beer arriving in the United States from Puerto Rico and the Virgin Islands are governed by the provisions of part 250 of this chapter.

[T.D. ATF–206, 50 FR 23955, June 7, 1985]

§ 251.2 Forms prescribed.

(a) The Director is authorized to prescribe all forms required by this part, including reports, returns, and records. 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.

(b) Requests for forms should be mailed to the ATF 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 46921, Sept. 23, 1981, as amended by T.D. ATF–249, 52 FR 5963, Feb. 27, 1987; T.D. ATF–372, 61 FR 20725, May 8, 1996]

Subpart B—Definitions

§ 251.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms ''includes'' and ''including'' do not exclude things not enumerated which are in the same general class.

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

Beer. Beer, ale porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor.

Bonded premises—distilled spirits plant. The premises of a distilled spirits plant, or part thereof, on which distilled spirits operations defined in 26 U.S.C. 5002 are authorized to be conducted.

Bulk container. Any container having a capacity of more than 1 gallon.

Bulk distilled spirits. The term ''bulk distilled spirits'' means distilled spirits in a container having a capacity in excess of 1 gallon.

CFR. The Code of Federal Regulations.

Class 8 Customs bonded warehouse. A class 8 customs bonded warehouse established under the provisions of Customs Regulations (19 CFR, chapter I).

Customs officer. Any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person authorized by law or designated by the Secretary of the Treasury to perform any duties of an officer of the Customs Service.

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

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine, and all mixtures or dilutions thereof, from whatever source or by whatever process produced, including alcohol, whisky, brandy, gin, rum, and vodka, but not including wine as defined in this subpart.

Distilled spirits plant. An establishment qualified under the provisions of part 19 of this chapter for the production, storage, or processing of spirits, or for authorized combinations of such operations.

District director of customs. The district director of customs at a 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.

Effective tax rate. The net tax rate after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content at which the tax imposed on distilled spirits by 26 U.S.C. 5001 is paid or determined.

Eligible flavor. A flavor which:

(1) Is of a type that is eligible for drawback of tax under 26 U.S.C. 5134,

(2) Was not manufactured on the premises of a distilled spirits plant, and

(3) Was not subjected to distillation on distilled spirits plant premises such that the flavor does not remain in the finished product.

Eligible wine. Wine on which tax would be imposed by paragraph (1), (2), or (3) of 26 U.S.C. 5041(b) but for its removal to distilled spirits plant premises and which has not been subject to distillation at a distilled spirits plant after receipt in bond.

Gallon or wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

Importer. Any person who imports distilled spirits, wines, or beer into the United States.

Kind. As applied to spirits, kind shall mean class and type as prescribed in 27 CFR part 5. As applied to wines, kind shall mean the classes and types of wines as prescribed in 27 CFR part 4.

Liquor bottle. A bottle made of glass or earthenware, or of other suitable material approved by the Food and Drug Administration, which has been designed or is intended for use as a container for distilled spirits for sale for beverage purposes and which has been determined by the Director to adequately protect the revenue.

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

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

Proof gallon. A gallon of liquid at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity, or the alcoholic equivalent thereof.

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

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

United States. ''United States'' includes only the States and the District of Columbia.

U.S.C. The United States Code.

Wine. (a) Still wine, including vermouth or other aperitif wine, artificial or imitation wines or compounds sold as still wines, champagne or sparkling wine, and artificially carbonated wine, and (b) flavored or sweetened fortified or unfortified wines, by whatever name sold or offered for sale, containing not over 24 percent alcohol by volume.

(68A Stat. 917, as amended (26 U.S.C. 7805); 49 Stat. 981, as amended (27 U.S.C. 205); 26 U.S.C. 7805 (68A Stat. 917, as amended), and in 27 U.S.C. 205 (49 Stat. 981, as amended))

[T.D. ATF–48, 43 FR 13552, Mar. 31, 1978, as amended by T.D. ATF–50, 43 FR 37180, Aug. 22, 1978; 44 FR 55853, Sept. 28, 1979; T.D. ATF–62, 44 FR 71718, Dec. 11, 1979; T.D. ATF–114, 47 FR 43950, Oct. 5, 1982; T.D. ATF–198, 50 FR 8555, Mar. 1, 1985; T.D. ATF–206, 50 FR 23955, June 7, 1985; T.D. ATF–251, 52 FR 19339, May 22, 1987; T.D. ATF–297, 55 FR 18069, Apr. 30, 1990; T.D. ATF–398, 63 FR 44784, Aug. 21, 1998]

Subpart C—Special (Occupational) Taxes

§ 251.30 Special (occupational) tax.

Importers engaged in the business of selling, or offering for sale, distilled spirits, wines or beer are subject to the provisions of part 194 of this chapter relating to special (occupational) taxes. Part 194 requires that the special tax return, Form 5630.5, with payment of the tax, shall be filed with ATF in accordance with the instruction on the form, before commencing business. Subsequently, Form 5630.5 with tax shall be filed each year on or before July 1, as long as the proprietor continues in business.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1340 as amended, 1343 as amended, 1344 as amended (26 U.S.C. 5111, 5112, 5121, 5122))

[T.D. ATF–70, 45 FR 33981, May, 21, 1980, as amended by T.D. ATF–251, 52 FR 19339, May 22, 1987]

§ 251.31 Warehouse receipts covering distilled spirits.

Since the sale of warehouse receipts for distilled spirits is equivalent to the sale of distilled spirits, every person engaged in business as an importer of distilled spirits, who sells, or offers for sale, warehouse receipts for distilled spirits stored in customs bonded warehouses, or elsewhere, incurs liability to special tax as a dealer in liquors at the place where the warehouse receipts are sold or offered for sale, and must file return and pay occupational tax as provided in § 251.30.

(68A Stat. 618, 620, 621; 26 U.S.C. 5111, 5112, 5121, 5122)

Subpart D—Tax On Imported Distilled Spirits, Wines, Beer, and Imported Perfumes Containing Distilled Spirits

DISTILLED SPIRITS AND PERFUMES

§ 251.40 Distilled spirits.

(a) A tax is imposed on all distilled spirits in customs bonded warehouses or imported into the United States at the rate prescribed by 26 U.S.C. 5001 on each proof gallon and a proportionate tax at a like rate on all fractional parts of each proof gallon. All products

of distillation, by whatever name known, which contain distilled spirits, are considered to be distilled spirits and are taxed as such. The tax will be determined at the time of importation, or, if entered into bond, at the time of withdrawal therefrom.

(b) A credit against the tax imposed on distilled spirits by 26 U.S.C. 5001 is allowable under 26 U.S.C. 5010 on each proof gallon of alcohol derived from eligible wine or from eligible flavors which do not exceed 2½ percent of the finished product on a proof gallon basis. The credit is allowable at the time the tax is payable as if it constituted a reduction in the rate of tax.

(c) Where credit against the tax is desired, the person liable for the tax shall establish an effective tax rate in accordance with § 251.40a. The effective tax rate established will be applied to each entry.

(Approved by the Office of Management and Budget under control number 1512–0352.)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001); Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended (26 U.S.C. 5201); Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

[T.D. ATF–297, 55 FR 18069, Apr. 30, 1990]

§ 251.40a Computation of effective tax rate.

(a) The proprietor shall compute the effective tax rate for distilled spirits containing eligible wine or eligible flavors as the ratio of the numerator and denominator as follows:

(1) The numerator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product (exclusive of distilled spirits derived from eligible flavors), multiplied by the tax rate prescribed by 26 U.S.C. 5001;

(ii) The wine gallons of each eligible wine used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5041(b)(1), (2), or (3), as applicable; and

(iii) The proof gallons of all distilled spirits derived from eligible flavors used in the product, multiplied by the tax rate prescribed by 26 U.S.C. 5001, but only to the extent that such distilled spirits exceed 2½% of the denominator prescribed in paragraph (a)(2) of this section.

(2) The denominator will be the sum of:

(i) The proof gallons of all distilled spirits used in the product, including distilled spirits derived from eligible flavors; and

(ii) The wine gallons of each eligible wine used in the product, multiplied by twice the percentage of alcohol by volume of each, divided by 100.

(b) In determining the effective tax rate, quantities of distilled spirits, eligible wine, and eligible flavors will be expressed to the nearest tenth of a proof gallon. The effective tax rate may be rounded to as many decimal places as the proprietor deems appropriate, provided that, such rate is expressed no less exactly than the rate rounded to the nearest whole cent, and the effective tax rates for all products will be consistently expressed to the same number of decimal places. In such case, if the number is less than five it will be dropped; if it is five or over, a unit will be added.

(c) The following is an example of the use of the formula.

BATCH RECORD

Distilled spirits	2249.1 proof gallons.
Eligible wine (14% alcohol by volume)	2265.0 wine gallons.
Eligible wine (19% alcohol by volume)	1020.0 wine gallons.
Eligible flavors	100.9 proof gallons.

[1] Proof gallons by which distilled spirits derived from eligible flavors exceed 2½% of the total proof gallons in the batch (100.9 − (2½%) × 3.371.8 = 16.6).

$$\frac{2249.1(\$13.50)+2265.0(\$1.07)+1020(\$1.57)+16.6^{1}(\$13.50)}{2249.1+100.9+(2265.0\times.28)+(1020\times.38)}=$$

$$\frac{\$30{,}362.85+\$2{,}423.55+\$1{,}601.40+\$224.10}{2{,}350.0+634.2+387.6}=\frac{\$34{,}611.90}{3{,}371.8}=\$10.27,\ \text{the effective tax rate.}$$

(Approved by the Office of Management and Budget under control number 1512–0352)

(Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

[T.D. ATF–297, 55 FR 18069, Apr. 30, 1990, as amended by T.D. ATF–307, 55 FR 52742, Dec. 21, 1990]

§ 251.41 Perfumes containing distilled spirits.

Perfumes imported into the United States containing distilled spirits are subject to the internal revenue tax at the rate prescribed by 26 U.S.C. 5001 per wine gallon, and a proportionate tax at a like rate on all fractional parts of such wine gallon.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended (26 U.S.C. 5001))

[T.D. 6388, 24 FR 4823, June 12, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55853, Sept. 28, 1979]

WINES

§ 251.42 Wines.

All wines (including imitation, substandard, or artificial wine, and compounds sold as wine) having not in excess of 24 percent of alcohol by volume, in customs bonded warehouse or imported into the United States are subject to an internal revenue tax at the rates prescribed by law; such tax to be determined at the time of removal from customs custody for consumption or sale. The tax is imposed on each wine gallon and at a like rate on fractional parts of a wine gallon. Fractions of less than one-tenth gallon shall be converted to the nearest one-tenth gallon, and five-hundredths gallon shall be converted to the next full one-tenth gallon. All wines containing more than 24 percent of alcohol by volume shall be classed as distilled spirits and shall be taxed accordingly.

(72 Stat. 1331, as amended; 26 U.S.C. 5041)

[T.D. 6644, 28 FR 3165, Apr. 2, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 251.42a Still wines containing carbon dioxide.

Still wines may contain not more than 0.392 gram of carbon dioxide per 100 milliliters of wine; except that a tolerance to this maximum limitation, not to exceed 0.009 gram of carbon dioxide per 100 milliliters of wine, will be allowed where the amount of carbon dioxide in excess of 0.392 gram per 100 milliliters of wine was due to mechanical variations which could not be completely controlled under good commercial practices. Such tolerance will not be allowed where it is found that the limitation of 0.392 gram of carbon dioxide per 100 milliliters of wine is continuously or intentionally exceeded.

[T.D. ATF–13, 40 FR 4419, Jan. 30, 1975. Redesignated at 40 FR 16835, Apr. 15, 1975]

LIQUEURS, CORDIALS, AND OTHER COMPOUNDS AND PREPARATIONS

§ 251.43 Liqueurs, cordials, and similar compounds.

A tax is imposed by 26 U.S.C. 5001 on all liqueurs, cordials, and similar compounds, containing distilled spirits, in a customs bonded warehouse or imported into the United States at the rate prescribed in such section on each proof gallon, and a proportionate tax at a like rate on all fractional parts of such proof gallon. The tax shall be determined at the time of importation, or, if entered into bond, at the time of withdrawal therefrom. Fortified or unfortified wines, containing not over 24 percent alcohol by volume, to which sweetening or flavoring materials, but no distilled spirits, have been added are

not classified as liqueurs, cordials, or similar compounds, but are considered to be flavored wines only and are subject to internal revenue tax at the rates applicable to wines.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1314, as amended, 1331, as amended (26 U.S.C. 5001, 5041))

[T.D. ATF–62, 44 FR 71718, Dec. 11, 1979]

§ 251.44 Other compounds and preparations.

Compounds and preparations, other than those specified in § 251.43 containing distilled spirits, which are fit for beverage purposes, in customs bonded warehouse or imported into the United States are subject to internal revenue tax at the rates applicable to distilled spirits. Compounds and preparations, containing fortified or unfortified wine, but no distilled spirits, which are fit for beverage purposes and which are sold as wine, are subject to internal revenue tax at the rates applicable to wines.

(68A Stat. 595, as amended, 609, as amended; 26 U.S.C. 5001, 5041)

BEER

§ 251.45 Rate of tax.

A tax is imposed by 26 U.S.C. 5051, on all beer imported into the United States, at the rate prescribed in such section, for every barrel containing not more than 31 gallons, and at a like rate for any other quantity or for fractional parts of a barrel. The tax on beer shall be determined at the time of importation, or, if entered into customs custody, at the time of removal from such custody.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5054))

[T.D. 6644, 28 FR 3165, Apr. 2, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55853, Sept. 28, 1979]

§ 251.46 Computation of tax.

The tax on imported beer shall be computed on the basis of the actual quantity in a container, at the rate prescribed by law.

(72 Stat. 1333, as amended; 26 U.S.C. 5051)

[T.D. 6644, 28 FR 3165. Apr. 2, 1963. Redesignated at 40 FR 16835, Apr. 15, 1975]

COLLECTION OF INTERNAL REVENUE TAXES

§ 251.48 Imported distilled spirits, wines, and beer.

Internal revenue taxes payable on imported distilled spirits, including perfumes containing distilled spirits, and on wines and beer, are collected, accounted for, and deposited as internal revenue collections by directors of customs in accordance with customs requirements: *Provided*, That the taxes on distilled spirits withdrawn from customs custody without payment of tax under the provisions of subpart L and thereafter withdrawn from bonded premises of a distilled spirits plant subject to tax shall be collected and paid under the provisions of part 19 of this chapter.

(72 Stat. 1314, 1366; 26 U.S.C. 5001, 5232)

[20 FR 3561, May 21, 1955, as amended by T.D. 6477, 25 FR 6204, July 1, 1960; T.D. 7006, 34 FR 2250, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 251.48, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 251.48a 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 distilled spirits taxes combining tax liabilities incurred under this part and parts 19 and 250 of this chapter, a gross amount equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and parts 240 and 250 of this chapter, or a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and parts 25 and 250 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT), as defined in paragraph (c) of

this section, 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 section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is to be summarized separately for distilled spirits taxes, wine taxes, or beer taxes, and is defined as the gross tax liability on all taxable withdrawals from premises in the United States and importations (including products of the same tax class 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) 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.

(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. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

[T.D. ATF–245, 52 FR 533, Jan. 7, 1987]

EXEMPTION OF CERTAIN SAMPLES FROM INTERNAL REVENUE TAXES

§ 251.49 Commercial samples of alcoholic beverages.

Samples of distilled spirits, beer, and wine, to be used in the United States by persons importing alcoholic beverages in commercial quantities, are, subject to the limitations in this section, exempt from the payment of any internal revenue tax imposed on, or by reason of, importation. This exemption applies only to samples to be used for soliciting orders for products of foreign countries. In no case shall this exemption apply to more than one sample of each alcoholic beverage product admitted during any calendar quarter for the use of each such person. No sample of beer shall contain more than 8 ounces, no sample of wine shall contain more than 4 ounces, and no sample of distilled spirits shall contain more than 2 ounces.

(76 Stat. 72; 19 U.S.C. 1202)

[T.D. 6300, 23 FR 5168, July 8, 1958; T.D. ATF–2, 37 FR 22740, Oct. 21, 1972. Redesignated at 40 FR 16835, Apr. 15, 1975]

Subpart E—General Requirements

PERMIT FOR IMPORTATION OF DISTILLED SPIRITS, WINES AND BEER

§ 251.55 Federal Alcohol Administration Act permit.

Under the Federal Alcohol Administration Act and the regulations issued pursuant thereto (Regulations 1, 27 CFR part 1), any person except an agency of a State or political subdivision thereof, or any officer or employee of any such agency, intending to engage in the business of importing distilled spirits, wines or beer for nonindustrial use is required to procure a permit (Form 1631) therefor.

(Sec. 3, 49 Stat. 978, as amended; 27 U.S.C. 203)

PACKAGING AND MARKING OF DISTILLED SPIRITS

§ 251.56 Distilled spirits containers of a capacity of not more than 1 gallon.

Bottled distilled spirits imported into the United States for sale shall be bottled in liquor bottles which conform to the requirements of subpart N of this part and part 5 of this chapter. Empty bottles imported for the packaging of distilled spirits shall conform to the requirements of subpart N of this part. (For Customs requirements as to marking, see 19 CFR parts 11 and 12.)

[T.D. ATF–206, 50 FR 23955, June 7, 1985]

§ 251.57 Containers in excess of 1 gallon.

Imported containers of distilled spirits in excess of 1 gallon are required to be marked in accordance with customs regulations (19 CFR parts 11 and 12).

[20 FR 3561, May 21, 1955. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–206, 50 FR 23955, June 7, 1985]

LABELING OF DISTILLED SPIRITS

§ 251.58 Containers of 1 gallon (3.785 liters) or less.

Labels on imported containers of distilled spirits, and on containers of imported distilled spirits bottled in customs custody, for sale at retail, are required to be covered by a certificate of label approval ATF Form 5100.31 issued pursuant to part 5 of this chapter. Containers of imported distilled spirits bottled after taxpayment and withdrawal from customs custody are required to be covered by a certificate of label approval or a certificate of exemption from label approval ATF Form 5100.31 issued pursuant to part 5 of this chapter. When distilled spirits are to be labeled under a certificate of exemption from label approval, the labels affixed to containers are required to conform to the provisions of part 19 of this chapter.

[T.D. 6954, 33 FR 6818, May 4, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 251.58, see the List of CFR Sections Affected in the Finding Aids section of this volume.

MARKING AND LABELING OF WINES AND BEER

§ 251.59 Wines.

All imported wines containing not less than 7 percent and not more than 24 percent of alcohol by volume are required to be packaged, marked, branded, and labeled in conformity with the Federal Alcohol Administration Act and regulations promulgated thereunder (Regulations 4, 27 CFR part 4), prior to their removal from customs custody. Containers of imported wine bottled or packaged after taxpayment and withdrawal from customs custody are required to be covered by a certificate of label approval or a certificate of exemption from label approval on ATF Form 5100.31 issued pursuant to the Federal Alcohol Administration Act and regulations promulgated thereunder (Regulations 4, 27 CFR part 4). Imported containers of wine are required also to be marked, branded and labeled in accordance with customs regulations (19 CFR parts 11 and 12).

[20 FR 3561, May 21, 1955. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF–242, 51 FR 39526, Oct. 29, 1986]

§ 251.60 Beer.

All imported beer is required to be released from customs custody in conformity with the Federal Alcohol Administration Act and regulations thereunder. The attention of all concerned is directed, in this connection, to the provisions of Regulations 7 (27 CFR part 7) relating to the labeling and advertising of malt beverages, issued under the Federal Alcohol Administration Act. Imported containers of beer are required to be marked and labeled in accordance with customs regulations (19 CFR parts 11 and 12).

CLOSURES FOR CONTAINERS OF DISTILLED SPIRITS

§ 251.61 Containers of distilled spirits to bear closures.

No person shall transport, buy, possess, or sell, or transfer any imported distilled spirits in containers of 1 gallon (3.785 liters) or less, unless the immediate container thereof has a closure

or other device affixed in accordance with the provisions of this part.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5301))

[T.D. ATF–206, 50 FR 23955, June 7, 1985]

§ 251.62 Affixing closures.

Closures or other devices on containers of imported distilled spirits having a capacity of 1 gallon (3.785 liters) or less shall be affixed so as to leave a portion of the closure or other device remaining on the container when it is opened. In addition, the closures or other devices shall be constructed in such a manner as to require that they be broken to gain access to the contents of the containers.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5301))

[T.D. ATF–206, 50 FR 23955, June 7, 1985]

EXEMPTIONS

§ 251.74 Exemption from requirements pertaining to marks, bottles, and labels.

The provisions of this part relating to the labeling of containers as prescribed by 27 CFR part 5 are not applicable to imported distilled spirits (a) not for sale or for any other commercial purpose whatever; (b) on which no internal revenue tax is required to be paid or determined on or before withdrawal from customs custody; (c) for use as ship stores; or (d) for personal use. Samples of distilled spirits, other than those provided for in §§ 251.49 and 251.75, imported for any purpose are not exempt from the requirements pertaining to marks, bottles, and labels. Samples of wine and beer brought into the United States pursuant to § 251.49 are exempt from the requirements pertaining to marks, bottles, and labels. Samples of wine and beer brought into the United States pursuant to § 251.49 are exempt from the labeling requirements of 27 CFR parts 4 and 7, respectively. Exemptions from the requirements that imported distilled spirits, wines, and beer be marked to indicate the country of origin are set forth in customs regulations (19 CFR part 11).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1374, as amended (26 U.S.C. 5205, 5301))

[T.D. ATF–206, 50 FR 23956, June 7, 1985]

§ 251.75 Samples of distilled spirits, wine, and beer for quality control purposes.

Samples of distilled spirits, wine, and beer in containers of a capacity of not more than 1.75 liters, imported solely for quality control purposes (laboratory testing and analysis) and not for sale or for use in the manufacture or production of any article for sale, shall be exempt from any requirements relating to marks, bottles, labels, and standards of fill. Samples imported for quality control purposes shall not be exempt from the payment of any internal revenue tax imposed on, or by reason of, importation.

[T.D. ATF–198, 50 FR 8557, Mar. 1, 1985, as amended by T.D. ATF–206, 50 FR 23955, June 7, 1985]

WINE AND FLAVORS CONTENT OF DISTILLED SPIRITS

§ 251.76 Approval and certification of wine and flavors content.

(a) Any person who, after December 1, 1990, imports into the United States distilled spirits on which the tax is to be paid or determined at an effective tax rate based in whole, or in part, on the alcohol content derived from eligible wine or eligible flavors which have not been previously approved on ATF Form 5530.5 (1678) shall, before the first tax determination at that rate, request and receive a statement of eligibility for each wine or flavor to be used in the computation of the effective tax rate.

(b) To receive a statement of eligibility, the importer shall cause to be submitted to the ATF National Laboratory, 1401 Research Boulevard, Attn: NBA, Rockville, MD 20850, the following:

(1) An 8-ounce sample of each distilled spirits, wine and flavor contained in the product; and

(2) A statement of composition listing—

(i) For wine, the kind (class and type) and percentage of alcohol by volume; and

(ii) For flavors, the name and percentage of alcohol by volume, and the name and quantity of each ingredient used in the manufacture of the flavor.

(c) Each time distilled spirits containing eligible wine or eligible flavors are imported into the United States, the importer shall prepare a certificate of effective tax rate computation showing the following:

(1) Name, address, and permit number of the importer;

(2) Kind (class and type) of product;

(3) Elements necessary to compute the effective tax rate in accordance with § 251.40a as follows—

(i) Proof gallons of distilled spirits (exclusive of distilled spirits derived from eligible flavors);

(ii) Wine gallons of each eligible wine and the percentage of alcohol by volume of each; and

(iii) Proof gallons of distilled spirits derived from eligible flavors;

(4) After December 1, 1990, the date of the statement of eligibility of each eligible wine and of each eligible flavor;

(5) Effective tax rate applied to the product; and

(6) Signature of the importer or other duly authorized person under the following declaration:

I declare under the penalties of perjury that this certificate of effective tax rate computation has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete.

(d) The importer shall file the certificate of effective tax rate computation with the district director of customs at the port of entry, at the time of entry summary, or, for distilled spirits to be withdrawn from customs custody under the provisions of subpart L of this part, furnish a copy to the proprietor of the distilled spirits plant to which the distilled spirits are transferred.

(Approved by the Office of Management and Budget under control number 1512–0352)

(Sec. 6, Pub. L. 96–598, 94 Stat. 3488, as amended (26 U.S.C. 5010))

[T.D. ATF–297, 55 FR 18070, Apr. 30, 1990]

§ 251.77 Standard effective tax rate.

(a) In lieu of preparing a certificate of effective tax rate computation each time distilled spirits containing eligible wine or eligible flavors are imported as prescribed in § 251.76(c), an importer may have a standard effective tax rate established based on the least quantity and the lowest alcohol content of eligible wine or eligible flavors used in the manufacture of the product.

(b) To have a standard effective tax rate established, the importer shall cause to be submitted to the ATF National Laboratory, 1401 Research Boulevard, Rockville, MD 20850, the following:

(1) The samples prescribed in § 251.76(b)(1) and an 8-ounce sample of the finished product;

(2) The statement of composition prescribed in § 251.76(b)(2);

(3) A statement of composition for the finished product listing the—

(i) Name of the product;

(ii) Quantity, alcohol content (percentage of alcohol by volume), and the kind (class and type) of each eligible wine or the name of each eligible flavor used in the manufacture of the product; and

(iii) Standard effective tax rate for the product computed in accordance with § 251.40a.

(c) Where a standard effective tax rate has been previously approved for a product, an importer, in lieu of having a standard effective tax rate established, may use that rate. An importer desiring to use a previously approved standard effective tax rate shall obtain a copy of the approval from the person to whom it was issued and, over the signature of the importer or other duly authorized person, place the following declaration:

I declare under the penalties of perjury that this approval has been examined by me and, to best of my knowledge and belief, the standard effective tax rate established for this product is applicable to all like products contained in this shipment.

(d) A standard effective tax rate may not be employed until approved by the ATF National Laboratory. The importer shall file or furnish a copy of the standard effective tax rate approval in

the manner prescribed in § 251.76(d). The use of a standard effective tax rate shall not relieve an importer from the payment of any tax found to be due. The Director may at any time require an importer to immediately discontinue the use of a standard effective tax rate.

(Approved by the Office of Management and Budget under control Number 1512–0352)

[T.D. ATF–297, 55 FR 18070, Apr. 30, 1990; 55 FR 23635, June 11, 1990]

Subparts F–G [Reserved]

Subpart H—Importation of Distilled Spirits In Bulk

§ 251.120 Persons authorized to receive distilled spirits imported in bulk.

Distilled spirits imported in bulk (i.e., in containers having a capacity in excess of 1 gallon (3.785 liters)) may be entered into a class 8 customs bonded warehouse for bottling, or may be withdrawn from customs custody only if entered for exportation or if withdrawn by a person to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk pursuant to the Federal Alcohol Administration Act (49 Stat. 985, as amended; 27 U.S.C., 206) and Regulation 3 (27 CFR part 3). The importation and disposition of distilled spirits imported in bulk shall be reported as prescribed by §§ 251.133 to 251.134.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1342, 1361, 1374, 1395 (26 U.S.C. 5114, 5207, 5301, 5555))

[T.D. ATF–34, 41 FR 46864, Oct. 26, 1976]

§ 251.121 Containers.

Imported distilled spirits may be bottled in either domestic or imported containers conforming to the provisions of subpart N of this part.

(72 Stat. 1374; 26 U.S.C. 5301)

[T.D. 6954, 33 FR 6819, May 4, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975]

Subpart I—Importer's Records and Reports

§§ 251.130–251.132 [Reserved]

RECORD AND REPORT OF IMPORTED LIQUORS

§ 251.133 General requirements.

Except as provided in § 251.134, every importer who imports distilled spirits, wines, or beer shall keep such records and render such reports of the physical receipt and disposition of such liquors as are required to be kept by a wholesale or retail dealer, as applicable, under the provision of part 194 of this chapter. Any importer who does not take physical possession of the liquors at the time of, but is responsible for, their release from customs custody shall keep commercial records reflecting such release; such records shall identify the kind and quantity of the liquors released, the name and address of the person receiving the liquors from customs custody, and the date of release, and shall be filed chronologically by release dates. Records and reports will not be required under this part with respect of liquors while in customs custody.

(Approved by the Office of Management and Budget under control number 1512–0352)

(72 Stat. 1342, 1345, 1395; 26 U.S.C. 5114, 5124, 5555)

[T.D. ATF–2, 37 FR 22743, Oct. 21, 1972. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–172, 49 FR 14943, Apr. 16, 1984]

§ 251.134 Proprietors of qualified premises.

Importing operations conducted by proprietors of premises qualified under the provisions of this chapter shall be recorded and reported in accordance with the regulations governing the operations of each such premises.

(72 Stat. 1342, 1361, 1395; 26 U.S.C. 5114, 5207, 5555)

[T.D. 6388, 24 FR 4824, June 12, 1959, as amended by T.D. 6477, 25 FR 6207, July 1, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975]

FILING AND RETENTION OF RECORDS AND REPORTS

§ 251.136 Filing.

(a) All records and reports required by this part will be maintained separately, by transaction or reporting date, at the importer's place of business. The regional director (compliance) may, pursuant to an application, authorize files, or an individual file, to be maintained at another business location under the control of the importer, if the alternative location does not cause undue inconvenience to ATF or Customs officers desiring to examine the files or delay in the timely submission of documents.

(b) If an importer conducts wholesale operations, one legible copy of each required record of receipt and disposition shall be filed not later than one business day following the date of transaction.

(c) If an importer conducts only retail operations, they may maintain either loose-leaf or book records of the daily receipt of liquors which contain all the required information.

(d) Supporting documents, such as consignors' invoices, delivery receipts, bills of lading, etc., or exact copies of the same, may be filed in accordance with the importer's regular accounting and recordkeeping practices.

(Approved by the Office of Management and Budget under control number 1512–0352)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1342, as amended, 1395, as amended (26 U.S.C. 5114, 5555))

[T.D. ATF–116, 47 FR 51573, Nov. 16, 1982, as amended by T.D. ATF–172, 49 FR 14943, Apr. 16, 1984]

§ 251.137 Retention.

All records required by this part, documents or copies of documents supporting these records, and file copies of reports required by this part to be submitted to the regional director (compliance) or to the district director of customs, shall be retained for not less than three years, and during this period shall be available, during business hours, for inspection and copying by ATF or customs officers. Furthermore, the regional director (compliance) may require these records to be kept for an additional period of not more than three years in any case where he determines retention necessary or advisable. Any records, or copies thereof, containing any of the information required by this part to be prepared, wherever kept, shall also be made available for inspection and copying.

[T.D. ATF–50, 43 FR 20495, May 12, 1978]

OTHER RECORDS

§ 251.138 Transfer record.

The transfer record for imported spirits prescribed in § 251.172 shall show the:

(a) Date prepared;

(b) Serial number of the transfer record, beginning with ''1'' each January 1;

(c) Name and distilled spirits plant number of the proprietor who received the spirits from customs custody;

(d) Country of origin;

(e) Name of foreign producer;

(f) Kind of spirits;

(g) Age, in years, months and days of the spirits;

(h) Proof of the spirits;

(i) Type and number of containers; and

(j) Proof gallons of spirits in the shipment.

(Approved by the Office of Management and Budget under control number 1512–0250)

[T.D. ATF–198, 50 FR 8558, Mar. 1, 1985]

§ 251.139 Package gauge record.

When required in this part, a package gauge record shall be prepared to show:

(a) The date prepared;

(b) The related transaction record and its serial number; and

(c) For each package:

(1) Package identification or serial number;

(2) Kind of spirits;

(3) Gross weight;

(4) Proof;

(5) Proof gallons;

(6) Name of warehouseman who received the spirits from customs custody; and

(7) Name of importer.

(Approved by the Office of Management and Budget under control number 1512–0250)

[T.D. ATF–198, 50 FR 8558, Mar. 1, 1985]

Subparts J–K [Reserved]

Subpart L—Transfer of Distilled Spirits From Customs Custody to Bonded Premises of Distilled Spirits Plant

§ 251.171 General provisions.

Imported distilled spirits in bulk containers may, under the provisions of this subpart, be withdrawn by the proprietor of a distilled spirits plant from customs custody and transferred in such bulk containers or by pipeline to the bonded premises of his plant, without payment of the internal revenue tax imposed on imported spirits by 26 U.S.C. 5001. Imported spirits so withdrawn and transferred to a distilled spirits plant (a) may be redistilled or denatured only if of 185 degrees or more of proof, and (b) may be withdrawn from internal revenue bond for any purpose authorized by 26 U.S.C. chapter 51, in the same manner as domestic distilled spirits. Imported distilled spirits transferred from customs custody to the bonded premises of a distilled spirits plant under the provisions of this subpart shall be received and stored thereat, and withdrawn or transferred therefrom, subject to the applicable provisions of 27 CFR part 19. However, distilled spirits plant proprietors are not required to file application on ATF Form 5100.16 to receive imported spirits from customs custody. The person operating the bonded premises of the distilled spirits plant to which imported spirits are transferred shall become liable for the tax on distilled spirits withdrawn from customs custody under 26 U.S.C. 5232, upon release of the spirits from customs custody, and the importer shall thereupon be relieved of his liability for such tax.

(Sec. 3, Pub. L. 90–630, 82 Stat. 1328, as amended (26 U.S.C. 5232))

[T.D. ATF–62, 44 FR 71719, Dec. 11, 1979, as amended by T.D. ATF–198, 50 FR 8558, Mar. 1, 1985]

§ 251.172 Preparation of transfer record and package gauge record.

The person importing spirits under this subpart shall prepare a transfer record according to § 251.138. A separate transfer record shall be prepared for each conveyance. If the spirits are in packages he shall prepare a package gauge record according to § 251.139 and attach it to the transfer record. The transfer record and the package gauge record shall be prepared in triplicate, and, upon release of the spirits from customs custody one copy will be given to the customs officer, one copy will be forwarded to the regional director (compliance) of the region in which the consignee is located, and the original will be forwarded to the consignee.

(Approved by the Office of Management and Budget under control number 1512–0250)

[T.D. ATF–198, 50 FR 8558, Mar. 1, 1985]

§ 251.173 Inspection and release.

The customs officer shall not release distilled spirits under this subpart until he inspects the spirits. If it appears that losses in transit were sustained from any container, the customs officer shall gauge the spirits in such container and enter the elements of gauge on the transfer record if the spirits are in a bulk conveyance or on the package gauge record if the spirits are in packages. The customs officer shall enter on the transfer record the port of entry, carrier identification, warehouse entry number, applicable rate of duty, and serial number of any customs seals affixed to bulk conveyances. When all customs requirements are complied with, he shall release the spirits for transfer to the distilled spirits plant by dating and signing on the transfer with his title the statement: ''To the best of my knowledge the information hereon is accurate and the spirits are released.'' The original of the transfer record with any attachments shall be retained by the consignee.

(Sec. 3, Pub. L. 90–630, 82 Stat. 1328, as amended (26 U.S.C. 5232))

[T.D. ATF–198, 50 FR 8558, Mar. 1, 1985]

§ 251.174 Tank cars and tank trucks to be sealed.

Where a shipment of distilled spirits from customs custody to the distilled spirits plant is made in a tank car or tank truck, all openings affording access to the spirits shall be sealed by the customs officer with customs seals

in such manner as will prevent unauthorized removal of spirits through such openings without detection.

(72 Stat. 1314, 1322, 1366; 26 U.S.C. 5001, 5007, 5232)

[T.D. 6477, 25 FR 6208, July 1, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 251.175 Receipt by consignee.

Proprietors of distilled spirits plants who receive imported spirits under this subpart shall follow the requirements in 27 CFR part 19 for spirits received by transfer in bond. However, proprietors are not required to file application on ATF Form 5100.16 to receive imported spirits from customs custody.

[T.D. ATF–198, 50 FR 8558, Mar. 1, 1985]

Subpart M—Withdrawal of Imported Distilled Spirits From Customs Custody Free of Tax for Use of the United States

SOURCE: 50 FR 9200, Mar. 6, 1985, unless otherwise noted.

§ 251.181 General.

(a) The United States or any of its Government agencies may, upon filing proper customs entry, withdraw imported distilled spirits free of tax from customs custody, as authorized by 26 U.S.C. 5313 and under the provisions of this subpart. Before any distilled spirits may be withdrawn, a permit to procure the spirits shall be obtained from the Director. A bond is not required for any Government agency to procure and withdraw spirits free of tax under this subpart.

(b) The provisions of subpart N of part 22 of this chapter cover the withdrawal of domestically produced tax-free spirits for use of the United States or any of its Government agencies.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1372, as amended, 1375, as amended (26 U.S.C. 5273, 5313))

§ 251.182 Application and permit, Form 5150.33.

(a) *General.* All permits previously issued to the United States or any of its Government agencies on Form 1444 shall remain valid and will be regulated by the same provisions of this subpart as it refers to permits on Form 5150.33.

(b) *Application.* (1) A Government agency of the United States shall apply to the Director for a permit to procure and withdraw spirits free of tax on Form 5150.33. Upon approval by the Director, Form 5150.33 will be returned to the agency.

(2) If a Government agency intends to withdraw spirits free of tax under this part and part 22 of this chapter, Form 5150.33 may be annotated to cover both types of withdrawals.

(3) A separate permit is not required for each port of entry. The application, Form 5150.33, may be completed to indicate the applicable ports of entry in which spirits will be withdrawn from customs custody.

(4) A Government agency may specify on its application that it desires a single permit authorizing all sub-agencies under its control to procure and withdraw spirits free of tax under this subpart and subpart N of part 22 of this chapter; or, each Government location may individually file an application for a permit, Form 5150.33.

(5) Each application for a permit shall be signed by the head of the agency or sub-agency, or the incumbent of an office which is authorized by the head of the agency or sub-agency, to sign. Evidence of authorization to sign on behalf of the head of an agency or sub-agency shall be furnished with the application.

(c) *Use of spirits.* Spirits withdrawn under this subpart may not be used for non-Government purposes.

(d) *Cancellation of permit.* All permits on Form 5150.33 and previous editions on Form 1444 shall remain in force until surrendered or canceled. Upon surrender or cancellation, the Government agency shall obtain and destroy all photocopies of the permit furnished to district directors of customs, and forward the original to the Director for cancellation.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5313))

§ 251.183 Use of permit, Form 5150.33.

Each Government agency shall retain the original of its permit, Form 5150.33, on file. When filing an initial customs entry to withdraw spirits free of tax

from a port of entry, the agency shall furnish a photocopy of its permit to the district director of customs for retention. In the case of an agency holding a single permit for use of its subagencies, an attachment to the permit shall list all locations authorized to withdraw spirits free of tax from customs custody. Any subsequent requests for customs entry from the same port shall refer to the permit number.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5313))

§ 251.184 Entry documents.

Entry documents for importation of tax-free spirits under this subpart shall record the serial numbers or other identifying numbers of the containers and the total quantity in proof gallons of the spirits to be entered.

[T.D. ATF–198, 50 FR 8559, Mar. 1, 1985]

§ 251.185 Customs release.

(a) Upon receipt of appropriate customs entry and a photocopy of a permit, Form 5150.33 or previous editions on Form 1444 (5150.33), the district director of customs shall, following an inspection of the shipment, release spirits free of tax to the Government agency named on the permit, or an attachment thereto.

(b) Customs officers shall not release spirits for shipment until the shipment has been inspected for losses in transit. If it appears that a container or containers have sustained losses in transit, the customs officers shall gauge the damaged container and prepare a package gauge record for the entire shipment, according to § 251.139. A copy of the package gauge record will be retained for the customs files and the original forwarded to the consignee agency.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1375, as amended (26 U.S.C. 5313))

Subpart N—Requirements for Liquor Bottles

AUTHORITY: Sec. 5301, 72 Stat. 1374; 26 U.S.C. 5301.

SOURCE: T.D. 6954, 33 FR 6819, May 4, 1968, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

§ 251.201 Scope of subpart.

The provisions of this subpart shall apply only to liquor bottles having a capacity of 200 ml. or more except where expressly applied to liquor bottles of less than 200 ml. capacity.

[T.D. 6954, 33 FR 6819, May 4, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–34, 41 FR 46865, Oct. 26, 1976]

§ 251.202 Standards of fill.

Distilled spirits imported into the United States in containers of 1 gallon (3.785 liters) or less for sale shall be imported only in liquor bottles, including liquor bottles of less than 200 ml capacity, which conform to the applicable standards of fill provided in § 5.47a of this chapter. Empty liquor bottles, including liquor bottles of less than 200 ml capacity, which conform to the provisions of part 19, or subpart E of part 5 of this chapter, may be imported for packaging distilled spirits in the United States as provided in part 19 of this chapter.

[T.D. ATF–62, 44 FR 71720, Dec. 11, 1979]

§ 251.204 Distinctive liquor bottles.

(a) *Application*. Liquor bottles of distinctive shape or design, including bottles of less than 200 ml. capacity, may be imported by an importer (filled bottles) or a bottler (empty bottles). For filled bottles, the importer shall submit ATF Form 5100.31 to the Director for approval prior to importation of such bottles into the United States. For empty bottles, the bottler shall obtain approval from the Director on ATF Form 5100.31 prior to using the bottles. The importer or bottler, as applicable, shall certify as to the total capacity of a representative sample bottle before closure (expressed in milliliters) on each copy of the form. In addition, the applicant shall affix a readily legible photograph (both front and back of the bottle to the front of each copy of ATF Form 5100.31, along with the label(s) to be used on the bottle. The applicant shall not submit an actual bottle or an authentic model unless specifically requested to do so.

(b) *Approval.* Properly submitted ATF Forms 5100.31 to import distinctive liquor bottles (filled), or, properly submitted ATF Forms 5100.31 to use distinctive liquor bottles (empty) which have been imported, shall be approved provided such bottles are found by the Director to—

(1) Meet the requirements of 27 CFR part 5;

(2) Be distinctive;

(3) Be suitable for their intended purpose;

(4) Not jeopardize the revenue; and

(5) Not be deceptive to the consumer.

The applicant shall keep a copy of the approved ATF Form 5100.31, including an approved photograph (both front and back) of the distinctive liquor bottle, on file at his premises. If ATF Form 5100.31 is disapproved, the applicant shall be notified of the Director's decision and the reasons therefor. The applicant importer is responsible for furnishing a copy of the approved ATF Form 5100.31, including a photograph of the distinctive liquor bottle, to Customs officials at each affected port of entry where the merchandise is examined.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

[T.D. ATF–114, 47 FR 43951, Oct. 5, 1982, as amended by T.D. ATF–242, 51 FR 39526, Oct. 29, 1986]

§ 251.205 [Reserved]

§ 251.206 Bottles not constituting approved containers.

The Director is authorized to disapprove any bottle, including a bottle of less than 200 ml. capacity, for use as a liquor bottle which he determines to be deceptive. The Customs officer at the port of entry shall deny entry of any such bottle containing distilled spirits upon advice from the Director that such bottle is not an approved container for distilled spirits for consumption in the United States.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

[T.D. ATF–114, 47 FR 43951, Oct. 5, 1982]

§ 251.207 Bottles to be used for display purposes.

Empty liquor bottles may be imported and furnished to liquor dealers for display purposes, provided each bottle is marked to show that it is to be used for such purpose. The importer shall keep records of the receipt and disposition of such bottles, showing the names and addresses of consignees, dates of shipment, and size, quantity, and description of bottles.

[T.D. ATF–206, 50 FR 23956, June 7, 1985]

§ 251.208 Liquor bottles denied entry.

Filled liquor bottles, not conforming to the provisions of this subpart, shall be denied entry into the United States: *Provided,* That, upon letterhead application, in triplicate, the regional director (compliance) of the region in which the port of entry is situated may, in nonrecurring cases, authorize the release from customs custody of distilled spirits in bottles, except those coming under the provisions of § 251.206, which, through unintentional error, do not conform to the provisions of this subpart, if he finds that such release will not afford a jeopardy to the revenue.

(Approved by the Office of Management and Budget under control number 1512–0352)

[T.D. 6954, 33 FR 6819, May 4, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–172, 49 FR 14943, Apr. 16, 1984]

§ 251.209 Used liquor bottles.

The Director may pursuant to letterhead application filed in triplicate, authorize an importer to receive liquor bottles assembled for him as provided in § 194.263 of this chapter. Used liquor bottles so received may be stored at any suitable location pending exportation for reuse. The importer shall keep records of the receipt and disposition of used liquor bottles.

(Approved by the Office of Management and Budget under control number 1512–0352]

[T.D. 6954, 33 FR 6819, May 4, 1968, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–172, 49 FR 14943, Apr. 16, 1984]

Subpart O—Miscellaneous Provisions

§ 251.221 Alternate methods or procedures.

(a) *Application.* An importer who desires to use an alternate method or procedure in lieu of a method or procedure prescribed by this part shall file application, in triplicate, with the regional director (compliance) of the region in which his place of business is located. If the importer has several places of business at which he desires to use such alternate method or procedure, a separate application shall be submitted for each. Each application shall:

(1) Specify the name, address, and permit number of the importer to which it relates;

(2) State the purpose for which filed; and

(3) Specifically describe the alternate method or procedure and set forth the reasons therefor.

No alternate method or procedure relating to the assessment, payment, or collection of tax shall be authorized under this paragraph.

(b) *Approval.* When an application for use of an alternate method or procedure is received, the regional director (compliance) shall determine whether approval thereof would unduly hinder the effective administration of this part or would result in jeopardy to the revenue. The regional director (compliance) shall forward two copies of the application to the Director, together with a report of his findings and his recommendation. The Director may approve the alternate method or procedure if he finds that:

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) 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

(3) The alternate method or 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 shall be used until approval has been received from the Director. Authorization for the 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 by the continuation of such authorization.

(Approved by the Office of Management and Budget under control number 1512–0352)

[T.D. ATF–2, 37 FR 22743, Oct. 21, 1972. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–172, 49 FR 14943, Apr. 16, 1984]

PART 252—EXPORTATION OF LIQUORS

Subpart A—Scope

Sec.
252.1 General.
252.2 Forms prescribed.
252.3 Related regulations.

Subpart B—Definitions

252.11 Meaning of terms.

Subpart C—Miscellaneous Provisions

WITHDRAWAL OR LADING FOR USE ON CERTAIN VESSELS AND AIRCRAFT

252.20 Alternate methods or procedures; and emergency variations from requirements.
252.21 General.
252.22 Vessels employed in the fisheries.
252.23 Reciprocating foreign countries.

MANUFACTURING BONDED WAREHOUSES

252.25 General.

CUSTOMS BONDED WAREHOUSES

252.26 Entry of distilled spirits into customs bonded warehouses.
252.27 Entry of wine into customs bonded warehouses.
252.28 Withdrawal of wine and distilled spirits from customs bonded warehouses.

FOREIGN-TRADE ZONES

252.30 Export status.

VOLUNTARY DESTRUCTION OF LIQUORS AFTER RECEIPT IN A FOREIGN-TRADE ZONE

252.35 General.
252.36 Application.
252.37 Action by regional director (compliance).
252.38 Action by district director of customs.

EVIDENCE OF EXPORTATION AND USE

252.40 Evidence of exportation: distilled spirits and wine.
252.41 Evidence of lading for use on vessles or aircraft: distilled spirits and wine.
252.42 Evidence of deposit.
252.43 Evidence of exportation and lading for use on vessels and aircraft: beer.

RETENTION OF RECORDS

252.45 Retention of records.

PENALTIES OF PERJURY

252.48 Execution under penalties of perjury.

Subpart D—Bands and Consents of Surety

252.51 General.
252.52 Corporate surety.
252.52a Filing of powers of attorney.
252.52b Execution of powers of attorney.
252.53 Deposit of securities in lieu of corporate surety.
252.54 Consents of surety.
252.55 Authority to approve bonds and consents of surety.
252.56 Disapproval of bonds or consents of surety.
252.57 Appeal to Director.
252.58 Operations or unit bond—distilled spirits.
252.59 Bond, Form 700.
252.60 Brewer's bond, Form 5130.22.
252.61 Bond, Form 2734 (5100.25).
252.62 Bond, Form 2735 (5100.30).
252.63 Bond, Form 2736.
252.64 Bond, Form 2737.
252.65 Bond, Form 2738.
252.66 Strengthening bonds.
252.67 New or superseding bonds.

TERMINATION OF BONDS

252.70 Termination of bonds, Forms 2734 and 2736.
252.71 Termination of bonds, Forms 2735, 2737, and 2738.
252.72 Application of surety for relief from bond.
252.73 Relief of surety from bond.
252.74 Release of pledged securities.

CHARGES AND CREDITS

252.80 Charges and credits on bonds.

Subpart E—Withdrawal of Distilled Spirits Without Payment of Tax for Exportation, Use on Vessels and Aircraft, Transfer to a Foreign-Trade Zone, or Transportation to a Manufacturing Bonded Warehouse

252.91 General.
252.92 Application or notice, ATF Form 5100.11.
252.93 Carrier to be designated.
252.94 Containers.
252.95 Change of packages for exportation.
252.96 Approval of application.
252.97 [Reserved]
252.98 Inspection and regauge.
252.100 [Reserved]
252.101 Packages to be stamped.
252.102 Bottles to have closures affixed.
252.103 Export marks.
252.104 Certificates of origin.
252.105 Report of inspection and tax liability.
252.106 Consignment, shipment, and delivery.
252.107 Disposition of forms.

LOSSES

252.110 Losses.

RETURN OF SPIRITS TO BONDED PREMISES

252.115 General.
252.116 Notice of return of spirits withdrawn without payment of tax.
252.117 Responsibility for return of spirits.
252.118 Receipt of spirits.

Subpart F—Withdrawal of Wine Without Payment of Tax for Exportation, Use on Vessels and Aircraft, Transfer to a Foreign-Trade Zone or to a Customs Bonded Warehouse, or Transportation to a Manufacturing Bonded Warehouse

252.121 General.
252.122 Application or notice, ATF Form 5100.11.
252.123 Export marks.
252.124 Consignment, shipment, and delivery.
252.125 Disposition of forms.
252.126 Proprietor's report.
252.127 Losses.

RETURN OF WINES TO BONDED WINE CELLAR

252.130 General.
252.131 Application for return of wines withdrawn without payment of tax.
252.132 Responsibility for return of wine.
252.133 Disposition of forms.

Subpart G—Removal of Beer and Beer Concentrate Without Payment of Tax for Exportation, Use as Supplies on Vessels and Aircraft, or Transfer to a Foreign-Trade Zone

252.141 General.
252.142 Notice, Form 1689.
252.143 Containers.
252.144 Export marks.
252.145 Consignment, shipment and delivery.
252.146 Disposition of forms.
252.147 Return of beer or beer concentrate.
252.148 Brewer's report.
252.149 Losses.

252.150 Charges and credits on bond.

Subpart H—Withdrawal of Specially Denatured Spirits, Free of Tax, for Exportation or Transfer to a Foreign-Trade Zone

252.151 General.
252.152 Notice, ATF Form 5100.11.
252.153 Withdrawal procedure.
252.154 Export marks.
252.155 Consignment, shipment, and delivery.
252.156 Losses.

RETURN OF SPECIALLY DENATURED SPIRITS TO BONDED PREMISES

252.160 General.
252.161 Notice of return of specially denatured spirits.
252.162 Responsibility for return of specially denatured spirits.
252.163 Receipt of specially denatured spirits.

Subpart I—Exportation of Distilled Spirits With Benefit of Drawback

252.171 General.

FILING OF NOTICE AND REMOVAL

252.190 Notice, ATF Form 5110.30.
252.191 [Reserved]
252.192 Packages of distilled spirits to be gauged.
252.193 Export marks.
252.194–252.195 [Reserved]
252.195a Claims on spirits tax determined before January 1, 1980.
252.195b Claims on spirits tax determined on and after January 1, 1980.
252.196 Consignment, shipment, and delivery.
252.197 Return of spirits withdrawn for export with benefit of drawback.
252.198 Notice of return.
252.199 Responsibility for return of spirits withdrawn for export with benefit of drawback.

Subpart J [Reserved]

Subpart K—Exportation of Wine With Benefit of Drawback

252.211 General.
252.212 Persons authorized.
252.213 [Reserved]
252.214 Notice and claim, Form 1582–A.
252.215 Certificate of tax determination, Form 2605.
252.216 Export marks.
252.217 Consignment, shipment, and delivery.
252.218 Disposition of Forms 1582–A.
252.219 Return of wine withdrawn for export with benefit of drawback.
252.220 Notice of return.
252.220a Responsibility for return of wine withdrawn for export with benefit of drawback.

Subpart L—Exportation of Beer With Benefit of Drawback

252.221 General.
252.222 Claim, Form 1582–B.
252.223 Export marks.

EXECUTION OF CLAIMS

252.225 Removals of beer by brewer.
252.226 Removals of beer by agent on behalf of brewer.
252.227 Removals of beer by persons other than the brewer or agent of the brewer.

CONSIGNMENT, SHIPMENT, AND DELIVERY

252.230 Consignment, shipment, and delivery.

Subpart M—Shipment or Delivery for Export

CONSIGNMENT

252.241 Shipment for export, or for use on vessels.
252.242 Shipment for use on aircraft.
252.243 Shipment to armed services.
252.244 Shipment to manufacturing bonded warehouse.
252.244a Shipment to a customs bonded warehouse.
252.245 Shipment to foreign-trade zone.
252.246 Delivery for shipment.
252.247 Change in consignee.

BILLS OF LADING

252.250 Bills of lading required.
252.251 Railway express receipts.
252.252 Air express or freight bills of lading.
252.253 Certificate by export carrier.

Subpart N—Proceedings at Ports of Export

252.261 Notice to district director of customs.
252.262 Delay in lading at port.
252.263 [Reserved]
252.264 Lading for exportation.
252.265 Evidence of fraud.
252.266 Release of detained merchandise.
252.267 Exportation from interior port.
252.268 Receipt for liquors for use on vessels or aircraft.
252.269 Certification by district director of customs.

RECEIPT BY ARMED SERVICES

252.275 Receipt by armed services.

LADING FOR USE ON AIRCRAFT

252.280 Distilled spirits and wines.
252.281 Certificate of use for distilled spirits and wines.
252.282 Beer.

RECEIPT IN MANUFACTURING BONDED WAREHOUSE

252.285 Receipt in manufacturing bonded warehouse.

RECEIPT IN CUSTOMS BONDED WAREHOUSE

252.286 Receipt in customs bonded warehouse.

RECEIPT IN FOREIGN-TRADE ZONE

252.290 Receipt in foreign-trade zone.

CUSTOMS GAUGE

252.291 Customs Form 6001.

ALTERNATE PROCEDURES

252.295 Exception for export of beer.

Subpart O—Losses

DISTILLED SPIRITS

252.301 Loss of distilled spirits in transit.
252.302 Notice to exporter.
252.303 Filing of claims.
252.304 Action on claim.

SPECIALLY DENATURED SPIRITS

252.310 Loss of specially denatured spirits in transit.

WINE

252.315 Loss of wine in transit.
252.316 Notice to exporter.
252.317 Filing of claims.
252.318 Action on claim.

BEER AND BEER CONCENTRATE

252.320 Loss of beer and beer concentrate in transit.
252.321 Tax assessed on loss not accounted for.

Subpart P—Action on Claims

252.331 Claims supported by bond, Form 2738.
252.332 Claim against bond.
252.333 Where no bond is filed.
252.334 Credit allowance.
252.335 Disallowance of claim.

AUTHORITY: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805; 27 U.S.C. 203, 205; 44 U.S.C. 3504(h).

SOURCE: 25 FR 5734, June 23, 1960, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

Subpart A—Scope

§ 252.1 General.

The regulations in this part relate to exportation, lading for use on vessels and aircraft, and the transfer to a foreign-trade zone or a manufacturing bonded warehouse, class 6, of distilled spirits (including specially denatured spirits), beer, and wine, and in the case of distilled spirits and wine only, transfer to a customs bonded warehouse as provided for in 26 U.S.C. 5066 and 5362, whether without payment of tax, free of tax, or with benefit of drawback, and includes requirements with respect to removal, shipment, lading, deposit, evidence of exportation, losses, claims, and bonds.

[T.D. ATF–88, 46 FR 39814, Aug. 5, 1981]

§ 252.2 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.

(b) Requests for forms should be mailed to the ATF 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 46921, Sept. 23, 1981, as amended by T.D. ATF–249, 52 FR 5963, Feb. 27, 1987; T.D. ATF–372, 61 FR 20725, May 8, 1996]

§ 252.3 Related regulations.

Regulations relating to this part are listed below:

19 CFR Chapter I—Customs Regulations
27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act
27 CFR Part 4—Labeling and Advertising of Wine
27 CFR Part 19—Distilled Spirits Plants
27 CFR Part 21—Formulas for Denatured Alcohol and Rum
27 CFR Part 24—Wine
27 CFR Part 25—Beer
27 CFR Part 30—Gauging Manual
27 CFR Part 194—Liquor Dealers

31 CFR Part 225—Acceptance of Bonds, Notes, or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety of Sureties on Penal Bonds

[T.D. ATF–224, 51 FR 7698, Mar. 5, 1986; as amended by T.D. ATF–299, 55 FR 25033, June 19, 1990]

Subpart B—Definitions

§ 252.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The terms ''includes'' and ''including'' do not exclude things not enumerated which are in the same general class.

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

Beer. Beer, ale, porter, stout, and other similar fermented beverages (including sake or similar products) of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor.

Bonded premises—distilled spirits plant. The premises of a distilled spirits plant, or part thereof, on which distilled spirits operations defined in 26 U.S.C. 5002 are authorized to be conducted.

Bonded wine cellar. Premises established under part 240 of this chapter for the production, blending, cellar treatment, storage, bottling, packaging, or repackaging of untaxpaid wine.

Brewer. A proprietor of a brewery.

Brewery. Premises established under part 25 of this chapter for the production of beer.

Bulk container. any container having a capacity of more than 1 gallon.

CFR. The Code of Federal Regulations.

Container. Any receptacle, vessel, or any form of package, bottle, can, tank, or pipeline used, or capable of being used, for holding, storing, transferring, or conveying liquors.

Customs bonded warehouse. A customs bonded warehouse, class 2, 3, or 8, established under the provisions of Customs Regulations (19 CFR chapter I).

Customs officer. Any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person authorized by law or designated by the Secretary of the Treasury to perform the duties of an officer of the Customs Service.

Delegate. Any officer, employee, or agency of the Department of the Treasury authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in the context.

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

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

Distilled spirits or spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine, in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced) but not denatured spirits.

Distilled spirits plant. An establishment qualified under the provisions of part 19 of this chapter for the production, warehousing, or processing of spirits, or for authorized combinations of such operations.

District director. A district director of internal revenue.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, claim, form, or other document or, where no form of declaration is prescribed, with the declaration:

I declare under the penalties of perjury that this _____ (insert type of document such as statement, report, certificate, application, claim, or other document), including the documents submitted in support thereof,

has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete.

Exportation. A severance of goods from the mass of things belonging to the United States with the intention of uniting them to the mass of things belonging to some foreign country and shall include shipments to any possession of the United States. The export character of any shipment shall be determined by the intention with which it is made, and it assumes an export character only when destined for use in a foreign country or in a possession of the United States. For the purposes of this part, shipments to the Commonwealth of Puerto Rico, to the territories of the Virgin Islands, American Samoa and Guam, and to the Panama Canal Zone shall also be treated as exportations.

Foreign-trade zone or zone. A foreign-trade zone established and operated pursuant to the Act of June 18, 1934, as amended.

Gallon or wine gallon. The liquid measure equivalent to the volume of 231 cubic inches.

Liquor. Distilled spirits, wines, and/or beer.

Liter. A metric unit of capacity equal to 1,000 cubic centimeters of alcoholic beverage, and equivalent to 33.814 fluid ounces. A liter is divided into 1,000 milliliters. Milliliter or milliliters may be abbreviated as ''ml''.

Manufacturing bonded warehouse. A manufacturing bonded warehouse, class six, established under the provisions of Customs Regulations (19 CFR, chapter I).

Package. Any cask, keg, barrel, drum, or similar portable container.

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

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percent of ethyl alcohol by volume.

Proof gallon. A gallon at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity, or the alcoholic equivalent thereof.

Proprietor. The person who operates the brewery, distilled spirits plant, bonded wine cellar, taxpaid wine bottling house, or manufacturing bonded warehouse, as the case may be, referred to in this part.

Region. A bureau of Alcohol, Tobacco and Firearms Region.

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

Secretary. The Secretary of the Treasury or his delegate.

Specially denatured spirits. Alcohol or rum, as defined in part 21 of this chapter, denatured pursuant to the formulas authorized in part 21 for specially denatured alcohol or rum.

Tank truck. A tank-equipped semi-trailer, trailer, or truck.

Tax. The distilled spirits tax, the beer tax, or the applicable wine tax, as the case may be, imposed by 26 U.S.C. chapter 51.

U.S.C. The United States Code.

Wine. All kinds and types of wine having not in excess of 24 percent of alcohol by volume.

Zone operator. The person to which the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted by the Foreign-Trade Zones Board created by the Act of June 18, 1934, as amended.

(68A Stat. 917, as amended (26 U.S.C. 7805); 49 Stat. 981, as amended (27 U.S.C. 205))

[T.D. ATF–48, 43 FR 13552, Mar. 31, 1978, as amended by T.D. ATF–51, 43 FR 24243, June 2, 1978; 44 FR 55854, Sept. 28, 1979; T.D. ATF–62, 44 FR 71720, Dec. 11, 1979; T.D. ATF–199, 50 FR 9201, Mar. 6, 1985; T.D. ATF–224, 51 FR 7698, Mar. 5, 1986]

Subpart C—Miscellaneous Provisions

WITHDRAWAL OR LADING FOR USE ON CERTAIN VESSELS AND AIRCRAFT

§ 252.20 Alternate methods or procedures; and emergency variations from requirements.

(a) *Alternate methods or procedures*—(1) *Application.* An exporter, after receiving approval from the Director, may use an alternate method or procedure (including alternate construction or

equipment) in lieu of a method or procedure prescribed by this part. An exporter wishing to use an alternate method or procedure may apply to the regional director (compliance). The exporter shall describe the proposed alternate method or procedure and shall set forth the reasons for its use.

(2) *Approval by Director*. The Director may approve the use of an alternate method or procedure if:

(i) The applicant shows good cause for its use;

(ii) It is consistent with the purpose and effect of the procedure prescribed by this part, and provides equal security to the revenue;

(iii) It is not contrary to law; and

(iv) It will not cause an increase in cost to the Government and will not hinder the effective administration of this part.

(3) *Exceptions*. The Director will not authorize an alternate method or procedure relating to the giving of a bond or the payment of tax.

(4) *Conditions of approval*. An exporter may not employ an alternate method or procedure until the Director has approved its use. The exporter shall, during the terms of the authorization of an alternate method or procedure, comply with the terms of the approved application.

(b) *Emergency variations from requirements*—(1) *Application*. When an emergency exists, an exporter may apply to the regional director (compliance) for a variation from the requirements of this part relating to construction, equipment, and methods of operation. The exporter shall describe the proposed variation and set forth the reasons for using it.

(2) *Approval by regional director (compliance)*. The regional director (compliance) may approve an emergency variation from requirements if:

(i) An emergency exists;

(ii) The variation from the requirements is necessary;

(iii) It will afford the same security and protection to the revenue as intended by the specific regulations;

(iv) It will not hinder the effective administration of this part; and

(v) It is not contrary to law.

(3) *Conditions of approval*. An exporter may not employ an emergency variation from the requirements until the regional director (compliance) has approved its use. Approval of variations from requirements are conditioned upon compliance with the conditions and limitations set forth in the approval.

(4) *Automatic termination of approval*. If the exporter fails to comply in good faith with the procedures, conditions or limitations set forth in the approval, authority for the variation from requirements is automatically terminated and the exporter is required to comply with prescribed requirements of regulations from which those variations were authorized.

(c) *Withdrawal of approval*. The Director may withdraw approval for an alternate method or procedure, or the regional director (compliance) may withdraw approval for an emergency variation from requirements, approved under paragraph (a) or (b) of this section, if the Director or the regional director (compliance) finds the revenue is jeopardized or the effective administration of this part is hindered by the approval.

(Act of August 16, 1954, Ch. 736, 68A Stat. 917 (26 U.S.C. 7805); sec. 201, Pub. L. 85–859, 72 Stat. 1395, as amended (26 U.S.C. 5552))

[T.D. ATF–199, 50 FR 9201, Mar. 6, 1985]

§ 252.21 General.

Liquors may be withdrawn without payment of tax for lading, and liquors on which the tax has been paid or determined may be laden with benefit of drawback of tax, subject to this part, for use on vessels and aircraft as follows:

(a) Vessels or aircraft operated by the United States;

(b) Vessels of the United States employed in the fisheries as provided in § 252.22 or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States;

(c) Aircraft registered in the United States and actually engaged in foreign trade or trade between the United

States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States;

(d) Vessels of war of any foreign nation;

(e) Foreign vessels employed in the fisheries as provided in § 252.22 or in the whaling business, or actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States; where such trade by foreign vessels is permitted; or

(f) Aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States, where trade by foreign aircraft is permitted, and where the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found such foreign country allows, or will allow, substantially reciprocal privileges in respect to aircraft registered in the United States.

(46 Stat. 690, as amended; 72 Stat. 1334, 1335, 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[T.D. 6588, 27 FR 773, Jan. 26, 1962. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.22 Vessels employed in the fisheries.

Liquors may be withdrawn or laden under the provisions of paragraphs (b) and (e) of § 252.21 relating to vessels employed in the fisheries, only for use on vessels of the United States documented to engage in the fisheries and foreign fishing vessels of 5 net tons or over if the district director of customs is satisfied by reason of the quantity requested in the light of (a) whether the vessel is employed in substantially continuous fishing activities, and (b) the vessel's complement, that none of the liquors to be withdrawn or laden are intended to be removed from the vessel in, or otherwise returned to, the United States. Such withdrawal or lading shall be conditioned upon compliance with the applicable provisions of this part. Lading of such liquors for use on such vessels shall be subject to approval by the district director of customs of a special written application by the withdrawer or the vessel's master on customs Form 5125 (in duplicate) and a statement by the withdrawer in his application or notice on the required ATF Form 5100.11, 5110.30, 1582–A, 1582–B, or 1689, as the case may be, that the liquors are to be laden for use as supplies on a vessel employed in the fisheries. The original application on customs Form 5125, after approval, shall be stamped with the serial number of the ATF Form 5100.11, 5110.30, 1582–A, 1582–B, or 1689, as the case may be, and the date thereof, and shall be returned by the district director of customs to the withdrawer or vessel's master for use as prescribed below. Approval of each such application shall be subject to the condition that the original shall be presented thereafter by the withdrawer or the vessel's master to the district director of customs within 24 hours (excluding Saturday, Sunday, and holidays) after each subsequent arrival of the vessel at a customs port or station and that an accounting shall be made at the time of such presentation of the disposition of the liquors until the district director of customs is satisfied that they have been consumed on board, or landed under customs supervision, and takes up the authorization. The approval of customs Form 5125 shall be subject to the further condition that any such liquors remaining on board while the vessel is in port shall be safeguarded in the manner and to such extent as the director of the port or place of arrival shall deem necessary. When such liquors have been accounted for to the satisfaction of the district director of customs, he shall execute his certificate of lading and use on both copies of the ATF Form 5100.11, 5110.30, 1582–A, 1582–B, or 1689, as the case may be, and forward the original of the form to the regional director (compliance) designated thereon. In the event of a failure on the part of the withdrawer or the master of the vessel to comply with the conditions of this section or upon receipt of evidence that the liquors were not lawfully used as supplies on the vessel, the district director of customs shall advise the regional director (compliance) of all the

facts in the case for determination of any liability incurred. In the case of liquors withdrawn without payment of tax, assessment of tax liability found to have been incurred shall be made against the principal on the bond. In the case of taxpaid or tax determined liquors, the regional director (compliance) shall determine as to whether to make demand upon the principal and the surety on the bond or to disallow the claim as the case may be.

NOTE: As used in this section, the word ''withdrawer'' shall mean the person executing the application or notice, ATF Form 5100.11, 5110.30, 1582–A, 1582–B, or 1689, as the case may be.

(46 Stat. 690, as amended, 72 Stat. 1334, 1335, 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 252.22, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 252.23 Reciprocating foreign countries.

Assistant regional commissioners may approve applications relating to the withdrawal or lading of liquors for use on aircraft of those foreign countries which will allow, to aircraft registered in the United States and engaged in foreign trade, privileges substantially reciprocal to the privileges allowed herein to aircraft of a foreign country. Where application is made to withdraw or lade liquors for use on aircraft of other countries, which it is claimed reciprocate similar privileges to aircraft of the United States, the applicant must first establish the right of such withdrawal or lading. In appropriate cases, the applicant should request the Secretary of Commerce to find and advise the Secretary of the Treasury that such foreign country or countries allow, or will allow, substantially reciprocal privileges to aircraft of the United States.

(46 Stat. 690, as amended; 19 U.S.C. 1309)

MANUFACTURING BONDED WAREHOUSES

§ 252.25 General.

The proprietor of a duly constituted manufacturing bonded warehouse, established in accordance with law and the regulations in 19 CFR chapter I, may withdraw distilled spirits or wine from any distilled spirits plant or bonded wine cellar, as the case may be, without payment of tax, for use in the manufacture of products for export, or for shipment in bond to Puerto Rico, or for use by foreign governments, organizations, and individuals, as authorized by 26 U.S.C. 5066, 5214(a)(6) and 5362; and 19 U.S.C. 1311. The proprietor of the manufacturing bonded warehouse shall furnish bond in accordance with the provisions of § 252.63 or § 252.64.

(Sec. 311, Tariff Act of 1930, 46 Stat. 691, as amended (19 U.S.C. 1311); sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1380, as amended (26 U.S.C. 5214, 5362); sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

[T.D. ATF–88, 46 FR 39814, Aug. 5, 1981]

CUSTOMS BONDED WAREHOUSES

§ 252.26 Entry of distilled spirits into customs bonded warehouses.

(a) *Distilled spirits withdrawn without payment of tax.* (1) Bottled distilled spirits may, subject to this part, be withdrawn from bonded premises for transfer to customs bonded warehouses in which imported distilled spirits are permitted to be stored in bond for entry pending withdrawal as provided in § 252.27. Withdrawals from bonded premises under the provisions of this paragraph shall be treated as withdrawals for exportation under the provisions of 26 U.S.C. 5214(a)(4).

(2) Distilled spirits may, subject to this part, be withdrawn from bonded premises for transfer (for the purpose of storage pending exportation) to any customs bonded warehouse from which distilled spirits may be exported. These withdrawals shall be treated as withdrawals for exportation under the provisions of 26 U.S.C. 5214(a)(9).

(b) *Bottled distilled spirits eligible for export with benefit of drawback.* Bottled distilled spirits eligible for export with benefit of drawback may, subject to

this part, be transferred to customs bonded warehouses in which imported distilled spirits are permitted to be stored, and entered pending withdrawal as provided in § 252.28, as if such spirits were for exportation.

(c) *Time deemed exported.* For the purpose of this part, distilled spirits entered into a customs bonded warehouse as provided in this section shall be deemed exported at the time so entered.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1381, 1382, (26 U.S.C. 5214); sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066, 5370, 5371; 26 U.S.C. 7805))

[T.D. 7112, 36 FR 8580, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–206, 50 FR 23956, June 7, 1985]

§ 252.27 Entry of wine into customs bonded warehouses.

Upon filing of the application or notice prescribed by § 252.122(a), wine may be withdrawn from a bonded wine cellar for transfer to any customs bonded warehouse for entry pending withdrawal as provided in § 252.28. Such withdrawal from bonded wine cellars is governed by the provisions of subpart F of this part. Wine so transferred to customs bonded warehouses shall be entered, stored, and accounted for in such warehouses under the appropriate provisions of 19 CFR chapter I.

(Sec. 2, Pub. L. 96–601, 94 Stat. 3495 (26 U.S.C. 5362))

[T.D. ATF–88, 46 FR 39815, Aug. 5, 1981]

§ 252.28 Withdrawal of wine and distilled spirits from customs bonded warehouses.

Wine and bottled distilled spirits entered into customs bonded warehouses as provided in § 252.26 (a) or (b) and § 252.27 may, under the appropriate provisions of 19 CFR chapter I, be withdrawn from such warehouses for consumption in the United States by and for the official or family use of foreign governments, organizations, and individuals who are entitled to withdraw imported wine and distilled spirits from a warehouse free of tax. Distilled spirits and wine entered into customs bonded warehouses under the provisions of §§ 252.26(a)(2) and 252.27 may be withdrawn for exportation, subject to the provisions of 19 CFR chapter I. Distilled spirits and wine transferred to customs bonded warehouses shall be entered into, stored and accounted for in, and withdrawn from, such warehouses under the appropriate provisions of 19 CFR chapter I. Wine and bottled distilled spirits, originally transferred to customs bonded warehouses for the purpose of withdrawal by foreign embassies, legations, etc., as authorized by law, may be withdrawn from such warehouses for domestic use, in which event they shall be treated as American goods exported and returned.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214); sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066); sec. 2, Pub. L. 96–601, 94 Stat. 3495 (26 U.S.C. 5362))

[T.D. ATF–88, 46 FR 39815, Aug. 5, 1981]

FOREIGN-TRADE ZONES

§ 252.30 Export status.

(a) Distilled spirits and wines manufactured, produced, bottled in bottles packed in containers, or packaged in casks or other bulk containers in the United States, and beer brewed or produced in the United States may be transferred to a foreign-trade zone for the sole purpose of exportation, or storage pending exportation. Liquors deposited in a foreign-trade zone under this part solely for such purposes are considered to be exported. Export status is not acquired until application on Form 214 for admission of the liquors into the zone has been approved by the district director of customs under the appropriate provision of 19 CFR chapter I, and the required certification of deposit has been made on the ATF form prescribed in this part.

(b) The provisions of subpart H of this part do not apply to specially denatured spirits transferred to a foreign-trade zone for use in the manufacture of articles pursuant to the provisions of 19 U.S.C. 81c(c). Transfer of domestic specially denatured spirits to a qualified user in a foreign-trade zone is made free of tax under the provisions of part 20 of this chapter. Such transfer

does not place the domestic specially denatured spirits in an export status.

(48 Stat. 999, as amended (19 U.S.C. 81c))

[T.D. ATF–274, 53 FR 25157, July 5, 1988]

VOLUNTARY DESTRUCTION OF LIQUORS AFTER RECEIPT IN A FOREIGN-TRADE ZONE

§ 252.35 General.

Liquors may not, under the law, be transferred to a foreign-trade zone for the purpose of destruction. However, liquors transported to and deposited in a foreign-trade zone for exportation or for storage pending exportation may be destroyed under the supervision of the district director of customs, where it is shown to the satisfaction of the regional director (compliance) of the region in which the zone is located that the liquors, after deposit in a zone, have become unmerchantable or unfit for export.

(48 Stat. 999, as amended; 19 U.S.C. 81c)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.36 Application.

Liquors deposited in a foreign-trade zone from the United States which have become unmerchantable or unfit for export may be destroyed. The exporter shall prepare a letter application, in duplicate, and submit it to the regional director (compliance) of the region in which the zone is located. The application shall identify the name and address of the exporter and contain the following information:

(a) The kind and quantity of the liquor, the serial numbers, if any, of the containers thereof, and identification of the zone in which the liquor is stored;

(b) The name and address of the producer bottler or packager of the liquor, and the name, registry number, if any, and location of the plant, warehouse or other establishment from which such liquors were withdrawn for transportation to and deposit in the foreign-trade zone;

(c) The date, form, and serial number of the ATF Form 5100.11, 5110.30, 1582–A, 1582–B, or 1689, as the case may be; and, in the case of liquors on which drawback of internal revenue tax has been allowed, the claim number assigned thereto by the regional director (compliance);

(d) Whether the liquor has become unmerchantable or unfit for export after deposit in the zone, together with all the known facts relating thereto; and

(e) Whether the unmerchantable or unfit liquor is covered by valid insurance in excess of the market value thereof, exclusive of tax. If the liquor is insured, the application shall show its market value, the amount and date of each and every policy of insurance, the name and location of the company by which each and every policy was issued, the name and address of the bona fide owner of the liquor, and to the best of the affiant's knowledge, whether any other person or party is indemnified against the loss of the liquor by reason of its spoilage or destruction.

Such application shall be signed by the exporter or his authorized agent and be executed under the penalties of perjury. The regional director (compliance) may require any further evidence as is deemed necessary. The operator of the foreign-trade zone shall countersign the application or otherwise indicate thereon his knowledge of and concurrence in the application to destroy the liquor. The exporter shall file the application with the district director of customs in whose district the foreign-trade zone is located; at the same time the exporter shall likewise file Zone Form E in accordance with Customs Regulations (19 CFR chapter I). On receipt of the application the district director of customs shall determine the completeness thereof and shall report any facts relating to the condition of the liquor of which he may have knowledge. The original application shall be forwarded to the regional director (compliance) and the district director of customs shall retain the copy for his files.

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 252.36, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 252.37 Action by regional director (compliance).

The regional director (compliance) shall carefully examine the application to see that all the required information has been furnished and shall cause an investigation to be made or require any additional evidence, including samples, to be submitted if necessary. If the regional director (compliance) finds that the liquors were transported to and deposited in a foreign-trade zone in good faith for the purpose of exportation or storage pending exportation, and that the liquors, after deposit in the zone, have become unmerchantable or unfit for export, he may approve the application and authorize the destruction of the liquor described therein under the supervision of the district director of customs. On approval or disapproval of the application, the regional director (compliance) shall advise the district director of customs of his action.

[T.D. ATF–51,43 FR 24244, June 2, 1978]

§ 252.38 Action by district director of customs.

On receipt of the regional director's (compliance) authorization for destruction of the liquor, or his disapproval of the application for destruction, the district director of customs shall act upon the exporter's application on Zone Form E and dispose of it in accordance with the applicable provisions of Customs Regulations (19 CFR chapter I). Where the regional director (compliance) has authorized the destruction of the liquor, such destruction shall be accomplished under customs supervision.

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EVIDENCE OF EXPORTATION AND USE

§ 252.40 Evidence of exportation: distilled spirits and wine.

The exportation of any shipment of distilled spirits or wine may be evidenced by:

(a) A copy of the export bill of lading (§ 252.250); or

(b) A copy of the railway express receipt (§ 252.251); or

(c) A copy of the air express receipt (§ 252.252); or

(d) A copy of the through bill of lading where exportation is to a contiguous foreign country (§ 252.250); or

(e) A certificate by the export carrier, as provided for in § 252.253.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–224, 51 FR 7698, Mar. 5, 1986]

§ 252.41 Evidence of lading for use on vessels or aircraft: distilled spirits and wine.

The lading of distilled spirits or wine for use on vessels or aircraft may be evidenced by submission of a receipt procured under the provisions of § 252.268.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 201, Pub. L. 85–859; 72 Stat. 1362, as amended, 1380, as amended (26 U.S.C. 5214, 5362))

[T.D. ATF–224, 51 FR 7698, Mar. 5, 1986]

§ 252.42 Evidence of deposit.

The deposit of distilled spirits in a customs bonded warehouse or distilled spirits and wines in a foreign-trade zone with benefit of drawback may be evidenced by a copy of the transportation bill of lading obtained under the provisions of § 252.250.

(48 Stat. 999, as amended, 84 Stat. 1965; 19 U.S.C. 81c, 26 U.S.C. 5066)

[T.D. 7112, 36 FR 8580, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.43 Evidence of exportation and lading for use on vessels and aircraft: beer.

(a) *Exportation.* The exportation of beer to a foreign country or possession will be fully evidenced by any of the following documents:

(1) Customs certification of lading and clearance on Form 1582–B or Form 1689 under subpart M of this part; or

(2) For shipment to the armed forces, certification by a military officer on Form 1582–B or Form 1689 under § 252.275; or

(3) A bill of lading (§ 252.250), a railway express receipt (§ 252.251), or an air express or air freight bill of lading (§ 252.252), when such bills of lading or

receipt show exportation to a foreign country or possession; or

(4) A certificate issued by an export carrier under § 252.253 attesting to exportation to a foreign country or possession; or

(5) A landing certificate issued by an official of the country or possession where the beer has actually landed; or

(6) Any other evidence of exportation approved by the regional director (compliance).

(b) *Use as supplies on vessels and aircraft.* The lading of beer for use on vessels or aircraft will be fully evidenced by:

(1) For fishing vessels only, customs certification of lading and use on Form 1582–B or Form 1689 under § 252.23; or

(2) Customs certification of lading on Form 1582–B or Form 1689 under §§ 252.264 or 252.282; or

(3) Any other evidence of exportation approved by the regional director (compliance).

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1335, as amended (26 U.S.C. 5053, 5055))

[T.D. ATF–224, 51 FR 7698, Mar. 5, 1986]

RETENTION OF RECORDS

§ 252.45 Retention of records.

File copies of forms required by this part to be retained by any proprietor or claimant, and all records, documents, or copies of records and documents supporting such forms, shall be preserved by such proprietor or claimant for a period of not less than two years, and during such period shall be available, during business hours, for inspection and the taking of abstracts therefrom by ATF officers.

(Approved by the Office of Management and Budget under control number 1512–0385)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1342, as amended, 1381, as amended, 1390, as amended, 1395, as amended (26 U.S.C. 5114, 5367, 5415, 5555); sec. 807, Pub. L. 96–39, 93 Stat. 283 (26 U.S.C. 5207))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71721, Dec. 11, 1979; T.D. ATF–172, 49 FR 14943, Apr. 16, 1984]

PENALTIES OF PERJURY

§ 252.48 Execution under penalties of perjury.

When a return, form, or other document called for under this part is required by this part or in the instructions on or with the return, form, or other document to be executed under penalties of perjury, it shall be so executed, as defined in subpart B of this part, and shall be signed by the proprietor, or other duly authorized person.

(68A Stat. 749 (26 U.S.C. 6065))

Subpart D—Bonds and Consents of Surety

§ 252.51 General.

Every person required by this part to file a bond or consent of surety shall prepare and execute it on the prescribed form and file it with the regional director (compliance) of the region in which is located the premises from which the withdrawal or removal of spirits or wines is made without payment of tax, or, in the case of taxpaid or tax-determined spirits or wines on which claim for drawback of tax will be filed, with the regional director (compliance) for the region in which the claim will be filed, in accordance with the procedures of this part. The procedures in parts 19, 25 or 240 of this chapter shall govern bonds covering distilled spirits plants, bonded wine cellars and breweries, respectively.

[T.D. ATF–62, 44 FR 71721, Dec. 11, 1979, as amended by T.D. ATF–224, 51 FR 7698, Mar. 5, 1986]

§ 252.52 Corporate surety.

(a) Surety bonds required by this part may be given only with corporate sureties holding certificates of authority from, and subject to the limitations prescribed by, the Secretary as set forth 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).

(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 46921, Sept. 23, 1981]

§ 252.52a Filing of powers of attorney.

Each bond, and each consent to changes in the terms of a bond, shall be accompanied by a power of attorney authorizing the agent or officer who executed the bond or consent to so act on behalf of the surety. The regional director (compliance) who is authorized to approve the bond, may, when he deems it necessary, require additional evidence of the authority of the agent or officer to execute the bond or consent.

(61 Stat. 648; 6 U.S.C. 6, 7)

[T.D. 6895, 31 FR 11976, Sept. 13, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.52b Execution of powers of attorney.

The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed original, it shall be accompanied by certification of its validity.

(61 Stat. 648; 6 U.S.C. 6, 7)

[T.D. 6895, 31 FR 11976, Sept. 13, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.53 Deposit of securities in lieu of corporate surety.

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

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

§ 252.54 Consents of surety.

Consents of surety to changes in the terms of bonds shall be executed on Form 1533 by the principal and by the surety with the same formality and proof of authority as is required for the execution of bonds.

§ 252.55 Authority to approve bonds and consents of surety.

Regional directors (compliance) are authorized to approve all bonds and consents of surety required by this part.

§ 252.56 Disapproval of bonds or consents of surety.

The regional director (compliance) may disapprove any bond prescribed by this part, or any consent of surety submitted in respect thereto, if the principal or any person owning, controlling, or actively participating in the management of the business of the principal shall have been previously convicted, in a court of competent jurisdiction, of:

(a) Any fraudulent noncompliance with any provision of any law of the United States, if such provision related to internal revenue or customs taxation of spirits, wines, or beer, or if such offense shall have been compromised with the person on payment of penalties or otherwise; or

(b) Any felony under a law of any State, Territory, or the District of Columbia, or the United States, prohibiting the manufacture, sale, importation, or transportation of spirits, wine, beer, or other intoxicating liquor.

(72 Stat. 1336, 1352, 1353, 1394; 26 U.S.C. 5062, 5175, 5177, 5551)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71721, Dec. 11, 1979]

§ 252.57 Appeal to Director.

Where a bond or consent of surety is disapproved by the regional director (compliance), the person giving the bond may appeal from such disapproval to the Director, who will hear such appeal. The decision of the Director shall be final.

(72 Stat. 1394; 26 U.S.C. 5551)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.58 Operations or unit bond—distilled spirits.

(a) *Spirits*. Where spirits are withdrawn without payment of tax, as authorized in § 252.91, from the bonded premises of a distilled spirits plant on application of the proprietor thereof, the operations or unit bond, given by the proprietor and approved under the provisions of part 19 of this chapter, shall cover such withdrawals.

(b) *Wine*. Where, under the provisions of part 19 of this chapter, an operations or unit bond has been given and approved to cover the operations of a distilled spirits plant and an adjacent bonded wine cellar, such bond shall cover the withdrawal of wine without payment of tax, as authorized in § 252.121, from such bonded wine cellar on application for such withdrawal by the proprietor.

(c) *Specially denatured spirits*. Where specially denatured spirits are withdrawn free of tax, as authorized in § 252.151, from the bonded premises of a distilled spirits plant on application of the proprietor thereof, the proprietor shall file a consent of surety extending the terms of the operations or unit bond, which consent shall be in the following form:

The obligors agree to extend the terms of said bond to cover all liability that may be incurred on all specially denatured spirits withdrawn by the principal for exportation or transfer to a foreign-trade zone, for which satisfactory evidence of exportation, or of deposit in a foreign-trade zone, as required by law and regulations, is not submitted to the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1352, as amended, 1362, as amended (26 U.S.C. 5175, 5214); Sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066); Sec. 805, Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

[T.D. ATF–62, 44 FR 71721, Dec. 11, 1979]

§ 252.59 Bond, Form 700.

Where the operations of a bonded wine cellar are covered by bond, Form 700, as provided in part 24 of this chapter, such bond shall cover the withdrawal of wine without payment of tax, as authorized in § 252.121, from such bonded wine cellar by the proprietor of the bonded wine cellar.

(72 Stat. 1379, 1380; 26 U.S.C. 5354, 5362, as amended by T.D. ATF–299, 55 FR 25033, June 19, 1990]

§ 252.60 Brewer's bond, Form 5130.22.

When beer or beer concentrate is removed from a brewery without payment of tax for any of the purposes authorized in § 252.141, the brewer's bond, Form 5130.22, furnished under the provisions of part 25 of this chapter will cover the removals.

(49 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1388, as amended (26 U.S.C. 5053, 5401))

[T.D. ATF–224, 51 FR 7698, Mar. 5, 1986]

§ 252.61 Bond, Form 2734 (5100.25).

If a specific lot of distilled spirits or wine is to be withdrawn without payment of tax, as authorized in § 252.91(a)(1), (2), (3), (5), or § 252.121(a), (b), (c), or (d), by a person other than the proprietor of the bonded premises, a specific bond on ATF Form 2734 (5100.25) shall be filed by the exporter with the regional director (compliance), as provided in § 252.51. The penal sum of the bond shall not be less than the tax prescribed by law on the quantity of spirits or wine to be withdrawn. However, the maximum penal sum of the bond shall not exceed $200,000 but in no case shall the penal sum be less than $1,000.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1352, as amended, 1362, as amended, 1380, as amended, 1381, 1382 (26 U.S.C. 5175, 5214, 5362) sec. 3. Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066, 5370, 5371))

[T.D. ATF–88, 46 FR 39815, Aug. 5, 1981]

§ 252.62 Bond, Form 2735 (5100.30).

(a) *Requirement for bond*. If a person other than the proprietor of the bonded premises withdraws distilled spirits or wine without payment of tax, as authorized by § 252.91(a)(1), (2), (3), (5), or § 252.121(a), (b), (c), or (d), the exporter shall file a continuing bond, ATF Form 2735 (5100.30), with the regional director (compliance), as provided in § 252.51.

(b) *Penal sum of bond*. The penal sum of the bond shall be sufficient to cover the tax on the maximum quantity of

distilled spirits and wine that may remain unaccounted for at any one time. However, the maximum penal sum of the bond shall not exceed $200,000, but in no case shall the penal sum be less than $1,000. Distilled spirits and wine withdrawn for exportation, use on vessels or aircraft, transfer to a customs bonded warehouse, or transfer to and deposit in a foreign-trade zone, shall remain unaccounted for until the evidence of exportation, use, deposit, transfer, or loss in transit has been filed with the regional director (compliance).

(c) *Apportioning bonds.* If the bond, Form 2735 (5100.30), is in less than the maximum penal sum, the principal shall apportion the bond, in accordance with the requirements on the bond form. The exporter may reapportion the bond coverage, if changing conditions make this necessary, by filing a consent of surety, ATF Form 1533 (5000.18), for approval by the Director of Industry Operations (DIO).

(d) *Withdrawal of wine for transfer to a customs bonded warehouse; consent of surety.* An exporter with a bond on Form 2735 (5100.30) executed before April 1, 1981, shall obtain a consent of surety on Form 1533 (5000.18) before withdrawing wine without payment of tax from a bonded wine cellar for transfer to a customs bonded warehouse. The consent shall be executed in accordance with § 252.54 and filed in accordance with instructions on the form. Exporters with bonds executed on or after April 1, 1981, do not need this consent of surety, because such bonds automatically apply to withdrawals for transfer to customs bonded warehouses.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1352, as amended, 1362, as amended, 1380, as amended, 1381, 1382 (26 U.S.C. 5175, 5214, 5362) sec. 3. Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066, 5370, 5371))

[T.D. ATF–88, 46 FR 39815, Aug. 5, 1991, as amended by T.D. ATF–413, 64 FR 46845, Aug. 27, 1999]

§ 252.63 Bond, Form 2736.

Where the proprietor of a manufacturing bonded warehouse desires to withdraw a specific lot of distilled spirits or wines without payment of tax, as authorized in § 252.25, he shall file with the regional director (compliance), as provided in § 252.51, a specific bond, on Form 2736, to cover the transportation of the distilled spirits or wines from the bonded premises from which withdrawn to the manufacturing bonded warehouse. The penal sum of such bond shall be not less than the tax prescribed by law on the quantity of distilled spirits or wines to be withdrawn: *Provided,* That the maximum penal sum of such bond shall not exceed $200,000, but in no case shall the penal sum be less than $1,000.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1352, as amended, 1380, as amended (26 U.S.C. 5175, 5362))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71721, Dec. 11, 1979]

§ 252.64 Bond, Form 2737.

(a) *General.* Where the proprietor of a manufacturing bonded warehouse desires to withdraw distilled spirits and wines from time to time without payment of tax, as authorized in § 252.25, he shall file with the regional director (compliance), as provided in § 252.51, a continuing bond on Form 2737. The bond shall be executed in a penal sum sufficient to cover the tax at the rates prescribed by law on the maximum quantity of distilled spirits and wines which may remain unaccounted for at any one time: *Provided,* That the maximum penal sum of such bond shall not exceed $200,000, but in no case shall the penal sum be less than $1,000. Distilled spirits and wines withdrawn for transfer to a manufacturing bonded warehouse shall remain unaccounted for until the evidence of deposit in such warehouse, as required by this part, has been filed with the regional director (compliance). The proprietor shall, at the time of executing Form 2737, designate the premises from which the withdrawals are to be made, provided that, as to any one bond on Form 2737, such premises shall be located in the same internal revenue region.

(b) *Apportioning bonds.* If the bond, Form 2737 is in less than the maximum penal sum, the principal shall apportion the bond, in accordance with the requirements on the bond form. The principal may reapportion the bond coverage, if changing conditions make

this necessary, by filing a consent of surety, Form 1533, for approval by the regional regulatory administrator.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1352, as amended, 1380, as amended (26 U.S.C. 5175, 5362))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71721, Dec. 11, 1979]

§ 252.65 Bond, Form 2738.

Whenever, under the provisions of this part, the claimant desires drawback of tax on distilled spirits or wines to be exported, laden for use on vessels or aircraft, or transferred to and deposited in a foreign-trade zone, or, in the case of distilled spirits, transferred to a customs bonded warehouse, as authorized in §§ 252.171 and 252.211, prior to the receipt by the regional regulatory administrator of the certified copy of ATF Form 5110.30, or 1582–A, as the case may be, as prescribed by this part, he shall file bond on Form 2738 with the regional regulatory administrator as provided in § 252.51. The penal sum of the bond shall be sufficient to cover the amount of drawback which will at any time constitute a charge against the bond:

Provided, That the maximum penal sum shall not exceed $200,000, but in no case shall the penal sum be less than $1,000: *Provided further*, That where the claimant desires to remove distilled spirits to a customs bonded warehouse as provided in § 252.171(d) and the terms of his bond on Form 2738, then in force, do not cover such removals, he shall either file a consent of surety on Form 1533 to extend the terms of such bond to cover such removals or file a new bond on Form 2738.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336, as amended, 84 Stat. 1965; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062, 5066)

[T.D. 7112, 36 FR 8580, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71721, Dec. 11, 1979; T.D. ATF–198, 50 FR 8559, Mar. 1, 1985]

§ 252.66 Strengthening bonds.

In all cases where the penal sum of any bond becomes insufficient, the principal shall either give a strengthening bond with the same surety to attain a sufficient penal sum, or give a new bond to cover the entire liability. Strengthening bonds 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 any bond to less than its full penal sum. Strengthening bonds shall show the current date of execution and the effective date.

(72 Stat. 1352, 1394; 26 U.S.C. 5175, 5551)

§ 252.67 New or superseding bonds.

New bonds shall be required in case of insolvency or removal of any surety, and may, at the discretion of the regional director (compliance), be required in any other contingency affecting the validity or impairing the efficiency of such bond. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity, continuing or liquidating the business of the principal, shall execute and file a new bond or obtain the consent of the surety or sureties on the existing bond or bonds. Where, under the provisions of § 252.72, the surety on any bond given under this subpart has filed an application to be relieved of liability under said bond and the principal desires or intends to continue the business or operations to which such bond relates, he shall file a valid superseding bond to be effective on or before the date specified in the surety's notice. If the principal does not file a new or superseding bond when required, he shall discontinue the operations intended to be covered by such bond forthwith. New or superseding bonds shall show the current date of execution and the effective date.

(72 Stat. 1336, 1362; 26 U.S.C. 5062, 5214)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71722, Dec. 11, 1979]

TERMINATION OF BONDS

§ 252.70 Termination of bonds, Forms 2734 and 2736.

Bonds, Forms 2734 and 2736, covering a specific lot of distilled spirits or wines withdrawn without payment of tax under this part, will be canceled by the regional director (compliance) on

receipt by him of ATF Form 5100.11 properly executed by the appropriate customs official or armed services officer, as required by this part, evidencing that the distilled spirits or wines have been duly exported, laden for use on vessels or aircraft, deposited in a foreign-trade zone, or deposited in a manufacturing bonded warehouse, as the case may be, or of evidence satisfactory to him that the distilled spirits or wines have been otherwise lawfully disposed of or accounted for: *Provided*, That all liability under the bond to be canceled has been terminated.

(72 Stat. 1352; 26 U.S.C. 5175)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71722, Dec. 11, 1979]

§ 252.71 Termination of bonds, Forms 2735, 2737, and 2738.

Continuing bonds, Forms 2735 and 2737, covering distilled spirits and/or wines withdrawn from time to time without payment of tax under this part and Form 2738 covering allowance of claims for drawback on distilled spirits and/or wines removed as authorized in §§ 252.171 and 252.211, may be terminated as to liability for future withdrawals or claims (a) pursuant to application of surety as provided in § 252.72, (b) on approval of a superseding bond, or (c) on written notification to the regional director (compliance) by the principal of his discontinuance of withdrawals or claims, as the case may be, under the bond. When no further withdrawals are to be made under a bond on Form 2735 or 2737, or no further claims for drawback are to be filed under bond Form 2738, the bond shall be canceled by the regional director (compliance) in the manner and subject to the conditions provided in § 252.70.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended, 1352, as amended, 1353, as amended (26 U.S.C. 5062, 5175, 5176))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975,and amended by T.D. ATF–62, 44 FR 71722, Dec. 11, 1979; T.D. ATF–198, 50 FR 8559, Mar. 1, 1985]

§ 252.72 Application of surety for relief from bond.

A surety on any bond given on Forms 2735, 2737, or 2738, may at any time in writing notify the principal and the regional director (compliance) in whose office the bond is on file that he desires, after a date named, to be relieved of liability under said bond. Such date shall be not less than 90 days after the date the notice is received by the regional director (compliance). The surety shall also file with the regional director (compliance) an acknowledgment or other proof of service on the principal. If such notice is not thereafter in writing withdrawn, the rights of the principal 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 § 252.73(b).

(68A Stat. 749, as amended (26 U.S.C. 6065); Sec. 201. Pub. L. 85–859, 72 Stat. 1336, as amended, 1352, as amended (26 U.S.C. 5062, 5175))

[T.D. 6895, 31 FR 11976, Sept. 13, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71722, Dec. 11, 1979]

§ 252.73 Relief of surety from bond.

(a) *Bonds, Forms 2734 and 2736*. The surety on a bond given on Form 2734 or Form 2736 shall be relieved from his liability under the bond when the bond has been canceled as provided for in § 252.70.

(b) *Bonds, Forms 2735, 2737, and 2738*. Where the surety on a bond given on Form 2735, Form 2737, or on Form 2738 has filed application for relief from liability, as provided in § 252.72, the surety shall be relieved from liability for withdrawals or claims, as the case may be, made wholly subsequent to the date specified in the notice, or on the effective date of a superseding bond, if one is given. Notwithstanding such relief, the liability of the surety shall continue until the spirits and/or wines withdrawn without payment of tax or included in a claim for drawback of tax allowed under the bond have been properly accounted for.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended, 1352, as amended, 1353, as amended (26 U.S.C. 5062, 5175, 5176))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71722, Dec. 11, 1979]

§ 252.74 Release of pledged securities.

Securities of the United States, pledged and deposited as provided in § 252.53, 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 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)

CHARGES AND CREDITS

§ 252.80 Charges and credits on bonds.

The withdrawal of liquors without payment of tax or of specially denatured spirits free of tax, under the provisions of this part shall constitute a charge against the bond under which the withdrawal is made of (a) the tax on the liquors withdrawn or (b) of an amount equal to the tax on specially denatured spirits withdrawn that will be due in the event of failure to account for the specially denatured spirits as provided in this part. The tax on liquors so withdrawn, or an amount equal to the tax on specially denatured spirits so withdrawn that would be due as set forth above, shall, on the required accounting for such liquors or specially denatured spirits, constitute a credit to the bond of such tax or amount equal to the tax, as the case may be. Provisions regarding charges and credits on drawback bonds are contained in subpart P of this part.

Subpart E—Withdrawal of Distilled Spirits Without Payment of Tax for Exportation, Use on Vessels and Aircraft, Transfer to a Foreign-Trade Zone, or Transportation to a Manufacturing Bonded Warehouse

§ 252.91 General.

(a) Distilled spirits on which the internal revenue tax has not been paid or determined may, subject to this part, be withdrawn from the bonded premises of a distilled spirits plant without payment of tax for:

(1) Exportation;

(2) Use on the vessels or aircraft described in § 252.21;

(3) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation;

(4) Transportation to and deposit in a manufacturing bonded warehouse; or

(5) Transfer to and deposit in a customs bonded warehouse as provided for in § 252.26.

(b) All withdrawals shall be made under the applicable bond prescribed in subpart D of this part.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214); sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

[T.D. ATF–51, 43 FR 24244, June 2, 1978, as amended by T.D. ATF–62, 44 FR 71722, Dec. 11, 1979]

§ 252.92 Application or notice, ATF Form 5100.11.

(a) *Export, use on vessels and aircraft, and transfer to a foreign-trade zone or a customs bonded warehouse.* Application for or notice of the withdrawal of distilled spirits without payment of tax for exportation from the United States, or for use on vessels and aircraft, or for transfer to a customs bonded warehouse or a foreign-trade zone, shall be made by the exporter on ATF Form 5100.11. If the exporter is not the proprietor of the bonded premises of the

distilled spirits plant from which the spirits are to be withdrawn, the exporter shall prepare ATF Form 5100.11 as an application, in accordance with the instructions on the form, and shall forward all copies of the form to the regional director (compliance) of the region in which the distilled spirits plant is located. If the exporter is the proprietor of the bonded premises of the distilled spirits plant from which the spirits are withdrawn, the exporter shall prepare ATF Form 5100.11 as a notice in accordance with the instructions on the form.

(b) *Manufacturing bonded warehouse.* Application for the withdrawal of distilled spirits without payment of tax for transportation to and deposit in a manufacturing bonded warehouse shall be made by the proprietor of such warehouse on ATF Form 5100.11, in accordance with the instructions on the form.

(Approved by the Office of Management and Budget under control number 152–0190)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214); Sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

[T.D. ATF–198, 50 FR 8559, Mar. 1, 1985]

§ 252.93 Carrier to be designated.

The name of the carrier or carriers to be used in transporting the distilled spirits from the bonded premises of the distilled spirits plant to the port of export, or to the customs bonded warehouse, or to the manufacturing bonded warehouse, or to the foreign-trade zone, as the case may be, shall be shown in the application. If the spirits are shipped on a through bill of lading and all carriers handling the spirits while in transit are not known, the name of the carrier to whom the distilled spirits are to be delivered at the shipping premises shall be shown.

(72 Stat. 1362, 84 Stat. 1965; 26 U.S.C. 5214, 5066)

[T.D. 7112, 36 FR 8581, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71722, Dec. 11, 1979]

§ 252.94 Containers.

Distilled spirits authorized to be withdrawn without payment of tax from the bonded premises of a distilled spirits plant under the provisions of this subpart may be withdrawn from such establishment in such containers as may be authorized in part 19 of this chapter. Except as otherwise provided in this part, the gauging, packing, bottling, casing, marking, closing and reporting of distilled spirits prior to withdrawal shall be in accordance with the provisions of part 19 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1360, as amended, 1374, as amended (26 U.S.C. 5205, 5206, 5301))

[T.D. ATF–62, 44 FR 71722, Dec. 11, 1979; as amended by T.D. ATF–206, 50 FR 23956, June 7, 1985]

§ 252.95 Change of packages for exportation.

Whenever the exporter desires to transfer distilled spirits from packages filled in internal revenue bond to such other suitable packages as may be desired for exportation, such change of packages shall be made under the procedures of part 19 of this chapter, prior to the preparation of ATF Form 5100.11 covering the removal of the distilled spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended, 1360, as amended, 1374, as amended (26 U.S.C. 5205, 5206, 5301))

[T.D. ATF–62, 44 FR 71722, Dec. 11, 1979]

§ 252.96 Approval of application.

When filed as an application, and ATF Form 5100.11 has been properly executed, and the required bond has been filed in a sufficient amount, the regional director (compliance) shall approve the application on all copies of the form and send them to the proprietor of the bonded premises from which the spirits will be withdrawn.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

[T.D. ATF–62, 44 FR 71722, Dec. 11, 1979, as amended by T.D. ATF–198, 50 FR 8559, Mar. 1, 1985]

§ 252.97 [Reserved]

§ 252.98 Inspection and regauge.

The proprietor shall inspect all containers to be withdrawn pursuant to ATF Form 5100.11 and shall regauge all packages, except those which are to be

withdrawn on the filling or production gauge as authorized in 27 CFR part 19. If the withdrawal is to be made subject to regauge, the proprietor shall prepare a package gauge record as provided in 27 CFR part 19, enter the total proof gallons regauged on ATF Form 5100.11, and attach a copy of the package gauge record to each copy of ATF Form 5100.11. If a proprietor wishes to reduce the proof of spirits contained in packages to be withdrawn pursuant to ATF Form 5100.11, he shall make such proof reduction incident to regauge of the packages.

(Approved by the Office of Management and Budget under control number 1412–0190 and 1512–0250)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5204))

[T.D. ATF–198, 50 FR 8559, Mar. 1, 1985]

§ 252.100 [Reserved]

§ 252.101 Packages to be stamped.

Each package and authorized bulk conveyance of spirits (including tank cars and tank trucks but not pipelines) withdrawn without payment of tax under the provisions of this subpart shall be marked with the word ''EXPORT'' in accordance with the provisions of 27 CFR part 19 prior to its removal from the bonded premises.

(Approved by the Office of Management and Budget under control number 1512–0189)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

[T.D. ATF–198, 50 FR 8560, Mar. 1, 1985; as amended by T.D. ATF–206, 50 FR 23956, June 7, 1985]]

§ 252.102 Bottles to have closures affixed.

Every bottle containing distilled spirits to be withdrawn under the provisions of this subpart shall have a closure or other device affixed in accordance with the provisions of part 19 of this chapter.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5301))

[T.D. ATF–206, 50 FR 23956, June 7, 1985]

§ 252.103 Export marks.

(a) *General*. In addition to the marks and brands required to be placed on packages and cases of distilled spirits at the time they are filled under the provisions of part 19 of this chapter, the proprietor shall mark the word ''Export'' on the Government side of each case or Government head of each container before removal from the bonded premises for any exportation authorized under this subpart.

(b) *Exception*. When containers are being removed to a contiguous manufacturing bonded warehouse, the proprietor need not place the word ''Export'' on the containers if the regional director (compliance) finds the omission will not jeopardize the revenue.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214); sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

[T.D. ATF–82, 46 FR 21158, Apr. 9, 1981]

§ 252.104 Certificates of origin.

The entry of distilled spirits at ports in certain foreign countries is permitted only upon the filing by the importer of an official certificate showing the origin and age of such spirits. An ATF officer may, on request of the applicant, furnish a certificate showing the origin and age of the spirits described on ATF Forms 5100.11 or 5110.30. The issuing officer may require supporting documentation to be provided by the applicant. Certificates of origin and age shall be furnished on Form 2177. Form 2177 may also be issued for distilled spirits removed to a foreign-trade zone, in which case the number and location of the foreign-trade zone shall be shown on the form in lieu of the name of the foreign country.

[T.D. ATF–198, 50 FR 8560, Mar. 1, 1985]

§ 252.105 Report of inspection and tax liability.

When the spirits are ready for shipment, the proprietor shall execute his report of inspection and tax liability on all copies of ATF Form 5100.11.

(72 Stat. 1362; 26 U.S.C. 5214)

[T.D. ATF–46, 42 FR 44773, Sept. 6, 1977, as amended by T.D. ATF–62, 44 FR 71723, Dec. 11, 1979]

§ 252.106 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of distilled spirits withdrawn without payment of tax under this subpart shall be made under the provisions of subpart M.

(72 Stat. 1362; 26 U.S.C. 5214)

§ 252.107 Disposition of forms.

ATF Form 5100.11 and any accompanying package gauge record shall be distributed by the proprietor in accordance with the instruction on ATF Form 5100.11.

(Approved by the Office of Management and Budget under control number 1512–0250)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

[T.D. ATF–198, 50 FR 8560, Mar. 1, 1985]

LOSSES

§ 252.110 Losses.

Where there has been a loss of distilled spirits while in transit from the bonded premises of a distilled spirits plant to a port of export, a customs bonded warehouse, a manufacturing bonded warehouse, a vessel or aircraft, or a foreign-trade zone, the provisions of subpart O of this part, with respect to losses of spirits after withdrawal without payment of tax and to claims for remission of the tax thereon, shall be applicable.

(72 Stat. 1323, as amended, 84 Stat. 1965; 26 U.S.C. 5008, 5066)

[T.D. 7112, 36 FR 8581, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

RETURN OF SPIRITS TO BONDED PREMISES

§ 252.115 General.

Spirits which have been lawfully withdrawn without payment of tax under the provisions of this subpart for exportation, or for deposit in a foreign-trade zone, a manufacturing bonded warehouse, or a customs bonded warehouse, or for use on vessels and aircraft may, subject to the requirements of § 252.116, be returned:

(a) To the bonded premises of a distilled spirits plant for redistillation; or

(b) To the bonded premises from which withdrawn, pending subsequent removal for lawful purposes. However, such spirits may only be returned before they are exported, deposited in a foreign-trade zone, a manufacturing bonded warehouse, or a customs bonded warehouse, or laden as supplies upon or used on vessels or aircraft, as the case may be.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1365 as amended (26 U.S.C. 5214, 5223); Sec. 3, Pub. L. 91–659, 84 Stat. 1365, as amended (26 U.S.C. 5066))

[T.D. ATF–198, 50 FR 8560, Mar. 1, 1985]

§ 252.116 Notice of return of spirits withdrawn without payment of tax.

If a proprietor of a distilled spirits plant desires to return spirits to his plant as provided in § 252.115, he shall file a notice with the regional director (compliance) for the region in which the plant is located. A copy of the notice shall be prepared for submission to the customs official, as required by § 252.117. The notice shall be executed under the penalties of perjury and shall show:

(a) Name, address, and plant number of the distilled spirits plant to which the spirits are to be returned.

(b) Name, address, and plant number of the distilled spirits plant which packaged or bottled the spirits.

(c) Name, address, and plant number of the distilled spirits plant from which the spirits were withdrawn.

(d) Name and address of the principal on the bond under which the spirits were withdrawn.

(e) Serial number of the ATF Form 5100.11 and the date withdrawn.

(f) Present location of spirits to be returned.

(g) Kind of spirits to be returned.

(h) Number, kind, and serial numbers of the containers to be returned. In case of bottled spirits, the number and size of the bottles in each case.

(i) Total quantity in proof gallons of spirits to be returned.

(j) Reason for return of spirits.

(k) Disposition to be made of returned spirits, i.e., redistillation or return to bonded storage.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71723, Dec. 11, 1979]

§ 252.117 Responsibility for return of spirits.

The principal on the bond under which the spirits were withdrawn without payment of tax shall be responsible for arranging the return of the spirits to the distilled spirits plant receiving them. The principal or his agent shall submit a copy of the notice required by § 252.116 to the appropriate customs official. If the spirits are returned before the ATF Form 5100.11 has been filed with the customs official, the principal shall submit the form with the notice. The customs officer shall, if the spirits are eligible for return under § 252.115, accept the notice as authority for the return of the spirits to the distilled spirits plant identified in the notice. The customs officer shall retain the notice and shall mark each copy of ATF Form 5100.11 ''Canceled'', note the date thereon, return both copies to the principal, and, if the spirits are in customs custody, release them for return. The principal shall retain one copy of the canceled ATF Form 5100.11 and file one copy with the regional director (compliance) identified on the form.

(Sec. 201, Pub. L. 85–859, 72 Stat 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[T.D. ATF–62, 44 FR 71723, Dec. 11, 1979]

§ 252.118 Receipt of spirits.

The receipt, gauge, and disposition of the distilled spirits at the distilled spirits plant shall be in accordance with the applicable provisions of subpart U of part 19 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[T.D. ATF–62, 44 FR 71723, Dec. 11, 1979]

Subpart F—Withdrawal of Wine Without Payment of Tax for Exportation, Use on Vessels and Aircraft, Transfer to a Foreign-Trade Zone or to a Customs Bonded Warehouse, or Transportation to a Manufacturing Bonded Warehouse

§ 252.121 General.

Wine may, subject to this part, be withdrawn from a bonded wine cellar, without payment of tax, for:

(a) Exportation;

(b) Use on the vessels and aircraft described in § 252.21;

(c) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation;

(d) Transfer to and deposit in a customs bonded warehouse as provided in § 252.27; or

(e) Transportation to and deposit in a manufacturing bonded warehouse.

All such withdrawals shall be made under the applicable bond prescribed in subpart D.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1380; 19 U.S.C. 1309, 81c, 26 U.S.C. 5362, 7805; (sec. 201, Pub. L. 85-859. 72 Stat. 1381, 1382 (26 U.S.C. 5370, 5371)))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71723, Dec. 11, 1979; T.D. ATF–88, 46 FR 39816, Aug. 5, 1981; 47 FR 20303, May 12, 1982]

§ 252.122 Application or notice, ATF Form 5100.11.

(a) *Export, use on vessels and aircraft, transfer to a customs bonded warehouse, and transfer to a foreign-trade zone.* The exporter shall, where he is not the proprietor of the bonded wine cellar from which the wine is to be withdrawn, make application on ATF Form 5100.11 to the regional director (compliance) of the region in which the bonded wine cellar is located, for approval of the withdrawal. Where the exporter is the proprietor of the bonded wine cellar from which the wine is to be withdrawn, he shall, at the time of withdrawal of the wine, prepare a notice of the withdrawal and shipment on ATF

For 5100.11. Prior approval by the regional director (compliance) is not required when the withdrawal is by the proprietor of the bonded wine cellar.

(b) *Manufacturing bonded warehouse.* Application for the withdrawal of wine without payment of tax for transportation to and deposit in a manufacturing bonded warehouse, shall be made by the proprietor of such warehouse on ATF Form 5100.11. The proprietor shall forward all copies of the application to the regional director (compliance) of the region in which is located the bonded wine cellar from which the wine is to be withdrawn, for approval prior to withdrawal of the wine.

(c) *Action by regional director (compliance).* Where, under the provisions of paragraphs (a) and (b) of this section, an ATF Form 5100.11 is submitted to the regional director (compliance) for approval, the regional director (compliance) shall, if satisfied that the application is in order and that the applicant has on file a good and sufficient bond, approve the application and forward it to the proprietor of the premises from which the wines are to be withdrawn.

(d) *Restriction on shipment.* Where, under the provisions of paragraphs (a) and (b) of this section, prior approval of ATF Form 5100.11 by the regional director (compliance) is required, the proprietor of the bonded wine cellar may not ship the wine until the approved ATF Forms 5100.11 have been received by him. In such cases, the proprietor of the bonded wine cellar shall, on removal of the wines, execute his certificate of removal on ATF Form 5100.11.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362))

[T.D. ATF–198, 50 FR 8560, Mar. 1, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 252.122, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 252.123 Export marks.

(a) *General.* In addition to the marks and brands required to be placed on packages or cases of wine at the time they are filled under the provisions of part 24 of this chapter, the proprietor shall mark the word ''Export'' on the Government side of each case or Government head of each container before removal from the bonded premises for any exportation authorized under this subpart, including withdrawals under 26 U.S.C. 5362(c)(4).

(b) *Exception.* When containers are being removed to a contiguous manufacturing bonded warehouse, the proprietor need not place the word ''Export'' on the containers if the regional director (compliance) finds the omission will not jeopardize the revenue.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1380, as amended (26 U.S.C. 5362, 7805))

[T.D. ATF–82, 46 FR 21158, Apr. 9, 1981, as amended by T.D. ATF–88, 46 FR 39816, Aug. 5, 1981; 47 FR 20303, May 12, 1982; T.D. ATF–299, 55 FR 25033, June 19, 1990]

§ 252.124 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of wines withdrawn without payment of tax under this subpart shall be made under the provisions of subpart M of this part.

(72 Stat. 1380; 26 U.S.C. 5362)

§ 252.125 Disposition of forms.

On removal of the wines from the premises of the bonded wine cellar, the proprietor shall forward one copy of ATF Form 5100.11 to the regional director (compliance), retain one copy for his files, and deliver the original and remaining copy to the officer to whom the shipment is consigned, or in whose care it is shipped, as required by subpart M. Where the shipment is for delivery for use on aircraft, the copy marked ''Consignee's Copy'', provided for in § 252.122, shall be forwarded to the airline company at the airport.

(72 Stat. 1380; 26 U.S.C. 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71724, Dec. 11, 1979]

§ 252.126 Proprietor's report.

The records of the proprietor of the bonded wine cellar shall reflect the quantity of wine removed without payment of tax under this subpart, and he

shall report the quantity of wine so removed on ATF F 5120.17.

(72 Stat. 1380; 26 U.S.C. 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–299, 55 FR 25033, June 19, 1990]

§ 252.127 Losses.

Where there has been a loss of wine while in transit from a bonded wine cellar to a port of export, a foreign-trade zone, a vessel or aircraft, a customs bonded warehouse, or a manufacturing bonded warehouse, the provisions of subpart O of this part, with respect to losses of wine after withdrawal without payment of tax and to claims for remission of the tax thereon, shall be applicable.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, 1382, (26 U.S.C. 5370, 5371))

[T.D. ATF–88, 46 FR 39816, Aug. 5, 1981]

RETURN OF WINES TO BONDED WINE CELLAR

§ 252.130 General.

On application of the proprietor of a bonded wine cellar, wine which has been lawfully withdrawn without payment of tax under the provisions of this subpart for exportation, or for use on vessels and aircraft, or for deposit in a foreign-trade zone, in a manufacturing bonded warehouse, or in a customs bonded warehouse, may for good cause be returned to the bonded wine cellar from which withdrawn, for storage pending subsequent removal for lawful purposes. However, such wine must be returned before being exported, laden as supplies or used aboard vessels or aircraft, or deposited in a foreign-trade zone, in a manufacturing bonded warehouse, or in a customs bonded warehouse, as the case may be.

[T.D. ATF–88, 46 FR 39816, Aug. 5, 1981]

§ 252.131 Application for return of wines withdrawn without payment of tax.

Where a proprietor of a bonded wine cellar desires to return wines to his bonded wine cellar as provided in § 252.130, he shall submit a written application, in duplicate, to the regional director (compliance) for the region in which his premises are located, for approval of the return of the wines. The application shall show.

(a) Name, address, and registry number of the bonded wine cellar.

(b) Name and address of the principal on the bond under which the wines were withdrawn.

(c) Serial number of the ATF Form 5100.11 and the date withdrawn.

(d) Present location of wines to be returned.

(e) Kind of wines to be returned.

(f) Number, kind, and serial numbers of the containers to be returned. In the case of bottled wines, the number and size of the bottles in each case.

(g) Total quantity in wine gallons for each separate tax class of wines to be returned.

(h) Reason for return of the wines.

The application shall be executed under the penalties of perjury. On approval of the application the regional director (compliance) shall return both copies to the proprietor, who, in turn, shall deliver them to the exporter.

(72 Stat. 1380; 26 U.S.C. 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71724, Dec. 11, 1979]

§ 252.132 Responsibility for return of wine.

The principal on the bond under which the wines were withdrawn without payment of tax shall be responsible for arranging the return of the wines to the bonded wine cellar from which they were withdrawn. In case of emergency, the principal on the bond may arrange the return of wines to bonded premises without an approved application, but such wines shall be kept separate at the bonded premises and shall not be recorded in the records and reports of the proprietor until an approved application for such return has been obtained as provided in § 252.131. Such principal or his agent shall present to the appropriate customs official the two copies of the approved application authorizing the return unless the wines are returned before the ATF Form 5100.11 has been filed with the customs official. The customs officer shall, if he finds that the wines are eligible for return under § 252.130, accept the approved application as authority for the return of the wines to the bonded wine

cellar noted on the application and shall mark each copy of ATF Form 5100.11 ''Canceled'', note the date thereon, affix a copy of the approved application to each of the canceled ATF Forms 5100.11, return both ATF Forms 5100.11 to the principal, and, where the wines are in his custody, release them for return. The canceled ATF Forms 5100.11, with attachments, shall be delivered by such principal or his agent to the proprietor of the bonded wine cellar. When wines have been returned before the ATF Forms 5100.11 were filed with customs officials, the two copies of the approved application shall be submitted, by the principal or his agent, to the proprietor of the bonded wine cellar who shall cancel and date each copy of ATF Form 5100.11 and affix copies of the approved application thereto.

(72 Stat. 1380; 26 U.S.C. 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71724, Dec. 11, 1979]

§ 252.133 Disposition of forms.

On receipt of the wines at the bonded wine cellar, the proprietor shall endorse, on each copy of the approved application to return the wines, the date received, the total amount in wine gallons of each tax class of wine returned, and affix his signature. He shall forward the original ATF Form 5100.11, with attached application, to the regional director (compliance) of the region in which his premises are located, and retain the remaining copy for his files. The storage, disposition, and records pertaining to such returned wines shall be in accordance with the applicable provisions of part 240 of this chapter.

(72 Stat. 1380; 26 U.S.C. 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71724, Dec. 11, 1979]

Subpart G—Removal of Beer and Beer Concentrate Without Payment of Tax for Exportation, Use as Supplies on Vessels and Aircraft, or Transfer to a Foreign-Trade Zone

SOURCE: T.D. ATF–224, 51 FR 7699, Mar. 5, 1986, unless otherwise noted.

§ 252.141 General.

(a) *Beer*. Beer may, subject to this part, be removed from the brewery without payment of tax for:

(1) Export to a foreign country;

(2) Use as supplies on the vessels and aircraft described in § 252.21; or

(3) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation.

(b) *Beer concentrate*. Concentrate, produced from beer under the provisions of subpart R of part 25 of this chapter may, subject to this part, be removed from the brewery without payment of tax for:

(1) Export to a foreign country; or

(2) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation.

(c) *Bond*. All removals of beer or beer concentrate will be made by the brewer under the provisions of the brewer's bond, Form 5130.22 as prescribed in § 252.60.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.142 Notice, Form 1689.

When a brewer intends to remove beer or beer concentrate without payment of tax from a brewery for exportation or for transportation to and deposit in a foreign-trade zone, or remove beer for use as supplies on vessels and aircraft, the brewer shall prepare a notice on Form 1689 for each withdrawal. The brewer shall execute Form 1689 in quadruplicate, except when the shipment is for use on aircraft the brewer

shall execute an extra copy which will be marked ''Consignee's Copy.''

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.143 Containers.

(a) *Beer*. Beer being exported, used as supplies on vessels and aircraft, or transferred to and deposited in a foreign-trade zone, without payment of tax, may be removed in bottles, kegs, or bulk containers.

(b) *Beer concentrate*. Concentrate may not be removed for export, or for transfer to and deposit in a foreign-trade zone, in containers of the kind ordinarily used by brewers for the removal of beer for consumption or sale.

§ 252.144 Export marks.

(a) *General Requirement*. In addition to the marks and brands required to be placed on containers of beer or beer concentrate under the provisions of part 25 of this chapter, the brewer shall mark the word ''Export'' on each container or case of beer, or the words ''Beer concentrate for export'' on each container of beer concentrate, before removal from the brewery for any exportation authorized under this subpart.

(b) *Exceptions*. A brewer need not apply the mark ''Export'' on cases of beer being exported under the following circumstances:

(1) When beer is being directly exported by the brewer, and the brewer can furnish documentation (such as an ocean or air freight bill of lading, or a foreign landing certificate) that the beer was directly exported to a foreign country;

(2) When cased beer is transferred from a brewery to a foreign-trade zone for export or for storage pending exportation; or

(3) When cased beer is exported to the military.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.145 Consignment, shipment and delivery.

The consignment, shipment and delivery of beer or beer concentrate removed from a brewery without payment of tax under this subpart will be in accordance with the applicable provisions of subpart M of this part.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.146 Disposition of forms.

On removal of the beer or beer concentrate withdrawn under the provisions of this subpart, the brewer shall forward one copy of Form 1689 to the regional director (compliance), retain one copy for the files, and deliver the original and remaining copy to the officer to whom the shipment is consigned, or in whose care it is shipped, as required by subpart M of this part. When the shipment is for delivery for use on aircraft, the copy marked ''Consignee's Copy,'' provided for in § 252.142, will be forwarded to the airline company at the airport.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

§ 252.147 Return of beer or beer concentrate.

Beer or beer concentrate removed without payment of tax under the provisions of this subpart may be returned to be brewery from which removed if lading of the beer or beer concentrate is delayed more than the period provided in § 252.262 or when the brewer has other good cause for return. The brewer shall request the district director of customs to release the beer or beer concentrate for return to the brewery and, on such release, the district director of customs shall endorse both copies of the appropriate Form 1689 to show the release of the beer or beer concentrate and shall return the forms to the brewer. On return of the beer or beer concentrate to the brewery, the brewer shall record the quantity in the brewery daily records, mark the two copies of Form 1689 returned by the district director of customs, ''Canceled—Returned to Brewery,'' and

forward one copy to the regional director (compliance).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1335, as amended (26 U.S.C. 5053, 5056))

§ 252.148 Brewer's report.

The brewer's records shall reflect the quantity of beer or beer concentrate removed without payment of tax under this subpart, and the brewer shall report the quantity of beer or beer concentrate so removed on Form 5130.9. The total quantity of beer or beer concentrate involved in all export shipments returned during any reporting period will be reported as a separate entry on Form 5130.9.

(Approved by the Office of Management and Budget under control number 1512–0052)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended (26 U.S.C. 5053))

[T.D. ATF–224, 51 FR 7699, Mar. 5, 1986, as amended by T.D. ATF–345, 58 FR 40358, July 28, 1993]

§ 252.149 Losses.

When there has been a loss of beer or beer concentrate while in transit from the brewery to a port for exportation, or for lading as supplies on a vessel or aircraft, or to a foreign-trade zone, the provisions of subpart O of this part, with respect to losses are applicable.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

§ 252.150 Charges and credits on bond.

The removal of beer concentrate from the brewery without payment of tax under this subpart will constitute a charge against the brewer's bond, Form 5130.22, of an amount equal to the tax which would be due on removal for consumption or sale, including penalties and interest, on all beer used to produce the concentrate which is removed. The satisfactory accounting for concentrate so removed will constitute a credit to the bond.

[T.D. ATF–224, 51 FR 7698, Mar. 5, 1986; 51 FR 9190, Mar. 18, 1986]

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

Subpart H—Withdrawal of Specially Denatured Spirits, Free of Tax, for Exportation or Transfer to a Foreign-Trade Zone

§ 252.151 General.

Specially denatured spirits may, under this part, be withdrawn from the bonded premises of a distilled spirits plant, free of tax, for:

(a) Exportation; or

(b) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation.

All such withdrawals shall be made under a consent of surety on the proprietor's operations or unit bond, as prescribed in § 252.58(c).

(48 Stat. 999, as amended, 72 Stat. 1362; 19 U.S.C. 81c, 26 U.S.C. 5214)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71724, Dec. 11, 1979]

§ 252.152 Notice, ATF Form 5100.11.

Notice of withdrawal of specially denatured spirits, as authorized in § 252.151 shall be made on ATF Form 5100.11 by the proprietor of the distilled spirits plant from which the denatured spirits are to be withdrawn., Upon removal of the denatured spirits from the bonded premises, a copy of the form shall be submitted to the regional director (compliance).

[T.D. ATF–198, 50 FR 8560, Mar. 1, 1985]

§ 252.153 Withdrawal procedure.

The provisions of §§ 252.93, 252.94, 252.98, 252.105, and 252.117 in respect of method of conveyance, authorized containers, gauging, inspection, approval and shipment, report of removal, and disposition of forms shall be applicable to specially denatured spirits to be withdrawn under the provisions of this subpart.

(48 Stat. 999, as amended, 72 Stat. 1362; 19 U.S.C. 81c, 26 U.S.C. 5214)

[T.D. ATF–46, 42 FR 44774, Sept. 6, 1977]

§ 252.154 Export marks.

In addition to the marks and brands required to be placed on packages and cases at the time they are filled under

the provisions of part 19 of this chapter, the proprietor shall mark the word ''Export'' on the Government side of each case or Government head of each container before removal from the bonded premises for any exportation authorized under this subpart.

(Sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended (26 U.S.C. 5214))

[T.D. ATF–82, 46 FR 21159, Apr. 9, 1981]

§ 252.155 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of specially denatured spirits withdrawn free of tax under this subpart shall be made under the provisions of subpart M of this part.

(48 Stat. 999, as amended, 72 Stat. 1362; 19 U.S.C. 81c, 26 U.S.C. 5214)

§ 252.156 Losses.

Where there has been a loss of specially denatured spirits while in transit from the bonded premises of a distilled spirits plant to a port of export or a foreign-trade zone, the exporter shall file claim for allowance of the loss in accordance with the provisions of subpart O of this part.

RETURN OF SPECIALLY DENATURED SPIRITS TO BONDED PREMISES

§ 252.160 General.

Specially denatured spirits, which have been lawfully withdrawn free of tax under the provisions of this part for exportation, or for deposit in a foreign-trade zone, may, subject to the requirements of § 252.161, be returned:

(a) To the bonded premises of a distilled spirits plant for redistillation; or

(b) To the bonded premises of any distilled spirits plant pending subsequent lawful withdrawal free of tax. However, such specially denatured spirits may only be returned before they are exported, or deposited in a foreign-trade zone. If the specially denatured spirits are to be returned to bonded premises for storage without redistillation, the proprietor shall also execute a consent of surety Form 1533 to extend the terms of his operations or unit bond to cover the return and storage of such specially denatured spirits.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[T.D. ATF–198, 50 FR 8561, Mar. 1, 1985]

§ 252.161 Notice of return of specially denatured spirits.

If a proprietor of a distilled spirits plant desires to return specially denatured spirits to his plant as provided in § 252.160, he shall file a notice with the regional director (compliance) for the region in which his plant is located. A copy of the notice shall be prepared for submission to the customs official, as required by § 252.162. The notice shall be executed under the penalties of perjury and shall show:

(a) Name, address, and plant number of the distilled spirits plant to which the specially denatured spirits are to be returned.

(b) Name, address, and plant number of the distilled spirits plant from which the specially denatured spirits were withdrawn.

(c) Serial number of the ATF Form 5100.11 and the date withdrawn.

(d) Present location of specially denatured spirits to be returned.

(e) Description of the specially denatured spirits—kind, serial numbers of containers, and quantity in wine gallons.

(f) Reason for return of the specially denatured spirits.

(g) Disposition to be made of specially denatured spirits, i.e. redistillation or return to processing on the bonded premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71724, Dec. 11, 1979; T.D. ATF–198, 50 FR 8561, Mar. 1, 1985]

§ 252.162 Responsibility for return of specially denatured spirits.

The principal on the bond under which the specially denatured spirits were withdrawn free of tax shall be responsible for arranging the return of the spirits to the distilled spirits plant receiving them. The principal or his agent shall submit a copy of the notice

required by § 252.161 to the appropriate customs official. If the specially denatured spirits are returned before the ATF Form 5100.11 has been filed with the customs official, the principal shall submit the form with the notice. The customs officer shall, if the specially denatured spirits are eligible for return under § 252.160, accept the notice as authority for the return of the specially denatured spirits to the distilled spirits plant identified in the notice. The customs officer shall retain the notice and shall mark each copy of ATF Form 5100.11 ''Canceled'', note the date thereon, return both copies to the principal, and, if the spirits are in customs custody, release them for return. The principal shall retain one copy of the canceled ATF Form 5100.11 and file one copy with the regional director (compliance) identified on the form.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[T.D. ATF–62, 44 FR 71724, Dec. 11, 1979]

§ 252.163 Receipt of specially denatured spirits.

The receipt, gauge, and disposition of the specially denatured spirits at the distilled spirits plant shall be in accordance with the applicable provisions of subpart U of part 19 of this chapter.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1365, as amended (26 U.S.C. 5214, 5223))

[T.D. ATF–62, 44 FR 71724, Dec. 11, 1979]

Subpart I—Exportation of Distilled Spirits With Benefit of Drawback

§ 252.171 General.

Distilled spirits manufactured, produced, bottled in bottles, packed in containers, or packaged in casks or other bulk containers in the United States on which an internal revenue tax has been paid or determined, and which have been marked under the provisions of 27 CFR part 19 and of this part, as applicable, especially for export with benefit of drawback may be:

(a) Exported;

(b) Laden for use on the vessels or aircraft described in § 252.21; or

(c) Transferred to and deposited in a foreign-trade zone for exportation or for storage pending exportation; or

(d) Transferred to and deposited in a customs bonded warehouse as provided for in § 252.26(b).

On receipt by the regional director (compliance) of required evidence of exportation, lading for use, or transfer, there shall be allowed to the bottler (or packager) of the spirits, drawback equal in amount to the tax found to have been paid or determined on the spirits.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062); sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

[25 FR 5734, June 23, 1960, as amended by T.D. 7112, 36 FR 8581, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 252.171, see the List of CFR Sections Affected in the Finding Aids section of this volume.

FILING OF NOTICE AND REMOVAL

§ 252.190 Notice, ATF Form 5110.30.

Notice of shipment of distilled spirits for export, for use as supplies on vessels or aircraft, for deposit in a foreign-trade zone, or for deposit in a customs bonded warehouse, shall be prepared by the exporter on ATF Form 5110.30, in accordance with the instructions on the form.

(48 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336, as amended, 84 Stat. 1965; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062, 5066)

[T.D. ATF–198, 50 FR 8561, Mar. 1, 1985]

§ 252.191 [Reserved]

§ 252.192 Packages of distilled spirits to be gauged.

Except for spirits which may be tax determined on the basis of the original gauge, spirits in packages which are to be removed for export with benefit of drawback, shall be gauged by the distilled spirits plant proprietor prior to preparation of notice on ATF Form 5110.30. When spirits in packages are gauged, a package gauge record shall be prepared by the proprietor, as provided in 27 CFR part 19, and a copy of

the package gauge record shall be attached to each copy of ATF Form 5110.30 and considered a part of the claim.

(Approved by the Office of Management and Budget under control number 1512–0250 and 1512–0199)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF–198, 50 FR 8561, Mar. 1, 1985]

§ 252.193 Export marks.

In addition to the marks and brands required to be placed on packages or other bulk containers and cases under the provisions of part 19 of this chapter, the exporter shall mark the word ''Export'' on the Government side of each case or Government head of each container before removal for export, for use on vessels or aircraft, or for transfer to a foreign-trade zone or a customs bonded warehouse.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062); sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

[T.D. ATF–82, 46 FR 21159, Apr. 9, 1981]

§§ 252.194–252.195 [Reserved]

§ 252.195a Claims on spirits tax determined before January 1, 1980.

The bottler or packager of the spirits shall compute the drawback rate, unless the regional director (compliance) established a standard drawback rate before January 1, 1980. The bottler or packager shall complete parts II and III on both copies of ATF Form 5110.30. If a standard drawback rate was established, the date of approval of the formula and the number shall be shown in any available space in part II of ATF Form 5110.30. The bottler or packager shall file one copy as the claim for drawback of tax with the regional director (compliance) of the region in which the claimant's premises are located, and retain one copy on file. Each claim on ATF Form 5110.30 shall be supported by applicable records and supporting documents are required by the instructions on the form.

(Approved by the Office of Management and Budget under control number 1512–0250 and 1512–0199)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF–198, 50 FR 8561, Mar. 1, 1985]

§ 252.195b Claims on spirits tax determined on and after January 1, 1980.

(a) *Preparation.* Claims for drawback of tax on spirits tax determined on and after January 1, 1980, and withdrawn for any purpose authorized by § 252.171, shall be prepared in duplicate by the bottler or packager on parts II and III of ATF Form 5110.30.

(b) *Supporting documents.* Each claim shall be supported by an invoice, bill of lading or other document which identifies the date of tax determination, unless the bill of lading required by § 252.250 identifies this date. Additional supporting documents are required if the claim covers distilled spirits products on which the claimed drawback rate exceeds the rate of tax imposed by 26 U.S.C. 5001 or 7652 on each proof gallon or part thereof of distilled spirits produced in or imported into the United States (e.g., a product containing alcoholic flavoring materials on which drawback has been claimed by the manufacturer of the material under 26 U.S.C. 5131–5134). For each such product, the additional supporting documents shall consist of a copy of each related dump and batch record, package gauge record as prescribed in 27 CFR part 19, and/or bottling and packaging record. The regional director (compliance) may also require these or other supporting documents for any distilled spirits product.

(c) *Filing.* One copy of the claim, with supporting documents, if required, shall be filed with the regional director

(compliance). The bottler or packager shall retain the other copy on file.

(Approved by the Office of Management and Budget under control number 1512–0198)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF–198, 50 FR 8561, Mar. 1, 1985, as amended by T.D. ATF–212, 50 FR 34123, Aug. 23, 1985]

§ 252.196 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of distilled spirits removed under this subpart for export, use on vessels or aircraft, transfer to a customs bonded warehouse, or transfer to a foreign-trade zone, shall be in accordance with the applicable provisions of subpart M of this part.

(72 Stat. 1336, 84 Stat. 1965; 26 U.S.C. 5062, 5066)

[T.D. 7112, 36 FR 8583, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.197 Return of spirits withdrawn for export with benefit of drawback.

When notice is filed by an exporter as provided in § 252.198, spirits on which the tax has been paid or determined, and which were withdrawn especially for export with benefit of drawback as provided in § 252.171, but which spirits have not been laden for export, laden for use, or deposited in a customs bonded warehouse or foreign-trade zone, may for good cause be returned under the applicable provisions of this part and 27 CFR part 19:

(a) To the bonded premises of the distilled spirits plant for purposes authorized under 26 U.S.C.; or

(b) To a wholesale liquor dealer; or

(c) To a taxpaid storeroom.

The export marks on spirits returned under this section shall be removed by obliteration, relabeling or recasing.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF–198, 50 FR 8561, Mar. 1, 1985, as amended by T.D. ATF–206, 50 FR 23956, June 7, 1985]

§ 252.198 Notice of return.

If an exporter desires to return spirits to a distilled spirits plant, wholesale liquor dealer or taxpaid storeroom, as provided in § 252.197, he shall file a notice, executed under the penalties of perjury, with the regional director (compliance) for the region in which the claim for drawback of tax was filed. The notice shall be prepared in triplicate for submission to the customs official as required in § 252.199. The notice shall show the:

(a) Name, address, and plant number of the distilled spirits plant which packaged or bottled the spirits;

(b) Date and serial number of the ATF Form 5110.30 on which the spirits were withdrawn;

(c) Present location of the spirits to be returned;

(d) Number, size and identification of the containers;

(e) Proof of spirits;

(f) Reason for the return; and

(g) Planned disposition of the returned spirits.

(Approved by the Office of Management and Budget under control number 1512–0206)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF–198, 50 FR 8562, Mar. 1, 1985]

§ 252.199 Responsibility for return of spirits withdrawn for export with benefit of drawback.

The exporter shall be responsible for arranging the return of the spirits under this subpart to the proprietor or wholesale liquor dealer who will receive them. The exporter or his agent shall submit the original and copies of the notice required by § 252.198 to the appropriate customs official. If the spirits are returned before ATF Form 5110.30 has been filed with the customs official, the exporter shall submit Form 5110.30 with the notice. The customs officer shall, if the spirits are eligible for return under § 252.197, accept the notice as authority for the return of the spirits to the premises identified in the notice. The customs official shall acknowledge receipt on the notice, retain a copy, and return the original and one copy of the notice to the exporter. The exporter shall retain the copy of the notice and file the original of the notice with the regional

director (compliance) identified thereon.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF–198, 50 FR 8562, Mar. 1, 1985]

Subpart J [Reserved]

Subpart K—Exportation of Wine With Benefit of Drawback

§ 252.211 General.

Wines manufactured, produced, bottled in bottles packed in containers, or packaged in casks or other bulk containers in the United States on which an internal revenue tax has been paid or determined, and which are filled on premises qualified under this chapter to package or bottle wines, may, subject to this part, be:

(a) Exported;

(b) Laden for use on the vessels or aircraft described in § 252.21; or

(c) Transferred to and deposited in a foreign-trade zone for exportation or for storage pending exportation.

On receipt by the regional director (compliance) of required evidence of exportation, lading for use, or transfer, there shall be allowed a drawback equal in amount to the tax found to have been paid or determined on the wines.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); Sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–51, 43 FR 24245, June 2, 1978]

§ 252.212 Persons authorized.

Persons who have qualified under this chapter as proprietors of distilled spirits plants, bonded wine cellars, or taxpaid wine bottling houses, and persons who are wholesale liquor dealers as defined in section 5112, I.R.C., and have paid the required tax as a wholesale liquor dealer, are authorized to remove wines under the provisions of this subpart.

(72 Stat. 1336; 26 U.S.C. 5062)

§ 252.213 [Reserved]

§ 252.214 Notice and claim, Form 1582–A.

Claim for allowance of drawback of internal revenue taxes on wines removed under the provisions of § 252.211 and § 252.212, shall be prepared by the exporter on Form 1582–A, in quadruplicate: *Provided*, That where the withdrawal is for use on aircraft, an extra copy, marked ''Consignee's Copy'', shall be prepared. Each Form 1582–A shall be given, by the exporter, a serial number beginning with ''1'' for the first day of January of each year and running consecutively thereafter to December 31, inclusive.

(46 Stat. 690, as amended, 72 Stat. 1336; 19 U.S.C. 1309, 26 U.S.C. 5062)

§ 252.215 Certificate of tax determination, Form 2605.

Every claim for drawback of tax on Form 1582–A shall be supported by a certificate, Form 2605, which shall be executed, in duplicate, (a) by the person who withdrew the wine from bond on tax determination, certifying that all taxes have been properly determined on such wine, or (b) where the wine was bottled or packaged after tax determination, by the person who did such bottling or packaging, certifying that the wines so bottled or packaged were received in taxpaid status and specifying from whom they were so received. The regional director (compliance) may require other evidence of tax payment whenever he deems it necessary. It shall be the responsibility of the exporter to secure Form 2605, properly executed, and to submit the original of such form to the regional director (compliance) with whom the claim, Form 1582–A, is filed. The exporter shall retain the copy of Form 2605 for his files.

(72 Stat. 1336; 26 U.S.C. 5062)

§ 252.216 Export marks.

In addition to the marks and brands required to be placed on packages or other bulk containers and cases under the provisions of parts 24 of this chapter, the exporter shall mark the word ''Export'' on the Government side of each case or Government head of each

container before removal for export, for use on vessels or aircraft, or for transfer to a foreign-trade zone.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF–82, 46 FR 21159, Apr. 9, 1981, as amended by T.D. ATF–299, 55 FR 25034, June 19, 1990; T.D. ATF–372, 61 FR 20725, May 8, 1996]

§ 252.217 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of wines removed under this subpart shall be made under the provisions of subpart M of this part.

(72 Stat. 1336; 26 U.S.C. 5062)

§ 252.218 Disposition of Forms 1582–A.

On removal of the wines from the premises, the exporter shall forward one copy of Form 1582–A to the regional director (compliance), retain one copy for his files, and deliver the original and remaining copy to the officer to whom the shipment is consigned, or in whose care it is shipped, as required by subpart M of this part. Where the shipment is for delivery for use on aircraft, the copy marked ''Consignee's Copy'', provided for in § 252.214, shall be forwarded to the airline company at the airport.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062)

§ 252.219 Return of wine withdrawn for export with benefit of drawback.

When notice is filed by an exporter as provided in § 252.220, wine on which the tax has been paid or determined, and which was withdrawn especially for export with benefit of drawback as provided in § 252.211, but which wine has not been laden for export, laden for use, or deposited in a foreign-trade zone, may for good cause be returned under the applicable provisions of this part and 27 CFR part 24:

(a) To a taxpaid storeroom at a bonded wine celler; or

(b) To a wholesale liquor dealer.

The export marks on wines returned under this section shall be removed from the containers.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF–198, 50 FR 8562, Mar. 1, 1985, as amended by T.D. ATF–344, 58 FR 40355, July 28, 1993]

§ 252.220 Notice of return.

If an exporter desires to return wine to a bonded wine cellar or wholesale liquor dealer as provided in § 252.219, he shall file a notice, executed under the penalties of perjury, with the regional director (compliance) for the region in which the claim for drawback of tax was filed. The notice shall be prepared in triplicate for submission to the customs official as required in § 252.220a. The notice shall show the:

(a) Name, address, and registration number of the bonded wine cellar from which withdrawn;

(b) Date and serial number of the Form 1582–A on which the wine was withdrawn;

(c) Present location of the wine to be returned;

(d) Number, size and identification of the containers;

(e) Total wine gallons for each tax class of wine; and

(f) Reason for the return.

(Approved by the Office of Management and Budget under control number 1512–0292)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF–198, 50 FR 8562, Mar. 1, 1985; 50 FR 23410, June 4, 1985]

§ 252.220a Responsibility for return of wine withdrawn for export with benefit of drawback.

The exporter shall be responsible for arranging the return of wine under this subpart to the proprietor or wholesale liquor dealer receiving the wine. The exporter or his agent shall submit the original and copies of the notice required by § 252.220 to the appropriate customs official. If the wine is returned before Form 1582–A has been filed with the customs official, the exporter shall submit ATF Form 1582–A with the notice. The customs officer shall, if the wine is eligible for return under § 252.219, accept the notice as authority

for the return of the wine to the premises identified in the notice. The customs officer shall acknowledge receipt of the notice, retain a copy, and return the original and one copy of the notice to the exporter. The exporter shall retain the copy and file the original of the notice with the regional director (compliance) identified thereon.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended (26 U.S.C. 5062))

[T.D. ATF–198, 50 FR 8562, Mar. 1, 1985]

Subpart L—Exportation of Beer With Benefit of Drawback

§ 252.221 General.

Beer brewed or produced in the United States and on which the internal revenue tax has been paid may, subject to this part, be:

(a) Exported;

(b) Delivered for use as supplies on the vessels and aircraft described in § 252.21; or

(c) Transferred to and deposited in a foreign-trade zone for exportation or for storage pending exportation.

Claim for drawback of taxes found to have been paid may be filed only by the producing brewer or his duly authorized agent. On receipt by the regional director (compliance) of required evidence of such exportation, delivery for use, or transfer, there shall be allowed a drawback equal in amount to the tax found to have been paid on such beer.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055)

§ 252.222 Claim, Form 1582–B.

Claim for allowance of drawback of internal revenue taxes on beer brewed or produced in the United States shall be prepared on Form 1582–B, in quadruplicate, as required by this part. Each Form 1582–B shall be given, by the person initiating the form, a serial number beginning with ''1'' for the first day of January of each year and running consecutively thereafter to December 31, inclusive.

(72 Stat. 1335; 26 U.S.C. 5055)

§ 252.223 Export marks.

In addition to the marks and brands required to be placed on kegs, barrels, cases, crates or other packages under the provisions of part 25 of this chapter, the exporter shall mark the word ''Export'' on each container or case before removal for export, for use on vessels or aircraft, or for transfer to a foreign-trade zone.

(Sec. 309, Tariff Act of 1930, 46 Stat. 690, as amended (19 U.S.C. 1309); sec. 3, Act of June 18, 1934, 48 Stat. 999, as amended (19 U.S.C. 81c); sec. 201, Pub. L. 85–859, 72 Stat. 1335, as amended (26 U.S.C. 5055))

[T.D. ATF–82, 46 FR 21159, Apr. 9, 1981, as amended by T.D. ATF–224, 51 FR 7700, Mar. 5, 1986]

EXECUTION OF CLAIMS

§ 252.225 Removals of beer by brewer.

Where a brewer removes taxpaid beer from the brewery or from its place of storage elsewhere for exportation, for lading for use as supplies on vessels or aircraft, or for deposit in a foreign-trade zone, he shall execute the notice and claim on Form 1582–B. On removal of the beer for shipment the brewer shall file one copy of Form 1582–B with the regional director (compliance) of his region, retain one copy for his files, and immediately forward the original and one copy of the form:

(a) In case of shipments for export or for use as supplies on vessels or aircraft, to the district director of customs at the port of export; or

(b) In the case of shipments to the armed services of the United States for export, to the commanding or supply officer to whom the shipment is consigned; or

(c) In the case of shipments to a foreign-trade zone, to the customs officer in charge of the zone.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.226 Removals of beer by agent on behalf of brewer.

Where proper power of attorney authorizing an agent to execute a claim

on behalf of the brewer has been filed with the regional director (compliance), such agent may, for any of the purposes authorized in § 252.221, remove taxpaid beer from the brewery where produced or from its place of storage elsewhere, and execute the notice and claim on Form 1582–B on behalf of the brewer. On removal of the beer, such agent shall dispose of Form 1582–B in accordance with the applicable procedure set forth in § 252.225.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055)

§ 252.227 Removals of beer by persons other than the brewer or agent of the brewer.

Where there is a removal of taxpaid beer by a person other than the brewer or the agent of the brewer for any of the purposes authorized in § 252.221, such person shall execute the notice, only, on Form 1582–B. Where the removal consists of the products of more than one brewer, separate Forms 1582–B shall be prepared for the products of each brewer. On removal of the beer for shipment such person shall forward two copies of Form 1582–B to the producing brewer, and immediately forward the original and one copy of the form as prescribed in § 252.225(a), (b), or (c), as the case may be. On receipt of the two copies of Form 1582–B from the exporter, the brewer shall, if he wishes to claim drawback on the beer covered thereby, execute the claim for drawback on both copies of the form, file one copy of the claim with the regional director (compliance) of his region, and retain the remaining copy for his files.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055)

CONSIGNMENT, SHIPMENT, AND DELIVERY

§ 252.230 Consignment, shipment, and delivery.

The consignment, shipment, and delivery of taxpaid beer removed under this subpart shall be made under the provisions of subpart M of this part.

(72 Stat. 1335; 26 U.S.C. 5055)

Subpart M—Shipment or Delivery for Export

CONSIGNMENT

§ 252.241 Shipment for export, or for use on vessels.

All liquors and specially denatured spirits intended for export or liquors intended for use as supplies on vessels shall be consigned to the district director of customs at the port of exportation, or port of lading for supplies on vessels, except that when the shipment is for export to a contiguous foreign territory it shall be consigned to the foreign consignee at destination in care of the district director of customs at the port of export.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.242 Shipment for use on aircraft.

(a) *Distilled spirits and wine*. All distilled spirits and wines intended for use on aircraft shall be consigned to the airline at the airport from which the aircraft will depart in international travel, in care of the district director of customs. On receipt of the distilled spirits or wines they shall be stored at the airport under customs custody until laden on aircraft.

(b) *Beer*. Beer intended for use on aircraft shall be consigned to the district director of customs at the port of lading.

(48 Stat. 999, as amended, 72 Stat. 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5214, 5362)

[25 FR 5734, June 23, 1969, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.243 Shipment to armed services.

On removal of distilled spirits, wines, or beer for export to the armed services of the United States, the shipment shall be consigned to the commanding officer or supply officer at the supply base or other place of delivery.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 252.244 Shipment to manufacturing bonded warehouse.

Distilled spirits and wines withdrawn for shipment to a manufacturing bonded warehouse shall be consigned to the proprietor of such warehouse in care of the customs officer in charge of the warehouse.

(72 Stat. 1362, 1380; 26 U.S.C. 5214, 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71725, Dec. 11, 1979]

§ 252.244a Shipment to a customs bonded warehouse.

Distilled spirits and wine withdrawn for shipment to a customs bonded warehouse shall be consigned in care of the customs officer in charge of the warehouse.

(Sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066); sec. 2, Pub. L. 96–601, 94 Stat. 3495 (26 U.S.C. 5362))

[T.D. ATF–88, 46 FR 39816, Aug. 5, 1981]

§ 252.245 Shipment to foreign-trade zone.

Where distilled spirits (including specially denatured spirits), wines, or beer, are transferred to a foreign-trade zone for exportation or for storage pending exportation, the shipment shall be consigned to the Zone Operator in care of the customs officer in charge of the zone.

(48 Stat. 999, as amended, 72 Stat. 1362, 1380; 19 U.S.C. 81c, 26 U.S.C. 5214, 5362)

§ 252.246 Delivery for shipment.

The proprietor or exporter may deliver the shipment directly to the consignees designated in §§ 252.241 through 252.245, or he may deliver it to a carrier for transportation and delivery to such consignees, or, when the exportation is to a contiguous foreign country, to the foreign consignee.

(72 Stat. 1334, 1335, 1336, as amended, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[T.D. 7002, 34 FR 1599, Feb. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.247 Change in consignee.

Where a change of consignee is desired after the liquors (including specially denatured spirits) have been removed from the shipping premises, the exporter shall notify the appropriate officer to whom the shipment is required by §§ 252.241–252.245 to be consigned or in whose care it is required to be shipped, and forward a copy of such notification to the appropriate regional director (compliance). Such notice shall identify the withdrawal or claim form, as the case may be, covering the shipment.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

BILLS OF LADING

§ 252.250 Bills of lading required.

A copy of the export bill of lading covering transportation from the port of export to the foreign destination, or a copy of the through bill of lading to the foreign destination, if so shipped, covering the acceptance of the shipment by a carrier for such transportation, shall be obtained and filed by the claimant or exporter with the regional director (compliance) with whom the application, notice, or notice and claim is filed. Where the shipment consists of distilled spirits for deposit in a customs bonded warehouse, or distilled spirits or wines, for deposit in a foreign-trade zone, with benefit of drawback, and the principal has filed bond, Form 2738, a copy of the transportation bill of lading covering the shipment shall be obtained and filed by the claimant or exporter with the regional director (compliance) with whom the notice and claim is filed: *Provided,* That such transportation bill of lading will not be required when delivery is made directly to the foreign-trade zone or the customs bonded warehouse by the shipper. Bills of lading shall be signed by the carrier or by an agent of the carrier and shall contain the following minimum information:

(a) As to spirits specially denatured spirits, and wines:

(1) The name of the exporter (if different from the shipper),

(2) The name and address of the consignee (foreign consignee in case of export or through bill of lading),

(3) The number of packages or cases,

(4) The serial number of the ATF Form 5100.11, 5110.30, or 1582–A, as the case may be, and

(5) The total quantity in wine gallons or liters,

(b) As to beer:

(1) The name of the shipper,

(2) The name and address of the consignee (foreign consignee in case of export or through bill of lading), and

(3) The number and size of containers.

Where a copy of an export bill of lading or a copy of the through bill of lading is required and is not obtainable, a certificate given by an agent of such carrier, as prescribed in § 252.253, may be procured and transmitted by the claimant or exporter to the regional director (compliance) with whom the application, notice, or notice and claim is filed.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, 1335, 1336, as amended, 1362, 1380, (26 U.S.C. 5053, 5055, 5062, 5214, 5362); sec. 3(a), Pub. L. 91–659, 84 Stat. 1965 (26 U.S.C. 5066))

[T.D. 7002, 34 FR 1599, Feb. 1, 1969, as amended by 36 FR 8583, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 252.250, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 252.251 Railway express receipts.

Where the exportation is to a contiguous foreign country and the shipment is by railway express, a receipt issued by the railway express agency may be accepted in lieu of an export bill of lading if the receipt furnishes all of the information required in an export bill of lading.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 252.252 Air express or freight bills of lading.

Where the exportation is made by air express or air freight, a bill of lading issued by the conveying airline is considered for the purpose of this part to be an export bill of lading if it otherwise conforms to the requirements of § 252.250.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

§ 252.253 Certificate by export carrier.

A certificate, executed under the penalties of perjury, by an agent or representative of the export carrier, showing actual exportation of the liquors (including specially denatured spirits) may be furnished by an exporter as evidence of exportation. The certificate shall contain a description of the shipment, including the serial number of the withdrawal form, or the claim and entry form, as the case may be, the name of the exporter, the name of the consignee, the date received, the place where received by such carrier, and the name of the carrier from which received.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

Subpart N—Proceedings at Ports of Export

§ 252.261 Notice to district director of customs.

On arrival at the port of exportation, of distilled spirits (including specially denatured spirits), wines, or beer, withdrawn or shipped for exportation or for use on vessels or aircraft, the exporter or his agent shall immediately notify the director of the port. At the same time, or prior thereto, the exporter or his agent shall file with the director two copies of the application, claim, or notice, ATF Form 5100.11, 5110.30, 1582–A, 1582–B, or 1689, as the case may be, covering the shipment: *Provided*, That where the shipment is for direct exportation, such forms shall be filed at least six hours prior to lading.

(46 Stat. 690, as amended, 72 Stat. 1334, 1335, 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 252.261, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 252.262 Delay in lading at port.

If, on arrival of a shipment withdrawn for export without payment of tax or free of tax, the exporting vessel is not prepared to receive the shipment, the district director of customs may permit such shipment to remain in possession of a carrier for a period

not exceeding 30 days. Storage elsewhere for a like cause, and not exceeding the same period, may be approved by the district director of customs. In the event of further delay, the facts shall be reported to the regional director (compliance) of the region from which the shipment was made, who shall issue appropriate instructions concerning the disposition of the shipment.

(72 Stat. 1334, 1362, 1380; 26 U.S.C. 5053, 5214, 5362)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.263 [Reserved]

§ 252.264 Lading for exportation.

On receipt of the notifcation required in § 252.261, the district director of customs shall deliver both copies of the application, claim, or notice, ATF Form 5100.11, 5110.30, 1582–A, 1582–B, or 1689, as the case may be, covering the shipment, together with any forms which may be attached thereto, to a customs officer for inspection and supervision of lading. Such shipment shall be subject to the same requirements for inspection and supervision of lading at the port of exportation as may be required by Customs Regulations (19 CFR chapter I) in the case of similar shipments of imported merchandise to be exported in customs bond. When an inspection of the shipment is made before it is laden on board the exporting carrier and such inspection discloses any discrepancy, the customs officer shall make note of the nature and extent of the discrepancy on each copy of the application, claim, or notice, ATF Form 5110.11, 5110.30, 1582–A, 1582–B, or 1689, as the case may be, and where the discrepancy involves one or more packages of distilled spirits or wine, he shall prepare customs Form 6001 in accordance with the instructions in § 252.291, and attach the original and copy of customs Form 6001 to the original and copy of the appropriate transaction form. The forms shall be disposed of according to the instructions thereon.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1334, as amended, 1335, as amended, 1336, as amended, 1362, as amended, 1380, as amended (26 U.S.C. 5053, 5055, 5062, 5214, 5362))

[T.D. ATF–198, 50 FR 8562, Mar. 1, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 252.264, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 252.265 Evidence of fraud.

If the customs inspection discloses evidence of fraud, the customs officer shall detain the merchandise and notify the district director of customs who shall report the facts forthwith to the regional director (compliance) within whose region the port of export is located. The regional director (compliance) shall make investigation and take such action as the facts may warrant. Where the detained merchandise has been withdrawn for transfer and deposit in a manufacturing bonded warehouse, the merchandise shall be deemed not to have been deposited in said warehouse, and the designated officer shall hold in abeyance the processing of ATF Form 5100.11 until advised by the district director of customs that the detained merchandise may be entered for deposit. Where the detained merchandise has been withdrawn or entered for deposit in a foreign-trade zone or a customs bonded warehouse, it shall be deemed to not have been deposited in the zone or the warehouse and the customs officer shall hold in abeyance the processing of the application, notice, or claim, ATF Form 5100.11, 5110.30, 1582–A, 1582–B, or 1689, as the case may be, and Zone Form D, until advised by the district director of customs that the detained merchandise may be entered for deposit.

(48 Stat. 999, as amended, 72 Stat. 1334, 1335, 1336, 1362, 1380, 84 Stat. 1965; 19 U.S.C. 81c, 26 U.S.C. 5053, 5055, 5062, 5214, 5362, 5066)

[T.D. 7112, 36 FR 8583, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71725, Dec. 11, 1979]

§ 252.266 Release of detained merchandise.

When any merchandise has been detained under the provisions of § 252.265, the district director of customs shall not release such merchandise until he is advised so to do by the regional director (compliance).

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.267 Exportation from interior port.

Where a shipment made under this part is to be exported to a contiguous foreign country through a frontier port, and it is desired to avoid the delay of customs inspection at such port, the shipment may, subject to approval of the district director of customs, be entered for exportation at an interior customs port. Subject to such approval, the inspection and supervision of lading, and the affixing of customs seals, shall be done by a customs officer in accordance with the provisions of U.S. Customs regulations (19 CFR chapter I). On completion of the lading, the seals shall be affixed and the customs officer shall execute the certificate of lading on both copies of the application, notice, or claim, ATF Form 5100.11, 5110.30, 1582–A, 1582–B or 1689, as the case may be, and forward them, with attachments (if any), to the district director of customs at the interior port of entry. The district director of customs shall forward both copies of the form, with attachments (if any), to the customs officer at the frontier port. When the customs officer at the frontier port is satisfied that the shipment as described on the appropriate form has been exported, he shall execute his certificate on both copies of the form and return them with attachments (if any), to the district director of customs at the interior port of entry.

[T.D. ATF–198, 50 FR 8563, Mar. 1, 1985]

§ 252.268 Receipt for liquors for use on vessels or aircraft.

Where liquors are withdrawn or removed for use on vessels or aircraft, the exporter shall procure and forward to the regional director (compliance) with whom the application, notice, or notice and claim is filed, a receipt executed under the penalties of perjury by the master or other authorized officer of the vessel, steamship company, or airline, as the case may be. The receipt shall give the number of containers, the serial numbers of the containers (if any), and the quantity received, and shall show that the liquors are in customs custody and have been or will be laden on board the vessel or aircraft, that they will be lawfully used on board the vessel or aircraft, and that no portion of the shipment has been or will be unladen in the United States or any of its territories or possessions. A receipt is not required, in the case of any shipment for use on vessels, when the liquors are laden on vessels of war, or, in cases other than supplies for vessels employed in the fisheries, where the amount of the tax on the liquors does not exceed $200. In the case of supplies for vessels employed in the fisheries, compliance with the provisions of § 252.22 is also required.

(46 Stat. 690, as amended, 72 Stat. 1334, 1335, 1336, as amended, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[T.D. 7002, 34 FR 1600, Feb. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.269 Certification by district director of customs.

(a) *Exportation.* When the district director of customs is satisfied that merchandise described on the application, notice, or claim, ATF Form 5100.11, 5110.30, 1582–A, 1582–B, or 1689, as the case may be, has been laden and cleared for export, he shall execute his certificate of lading and clearance on both copies of the form.

(b) *Distilled spirits and wines as supplies on vessels and aircraft.* When the district director of customs is satisfied that the distilled spirits and wines described on ATF Form 5100.11, 5110.30, or 1582–A, as the case may be, have been duly laden for use on vessels and aircraft, and that proper accounting for such spirits or wines has been submitted to him as required by this part, he shall execute his certificate of lading for use on both copies of the form.

(c) *Disposition of forms.* After executing his certificate, the district director of customs shall forward the original of ATF Form 5100.11, 5110.30, 1582–A, 1582–B, or 1689, as the case may be, with attachments (if any), to the regional director (compliance) designated on the form, and retain the remaining copy, with any attached forms, for his files.

(46 Stat. 690, as amended, 72 Stat. 1334, 1335, 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 252.269, see the List of CFR Sections Affected in the Finding Aids section of this volume.

RECEIPT BY ARMED SERVICES

§ 252.275 Receipt by armed services.

When liquors which have been withdrawn or removed for export to the armed services of the United States are received at the supply base or other designated place of delivery, the officer to whom consigned, or other authorized supply officer, at the supply base or other place of delivery shall enter the quantity of liquors received on both copies of the application, notice, or claim, ATF Form 5100.11, 5110.30, 1582–A, 1582–B, or 1689, as the case may be. After signing the form, he shall forward the original with attachments, if any, to the regional director (compliance) designated on the form, and retain the other copy for his records.

(72 Stat. 1334, 1335, 1336, 1362, 1380; 26 U.S.C. 5053, 5055, 5062, 5214, 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71726, Dec. 11, 1979]

LADING FOR USE ON AIRCRAFT

§ 252.280 Distilled spirits and wines.

When an airline desires to withdraw distilled spirits or wines from its stock being held at the airport under customs custody, for use on a particular aircraft, a requisition in triplicate shall be prepared for presentation to the customs officer. The requisition shall show the flight number, the registry number of the aircraft on which the distilled spirits or wines are to be laden, the country for which the aircraft is to be cleared, the date of departure of the aircraft, and the brand, kind, and quantity of distilled spirits or wines. Where the distilled spirits or wines are contained in kits which have been previously prepared while under customs custody, the kit number shall also be shown on the requisition. Where the kits are not prepared and the distilled spirits or wines are withdrawn for direct lading on aircraft, the requisition shall be serially numbered in lieu of the insertion of the kit number. When the distilled spirits or wines are withdrawn and laden aboard the aircraft, the lading shall be verified by the customs officer by an appropriate stamp or notation on the requisition. One copy of the requisition shall be retained by the customs officer who certifies to the lading for attachment to the outgoing manifest. The other two copies shall be delivered to the airline which shall retain both copies until the return of the flight. In case any of the distilled spirits or wines are removed from the aircraft on its return, they shall be returned to customs custody, appropriate notation made on both copies of the requisition retained by the airline and one copy shall be delivered to the customs officer for attachment to the incoming manifest. The remaining copy shall be retained by the airline.

(Approved by the Office of Management and Budget under control number 1512–0384)

(46 Stat. 690, as amended, 72 Stat. 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5062, 5214, 5362)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–172, 49 FR 14943, Apr. 16, 1984]

§ 252.281 Certificate of use for distilled spirits and wines.

When all of the distilled spirits or wines represented by a single application, notice, or claim, ATF Form 5100.11, 5110.30, or 1582–A, as the case may be, have been withdrawn from customs custody and laden and used on aircraft, the airline shall prepare a certificate of use on which are itemized all the requisitions pertaining to such distilled spirits or wines. The certificate shall be executed under the penalties of perjury by an officer of the

airline and shall show the name of the exporter, the entry number, the brand and kind of distilled spirits or wines, and the number of bottles to be accounted for; and, as to each requisition, the requisition (or kit) number, the date laden, the registry number of the aircraft, the country for which the aircraft was cleared, and the number of bottles used. When completed, the certificate shall be presented to the customs officer at the airport who shall then execute his certificate on both copies of the appropriate application, notice, or claim, ATF Form 5100.11, 5110.30, or 1582–A, as the case may be, noting thereon any exception, such as shortages or breakage. The customs officer shall then attach the certificate of use to the copy of the appropriate form and forward both copies of the form to the district director of customs.

(46 Stat. 690, as amended, 72 Stat. 1336, 1362, 1380; 19 U.S.C. 1309, 26 U.S.C. 5062, 5214, 5362)

[25 FR 5734, June 23, 1960, as amended by T.D. 7006, 34 FR 2251, Feb. 15, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 252.281, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 252.282 Beer.

When beer has been laden on board the aircraft for use as supplies, the customs officer shall execute his certificate on both copies of the Form 1582–B or Form 1689, as the case may be, forward the original to the regional director (compliance) designated on the form, and retain the copy for his files.

(46 Stat. 690, as amended, 72 Stat. 1334, 1335; 19 U.S.C. 1309, 26 U.S.C. 5053, 5055)

RECEIPT IN MANUFACTURING BONDED WAREHOUSE

§ 252.285 Receipt in manufacturing bonded warehouse.

On receipt of the distilled spirits or wines, the related ATF Form 5100.11 (with any attachments), such inspection as is necessary will be made to establish that the shipment corresponds with its description on ATF Form 5100.11 (and any attachments) and customs Form 6001 will be prepared according to § 252.291. Any discrepancy disclosed by the inspection and gauge will be noted on each copy of ATF Form 5100.11. When the shipment corresponds with the description of ATF Form 5100.11 (and any attachments), the certificate of deposit will be executed on both copies of ATF Form 5100.11 and the original of ATF Form 5100.11 (and any attachments) and the original of his customs Form 6001 will be forwarded to the regional director (compliance). The remaining copies shall be kept on file.

(Sec. 201. Pub. L. 85–859, 72 Stat. 1362, as amended, 1380, as amended (26 U.S.C. 5214, 5362))

[T.D. ATF–198, 50 FR 8563, Mar. 1, 1985]

RECEIPT IN CUSTOMS BONDED WAREHOUSE

§ 252.286 Receipt in customs bonded warehouse.

On receipt of the distilled spirits or wine and the related ATF Form 5100.11 or 5110.30 as the case may be, the customs officer in charge of the customs bonded warehouse shall make such inspection as is necessary to establish to his satisfaction that the shipment corresponds with the description thereof on the appropriate form. The customs officer shall note on each copy of the Form 5100.11 or 5110.30, as the case may be, any deficiency in quantity or discrepancy between the merchandise inspected and that described on the form. Where the inspection discloses no loss, or where a loss is disclosed and there is no evidence to indicate fraud, the officer shall execute his certificate of deposit on both copies of the form, forward the original to the regional regulatory administrator, and retain the remaining copy for his files.

(Sec. 3(a), Pub. L. 91–659, 84 Stat. 1965 (26 U.S.C. 5066); sec. 2, Pub. L. 96–601, 94 Stat. 3495 (26 U.S.C. 5362))

[T.D. ATF–88, 46 FR 39816, Aug. 5, 1981]

RECEIPT IN FOREIGN-TRADE ZONE

§ 252.290 Receipt in foreign trade zone.

On receipt at the zone, the shipment shall be inspected by the customs officer in charge of the zone who shall determine if the shipment agrees with

the description thereof on the application, notice, or claim, ATF Form 5100.11, 5110.30, 1582–A, 1582–B, or 1689, as the case may be. If the customs officer regauges spirits or wine in the course of his inspection, he shall prepare customs Form 6001 according to § 252.291. The customs officer shall note on both copies of the ATF Form 5100.11, 5110.30, 1582–A, 1582–B, or 1689, as the case may be any deficiency in quantity or discrepancy between the merchandise inspected or gauged and that described in the form. Where the inspection or gauge discloses no loss, or where a loss is disclosed by such inspection or gauge and there is no evidence to indicate fraud, the officer shall execute his certificate on both copies of the form covering the deposit, and forward to the regional director (compliance):

(a) Original of the deposit from (with any attachments); and

(b) Original of the officer's customs Form 6001, if any. The remaining copy of the deposit form (with any attachments), and the copy of any customs Form 6001, shall be retained by the customs officer for his files.

(48 Stat. 999, as amended (19 U.S.C. 81c); Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended, 1362, as amended, 1380, as amended (26 U.S.C. 5062, 5214, 5362))

[T.D. ATF–198, 50 FR 8563, Mar. 1, 1985]

CUSTOMS GAUGE

§ 252.291 Customs Form 6001.

When spirits or wines are gauged as required in §§ 252.264, 252.285, or 252.290, the customs officer shall prepare in duplicate customs Form 6001 to show:

(a) Date;

(b) Name of exporter;

(c) Serial number and designation of the related transaction form;

(d) Kind of liquor (show whether alcohol, whiskey, brandy, rum, gin, vodka, wine, etc.);

(e) Name and registry number of producer;

(f) If gauged under § 252.264, the location of the port;

(g) If gauged under § 252.285, the location and number of the manufacturing bonded warehouse;

(h) If gauged under 252.290, the location and number of the foreign-trade zone;

(i) Kind and serial numbers or lot identification numbers of containers; and

(j) For each container:

(1) Proof of spirits, or percent of alcohol by volume in wine;

(2) Proof gallons, if spirits;

(3) Wine gallons, if wine; and

(4) Variation from the last gauge (proof, percent of alcohol by volume or wine gallons).

[T.D. ATF–198, 50 FR 8563, Mar. 1, 1985]

ALTERNATE PROCEDURES

§ 252.295 Exception for export of beer.

The provisions of this subpart do not apply in the case of beer when the exporter or claimant obtains proof of exportation other than certification by the military or customs certification of lading and use under § 252.43. Brewers and exporters shall prepare Forms 1582–B or 1689, as applicable, to cover exportation of beer, but customs or military certification on them is not required when other proof of exportation is used.

[LT.D.ATF–224, 51 FR 7700, Mar. 5, 1986]

Subpart O—Losses

DISTILLED SPIRITS

§ 252.301 Loss of distilled spirits in transit.

The tax on distilled spirits withdrawn without payment of tax under this part and which are lost during transportation from the bonded premises of the distilled spirits plant from which withdrawn to (a) the port of export, (b) the manufacturing bonded warehouse, (c) the vessel or aircraft, (d) the foreign-trade zone, or (e) the customs bonded warehouse, as the case may be, may be remitted if evidence satisfactory to the regional director (compliance) establishes that such distilled spirits have not been unlawfully diverted, or lost by theft with connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier or the employees or agents of any of

them: *Provided*, That such remission in the case of loss of distilled spirits by theft shall only be allowed to the extent that the claimant is not indemnified against or recompensed in respect of the tax for such loss.

(72 Stat. 1323, as amended, 84 Stat. 1965; 26 U.S.C. 5008, 5066)

[T.D. 7112, 36 FR 8583, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.302 Notice to exporter.

If, on examination of the ATF Form 5100.11 (and attached gauge reports, if any) received from the officer required to certify the same under the provisions of subpart N of this part, the regional director (compliance) is of the opinion that the distilled spirits reported lost had been unlawfully diverted, or had been lost by theft, he will advise the exporter by letter:

(a) Of the identity of the containers;

(b) Of the amount of the loss;

(c) Of the circumstances indicating diversion or theft;

(d) That allowance of the loss will be subject to filing (1) proof that such loss is allowable under the provisions of 26 U.S.C. 5008 (a) and (f), and (2) claim for remission of the tax on the spirits so lost; and

(e) That action in respect of the loss will be withheld for a period of not more than 30 days to afford an opportunity to file such proof and claim.

In any case in which distilled spirits are lost during transportation, as described in § 252.301, whether by theft or otherwise, the regional director (compliance) may require the exporter to file a claim for relief in accordance with § 252.303. When circumstances may warrant, extensions of additional time for submission of the proof and claim may be granted by the regional director (compliance). Where such proof and claim are not filed within the 30-day period, or such extensions as the regional director (compliance) may grant, the tax on the distilled spirits diverted or lost will be assessed, or liability asserted against the bond covering the shipment, as the case may be.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1323, as amended (26 U.S.C. 5008))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55854, Sept. 28, 1979; T.D. ATF–62, 44 FR 71726, Dec. 11, 1979]

§ 252.303 Filing of claims.

Claims, for remission of tax on the distilled spirits under § 252.301, shall be filed on Form 2635, in duplicate, with the regional director (compliance), and shall set forth the following:

(a) Name, address, and capacity of the claimant;

(b) Identification (including serial numbers, if any) and location of the container or containers from which the spirits were lost;

(c) Quantity of spirits lost from each container, and the total quantity of spirits covered by the claim;

(d) Total amount of tax for which the claim is filed;

(e) The date, penal sum, and form number of the bond under which withdrawal and shipment were made;

(f) Name, number, and address of the distilled spirits plant from which withdrawn without payment of tax;

(g) Date of the loss (or, if not known, date of discovery), the cause thereof, and all the facts relative thereto;

(h) Name of the carrier;

(i) If lost by theft, facts establishing that the loss did not occur as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them;

(j) In the case of a loss by theft, whether the claimant is indemnified or recompensed in respect of the tax on the spirits lost, and, if so, the amount and nature of such indemnity or recompense and the actual value of the spirits, less the tax.

The claim shall be executed by the exporter or his authorized agent under the penalties of perjury, and shall be supported (whenever possible) by affidavits of persons having personal

knowledge of the loss. The regional director (compliance) may require such further evidence as he deems necessary.

(68A Stat. 749, 72 Stat. 1323; 26 U.S.C. 6065, 5008)

§ 252.304 Action on claim.

The regional director (compliance) will allow or disallow claims filed under § 252.303 in accordance with existing law and regulations. If the regional director (compliance) finds that there has been a diversion or theft of the distilled spirits as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them, the tax on the distilled spirits diverted or lost by theft will be assessed, or liability asserted against the bond covering the shipment, as the case may be.

(68A Stat. 867, 72 Stat. 1323; 26 U.S.C. 7302, 5008)

SPECIALLY DENATURED SPIRITS

§ 252.310 Loss of specially denatured spirits in transit.

Losses of specially denatured spirits withdrawn free of tax under this part during transportation from the bonded premises of the distilled spirits plant from which withdrawn to (a) the port of export, or (b) the foreign-trade zone, as the case may be, may be allowed if evidence satisfactory to the regional director (compliance) establishes that such specially denatured spirits have not been unlawfully diverted, or lost by theft as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier, or the employees or agents of any of them. The giving of notice to the exporter, filing claims for allowance of loss, and action on the claims shall be, insofar as applicable, in accordance with the procedure prescribed in §§ 252.302 through 252.304.

WINE

§ 252.315 Loss of wine in transit.

The tax on wine withdrawn without payment of tax under this part and which is lost during transportation from the bonded wine cellar from which withdrawn to (a) the port of export, (b) the vessel or aircraft, (c) the foreign-trade zone, (d) the manufacturing bonded warehouse, or (e) the customs bonded warehouse, as the case may be, may be remitted if evidence satisfactory to the regional director (compliance) establishes that such wine has not been unlawfully diverted, or lost by theft with connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier or the employees or agents of any of them. However, the remission of tax on wine withdrawn without payment of tax under this part and which is lost while in transit may be allowed only to the extent that the claimant is not indemnified or recompensed for such tax.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, 1382 (26 U.S.C. 5370, 5371))

[T.D. ATF–88, 46 FR 39816, Aug. 5, 1981]

§ 252.316 Notice to exporter.

If, on examination of the ATF Form 5100.11 received from the officer required to certify the same under the provisions of subpart N, the regional director (compliance) is of the opinion that wine reported lost had been unlawfully diverted, or had been lost by theft, he will advise the exporter by letter:

(a) Of the identity of the containers;

(b) Of the amount of the loss;

(c) Of the circumstances indicating diversion or theft;

(d) That allowance of the loss will be subject to filing (1) proof that such loss is allowable under the provisions of 26 U.S.C. 5370, and (2) claim for remission of the tax on the wine so lost; and

(e) That action in respect of the loss will be withheld for a period of not more than 30 days to afford an opportunity to file such proof and claim.

In any case in which wines are lost during transportation, as described in § 252.315, whether by theft or otherwise, the regional director (compliance) may require the exporter to file a claim for relief in accordance with § 252.317. Where circumstances may warrant, extensions of additional time for submission of the proof and claim may be

granted by the regional director (compliance). Where such proof and claim are not filed within the 30-day period, or such extensions as the regional director (compliance) may grant, the tax on the wine diverted or lost will be assessed, or liability asserted against the bond covering the shipment, as the case may be.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1381, as amended (26 U.S.C. 5370))

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55854, Sept. 28, 1979; T.D. ATF–62, 44 FR 71726, Dec. 11, 1979]

§ 252.317 Filing of claims.

Claims, for remission of tax on the wine under § 252.315, shall be filed on Form 2635, in duplicate, with the regional director (compliance), and shall set forth the following:

(a) The name, address, and capacity of the claimant;

(b) The name, registry number, and location of the bonded wine cellar from which the wine was withdrawn;

(c) The date, penal sum, and form number of the bond under which withdrawal and shipment was made;

(d) Identification (including serial numbers, if any) and location of the container or containers from which the wine was lost;

(e) The quantity of wine lost from each container, and the total quantity of wine covered by the claim;

(f) The total amount of tax for which the claim is filed;

(g) The date of the loss (or, if not known, date of discovery), the cause thereof, and all the facts relative thereto;

(h) Name of the carrier;

(i) If lost by theft, the facts establishing that the loss did not occur as the result of any connivance, collusion, fraud, or negligence on the part of the exporter, owner, consignor, consignee, bailee, or carrier, or the agents or employees of any of them; and

(j) Whether the claimant is indemnified or recompensed in respect of the tax on the wine lost, and, if so, the amount and nature of such indemnity or recompense and the actual value of the wine, less the tax.

The claim shall be signed by the exporter or his authorized agent under the penalties of perjury, and shall be supported (whenever possible) by affidavits of persons having personal knowledge of the loss. The regional director (compliance) may require such further evidence as he deems necessary.

(68A Stat. 749, 72 Stat. 1381, 1382; 26 U.S.C. 6065, 5370, 5371)

§ 252.318 Action on claim.

Action on claims filed under § 252.317 shall be, insofar as applicable, in accordance with the procedure prescribed in § 252.304.

(72 Stat. 1381; 26 U.S.C. 5370)

BEER AND BEER CONCENTRATE

§ 252.320 Loss of beer and beer concentrate in transit.

(a) *Losses not requiring inspection.* When, on receipt by the regional director (compliance) of Form 1689 from the officer required to certify it under the provisions of subpart N of this part, it is disclosed that there has been a loss of beer or beer concentrate after removal from the brewery without payment of tax while in transit to the port of export, the vessel or aircraft, or the foreign-trade zone, and the report of the certifying officer shows that the loss was a normal one caused by casualty, leakage, or spillage, the regional director (compliance) will allow the loss.

(b) *Losses requiring inspection.* When it is disclosed that the loss of beer or beer concentrate is large or unusual, the regional director (compliance) will conduct an investigation of the loss. When it is disclosed that the loss in transit has occurred by reason of casualty, leakage or spillage, credit for the loss will be allowed. When the investigation discloses evidence indicating that the loss resulted from theft or from fraud, the regional director (compliance) will afford the brewer opportunity to submit a written explanation with respect to the causes of the loss before taking further action.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended, 1334, as amended, 1335, as amended (26 U.S.C. 5051, 5053, 5056))

[T.D. ATF–224, 51 FR 7700, Mar. 5, 1986]

§ 252.321 Tax assessed on loss not accounted for.

The regional director (compliance) shall make demand on the brewer for an amount equal to the tax which would be due on removal for consumption or sale, including penalties and interest, on; (a) The quantity of beer not satisfactorily accounted for, or (b) the quantity of beer used to produce the quantity of beer concentrate which is not satisfactorily accounted for.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1333, as amended, 1334, as amended (26 U.S.C. 5051, 5053))

[T.D. ATF–224, 51 FR 7700, Mar. 5, 1986]

Subpart P—Action on Claims

§ 252.331 Claims supported by bond, Form 2738.

On receipt of a claim for drawback of tax on distilled spirits or wines on which the tax has been determined, and of the evidence of exportation required by § 252.40, or of lading for use on vessels or aircraft required by § 252.41, or of deposit in a foreign-trade zone or of deposit of distilled spirits in a customs bonded warehouse, as required by § 252.42, as the case may be, the regional director (compliance) shall, if a good and sufficient bond has been filed as provided in § 252.65, and the notice of removal has been properly completed, allow the claim in accordance with the rate of drawback established in respect of the particular spirits or wines on which claim is based and charge the amount allowed against the bond. On receipt of the original of the claim properly executed by the appropriate customs official or armed services officer, as required by this part, and, in the case of claims on Form 1582–A, the certificate of tax determination, Form 2605, the regional director (compliance) shall give appropriate credit to the bond.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1336, as amended, 84 Stat. 1965; 19 U.S.C. 1309, 81c, 26 U.S.C. 5062, 5066)

[T.D. 7112, 36 FR 8583, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 252.332 Claim against bond.

When any claim supported by a bond has been allowed and changed against the bond under the provisions of § 252.331, and the original of the claim properly executed by the appropriate customs official or armed services officer as required by this part is not received by the regional director (compliance) within three months of the date the claim was allowed, or where the distilled spirits or wines are not otherwise accounted for in accordance with this part, the regional director (compliance) shall advise the claimant of the facts, and notify him that unless the original of the claim, properly executed as required by this part, is received by the regional director (compliance) within 30 days, a written demand will be made upon the principal and the surety for repayment to the United States of the full amount of the drawback, plus interest at the rate prescribed by law from the time the drawback was paid. However, the regional director (compliance) may, if in his opinion the circumstances warrant it, grant the claimant any additional extension of time beyond 30 days as may be necessary to accomplish the required filing.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336 as amended, (26 U.S.C. 5062))

[T.D. ATF–70, 45 FR 33981, May 21, 1980]

§ 252.333 Where no bond is filed.

Where a claim for drawback of tax on distilled spirits or wines on ATF Form 5110.30 or 1582–A, is not supported by a bond on Form 2738, and in all cases where claim for drawback of tax on beer is made on Form 1582–B, the regional director (compliance) shall, on receipt by him of the original of the claim properly executed by the appropriate customs official or armed services officer, as required by this part, examine the claim to determine that it has been properly completed. He shall then, on receipt of the evidence of exportation required by § 252.40, or of lading for use on vessels or aircraft required by § 252.41, or of deposit in a foreign-trade zone or a customs bonded warehouse as required by § 252.42, as the case may be, and, in the case of claims on Form 1582–A, the certificate of tax determination, Form 2605, allow the claim in the amount of the tax paid on the beer or the tax paid or determined

on the distilled spirits or wines on which the claim is based and which were exported, laden as supplies on vessels or aircraft, or deposited in a foreign-trade zone or a customs bonded warehouse, as the case may be.

(46 Stat. 690, 691, as amended, 48 Stat. 999, as amended, 72 Stat. 1335, 1336, 84 Stat. 1965; 19 U.S.C. 1309, 1311, 81c, 26 U.S.C. 5055, 5062, 5066)

[T.D. 7112, 36 FR 8584, May 8, 1971. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71726, Dec. 11, 1979]

§ 252.334 Credit allowance.

Where the claimant has indicated that he desires the amount of drawback allowed to be credited against internal revenue taxes determined by him but not yet paid, the regional director (compliance) shall prepare ATF Form 5620.2, in triplicate, and forward the original to the claimant. Where the credit relates to tax determined distilled spirits, procedure for taking the credit shall be in accordance with the procedures set forth in part 19 of this chapter. Where the credit relates to tax-determined wines, procedure for taking the credit shall be in accordance with the procedures set forth in part 240 of this chapter. No credit may be given for drawback of the tax on beer nor may one class of tax be credited to another.

(72 Stat. 1336; 26 U.S.C. 5062)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71726, Dec. 11, 1979]

§ 252.335 Disallowance of claim.

If a claim for drawback of tax is not allowed in full, the regional director (compliance) shall notify the claimant in writing of the reasons for any disallowance.

(46 Stat. 690, as amended, 48 Stat. 999, as amended, 72 Stat. 1335, 1336; 19 U.S.C. 1309, 81c, 26 U.S.C. 5055, 5062)

[25 FR 5734, June 23, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–62, 44 FR 71726, Dec. 11, 1979]

PART 270—MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Subpart A—Scope of Regulations

Sec.
270.1 Manufacture of tobacco products and cigarette papers and tubes.
270.2 Territorial extent.

Subpart B—Definitions

270.11 Meaning of terms.

Subpart C—Taxes

270.21 Cigar tax rates.
270.22 Determination of sale price of large cigars.
270.23 Cigarette tax rates.
270.24 Classification of cigarettes.
270.25 Smokeless tobacco tax rates.
270.25a Pipe tobacco and roll-your-own tobacco tax rates.
270.26 Persons liable for tax.
270.27 Assessment.

Subpart Ca—Special (Occupational) Taxes

270.31 Liability for special tax.
270.32 Rates of special tax.
270.33 Special tax returns.
270.34 Employer identification number.
270.35 Issuance, distribution, and examination of special tax stamps.
270.36 Changes in special tax stamps.

Subpart D—Administrative Provisions

270.41 Forms prescribed.
270.42 Authority of ATF officers to enter premises.
270.43 Interference with administration.
270.44 Disposal of forfeited, condemned, and abandoned tobacco products.
270.45 Alternate methods or procedures.
270.46 Emergency variations from requirements.
270.47 Other businesses within factory.
270.48 Penalties and forfeitures.
270.49 Delegations of the Director.

Subpart E—Qualification Requirements for Manufacturers

270.61 Qualification—General.
270.61a Transitional rule.
270.62 Application for permit.
270.63 Corporate documents.
270.64 Articles of partnership or association.
270.65 Trade name certificate.
270.66 Bond.
270.67 Blanket bond.

270.68 Power of attorney.
270.69 Factory premises.
270.70 Separation of and access to factory.
270.71 Factories established prior to October 1, 1961.
270.72 Use of factory premises.
270.73 Additional information.
270.74 Investigation of applicant.
270.75 Issuance of permit.
270.76 Retention of permit and supporting documents.

Subpart F—Changes After Original Qualification of Manufacturers

CHANGES IN NAME

270.91 Change in individual name.
270.92 Change in trade name.
270.93 Change in corporate name.

CHANGES IN OWNERSHIP AND CONTROL

270.101 Fiduciary successor.
270.102 Transfer of ownership.
270.103 Change in officers, directors, or stockholders of a corporation.
270.104 Change in control of a corporation.

CHANGES IN LOCATION OF FACTORY

270.111 Change in location within same region.
270.112 Change in address.
270.113 Change in location to another region.
270.114 Extension or curtailment of factory.

Subpart G—Bonds and Extensions of Coverage of Bonds

270.131 Corporate surety.
270.132 Deposit of securities in lieu of corporate surety.
270.133 Amount of individual bond.
270.134 Amount of blanket bond.
270.135 Strengthening bond.
270.136 Superseding bond.
270.137 Extension of coverage of bond.
270.138 Approval of bond and extension of coverage of bond.
270.139 Termination of bond.
270.140 Release of pledged securities.

Subpart H—Operations by Manufacturers

DETERMINATION AND PAYMENT OF TAXES ON TOBACCO PRODUCTS

270.161 Determination of tax and method of payment.
270.162 Semimonthly tax return.
270.163 Semimonthly tax return periods.
270.164 Special rule for taxes due for the month of September (effective after December 31, 1994).
270.165 Times for filing semimonthly return.
270.165a Payment of tax by electronic fund transfer.
270.166 Default, prepayment of tax required.
270.167 Prepayment tax return.
270.168 Remittance with return.
270.169 Employer identification number.
270.170 Application for employer identification number.
270.171 Execution and filing of Form SS–4.

RECORDS

270.181 General.
270.182 Record of tobacco.
270.183 Record of tobacco products.
270.184 Record of removals subject to tax.
270.185 Retention of records.
270.186 Record in support of transfers in bond.
270.187 Record of sales prices of large cigars.

INVENTORIES AND REPORTS

270.201 Inventories.
270.202 Reports.
270.203 Statistical classification of large cigars.

PACKAGES

270.211 Package.
270.212 Mark.
270.213 Tobacco products labeled for export.
270.214 Notice for cigars.
270.215 Notice for cigarettes.
270.216 Notice for smokeless tobacco.
270.216a Notice for pipe tobacco.
270.216b Notice for roll-your-own tobacco.
270.216c Package use-up rule.
270.217 Repackaging.

EXEMPTION FROM TAXES ON TOBACCO PRODUCTS

270.231 Consumption by employees.
270.232 Experimental purposes.
270.233 Transfer in bond.
270.234 Removal for use of the United States.
270.235 Removal for export purposes.
270.236 Release from customs custody.

OTHER PROVISIONS RELATING TO TOBACCO PRODUCTS

270.251 Emergency storage.
270.252 Reduction of tobacco products to materials.
270.253 Destruction.
270.254 Receipt into factory.
270.255 Shortages and overages in inventory.

Subpart I—Claims by Manufacturers

GENERAL

270.281 Abatement of assessment.
270.282 Allowance of tax.
270.283 Credit or refund of tax.
270.284 Remission of tax liability.
270.285 [Reserved]
270.286 Refund of overpayment.
270.287 Remission of tax liability on shortage.

TOBACCO PRODUCTS LOST OR DESTROYED

270.301 Action by claimant.

TOBACCO PRODUCTS WITHDRAWN FROM THE MARKET

270.311 Action by claimant.
270.312 Action by regional director (compliance).
270.313 Disposition of tobacco products and schedule.

Subpart J—Suspension and Discontinuance of Operations by Manufacturers

270.331 Discontinuance of operations.
270.332 Suspension and revocation of permit.

Subpart K—MANUFACTURE OF CIGARETTE PAPERS AND TUBES

TAXES

Sec.
270.351 Cigarette papers.
270.352 Cigarette tubes.
270.353 Persons liable for tax.
270.354 Determination of tax and method of payment.
270.355 Return of manufacturer.
270.356 Adjustments in the return of manufacturer.
270.357 Payment of tax by electronic fund transfer.
270.358 Assessment.
270.359 Employer identification number.
270.360 Application for employer identification number.
270.361 Execution and filing of Form SS–4.

SPECIAL (OCCUPATIONAL) TAXES

270.371 Liability for special tax.
270.372 Rate of special tax.
270.373 Special tax returns.
270.374 Issuance, distribution, and examination of special tax stamps.
270.375 Changes in special tax stamps.

GENERAL

270.382 Authority of ATF officers to enter premises.
270.383 Interference with administration.
270.384 Disposal of forfeited, condemned, and abandoned cigarette papers and tubes.
270.385 Alternate methods or procedures.
270.386 Emergency variations from requirements.
270.387 Penalties and forfeitures.

QUALIFICATION REQUIREMENTS FOR MANUFACTURERS

Original Qualifications

270.391 Persons required to qualify.
270.392 Bond.
270.393 Power of attorney.
270.394 Notice of approval of bond.

Changes After Original Qualification

270.395 Change in name.
270.396 Change in proprietorship.
270.397 Change in location.

Bonds and Extensions of Coverage of Bonds

270.401 Corporate surety.
270.402 Two or more corporate sureties.
270.403 Deposit of securities in lieu of corporate surety.
270.404 Amount of bond.
270.405 Strengthening bond.
270.406 Superseding bond.
270.407 Extension of coverage of bond.
270.408 Approval of bond and extension of coverage of bond.
270.409 Termination of liability of surety under bond.
270.410 Release of pledged securities.

OPERATIONS BY MANUFACTURERS

Records

270.421 General.

Reports

270.422 General.
270.423 Opening.
270.424 Monthly.
270.425 Special.
270.426 Closing.

Inventories

270.431 General.
270.432 Opening.
270.433 Special.
270.434 Closing.

Document Retention

270.435 General.

Packages

270.441 General.

Miscellaneous Operations

270.451 Transfer in bond.
270.452 Release from customs custody.
270.453 Use of the United States.
270.454 Removal for export purposes.

Permanent Discontinuance of Business

270.461 Discontinuance of operations.

CLAIMS BY MANUFACTURERS

General

270.471 Abatement.
270.472 Allowance.
270.473 Credit or refund.
270.474 Remission.

Lost or Destroyed

270.475 Action by claimant.

Withdrawn From the Market

270.476 Action by claimant.
270.477 Action by regional director (compliance).
270.478 Disposition of cigarette papers and tubes and schedule.

AUTHORITY: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

SOURCE: 26 FR 8174, Aug. 31, 1961, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975; 54 FR 48839, Nov. 27,1989.

Subpart A—Scope of Regulations

§ 270.1 Manufacture of tobacco products and cigarette papers and tubes.

This part contains regulations relating to the manufacture of tobacco products and cigarette papers and tubes; the payment by manufacturers of tobacco products and cigarette papers and tubes of internal revenue taxes imposed by 26 U.S.C. chapter 52; and the qualification of and operations by manufacturers of tobacco products.

[T.D. ATF–384, 61 FR 54085, Oct. 17, 1996]

§ 270.2 Territorial extent.

The provisions of the regulations in this part shall apply in the several States of the United States and the District of Columbia.

Subpart B—Definitions

§ 270.11 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.

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296.

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. The Bureau of Alcohol, Tobacco and Firearms.

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.

CFR. The Code of Federal Regulations.

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

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.

Determine. To establish enough information about taxable products at the time of removal to calculate the tax, specifically the quantity (pounds or number) and kind (for example, cigarettes, snuff, paper tubes). Where the tax rate depends on additional information (such as number of cigarette papers to a set before January 1, 2000 or sale price of large cigars), that information must also be established as part of tax determination.

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

Director of the service center. The Director, Internal Revenue Service Center, in any of the Internal Revenue regions.

District director. A district director of internal revenue.

Electronic fund transfer or EFT. Any transfer of funds effected by a 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.

Export warehouse. A bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

Export warehouse proprietor. Any person who operates an export warehouse.

Factory. The premises of a manufacturer of tobacco products as described in his permit issued under 26 U.S.C. chapter 52, or the premises of a manufacturer of cigarette papers and tubes on which such business is conducted.

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

In bond. The status of tobacco products and cigarette papers and tubes, which come within the coverage of a bond securing the payment of internal revenue taxes imposed by 26 U.S.C. 5701 or 7652, and in respect to which such taxes have not been determined as provided by regulations in this chapter, including (a) such articles in a factory, (b) such articles removed, transferred, or released, pursuant to 26 U.S.C. 5704, and with respect to which relief from the tax liability has not occurred, and (c) such articles on which the tax has been determined, or with respect to which relief from the tax liability has occurred, which have been returned to the coverage of a bond.

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 personal use or consumption.

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco but does not include:

(1) A person who produces tobacco products solely for that person's own consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

Package. The immediate container in which tobacco products or cigarette papers or tubes are put up in by the manufacturer and offered for sale or delivery to the consumer.

Permit number. The combination of (1) the letters indicating the kind of permit, (2) the identifying number, and (3) the name or abbreviation of the State (or the District of Columbia) in which the factory is located, as assigned to the permit by the regional director (compliance); for example, ''TP-999-Utah''.

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 of other unlawful importation of such articles into the United States.

Roll-your-own 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 for making cigarettes.

Sale price. The price for which large cigars are sold by the manufacturer, determined in accordance with § 270.22 and used for computation of the tax.

Service center. An Internal Revenue Service Center in any of the Internal Revenue regions.

Service center director. A director of an internal revenue service center.

Sets. Any collection, grouping, or packaging of cigarette papers made up by any person for delivery to the consumer as a unit.

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 snuff or chewing tobacco.

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

This chapter. Title 27, Code of Federal Regulations, chapter I (27 CFR chapter I).

Tobacco products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

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

U.S.C. The United States Code.

(26 U.S.C. 7805 (68A Stat. 917), 27 U.S.C. 205 (49 Stat. 981 as amended), (82 Stat. 959), and Sec. 38, Arms Export Control Act (90 Stat. 744) 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 13553, Mar. 31, 1978; 44 FR 55854, Sept. 28, 1979, as amended by T.D. ATF–77, 46 FR 3007, Jan. 13, 1981; T.D. ATF–232, 51 FR 28080, Aug. 5, 1986; T.D. ATF–289, 54 FR 48839, Nov. 27, 1989; T.D. ATF–384, 61 FR 54085, Oct. 17, 1996; T.D. ATF–424, 64 FR 71930, Dec. 22, 1999; T.D. ATF–420, 64 FR 71939, Dec. 22, 1999]

Subpart C—Taxes

§ 270.21 Cigar tax rates.

(a) Cigars are taxed at the following rates under 26 U.S.C. 5701(a):

Type and amount	Tax rate for removals during the years:		
	1993 to 1999	2000 and 2001	2002 and after
Small cigars per thousand	$1.125	$1.594	$1.828
Large cigars per thousand*			
• percentage of sale price	12.75%	18.063%	20.719%
• but not to exceed→	$30	$42.50	$48.75

*For large cigars, the percentage tax rate applies when the sale price is $235.294 per thousand or less, and the flat tax rate applies when the sale price is more than $235.294 per thousand.

(b) See § 270.22 of this part for rules concerning determination of sale price of large cigars.

(c) Cigars not exempt from tax under 26 U.S.C. chapter 52 and the provisions of this part which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

[T.D. ATF–420, 64 FR 71939, Dec. 22, 1999]

§ 270.22 Determination of sale price of large cigars.

(a) *General rule.* The tax imposed on large cigars is computed based on the sale price (the price for which the large cigars are sold by the manufacturer). In addition to money, goods or services exchanged for cigars may be considered as part of the sale price.

(b) *Special cases.*—(1) *In general.* If there is any question concerning the applicable sale price for tax purposes, the appropriate ATF officer will determine such price, applying rules similar to the constructive sale price rules in 26 U.S.C. 4216(b) and the implementing regulations in 26 CFR 48.4216(b)–1 through 48.4216(b)–4. These constructive sale price rules apply to cigars sold by a manufacturer at retail, sold on consignment, or sold (otherwise than through an arm's length transaction) at less than the fair market price. Sales of cigars between affiliated corporations may be analyzed under the constructive sale price rules. The appropriate ATF officer may make this analysis on his or her own initiative or upon the written request of a manufacturer. If ATF decides it is necessary, we will publish constructive sale price determinations in the ATF Bulletin in accordance with § 70.701(d) of this chapter.

(2) *Adjustments in sale price.*—(i) *Reasons for adjustment.* Adjustments to the sale price may occur as a result of a discount or price increase by the manufacturer or as a result of an ATF determination pursuant to paragraph (b)(1) above. In either case, the manufacturer must make conforming changes to the tax that was computed on the sale price before the adjustment.

(ii) *Time of adjustment.* If an adjustment is made before the end of the same tax return period as the original determination of the tax, the adjustment may be made on the same return. If the price is increased or decreased retroactively (during a later return period), either by the manufacturer or by ATF's determination, the manufacturer must make an adjustment on the tax return for the current return period in which the price change was determined.

(iii) *Amount of adjustment.* The taxpayer must compute the adjustment to the tax as the difference between the tax that was paid and the tax that should have been paid, based on the newly determined sale price, together with interest thereon and any applicable penalties. The interest must be computed from the time of payment of the original tax until the time the adjustment was made. Upon request, the appropriate ATF officer will provide information regarding interest rates applicable to specific time periods and any applicable penalties.

(3) *Pricing for different packaging.* If different bona fide sale prices are applicable to different types of packaging (*e. g.*, boxes of 25 and boxes of 50), then the cigars in each type of packaging are taxed on the basis of their respective sale prices.

(4) *Pricing of seconds.* If some of an otherwise identical cigar brand and size:

(i) Are distinctive from other such cigars because of physical imperfections,

(ii) Are offered to the consumer through clear labeling as ''imperfects'', ''seconds'', ''throw-outs'', or a comparable commonly understood term, and

(iii) The manufacturer has a separate sale price for such cigars, then they are taxed on the basis of this separate sale price.

(5) *Combination packages.* If a manufacturer has a sale price for a combination package containing cigars of different sizes, the cigars are taxed based on that combination sale price. If there is no sale price for the combination, then the cigars are taxed based on their individual sale prices.

(6) *Removals for another person.* If a manufacturer makes taxable removals of a brand and size of cigar only for distribution by others who establish the sale price, the tax is based on such sale price even though the manufacturer who makes the removals does not establish the price.

[T.D. ATF–420, 64 FR 71939, Dec. 22, 1999]

§ 270.23 Cigarette tax rates.

Cigarettes are taxed at the following rates under 26 U.S.C. 5701(b):

Product	Tax rate per thousand for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Small cigarettes	$12	$17	$19.50
Large cigarettes up to 6½″ long	25.20	35.70	40.95
Large cigarettes over 6½″ long	(2)Taxed at the rate for small cigarettes, counting each 2¾ inches or fraction thereof of the length of each as one cigarette.		

[T.D. ATF–420, 64 FR 71940, Dec. 22, 1999]

§ 270.24 Classification of cigarettes.

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

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

§ 270.25 Smokeless tobacco tax rates.

Smokeless tobacco products are taxed at the following rates under 26 U.S.C. 5701(e):

Product	Tax rate per pound* for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Snuff	$0.36	$0.51	$0.585
Chewing tobacco	0.12	0.17	0.195

*Prorate tax for fractions of a pound.

[T.D. ATF–420, 64 FR 71940, Dec. 22, 1999]

§ 270.25a Pipe tobacco and roll-your-own tobacco tax rates.

Pipe tobacco and roll-your-own tobacco are taxed at the following rates under 26 U.S.C. 5701(f) and (g), respectively:

Product	Tax rate per pound* for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Pipe tobacco	$0.675	$0.9567	$1.0969
Roll-your-own tobacco	*No tax	0.9567	1.0969

*Prorate tax for fractions of a pound.

[T.D. ATF–420, 64 FR 71940, Dec. 22, 1999]

§ 270.26 Persons liable for tax.

The manufacturer of tobacco products shall be liable for the taxes imposed on tobacco products by 26 U.S.C. 5701: *Provided*, That when tobacco products are transferred in bond pursuant to 26 U.S.C. 5704, to the bonded premises of another such manufacturer or an export warehouse proprietor, the transferee shall become liable for the tax upon receipt by him of such products and the transferor shall thereupon be relieved of his liability for the tax. When tobacco products are released in bond from customs custody for transfer to the bonded premises of a manufacturer of tobacco products, the transferee shall become liable for the tax on such products upon release from customs custody. Any person who possesses tobacco products in violation of 26 U.S.C. 5751(a)(1) or (2), shall be liable

for a tax equal to the tax on such products.

(Sec. 201, Pub. L. 85–859, 72 Stat 1415, as amended, 1424, as amended (26 U.S.C. 5703, 5751))

[T.D. 6871, 31 FR 32, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55854, Sept. 28, 1979; T.D. ATF–232, 51 FR 28080, Aug. 5, 1986; T.D. ATF–243, 52 FR 43194, Dec. 1, 1986]

§ 270.27 Assessment.

Whenever any person required by law to pay tax on tobacco products 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.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1415, as amended (26 U.S.C. 5703))

[T.D. 6871, 31 FR 32, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55854, Sept. 28, 1979; T.D. ATF–232, 51 FR 28080, Aug. 5, 1986; T.D. ATF–243, 52 FR 43194, Dec. 1, 1986]

Subpart Ca—Special (Occupational) Taxes

SOURCE: T.D. ATF-271, 53 FR 17560, May 17, 1988, unless otherwise noted.

§ 270.31 Liability for special tax.

(a) *Manufacturer of tobacco products.* Every manufacturer of tobacco products shall pay a special (occupational) tax at a rate specified by § 270.32 of the part. The tax shall be paid on or before the date of commencing the business of manufacturing tobacco products, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule.* For purposes of paragraph (a) of this section, a proprietor engaged in the business of manufacturing tobacco products on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(c) *Each place of business taxable.* A manufacturer of tobacco products incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5731)

§ 270.32 Rates of special tax.

(a) *General.* Title 26 U.S.C. 5731(a)(1) imposes a special tax of $1,000 per year on every manufacturer of tobacco products.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5731(b) provides for a reduced rate of $500 per year with respect to any manufacturer of tobacco products whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 270.31 relates) are less than $500,000. The ''taxable year'' to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a ''controlled group''; in that case, the rules of paragraph (c) of this section shall apply.

(c) *Controlled group*. All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. ''Controlled group'' means 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 they appear 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 this section.

(d) *Short taxable year*. Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances*. Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5731)

§ 270.33 Special tax returns.

(a) *General*. Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5*. All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 270.34).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. ''Owner of the business'' shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax*. A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 270.185.

(d) *Signing of ATF Forms 5630.5*—(1) *Ordinary returns*. The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the

person signing the return shall designate his or her capacity as ''individual owner,'' ''member of firm,'' or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 5142, 6061, 6065, 6151, 7011)

§ 270.34 Employer identification number.

(a) *Requirement.* The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of the penalty specified in § 70.113 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

[T.D. ATF-271, 53 FR 17560, May 17, 1988, as amended by T.D. ATF–301, 55 FR 47658, Nov. 14, 1990]

§ 270.35 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 270.33(c)(2), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5146, 6806)

§ 270.36 Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on ATF Form 5630.5, the manufacturer shall file an amended special tax return as soon as practicable after the change,

covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The manufacturer shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship*—(1) *General*. If there is a change in the proprietorship of a tobacco factory, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors*. Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession*. Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death*. The widowed spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) *Succession of spouse*. A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency*. A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm*. The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location*. If there is a change in location of a taxable place of business, the manufacturer shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The manufacturer shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the manufacturer does not file the amended return within 30 days, the manufacturer is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

Subpart D—Administrative Provisions

§ 270.41 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 ATF 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 46921, Sept. 23, 1981, as amended by T.D. ATF–232, 51 FR 28080, Aug. 5, 1986; T.D. ATF–243, 52 FR 43194, Dec. 1, 1986; T.D. ATF–372, 61 FR 20725, May 8, 1996]

§ 270.42 Authority of ATF officers to enter premises.

Any ATF officer may enter in the daytime any premises where tobacco products are produced or kept, so far as it may be neccessary for the purpose of examining such products. 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 products 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 33, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF–232, 51 FR 28080, Aug. 5, 1986; T.D. ATF–243, 52 FR 43194, Dec. 1, 1986]

§ 270.43 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)

§ 270.44 Disposal of forfeited, condemned, and abandoned tobacco products.

A Federal, State, or local officer shall not sell or cause to be sold for consumption in the United States any forfeited, condemned, or abandoned tobacco products in his custody upon which the Federal tax has not been paid, if in his opinion the sale thereof will not bring a price equal to the tax due and payable thereon and the expenses incident to the sale thereof. Where the products 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 products are sold they shall be released by the officer having custody thereof only after they are properly packaged and taxpaid. A receipt from the regional director (compliance) evidencing payment of tax on such products shall be presented to the officer having custody of the products, which tax shall be considered part of the sales price. Where tobacco products which have been packaged under the provisions of part 290 or part 295 of this chapter are to be released after payment of tax, the purchaser shall appropriately mark each package ''Federal Tax Paid (date)'' before the officer having custody of the products releases them:

Provided, That if the purchaser is a qualified manufacturer of tobacco products, or for products packaged under part 290 a qualified export warehouse proprietor, the products may be released without such marking of the packages if the manufacturer or proprietor does not intend to place such products on the domestic market for taxable products but will dispose of them otherwise, such as by destruction or return to bond through claim for refund, and files a written statement to that effect, in original only, with the officer having custody of the products. In the case of products forfeited under the internal revenue laws the sale shall be subject to the provisions of part 172 of this chapter.

(68A Stat. 870, as amended, 72 Stat. 1425, as amended; 26 U.S.C. 7325, 5753)

[T.D. 6961, 33 FR 9488, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28080, Aug. 5, 1986; T.D. ATF–243, 52 FR 43194, Dec. 1, 1986; T.D. ATF–251, 52 FR 19339, May 22, 1987]

§ 270.45 Alternate methods or procedures.

A manufacturer of tobacco products, 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 or 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. Where a manufacturer 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 manufacturer 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 manufacturer shall retain, as part of his records, any authorization of the Director under this section.

§ 270.46 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 with such procedures, conditions, and limitations shall automatically terminate the authority for such variations and the manufacturer 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 a manufacturer 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 manufacturer shall retain, as part of his records, any authorization of the Director under this section.

§ 270.47 Other businesses within factory.

The Director may authorize such other businesses within the factory as he finds will not jeopardize the revenue, will not hinder the effective administration of this part, and will not be contrary to law. Where a manufacturer desires to engage in another business within the factory he shall submit a written application to do so, in triplicate, to the regional director (compliance) for the region in which the factory is located, for his transmittal to the Director. A manufacturer shall not engage in such other business until the application is approved by the Director. The manufacturer shall retain, as part of his records, any authorization of the Director under this section.

[T.D. 6840, 30 FR 9310, July 27, 1965. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 270.48 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)

§ 270.49 Delegations of the Director.

The Director has general authority to take action on all matters under the regulations in this part 270. Some of the authorities in this part are redelegated to ''appropriate ATF officers''. The title of the appropriate ATF officer for each delegation is listed by section in ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR Parts 270, 275, and 296. ATF delegation orders, such as ATF Order 1130.15, are available from the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150–5190, or from the ATF web site (*http://www.atf.treas.gov*).

[T.D. ATF–420, 64 FR 71940, Dec. 22, 1999]

Subpart E—Qualification Requirements for Manufacturers

§ 270.61 Qualification—General.

(a) *Who must qualify*. Every person who produces tobacco products except for his or her own personal consumption or use, shall qualify as a manufacturer of tobacco products in accordance with the provisions of this part.

(b) *Minimum manufacturing and activity requirements*. A permit to manufacture tobacco products will only be granted to those persons whose principal business activity under such permit will be the original manufacture of tobacco products. A permit will not be granted to any person whose principal activity under such permit will be to receive or transfer tobacco products in bond. As a minimum activity requirement, in order to qualify for a permit, the quantity of tobacco products manufactured under the permit must exceed the quantity to be transferred or received in bond under the permit. For the purposes of this section, repackaging or relabeling activities alone do not qualify as a manufacturing activity.

[T.D. ATF–421, 64 FR 71923, Dec. 22, 1999]

§ 270.61a Transitional rule.

Any person who:

(a) On August 5, 1997, was engaged in business as a manufacturer of roll-your-own tobacco, and

(b) Before January 1, 2000, submits an application, as provided in this part, to engage in such business, may, continue to engage in such business pending final action on such application. Pending such final action, all provisions of chapter 52 of the Internal Revenue Code of 1986 shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit to manufacture roll-your-own tobacco under such chapter 52.

[T.D. ATF–424, 64 FR 71931, Dec. 22, 1999]

§ 270.62 Application for permit.

Every person, before commencing business as a manufacturer of tobacco products as defined in § 270.11, shall make application for, and obtain, the permit provided in § 270.75, covering operations at each proposed factory. Such application shall be made on Form 2093, in duplicate, to the regional director (compliance) for the region in which the proposed factory will be located. All documents required under this part to be furnished with such application shall be made a part thereof. Where the applicant for a permit under this section holds a permit or permits authorizing the production of any tobacco products at premises to be covered by the permit applied for, the applicant shall surrender such permit or permits for cancellation, upon the issuance of the permit applied for.

(72 Stat. 1421; 26 U.S.C 5712)

§ 270.63 Corporate documents.

Every corporation, before commencing business as a manufacturer of tobacco products, shall furnish with its application for permit, required by § 270.62, a true copy of the corporate charter or a certificate of corporate existence or incorporation executed by the appropriate officer of the State in which incorporated. The corporation shall likewise furnish duly authenticated extracts of the stockholders' meetings, bylaws, or directors' meetings, listing the offices the incumbents of which are authorized to sign documents or otherwise act in behalf of the corporation in matters relating to 26 U.S.C. chapter 52, and regulations issued thereunder. The corporation shall also furnish evidence, in duplicate, of the identity of the officers and directors and each person who holds more than ten percent of the stock of such corporation. Where any of the information required by this section has previously been filed with the same regional director (compliance) and such information is currently complete and accurate, a written statement to that effect, in duplicate, will be sufficient for the purpose of this section.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1421, as amended (26 U.S.C. 5712))

[T.D. 6840, 30 FR 9310, July 27, 1965. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55854, Sept. 28, 1979]

§ 270.64 Articles of partnership or association.

Every partnership or association, before commencing business as a manufacturer of tobacco products, shall furnish with its application for permit, required by § 270.62, a true copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality. Where a partnership or association has previously filed such documents with the same regional director (compliance) and such documents are currently complete and accurate, a written statement, in duplicate, to that effect by the partnership or association will be sufficient for the purpose of this section.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 270.65 Trade name certificate.

Every person, before commencing business under a trade name as a manufacturer of tobacco products, shall furnish with his application for permit, required by § 270.62, a true copy of the certificate or other document, if any, issued by a State, county, or municipal authority in connection with the transaction of business under such trade name. If no such certificate or other document is so required, a written statement, in duplicate, to that effect by such person will be sufficient for the purpose of this section.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 270.66 Bond.

Every person, before commencing business as a manufacturer of tobacco products, shall file, in connection with his application for permit, a bond on Form 3070, in duplicate, in accordance with the applicable provisions of subpart G of this part, conditioned upon compliance with the provisions of chapter 52, I.R.C., and regulations thereunder, including, but not limited to, the timely payment of taxes imposed by such chapter and penalties and interest in connection therewith for which he may become liable to the United States: *Provided*, That any person who, on the effective date of this part, October 1, 1961, has on file a valid and adequate bond, Form 2100, ''Bond—Manufacturer of Cigars and Cigarettes,'' may continue, under such bond, the operations with respect to the permit to which that bond relates, in accordance with the provisions of this part.

(72 Stat. 1421, as amended; 26 U.S.C. 5711)

[T.D. 6871, 31 FR 33, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 270.67 Blanket bond.

Where a manufacturer of tobacco products operates more than one factory in the same region he may, in lieu of filing separate bonds, file a blanket bond on Form 3070, in duplicate, in accordance with the provisions of § 270.134, for any or all of the factories in the same region. The total amount of any blanket bond given under this section shall be available for the satisfaction of any liability incurred at any factory covered by the bond.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.68 Power of attorney.

If the application for permit or any report, return, notice, schedule, or other document required to be executed is to be signed by an individual (including one of the partners for a partnership or one of the members of an association) as an attorney in fact for any person, or if an individual is to otherwise officially represent such person, power of attorney on Form 1534 shall be furnished to the regional director (compliance). (For power of attorney in connection with conference and practice requirements see subpart E, part 601 of this chapter.) Such power of attorney is not required for persons whose authority is furnished with the corporate documents as required by § 270.63. Form 1534 does not have to be filed again with an regional director (compliance) where such form has previously been submitted to that regional director (compliance) and is still in effect.

[T.D. 6840, 30 FR 9310, July 27, 1965. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 270.69 Factory premises.

The premises to be used by a manufacturer of tobacco products as his factory may consist of more than one

building, or portions of buildings, which need not be contiguous but must be located in the same city, town, or village: Except that, where the regional director (compliance) determines that a building or portion of a building which is not within the city, town, or village, is so conveniently and closely situated to the general factory premises as to present no jeopardy to the revenue and as to offer no hindrance to the administration of this part, he may authorize the inclusion of such building or portion of building as part of the factory. The buildings or portions of buildings shall be described in the application for permit and the bond by number, street, and city, town, or village, and State. If any of the following conditions exist a diagram shall also be furnished, in duplicate, showing the information indicated:

(a) Where the factory is in more than one building, and each building is not identifiable by a separate street address—identify each building by a letter, number, or similar designation;

(b) Where the factory consists of a portion of a building or where portions of buildings are part of the factory—show the particular floor or floors, or room or rooms, comprising the factory;

(c) Where there is an adjoining retail store operated by the manufacturer tobacco products including any doors or other openings between the premises.

(72 Stat. 1421; 26 U.S.C. 5712)

[T.D. 6840, 30 FR 9310, July 27, 1965, as amended by T.D. 6871, 31 FR 33, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–232, 51 FR 28080, Aug. 5, 1986; T.D. ATF–243, 52 FR 43194, Dec. 1, 1986]

§ 270.70 Separation of and access to factory.

Where the factory consists of a portion of a building, or where portions of buildings are part of the factory, the factory shall be completely separated by walls from adjoining portions of the building. Such walls shall be securely constructed of substantial materials. The regional director (compliance) may, wherever he finds that the revenue will not be jeopardized, authorize openings and doors in such walls or means of separation other than walls if such means adequately delineate the factory. The factory shall be accessible directly from a street, yard, common passageway, or other common means of entrance.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 270.71 Factories established prior to October 1, 1961.

Factories established prior to the effective date of this part, October 1, 1961, shall not be subject to the provisions of § 270.70 if, in the opinion of the regional director (compliance), the existing premises afford adequate protection to the revenue.

(72 Stat. 1421; 26 U.S.C. 5712)

[T.D. 6871, 31 FR 33, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 270.72 Use of factory premises.

Unless otherwise authorized by the Director as provided in § 270.47, the factory premises shall be used exclusively for the purposes of manufacturing and storing tobacco products; storing materials, equipment, and supplies related thereto or used or useful in the conduct of the business; and carrying on activities in connection with the business of the manufacturer: *Provided*, That tobacco products manufacturers who maintain adequate records in respect to the manufacture and storage of smoking tobacco that is not subject to tax (as well as with respect to tobacco products), showing the date and total quantity in pounds of the tobacco received, shipped or delivered, lost, and destroyed, may continue such operations on the tobacco products factory premises, without application for authorization as prescribed in § 270.47.

[T.D. ATF–232, 51 FR 28080, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF–289, 54 FR 48839, Nov. 27, 1989]

§ 270.73 Additional information.

The regional director (compliance) may require such additional information as he may deem necessary to determine whether the applicant is entitled to a permit under the provisions of this part. The applicant shall, when required by the regional director (compliance), furnish as a part of his application for such permit such additional information as may be necessary for the regional director (compliance) to

determine whether the applicant is entitled to a permit.

§ 270.74 Investigation of applicant.

As the regional director (compliance) deems necessary he will cause inquiry or investigation to be made to verify the information furnished in connection with an application for permit and to ascertain whether the applicant is, by reason of his business experience, financial standing, and trade connections, likely to maintain operations in compliance with 26 U.S.C. chapter 52, and regulations thereunder; whether such person has disclosed all material information required or made any material false statement in the application for such permit; and whether the premises on which it is proposed to establish the factory are adequate to protect the revenue. If the regional director (compliance) has reason to believe that the applicant is not entitled to a permit, he shall promptly give the applicant notice of the contemplated disapproval of his application and opportunity for hearing thereon in accordance with part 200 of this chapter, which part (including the provisions relating to the recommended decision and to appeals) is applicable to such proceedings. If, after such notice and opportunity for hearing, the regional director (compliance) finds that the applicant is not entitled to a permit, he shall, by order stating the findings on which his decision is based, deny the permit.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1421, as amended (26 U.S.C. 5713))

[26 FR 8174, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55854, Sept. 28, 1979]

§ 270.75 Issuance of permit.

If the application for permit, together with the bond and supporting documents, required under this part is approved by him, the regional director (compliance) shall issue a permit on Form 2096 to the applicant as a manufacturer of tobacco products.

(72 Stat. 1421; 26 U.S.C. 5713)

[T.D. 6871, 31 FR 33, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 270.76 Retention of permit and supporting documents.

The manufacturer shall retain his permit, together with the copy of the application and supporting documents returned to him with the permit, at the same place where the records required by this part are kept and they shall be made available for inspection by any ATF officer upon his request.

(72 Stat. 1421, 1423; 26 U.S.C. 5712, 5713, 5741)

Subpart F—Changes After Original Qualification of Manufacturers

CHANGES IN NAME

§ 270.91 Change in individual name.

Where there is a change in the name of an individual operating as a manufacturer, of tobacco products he shall, within 30 days of such change, make application on Form 2098 for an amended permit.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 270.92 Change in trade name.

Where there is a change in, or an addition or discontinuance of, a trade name used by a manufacturer of tobacco products in connection with operations authorized by his permit the manufacturer shall, within 30 days of such change, addition or discontinuance, make application on Form 2098 for an amended permit to reflect such change. The manufacturer shall also furnish a true copy of any new trade name certificate or document issued to him, or statement in lieu thereof, required by § 270.65.

(72 Stat. 1421; 26 U.S.C. 5712)

[T.D. 6840, 30 FR 9311, July 27, 1965. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 270.93 Change in corporate name.

Where there is a change in the name of a corporate manufacturer of tobacco products, the manufacturer shall, within 30 days of such change, make application on Form 2098 for an amended permit. The manufacturer shall also furnish such documents as may be necessary to establish that the corporate name has been changed.

(72 Stat. 1421; 26 U.S.C. 5712)

CHANGES IN OWNERSHIP AND CONTROL

§ 270.101 Fiduciary successor.

If an administrator, executor, receiver, trustee, assignee, or other fiduciary, is to take over the business of a manufacturer of tobacco products, as a continuing operation, such fiduciary shall, before commencing operations, make application for permit and file bond as required by subpart E, of this part, furnish certified copies, in duplicate, of the order of the court, or other pertinent documents, showing his appointment and qualification as such fiduciary, and make a commencing inventory, in accordance with the provisions of § 270.201: *Provided*, That where a diagram has been furnished by the predecessor, in accordance with the provisions of § 270.69, the successor may adopt such diagram if it is currently complete and accurate. However, where a fiduciary intends only to liquidate the business, qualification as a manufacturer of tobacco products will not be required if he promptly files with the regional director (compliance) a written statement to that effect, in duplicate, together with an extension of coverage of the predecessor's bond, executed by the fiduciary and the surety on such bond, in accordance with the provisions of § 270.137.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5712, 5721)

§ 270.102 Transfer of ownership.

If a transfer is to be made in ownership of the business of a manufacturer of tobacco products (including a change of any member of a partnership or association), such manufacturer shall give notice, in writing, to the regional director (compliance), naming the proposed successor and the desired effective date of such transfer. The proposed successor shall, before commencing operations, qualify as a manufacturer of tobacco products, in accordance with the applicable provisions of subpart E of this part: *Provided*, That where a diagram has been furnished by the manufacturer in accordance with the provisions of § 270.69, the proposed successor may adopt such diagram if it is currently complete and accurate. The manufacturer shall give such notice of transfer, and the proposed successor shall make application for permit and file bond, as required, in ample time for examination and approval thereof before the desired date of such change. The predecessor shall make a concluding inventory and concluding report, in accordance with the provisions of §§ 270.201 and 270.202, respectively, and surrender his permit with such inventory and report. The successor shall make a commencing inventory and commencing report, in accordance with the provisions of § 270.201 and § 270.202, respectively.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5712, 5713, 5721, 5722)

§ 270.103 Change in officers, directors, or stockholders of a corporation.

Upon election or appointment (excluding successive reelection or reappointment) of any officer or director of a corporation operating the business of a manufacturer of tobacco products, or upon any occurrence which results in a person acquiring ownership or control of more than ten percent in aggregate of the outstanding stock of such corporation, the manufacturer shall, within 30 days of such action, so notify the regional director (compliance) in writing, giving the identity of such person. When there is any change in the authority furnished under § 270.63 for officers to act in behalf of the corporation the manufacturer shall immediately so notify the regional director (compliance) in writing.

(72 Stat. 1421; 26 U.S.C. 5712)

[T.D. 6840, 30 FR 9311, July 27, 1965. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 270.104 Change in control of a corporation.

Where the issuance, sale, or transfer of the stock of a corporation, operating as a manufacturer of tobacco products, results in a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation, the corporate manufacturer shall, within 30 days after the change occurs, make application on Form 2093 for a new permit. Otherwise, the present permit shall be automatically terminated at the expiration of such 30-day period, and the manufacturer shall dispose of

all tobacco products on hand, in accordance with this part, make a concluding inventory and concluding report, in accordance with the provisions of §§ 270.201 and 270.202, respectively, and surrender his permit with such inventory and report. If the application for a new permit is timely made, the present permit shall continue in effect pending final action with respect to such application.

(72 Stat. 1421, 1422; 26 U.S.C. 5712, 5713, 5721, 5722)

[T.D. 6871, 31 FR 33, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–232, 51 FR 28081, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

CHANGES IN LOCATION OF FACTORY

§ 270.111 Change in location within same region.

Whenever a manufacturer of tobacco products intends to relocate his factory within the same region, the manufacturer shall, before commencing operations at the new location, make application on Form 2098 for, and obtain, an amended permit. The application shall be supported by an extension of coverage of bond in accordance with the provisions of § 270.137.

(72 Stat. 1421; 26 U.S.C. 5711, 5712)

§ 270.112 Change in address.

Whenever any change occurs in the address, but not the location, of the factory of a manufacturer of tobacco products, as a result of action of local authorities, the manufacturer shall, within 30 days of such change, make application on Form 2098 for an amended permit.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 270.113 Change in location to another region.

Whenever a manufacturer of tobacco products intends to remove his factory to another region, the manufacturer shall, before commencing operations at the new location, qualify as such a manufacturer in the new region, in accordance with the applicable provisions of subpart E of this part. The manufacturer shall notify the regional director (compliance) for the region from which he is removing his factory of his qualification in the new region, giving the address of the new location of his factory and the number of the permit issued to him in the new region, make a concluding inventory and concluding report in accordance with the provisions of §§ 270.201 and 207.202, respectively, and surrender the permit for his old location with such inventory and report.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5712, 5713, 5721, 5722)

§ 270.114 Extension or curtailment of factory.

Where a tobacco products factory is to be changed to an extent which will make inaccurate the description of the factory as set forth in the last application by the manufacturer for permit, on the diagram, if any, furnished with such application, the manufacturer shall first make an application on Form 2098 for, and obtain, an amended permit. Such application shall describe the proposed change in the factory and shall be accompanied by a new diagram if required under the provisions of § 270.69.

(72 Stat. 1421; 26 U.S.C. 5711, 5712)

Subpart G—Bonds and Extensions of Coverage of Bonds

§ 270.131 Corporate surety.

(a) Surety bonds required under the provisions of this part may be given only with corporate sureties holding certificates of authority from the Secretary of the Treasury as acceptable sureties on Federal bonds. Each bond and each extension of coverage of bond shall at the time of filing be accompanied by a power of attorney authorizing the agent or officer who executed the bond to so act on behalf of the surety. The regional director (compliance) who is authorized to approve the bond may, whenever he deems it necessary, require additional evidence of the authority of the agent or officer to execute the bond or extension of coverage of bond. The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed document it

shall be accompanied by a certificate of its validity. Limitations concerning corporate sureties are prescribed by the Secretary in Treasury Department Circular No. 570, as revised. The surety shall have no interest whatever in the business covered by the bond.

(b) Treasury Department Circular No. 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies) is published in the FEDERAL REGISTER annually as of the first workday in 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.

(61 Stat. 649, 72 Stat. 1421, as amended; 31 U.S.C. 9304, 9306; 26 U.S.C. 5711; 5 U.S.C. 552(a) (80 Stat. 383, as amended))

[T.D. 6961, 33 FR 9488, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF–92, 46 FR 46921, Sept. 23, 1981]

§ 270.132 Deposit of securities in lieu of corporate surety.

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

(61 Stat. 650, 72 Stat. 1421; 6 U.S.C.9301, 9303; 26 U.S.C. 5711)

§ 270.133 Amount of individual bond.

The amount of the bond of a manufacturer of tobacco products shall be not less than the total amount of tax liability on all tobacco products manufactured in his factory, received in bond from other factories and from export warehouses, and released to him in bond from customs custody, during any calendar month. Where the amount of any bond is no longer sufficient and the bond is in less than the maximum amount, the manufacturer shall immediately file a strengthening or superseding bond as required by this subpart. The amount of any such bond (or the total amount including strengthening bonds, if any) need not exceed $250,000 for a manufacturer producing or receiving cigarettes in bond; need not exceed $150,000 for a manufacturer producing or receiving cigars, smokeless tobacco, pipe tobacco, or roll-your-own tobacco in bond; and need not exceed $250,000 for a manufacturer producing or receiving any combination of tobacco products in bond. The bond of a manufacturer of tobacco products shall in no case be less than $1,000.

[T.D. ATF–232, 51 FR 28080, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF–289, 54 FR 48839, Nov. 27, 1989; T.D. ATF–424, 64 FR 71931, Dec. 22, 1999]

§ 270.134 Amount of blanket bond.

In the case of a blanket bond filed under the provisions of § 270.67, where the total amount of individual bonds otherwise required for the factories under § 270.133 does not exceed $250,000, such blanket bond shall be not less than the total amount of such individual bonds. Where the total amount of such individual bonds required is in excess of $250,000 but not in excess of $500,000, the amount of the blanket bond shall be not less than $250,000 plus 50 percent of such total amount which is in excess of $250,000. Where the total amount of such individual bonds required is in excess of $500,000 the amount of the blanket bond shall be not less than $375,000 plus 25 percent of such total amount which is in excess of $500,000.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.135 Strengthening bond.

Where the amount of any bond is no longer sufficient under the provisions of § 270.133 or § 270.134, the 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 § 270.136. Strengthening bonds 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.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.136 Superseding bond.

A manufacturer of tobacco products 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) 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 § 270.133 or § 270.134 and a strengthening bond has not been filed, or (e) the regional director (compliance) considers such a superseding bond necessary for the protection of the revenue. Where a bond is not filed as required under the provisions of this section the manufacturer shall discontinue forthwith the operations to which such bond relates.

(72 Stat. 1421: 26 U.S.C. 5711)

§ 270.137 Extension of coverage of bond.

An extension of coverage of bond shall be manifested on Form 2105 by the manufacturer of tobacco products and by the surety on the bond with the same formality and proof of authority as required for the execution of the bond.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.138 Approval of bond and extension of coverage of bond.

No person shall commence operations under any bond, nor extend his operations, until he receives from the regional director (compliance) notice of his approval of the bond or of an appropriate extension of coverage of the bond required under this part.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.139 Termination of bond.

Any bond required by this part may be terminated by the regional director (compliance) as to liability for future operations (a) pursuant to application by the surety as provided in the bond, (b) on approval of a superseding bond, or (c) when operations by the manufacturer are permanently discontinued in accordance with subpart J. After a bond is terminated the surety shall remain bound with respect to any liability for unpaid taxes, penalties, and interest, not in excess of the amount of the bond, incurred by the manufacturer prior to the termination date.

(72 Stat. 1421; 26 U.S.C. 5711)

[T.D. 6840, 30 FR 9311, July 27, 1965. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 270.140 Release of pledged securities.

Securities of the United States pledged and deposited as provided in § 270.132 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 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, 72 Stat. 1421; 31 U.S.C. 9301, 9303, 26 U.S.C. 5711)

Subpart H—Operations by Manufacturers

DETERMINATION AND PAYMENT OF TAXES ON TOBACCO PRODUCTS.

§ 270.161 Determination of tax and method of payment.

Except for removals in bond and transfers in bond, as authorized by law, the taxes imposed on tobacco products by section 5701, I.R.C., shall be determined at the time of removal of such products and paid on the basis of a return, in accordance with the provisions of this part.

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

[T.D. 6929, 32 FR 13866, Oct. 5, 1967. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF–232, 51 FR 28081, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 270.162 Semimonthly tax return.

Every manufacturer of tobacco products shall file, for each of his factories, a semimonthly tax return on Form

5000.24 for each return period, including any period during which a manufacturer begins or discontinues business. The return shall be filed with ATF in accordance with the instructions on the form. The manufacturer shall file the return at the time specified in § 270.165 regardless of whether tobacco products are removed or whether tax is due for that particular return period. However, when the manufacturer requests by letter and the regional director (compliance) grants specific authorization, the manufacturer need not during the term of such authorization file a tax return for which tax is not due or payable.

[T.D. ATF–232, 51 FR 35353, Oct. 3, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF–251, 52 FR 19339, May 22, 1987]

§ 270.163 Semimonthly tax return periods.

Except as provided in section 270.164, the periods to be covered by semimonthly tax returns shall be from the 1st day of each month through the 15th day of that month and from the 16th day of each month through the last day of that month.

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

§ 270.164 Special rule for taxes due for the month of September (effective after December 31, 1994).

(a)(1) Except as provided in paragraph (a)(2) of this section, the second semimonthly 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 manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The 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 § 270.165a, the second semimonthly 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 manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(b) *Amount of payment: Safe harbor rule*. (1) Taxpayers are considered to have met the requirements of paragraph (a)(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 semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(2) Taxpayers are considered to have met the requirements of paragraph (a)(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 semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(c) *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.

(d) *Example. Payment of tax for the month of September*—(1) *Facts*. X, a manufacturer of tobacco products required to pay taxes by electronic fund transfer, incurred tax liability in the amount of $30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of $45,000, and for the period September 27–30, X incurred tax liability in the amount of $2,000.

(2) *Payment requirement*. X's payment of tax in the amount of $30,000 for the first semimonthly period of September is due no later than September 29 (§ 270.165(a)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 270.164(a)(1)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26

(§ 270.164(b)). Under the safe harbor rule, X's payment of tax must equal $21,990.00, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of $2,000 for the period September 27–30 must be paid no later than October 14 (§ 270.164(a)(1)). X must also pay the underpayment of tax, $23,010.00, for the period September 16–26, no later than October 14 (§ 270.164(b)).

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

§ 270.165 Times for filing semimonthly return.

(a) *General.* Except as provided by § 270.164, and paragraph (b) of this section, semimonthly returns on Form 5000.24 shall be filed, for each return period, not later than the 14th day after the last day of the return period. 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 is not a Saturday, Sunday, or legal holiday, except as provided by § 270.164(c).

(b) *Postmark.* The official postmark of the U.S. Postal Service stamped on the cover in which the return was mailed shall be considered the date of delivery of the tax return and, if the return was accompanied by a remittance, the date of delivery of the remittance. When the postmark is illegible, the manufacturer shall prove when the postmark was made. When the proprietor sends the tax return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, shall be treated as the date of delivery of the tax return and, if accompanied, of the remittance.

[T.D. ATF–246, 52 FR 669, Jan. 8, 1987, as amended by T.D. ATF–251, 52 FR 19339, May 22, 1987; T.D. ATF–365, 60 FR 33675, June 28, 1995; T.D. ATF–446, 66 FR 16602, Mar. 27, 2001]

§ 270.165a 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 parts 275 and 285 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 by cash, check, or money order, as described in § 270.168, 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 on all taxable withdrawals and importations (including tobacco products, cigarette papers, and cigarette tubes 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. 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 return, Form 5000.24, for each factory from which tobacco products 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 parts 275 and 285 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 tax payment 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 § 270.165 or § 270.167. 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 combining tax liabilities incurred under this part and parts 275 and 285 of this chapter 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 on as prescribed by § 270.168. Upon filing the first return 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 Form 5000.24, 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 return, Form 5000.24, information about remitting the tax for that return period by EFT and shall file the return with the ATF, in accordance with the instructions on Form 5000.24.

(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 tax payment 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.

(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–198, 49 FR 37582, Sept. 25, 1984, as amended by T.D. ATF–219, 50 FR 51390, Dec. 17, 1985; T.D. ATF–232, 51 FR 28081, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–245, 52 FR 533, Jan. 7, 1987; T.D. ATF–251, 52 FR 19339, May 22, 1987; T.D. ATF–262, 52 FR 47560, Dec. 15, 1987; T.D. ATF–446, 66 FR 16602, Mar. 27, 2001]

§ 270.166 Default, prepayment of tax required.

Where a check or money order tendered with any return, whether semimonthly or prepayment, for payment of tax on tobacco products is not paid on presentment, where a manufacturer fails to remit with the return the full amount of tax due thereunder, or where a manufacturer is otherwise in default in payment of tax on tobacco products under the internal revenue

laws or this chapter, during the period of such default and until the regional director (compliance) finds that the revenue will not be jeopardized by the deferred payment of tax pursuant to the provisions of this part, no tobacco products shall be removed subject to tax until the tax thereon has first been paid as provided in § 270.167. Any remittance made during the period of a default shall be in cash, or in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State, Territory, or possession of the United States, or in the form of a U.S. postal money order or other money order, and defined in § 70.61 of this chapter (payment by check or money order), or shall be delivered in the form of an electronic fund transfer message as provided in § 270.165a.

(68A Stat. 777, 72 Stat. 1417; 26 U.S.C. 6311, 5703; Aug. 16, 1954, ch. 736, 68A Stat. 707 (26 U.S.C. 5703); Aug. 16, 1954, ch. 736, 68A Stat. 777 (26 U.S.C. 6311))

[T.D. 6871, 31 FR 34, 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–77, 46 FR 3008, Jan. 13, 1981; T.D. ATF–232, 51 FR 28081, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–301, 55 FR 47658, Nov. 14, 1990]

§ 270.167 Prepayment tax return.

(a) To prepay the tax on tobacco products a manufacturer shall file a prepayment tax return on Form 5000.24 showing the tax to be paid on the tobacco products prior to removal. The return shall be executed and filed, prior to the removal of such products, with ATF, in accordance with the instructions on the form. A manufacturer prepaying the taxes on tobacco products under the provisions of this section shall continue to file semimonthly returns as required by § 270.162.

(b) However, if a manufacturer is required by § 270.165a to pay the tax by electronic fund transfer, the manufacturer shall prepay the tax before any tobacco products can be removed for consumption or sale by completing the return and filing it with ATF, in accordance with the instructions on the form. At the same time, the manufacturer shall direct his bank to effect an EFT.

(Sec. 202, Pub. L. 85–859, 68A Stat. 1417 (26 U.S.C. 5703); sec. 202, Pub. L. 85–859, 72 Stat. 1423, as amended (26 U.S.C. 5741); (Aug. 16, 1954, ch. 736, 68A Stat. 775, as amended (26 U.S.C. 6302)); 26 U.S.C. 7805 (68A Stat. 917, as amended))

[T.D. 6871, 31 FR 34, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–77, 46 FR 3008, Jan. 13, 1981; T.D. ATF–219, 50 FR 51390, Dec. 17, 1985; T.D. ATF–232, 51 FR 28081, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–251, 52 FR 19340, May 22, 1987]

§ 270.168 Remittance with return.

Except when an electronic fund transfer has been made under § 270.165a for the full amount of tax due, the tax on tobacco products shown to be due and payable on any return shall be paid by remittance in full with the tax return. The remittance may be in the form which the regional director (compliance) is authorized to accept under § 70.61 of this chapter (Payment by check or money order) and which is acceptable to him, except as otherwise specified in § 270.166. Checks and money orders shall be made payable to the ''Bureau of Alcohol, Tobacco and Firearms''. 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.

(68A Stat. 778, 72 Stat. 1417; 26 U.S.C. 6313, 5703; Aug. 16, 1954, ch. 736, 68A Stat. 707, as amended (26 U.S.C. 5703))

[T.D. 6871, 31 FR 35, 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–77, 46 FR 3009, Jan. 13, 1981; T.D. ATF–232, 51 FR 28081, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–301, 55 FR 47658, Nov. 14, 1990]

§ 270.169 Employer identification number.

The employer identification number (defined at 26 CFR 301.7701–12) of a manufacturer of tobacco products who has been assigned such a number shall be shown on each tax return, Form 5000.24. Failure of the manufacturer to include his employer identification number on Form 5000.24 may result in

assertion and collection of the penalty specified in § 70.113 of this chapter.

[T.D. ATF–219, 50 FR 51390, Dec. 17, 1985, as amended by T.D. ATF–301, 55 FR 47658, Nov. 14, 1990]

§ 270.170 Application for employer identification number.

Every manufacturer of tobacco products who has neither secured an employer identification number nor made application therefor shall file an application on Form SS–4. Form SS–4 may be obtained from any service center director or from any district director. Such application shall be filed on or before the seventh day after the date on which any tax return under this part is filed. Each manufacturer shall make application for and shall be assigned only one employer identification number for all internal revenue tax purposes.

(75 Stat. 828; 26 U.S.C. 6109)

[T.D. 7055, 35 FR 13515, Aug. 25, 1970. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 270.171 Execution and filing of Form SS–4.

The application on Form SS–4, together with any supplementary statement, shall be prepared in accordance with the form, instructions, and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. The application shall be filed with the service center director serving any internal revenue district where the applicant is required to file returns under this part, except that hand-carried applications may be filed with the district director of any such district as provided for in 26 CFR 301.6091–1. The application shall be signed by (a) the individual if the person is an individual; (b) the president, vice president, or other principal officer if the person is a corporation; (c) a responsible and duly authorized member or officer having knowledge of its affairs if the person is a partnership or other unincorporated organization; or (d) the fiduciary if the person is a trust or estate.

(75 Stat. 828; 26 U.S.C. 6109)

[T.D. 7055, 35 FR 13515, Aug. 25, 1970. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55855, Sept. 28, 1979]

RECORDS

§ 270.181 General.

Every manufacturer of tobacco products must keep records of his operations and transactions which shall reflect, for each day, the information specified in §§ 270.182 and 270.183. For this purpose *day* shall mean calendar day, except that the regional director (compliance) may, upon application of the manufacturer by letter, in duplicate, authorize as such day for a factory a 24-hour cycle of operation other than the calendar day. A day once so established as other than the calendar day may be changed only by another application approved by the regional director (compliance). No specific form is required. The manufacturer may use commercial records from which the required information may be readily ascertained for this purpose. The manufacturer shall keep the auxiliary and supplemental records from which such records are compiled and shall keep supporting records, as specified in §§ 270.184 and 270.186, of tobacco products removed subject to tax and transferred in bond. Except as provided in §§ 270.184 and 270.186, the entries in the commercial records so maintained or kept shall be made not later than the close of the next business day following the day on which the transaction(s) occurred. As used in this section the term *business day* shall mean any day other than Saturday, Sunday, a legal holiday in the District of Columbia, or a statewide legal holiday in the State wherein the factory to which the records relate is located.

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

[T.D. ATF–424, 64 FR 71931, Dec. 22, 1999]

§ 270.182 Record of tobacco.

The record of a manufacturer of tobacco products shall show the date and total quantity in pounds, of all tobacco other than tobacco products:

(a) Received (including tobacco resulting from reduction of cigars and cigarettes, and unpackaging of smokeless tobacco, pipe tobacco and roll-your-own tobacco), together with the name and address of the person from whom received;

(b) Shipped or delivered, together with the name and address of the person to whom shipped or delivered;

(c) Lost; and

(d) Destroyed.

(Approved by the Office of Management and Budget under control number 1512–0358)

[T.D. 6871, 31 FR 35, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–172, 49 FR 14943, Apr. 16, 1984; T.D. ATF–232, 51 FR 28081, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–289, 54 FR 48840, Nov. 27, 1989; T.D. ATF–424, 64 FR 71931, Dec. 22, 1999]

§ 270.183 Record of tobacco products.

The record of a manufacturer of tobacco products shall show the date and total quantities of all tobacco products, by kind (small cigars-large cigars; small cigarettes-large cigarettes; chewing tobacco-snuff; pipe tobacco; roll-your-own tobacco):

(a) Manufactured;

(b) Received in bond by—

(1) Transfer from other factories,

(2) Release from customs custody,

(3) Transfer from export warehouses, and

(4) Transfer from foreign trade zone;

(c) Received by return to bond;

(d) Disclosed as an overage by inventory;

(e) Removed subject to tax (itemize large cigars by sale price in accordance with § 270.22, except cigars that cost more than $235.294 may optionally be shown as if the price were $236 per thousand);

(f) Removed, in bond, for—

(1) Export,

(2) Transfer to export warehouses,

(3) Transfer to other factories,

(4) Transfer to a foreign trade zone

(5) Use of the United States, and

(6) Experimental purposes off factory premises;

(g) Otherwise disposed of, without determination of tax, by—

(1) Consumption by employees on factory premises,

(2) Consumption by employees off factory premises, together with the number of employees to whom furnished,

(3) Use for experimental purposes on factory premises,

(4) Loss,

(5) Destruction, and

(6) Reduction to materials;

(h) Disclosed as a shortage by inventory; and

(i) On which the tax has been determined and which are—

(1) Received, and

(2) Disposed of.

(Approved by the Office of Management and Budget under control number 1512–0358)

[T.D. ATF–421, 64 FR 71923, Dec. 22, 1999, as amended by T.D. ATF–424, 64 FR 71931, Dec. 22, 1999; T.D. ATF–420, 64 FR 71940, Dec. 22, 1999]

§ 270.184 Record of removals subject to tax.

(a) *Requirement.* Every manufacturer of tobacco products must keep a record of tobacco products removed from the factory subject to tax. The manufacturer must make entries in this record at the time of removal. The record for each removal must show:

(1) The date of removal,

(2) The name and address of the person to whom shipped or delivered,

(3) The kind and quantity of tobacco products removed, and

(4) For large cigars, show the sale price (If the sale price is more than $235.294 per thousand, you may place a note to that effect in the record instead of the actual price).

(b) *Exceptions.* (1) The record of removal may consist of the manufacturer's commercial documents, such as copies of invoices, rather than records prepared expressly to meet the requirements of this section. If commercial documents are used, they must be kept at the factory, contain all the details required by this section, and be clear and accurate. Commercial documents that do not show specifically the tax classification of tobacco products (including sale price of large cigars) are

still acceptable if they contain adequate information for an ATF officer to readily ascertain the applicable tax.

(2) Where tobacco products are delivered within the factory directly to the consumer, the record need not show the name and address of the consumer.

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

[T.D. ATF–420, 64 FR 71941, Dec. 22, 1999]

§ 270.185 Retention of records.

All records required to be kept under this part, including copies of authorizations, claims, inventories, notices, reports, returns and schedules, shall be retained by the manufacturer for three years following the close of the calendar 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 kept in the factory or a place convenient thereto, and shall be made available for inspection by any ATF officer upon his request.

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

§ 270.186 Record in support of transfers in bond.

Every manufacturer of tobacco products shall keep a supporting record of tobacco products transferred in bond to or received in bond from other factories, and shall make the entries therein at the time of each receipt or removal of such products. Such supporting records shall show the date of receipt or removal, the name of the manufacturer and address of the factory from which received or to which removed or the permit number of such factory, and the kind and quantity of tobacco products. Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each receipt and removal, in such orderly manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section.

(Approved by the Office of Management and Budget under control number 1512–0358)

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

[T.D. 6871, 31 FR 35, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–172, 49 FR 14943, Apr. 16, 1984; T.D. ATF–232, 51 FR 28081, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 270.187 Record of sales prices of large cigars.

Every manufacturer of tobacco products who removes large cigars from the factory shall keep such records as are necessary to establish and verify the price for which the cigars are sold, in accordance with § 270.22. The record shall be a continuing one of each brand and size of cigar so that the sale price on which the tax is based may be readily ascertained.

[T.D. ATF–307, 55 FR 52743, Dec. 21, 1990. Redesignated and amended by T.D. ATF–420, 64 FR 71941, Dec. 22, 1999; T.D. ATF–420, 65 FR 1676, Jan. 11, 2000]

INVENTORIES AND REPORTS

§ 270.201 Inventories.

Every manufacturer of tobacco products shall make true and accurate inventories on Form 5210.9, which inventories shall include all tobacco products and tobacco on hand required to be accounted for in the records kept under this part. The manufacturer shall make such an inventory at the time of commencing business, which shall be the effective date of the permit issued upon original qualification under this part; at the time of transferring ownership; at the time of changing the location of his factory to a different region; at the time of concluding business; and at such other time as any ATF officer may require. Each inventory shall be prepared in duplicate, and shall be subject to verification by an ATF officer. The original of each such inventory shall be submitted to the regional director (compliance), and the

duplicate shall be retained by the manufacturer.

(Approved by the Office of Management and Budget under control number 1512–0358)

(72 Stat. 1422, 1423, as amended; 26 U.S.C. 5721, 5741)

[T.D. 6871, 31 FR 35, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–172, 49 FR 14943, Apr. 16, 1984; T.D. ATF–232, 51 FR 28081, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–424, 64 FR 71931, Dec. 22, 1999]

§ 270.202 Reports.

(a) *Monthly report.* Every manufacturer of tobacco products shall make a report on Form 5210.5, in duplicate, for each month and for any portion of a month during which he engages in such business. Such report shall be made regardless of whether any operations or transactions occurred during the month or portion of a month covered therein. The report for a month or portion of a month in which business is commenced or is concluded shall be conspicuously marked ''Commencing Report'' or ''Concluding Report,'' respectively. The original of the report shall be submitted to the regional director (compliance) not later than the 20th day of the month succeeding the month covered therein, and the duplicate shall be retained by the manufacturer. Each report shall show, for the period covered, the total quantity of tobacco products:

(1) Manufactured,

(2) Received in bond,

(3) Received by return to bond,

(4) Disclosed by inventory as an overage,

(5) Removed subject to tax,

(6) Removed in bond,

(7) Otherwise disposed of without determination of tax,

(8) Disclosed by inventory as a shortage, and

(9) On hand, in bond, beginning of and end of month.

(b) *Report of wholesale prices of large cigars removed before January 1, 1991.* Every manufacturer of tobacco products who removes large cigars from his factory, and who issues announcements such as those described in this paragraph, shall make a report of each establishment or change of wholesale price (suggested delivered price to retailers) for large cigars. The report shall consist of a copy of each general announcement that the manufacturer issues within his organization or to the trade about establishment or changes of wholesale prices. Only one copy of an announcement need be submitted even if it relates to tobacco products removed subject to tax from more than one factory. If this copy does not show the actual date when the announcement was issued, or identify the factory or factories from which removals of the cigars covered by the announcement are made, then the copy shall be annotated to show this information. The factory or factories shall be identified either by permit number(s) or by name, city and state. If an intraorganizational announcement involves a forthcoming price change or new product which at the time of issuance is to remain confidential until a later date, the manufacturer may include a statement to this effect on the copy submitted. The copy shall be submitted to the Associate Director (Compliance Operations), Attn: Industry Control Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, within five business days after the day issued.

(Sec. 202, Pub. L. 85–859, 72 Stat. 1422 (26 U.S.C. 5722))

(Approved by the Office of Management and Budget under Control No. 1512–0358)

[T.D. 6871, 31 FR 36, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–40, 42 FR 5001, Jan. 26, 1977; T.D. ATF–232, 51 FR 28081, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–307, 55 FR 52743, Dec. 21, 1990; T.D. ATF–424, 64 FR 71931, Dec. 22, 1999]

§ 270.203 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 applicable of more than $235.294 per thousand.

[T.D. ATF–40, 42 FR 5002, Jan. 26, 1977, as amended by T.D. ATF–307, 55 FR 52743, Dec. 21, 1990]

PACKAGES

§ 270.211 Package.

All tobacco products shall, before removal subject to tax, be put up by the manufacturer in packages which shall be of such construction as will securely contain the products therein and maintain the mark and the notice thereon as required by this part. No package of tobacco products shall have contained therein, attached thereto, 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 36, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28081, Aug. 5, 1986 T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 270.212 Mark.

Every package of tobacco products packaged in a domestic factory shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, a mark as specified in this section. The mark may consist of the name of the manufacturer removing the product subject to tax and the location (by city and State) of the factory from which the products are to be so removed, or may consist of the permit number of the factory from which the products are to be so removed. (Any trade name of the manufacturer approved as provided in § 270.65 may be used in the mark as the name of the manufacturer.) As an alternative, where tobacco products are packaged and removed subject to tax by the same manufacturer, either at the same or different factories, the mark may consist of the name of such manufacturer if the factory where packaged is identified on or in the package by a means approved by the Director. Before using the alternative, the manufacturer shall notify the Director in writing of the name to be used as the name of the manufacturer and the means to be used for identifying the factory where packaged. If approved by him the Director shall return approved copies of the notice to the manufacturer. A copy of the approved notice shall be retained as part of the factory records at each of the factories operated by the manufacturer.

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

[T.D. 6871, 31 FR 36, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF–232, 51 FR 28081, Aug. 5, 1986; T.D. ATF–243, 52 FR 43194, Dec. 1, 1986]

§ 270.213 Tobacco products labeled for export.

Tobacco products labeled for export are ineligible for removal from the factory and distribution into the domestic U.S. market. Such products may only be sold, transferred or delivered onto the domestic U.S. market by a manufacturer of tobacco products after repackaging of the product. For the purposes of this section, ''repackaging'' shall mean the removal of the tobacco product from its original package bearing the export marks and placement of the product in a new package. The new

packages, marks and notices must conform to the requirements of this subpart.

[T.D. ATF–421, 64 FR 71924, Dec. 22, 1999]

§ 270.214 Notice for cigars.

Before removal subject to tax, every package of cigars 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]

§ 270.215 Notice for cigarettes.

Every package of cigarettes shall, before removal subject to 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)

§ 270.216 Notice for smokeless tobacco.

(a) *Product designation.* Every package of chewing tobacco or snuff shall, before removal subject to 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 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 1512–0502)

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

[T.D. ATF–243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF–446, 66 FR 16602, Mar. 27, 2001]

§ 270.216a Notice for pipe tobacco.

(a) *Product designation.* Every package of pipe tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed 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 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 48840, Nov. 27, 1989. Redesignated at T.D. ATF–424, 64 FR 71931, Dec. 22, 1999]

§ 270.216b Notice for roll-your-own tobacco.

(a) *Product designation.* Before removal subject to tax, roll-your-own tobacco must have adequately imprinted on, or on a label securely affixed to, the package, the designation ''roll-your-own tobacco'' or ''cigarette tobacco'' or ''Tax Class J.''

(b) *Product weight.* Before removal subject to tax, roll-your-own tobacco must have a clear statement of the actual weight in pounds and ounces of the product in the package. This statement must be adequately imprinted on, or on a label securely affixed to, the package.

(Approved by the Office of Management and Budget under control number 1512–0502)

[T.D. ATF–429, 65 FR 57547, Sept. 25, 2000]

§ 270.216c Package use-up rule.

(a) A manufacturer must have used such packaging for roll-your-own tobacco before January 1, 2000.

(b) A manufacturer of roll-your-own tobacco may continue to place roll-your-own tobacco in packages that do not meet the marking requirements of §§ 270.212 and 270.216b(b) until April 1, 2000.

(c) A manufacturer of roll-your-tobacco may continue to place roll-your-tobacco in packages that do not meet the requirements of § 270.216b(a) until October 1, 2000.

[T.D. ATF–427, 65 FR 40051, June 29, 2000]

§ 270.217 Repackaging.

Where a manufacturer of tobacco products desires to repackage, outside the factory, tobacco products on which the tax has been determined or which were removed for a tax-exempt purpose or transferred in bond to an export warehouse, or to repackage tax determined tobacco products in the factory, he shall make application for authorization to do so, in duplicate, to the regional director (compliance) for the region in which the products are to be repackaged. The application shall set forth the location and the number of packages, a description of the contents, the tax status of the tobacco products the reason for wanting to repackage the products (e.g., packages soiled, damaged, or otherwise in a condition making the product unsalable), and a description of the package to be used for repackaging. The packages to be used must comply with the package, mark, and notice provisions of this chapter applicable to the tobacco products being repackaged. The operations authorized under this section are limited solely to repackaging for good cause by a manufacturer, pursuant to an approved application, of the specified tobacco products in the described packages, and do not include any manufacturing processes. If the regional director (compliance) approves the application, he may assign an ATF officer to supervise the repackaging or he may authorize the manufacturer to repackage the products without supervision by so stating on a copy of the application returned to the manufacturer. Where the manufacturer is authorized to repackage he shall record the date of repackaging on the approved application and retain it as part of his records.

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

[T.D. 6871, 31 FR 36, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28082, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

EXEMPTION FROM TAXES ON TOBACCO PRODUCTS

§ 270.231 Consumption by employees.

A manufacturer of tobacco products may gratuitously furnish tobacco products, without determination and payment of tax, for personal consumption by employees in the factory in such quantities as desired. Each employee may also be gratuitously furnished by the manufacturer, for off-factory personal consumption, not more than 5 large cigars or cigarettes, 20 small cigars or cigarettes, or one retail package of chewing tobacco, snuff, pipe tobacco or roll-your-own tobacco, or a proportionate quantity of each, without determination and payment of tax, on each day the employee is at work. For the purposes of this section, the term ''employee'' shall mean those persons whose duties require their presence in the factory of whose duties relate to the manufacture, distribution, or sale of tobacco products and who receive compensation from the manufacturer, or a parent, subsidiary, or auxiliary company or corporation of the manufacturer. Such product furnished for off-factory consumption shall be furnished to the employee within the factory and taken from the factory by the employee on the day for which furnished. Employees shall not sell, offer for sale, or give away products so furnished.

[T.D. ATF–232, 51 FR 28082, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF–289, 54 FR 48840, Nov. 27, 1989; T.D. ATF–424, 64 FR 71931, Dec. 22, 1999]

§ 270.232 Experimental purposes.

A manufacturer of tobacco products may use tobacco products without determination and payment of tax, for experimental (including testing) purposes in his factory, in such quantities

as desired. When authorized by the regional director (compliance) a manufacturer may also remove tobacco products in bond, for experimental (including testing) purposes outside his factory. Removal of tobacco products under this section will be authorized only for bona fide experimental purposes, such as for use by producers of machines designed to package such products for testing and experimenting in the operation of these machines, or for use in laboratories, hospitals, medical centers, institutes, colleges, and universities, for scientific, technical, or medical research. Tobacco products may not be removed, under this section, for such purposes as advertising, salesmen's or customers' samples, or for consumer testing. An application to the regional director (compliance) for authorization to remove tobacco products in bond for experimental purposes shall be by letter, in duplicate, and shall set forth the name and address of the consignee, the kind and quantity of tobacco products to be removed, and the intended use of the products. The manufacturer shall retain, as part of his records, each authorization of the regional director (compliance) for such removal of tobacco products.

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

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28082, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 270.233 Transfer in bond.

A manufacturer of tobacco products may transfer tobacco products in bond, to the factory of any manufacturer of tobacco products. The transfer of tobacco products in bond to the premises of an export warehouse proprietor shall be in accordance with the provisions of part 290 of this chapter. Tobacco products are not eligible for transfer in bond to a manufacturer of tobacco products or to an export warehouse unless they bear all required marks, labels, or notices.

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

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28082, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–421, 64 FR 71924, Dec. 22, 1999]

§ 270.234 Removal for use of the United States.

The removal of tobacco products in bond, for use of the United States, shall be in accordance with the provisions of part 295 of this chapter.

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

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF–232, 51 FR 28082, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 270.235 Removal for export purposes.

The removal of tobacco products in bond, for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States, shall be in accordance with the provisions of part 290 of this chapter.

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

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28082, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 270.236 Release from customs custody.

The release of tobacco products from customs custody, in bond, for transfer to the premises of a tobacco products factory, shall be in accordance with the provisions of part 275 of this chapter.

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

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28082, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

OTHER PROVISIONS RELATING TO TOBACCO PRODUCTS

§ 270.251 Emergency storage.

In cases of emergency, the regional director (compliance) may authorize, for a stated period, the temporary storage of tobacco products at a place outside the factory without the application for amended permit required under § 270.114, where such action will not hinder the effective administration of this part, is not contrary to law, and will not jeopardize the revenue. Application for authorization to so store tobacco products shall be submitted to the regional director (compliance) by letter, in duplicate. All tobacco products so stored outside the factory shall be accounted for in the records and reports required under §§ 270.183 and 270.202 the same as products within the factory.

(72 Stat. 1422, 1423, as amended; 26 U.S.C. 5722, 5741)

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF–232, 51 FR 28082, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 270.252 Reduction of tobacco products to materials.

A manufacturer may reduce tobacco products to materials without supervision. If the tobacco products have been entered in the factory record as manufactured or received, an entry shall be made in such record of the quantity of pipe tobacco or roll-your-own tobacco and the kind and quantity of cigars, cigarettes, and smokeless tobacco reduced to materials and of the quantity of tobacco resulting from the reduction. Where the manufacturer intends to file claims for credit allowance, or refund of tax on such tobacco products, he shall comply with the provisions of §§ 270.311 and 270.313.

[T.D. ATF–232, 51 FR 28082, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF–289, 54 FR 48840, Nov. 27, 1989; T.D. ATF–424, 64 FR 71931, Dec. 22, 1999]

§ 270.253 Destruction.

When a manufacturer of tobacco products desires to destroy tobacco products which have been entered in the factory record as manufactured or received, without salvaging the tobacco, he shall notify the regional director (compliance) by letter, in duplicate, of the kind and quantity of tobacco products to be destroyed, the intended method of destruction, and the date on which he desires to destroy such products. The regional director (compliance) may assign an ATF officer to supervise destruction of the tobacco products or he may authorize the manufacturer to destroy such products without supervision by so stating on a copy of the manufacturer's notice returned to the manufacturer. When so authorized by the regional director (compliance), the manufacturer shall destroy the tobacco products by burning completely or by rendering them unfit for consumption. Upon completion of the destruction, the manufacturer shall make an entry of such destruction in his factory record, and where destruction without supervision is authorized, shall record the date and method of destruction on the notice returned to him by the regional director (compliance), which notice the manufacturer shall retain. Where the manufacturer intends to file claim for credit, allowance, or refund of tax on such products he shall comply with the provisions of §§ 270.311 and 270.313.

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

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28082, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 270.254 Receipt into factory.

A manufacturer of tobacco products may receive in bond into his factory tobacco products and may also receive into his factory tobacco products on which the tax has been determined (including products on which the tax has been paid). Cigars and cigarettes on which the tax has been determined which are so received shall be segregated and identified as products on which the tax has been determined. If tax determined products received into the factory are so handled that they cannot be identified both physically and in the records as tax determined products they shall be accounted for as returned to bond and upon subsequent removal shall be tax determined.

Where returned tax determined tobacco products are to be repackaged without being returned to bond the manufacturer shall make application for authorization to do so to the regional director (compliance) in accordance with § 270.217. Where the manufacturer intends to file claim for credit, allowance, or refund of tax on tax determined products he shall comply with the provisions of §§ 270.311 and 270.313.

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28082, Aug. 5, 1986; T.D. ATF–243, 52 FR 43194, Dec. 1, 1986]

§ 270.255 Shortages and overages in inventory.

Whenever a manufacturer of tobacco products makes a physical inventory of packaged tobacco products in bond, either as part of normal operations or when required by an ATF officer, and such inventory discloses a shortage or overage in such products by kind as recorded and reported (*i.e.*, small cigars, large cigars, chewing tobacco, snuff, pipe tobacco, or roll-your-own tobacco), the manufacturer shall enter such shortage or overage in the records required by § 270.183. Shortages or overages in inventories made at different times may not be used to offset each other, but shall be recorded and reported separately. Unless the manufacturer establishes that a shortage was not caused by a removal subject to the tax the manufacturer shall determine the tax on any shortage, make an adjustment in Schedule A of his next semimonthly tax return and pay the tax thereon. If, after paying the tax on a shortage, the manufacturer satisfactorily establishes that the shortage was not caused by a removal subject to tax, then such payment would be an overpayment of tax which the manufacturer may recover as provided in § 270.286. Where the manufacturer can establish prior to paying the tax on a shortage, that the shortage was not the result of a removal subject to tax he shall submit an explanation of such shortage with his report for the month in which the shortage was disclosed and, if appropriate, he may file claim for remission of tax liability as provided in § 270.287. When an overage is disclosed which the manufacturer can explain, he shall include such explanation in his monthly report and refund of any overpayment may be recovered as provided in § 270.286. Whenever a physical inventory discloses a shortage or overage of tobacco products which have not been packaged the manufacturer shall appropriately enter such shortage or overage in his records and shall, at the time required by the Regional Director (Compliance), furnish an explanation in the form of a claim for remission of tax liability as provided in § 270.287. The manufacturer shall pay the tax on any shortage or portion thereof for which he is unable to furnish an explanation acceptable to the Regional Director (Compliance).

[T.D. ATF–232, 51 FR 28082, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF–289, 54 FR 48840, Nov. 27, 1989; T.D. ATF–424, 64 FR 71931, Dec. 22, 1999]

Subpart I—Claims by Manufacturers

GENERAL

§ 270.281 Abatement of assessment.

A claim for abatement of the unpaid portion of the assessment of any tax on tobacco products 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 manufacturer.

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

[T.D. 6871, 31 FR 38, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28083, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–251, 52 FR 19340, May 22, 1987]

§ 270.282 Allowance of tax.

Relief from the payment of tax on tobacco products may be extended to a manufacturer by allowance of the tax where the tobacco products after removal from the factory upon determination of tax and prior to the payment of such tax, are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the manufacturer who removed such products, or are withdrawn by him from the market. Any claim for allowance under this section shall be filed on Form 2635, in duplicate, with the regional director (compliance) for the region in which the products were removed, and shall show the date the tobacco products were removed from the factory. A claim relating to products lost or destroyed shall be supported as prescribed in § 270.301. In the case of a claim relating to tobacco products withdrawn from the market the schedule prescribed in § 270.311 shall be filed with the regional director (compliance) for the region in which the products are assembled. The manufacturer may not anticipate allowance of his claim by making the adjusting entry in a tax return pending consideration and action on the claim. Tobacco products to which such a claim relates must be shown as removed on determination of tax in the return covering the period during which such products were so removed. Upon action on the claim by the regional director (compliance) he will return the copy of Form 2635 to the manufacturer as notice of such action, which copy, with the copy of any verified supporting schedules, shall be retained by the manufacturer. When such notification of allowance of the claim or any part thereof is received prior to the time the return covering the tax on the tobacco products to which the claim relates is to be filed, the manufacturer may make an adjusting entry and explanatory statement in that tax return. Where the notice of allowance is received after the filing of the return and taxpayment of the tobacco products to which the claim relates, the manufacturer may make an adjusting entry and explanatory statement in the next tax return(s) to the extent necessary to take credit in the amount of the allowance.

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

[T.D. 6961, 33 FR 9488, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28083, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 270.283 Credit or refund of tax.

The taxes paid on tobacco products may be credited or refunded (without interest) to a manufacturer on proof satisfactory to the regional director (compliance) that the claimant manufacturer paid the tax on tobacco products lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such manufacturer, or withdrawn by him from the market. Any claim for credit or refund under this section shall be prepared on Form 2635 (5620.8), in duplicate. Claims shall include a statement that the tax imposed on tobacco products by 26 U.S.C. 7652 or chapter 52, was paid in respect to the tobacco products covered by the claim, and that the products were lost, destroyed, or withdrawn from the market within 6 months preceding the date the claim is filed. A claim for credit or refund relating to products lost or destroyed shall be supported as prescribed in § 270.301, and a claim relating to products withdrawn from the market shall be accompanied by a schedule prepared and verified as prescribed in §§ 270.311 and 270.313. The original and one copy of Form 2635 (5620.8), claim for credit, or the original of Form 2635 (5620.8), claim for refund, 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. Upon action by the regional director (compliance) on a claim for credit he will return the copy of Form 2635 to the manufacturer as notification of allowance or disallowance of the claim or any part thereof, which copy, with the copy of any verified supporting schedules, shall be retained by the manufacturer. When the manufacturer is notified of allowance of the claim for credit or any part thereof he shall make an

adjusting entry and explanatory statement in the next tax return(s) to the extent necessary to take credit in the amount of the allowance. Prior to consideration and action on his claim the manufacturer may not anticipate allowance of his claim by taking credit in his tax return. The duplicate of a claim for refund, with the copy of any verified supporting schedules, shall be retained by the manufacturer.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1419)

[T.D. 6961, 33 FR 9489, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55855, Sept. 28, 1979; T.D. ATF–219, 50 FR 51389, Dec. 17, 1985; T.D. ATF–232, 51 FR 28083, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–251, 52 FR 19340, May 22, 1987]

§ 270.284 Remission of tax liability.

Remission of the tax liability on tobacco products may be extended to the manufacturer liable for the tax where tobacco products in bond are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such manufacturer. Where tobacco products are so lost or destroyed the manufacturer shall report promptly such fact, and the circumstances, to the regional director (compliance) for the region in which the factory is located. If the manufacturer wishes to be relieved of the tax liability thereon he shall also prepare a claim on Form 2635, in duplicate, setting forth the nature, date, place, and extent of the loss or destruction. Both copies 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 factory is located. Upon action on the claim by the regional director (compliance) he will return the copy of Form 2635 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. 5705)

[T.D. 6961, 33 FR 9489, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28083, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 270.285 [Reserved]

§ 270.286 Refund of overpayment.

Where an error in computation of the quantity of tobacco products or in computation of the amount of tax due results in an overpayment and such error is specifically identified and supported by records, the manufacturer may file claim for refund or may make an adjustment in his semimonthly tax return as provided in § 270.164. (Section 6511, 26 U.S.C., provides that, in most cases, any adjustment of claim for refund of an overpayment of tax on tobacco products must be made or filed within three years after the tax is paid.) If the manufacturer elects to file a claim for refund of an overpayment resulting from such a computational error, he shall do so on Form 2635 (5620.8), in duplicate. The original shall be filed with the regional director (compliance) for the region in which the tax was paid, and the duplicate retained by the manufacturer. Where an overpayment of tax on tobacco products results from other than a computational error any claim for refund or credit shall be made in accordance with subpart A of part 296 of this chapter.

(68A Stat. 791, 72 Stat. 9; 26 U.S.C. 6402, 6423)

[T.D. 6871, 31 FR 39, 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 28083, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–251, 52 FR 19340, May 22, 1987]

§ 270.287 Remission of tax liability on shortage.

Whenever a manufacturer of tobacco products desires to submit a claim for remission of tax liability on shortages of tobacco products in bond, disclosed by physical inventory as set forth in § 270.255, he shall prepare such claim on Form 2635, in duplicate. Both copies of the claim shall be filed with the regional director (compliance) for the region in which the factory is located. The claim shall specify the quantities of tobacco products on which claim is made and the tax liability in respect thereof, and shall set forth the circumstances surrounding the shortage

and the reason the manufacturer believes tax is not due or payable. The regional director (compliance) will, after such investigation as he deems appropriate, allow the claim to the extent he is satisfied the shortage was due to operating losses such as damage during grading, sorting, or packaging, and was not caused by theft or other unlawful or improper removal. Upon action on the claim by the regional director (compliance) he will return the copy of Form 2635 to the manufacturer as notice of such action, which copy shall be retained by the manufacturer.

(72 Stat. 1414, as amended, 1417, 1419, as amended; 26 U.S.C. 5701, 5703, 5705)

[T.D. 6961, 33 FR 9489, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28083, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

TOBACCO PRODUCTS LOST OR DESTROYED

§ 270.301 Action by claimant.

Where tobacco products are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, and the manufacturer desires to file a claim for the tax on such products under the provisions of § 270.282 or § 270.283, he shall 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 satisfaction 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 39, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28083, Aug. 5, 1986; T.D. ATF–243, 52 FR 43194, Dec. 1, 1986]

TOBACCO PRODUCTS WITHDRAWN FROM THE MARKET

§ 270.311 Action by claimant.

(a) *General*. Where tobacco products are withdrawn from the market and the manufacturer desires to file claim under the provisions of § 270.282 or § 270.283, he shall assemble the products in or adjacent to a factory if they are to be returned to bond or at any suitable place if they are to be destroyed or reduced to materials. The manufacturer shall group the products according to the rates of tax applicable to the products, and shall prepare a schedule of the products, on ATF Form 5200.7, in triplicate. All copies of the schedule shall be forwarded to the regional director (compliance) for the region in which the products are assembled.

(b) *Large cigars*. Refund or credit of tax on large cigars withdrawn from the market is limited to the lowest tax paid on that brand and size of cigar during the required record retention period (see § 270.185), except where the manufacturer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market, the manufacturer must include a certification on either Form 5200.7 or Form 2635 (5620.8) to read as follows:

The amounts claimed relating to large cigars are based on the lowest sale price 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.

(See 26 U.S.C. 5705)

[T.D. ATF–80, 46 FR 18310, Mar. 24, 1981, as amended by T.D. ATF–232, 51 FR 28083, 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–307, 55 FR 52743, Dec. 21, 1990; T.D. ATF–424, 64 FR 71932, Dec. 22, 1999; T.D. ATF–420, 64 FR 71941, Dec. 22, 1999]

§ 270.312 Action by regional director (compliance).

Upon receipt of a schedule of tobacco products withdrawn from the market, the regional director (compliance) may assign an ATF officer to verify the schedule and supervise disposition of the tobacco products (and destruction of the stamps, if any), or he may authorize the manufacturer to dispose of the products (and destroy the stamps, if any) without supervision by so stating on the original and one copy of the schedule returned to the manufacturer.

[T.D. 6871, 31 FR 39, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–232, 51 FR 28083, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 270.313 Disposition of tobacco products and schedule.

When so authorized, as evidenced by the regional director's (compliance) statement on the schedule, the manufacturer shall dispose of the tobacco products (and destroy the stamps, if any) as specified in the schedule. After the manufacturer has disposed of the products (and destroyed the stamps, if any), he shall execute a certificate on both copies of the schedule returned to him by the regional director (compliance), to show the disposition and the date of disposition of the products (and stamps, if any). In connection with a claim for allowance the manufacturer then shall return the original of the schedule to the regional director (compliance) who authorized such disposition, who will cause such schedule to be associated with the claim, Form 2635 (5620.8), filed under § 270.282. In connection with a claim for credit or refund the manufacturer shall attach the original of the schedule to his claim for credit, Form 2635 (5620.8), or claim for refund, Form 2635 (5620.8), filed under § 270.283. When an ATF officer is assigned to verify the schedule and supervise disposition of the tobacco products, 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 the products. In connection with a claim for allowance the officer shall return one copy of the schedule to be included in the manufacturers records, 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, Form 2635 (5620.8), filed under § 270.283.

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

[T.D. 6871, 31 FR 39, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28083, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–251, 52 FR 19340, May 22, 1987]

Subpart J—Suspension and Discontinuance of Operations by Manufacturers

§ 270.331 Discontinuance of operations.

Every manufacturer of tobacco products who desires to discontinue operations under this part shall dispose of all tobacco products on hand, in accordance with this part, and make a concluding inventory and concluding report in accordance with the provisions of § 270.201 and § 270.202, respectively. The manufacturer shall surrender his permit, with such inventory and report, to the regional director (compliance) as notice of such discontinuance. The regional director (compliance) may then terminate the liability of the surety on the bond of the manufacturer.

(72 Stat. 1422; 26 U.S.C. 5721, 5722)

[T.D. 6871, 37 FR 40, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28083, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 270.332 Suspension and revocation of permit.

Where the regional director (compliance) has reason to believe that a manufacturer of tobacco products has not in good faith complied with the provisions of 26 U.S.C. chapter 52, and regulations thereunder, or with any other provision of 26 U.S.C. with intent to defraud, or has violated any condition of his permit, or has failed to disclose any material information required or made any material false statement in the application for the permit, or has failed to maintain his premises in such manner as to protect the revenue, the regional director (compliance) shall issue an order, stating the facts charged, citing such person to show cause why his permit should not be suspended or revoked. Such citation shall be issued and opportunity for hearing afforded in accordance with part 200 of this chapter, which part is applicable to such proceedings. If the hearing examiner, or on appeal, the Director, decides the

permit should be suspended or revoked, the regional director (compliance) shall by order give effect to such decision.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1421, as amended (26 U.S.C. 5713))

[26 FR 8174, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55855, Sept. 28, 1979]

Subpart K—Manufacture of Cigarette Papers and Tubes

SOURCE: T.D. ATF–384, 61 FR 54085, Oct. 17, 1996, unless otherwise noted.

TAXES

§ 270.351 Cigarette papers.

Cigarette papers are taxed at the following rates under 26 U.S.C. 5701(c):

Product	Tax rate for each 50 papers[1] for removals during the years:		
	1993 to 1999[2]	2000 and 2001	2002 and after
Cigarette papers up to 6½″ long	$0.0075	$0.0106	$0.0122
Cigarette papers over 6½″ long	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper.		

[1] Tax rate for less than 50 papers is the same. The tax is not prorated.
[2] Before January 1, 2000, books or sets containing 25 papers or less were not taxable. On and after January 1, 2000, all cigarette papers are taxable.

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

[T.D. ATF–420, 64 FR 71941, Dec. 22, 1999]

§ 270.352 Cigarette tubes.

Cigarette tubes are taxed at the following rates under 26 U.S.C. 5701(d):

Product	Tax rate for each 50 tubes* for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Cigarette tubes up to 6½″ long	$0.015	$0.0213	$0.0244
Cigarette tubes over 6½″ long	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube.		

*Tax rate for less than 50 tubes is the same. The tax is not prorated.

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

[T.D. ATF–420, 64 FR 71941, Dec. 22, 1999]

§ 270.353 Persons liable for tax.

The manufacturer of cigarette papers and tubes shall be liable for the taxes imposed on such articles by 26 U.S.C. 5701. When a manufacturer of cigarette papers and tubes transfers such papers and tubes without payment of tax, pursuant to 26 U.S.C. 5704 to the bonded premises of another such manufacturer, a manufacturer of tobacco products, or an export warehouse proprietor, the transferee shall become liable for the tax upon receipt of such papers and tubes and the transferor shall thereupon be relieved of liability for the tax. When cigarette papers and tubes are released in bond from customs custody for transfer to the bonded premises of a manufacturer of such papers and tubes or a manufacturer of tobacco products, the transferee shall become liable for the tax on the papers and tubes upon release from customs custody. Any person who possesses cigarette papers and tubes in violation of 26 U.S.C. 5751(a) (1) or (2), shall be liable for a tax equal to the rate of tax applicable to such articles.

(72 Stat. 1417, 1424; 26 U.S.C. 5703, 5751)

§ 270.354 Determination of tax and method of payment.

Except for removals without payment of tax and transfers in bond, as authorized by law, no cigarette papers and tubes shall be removed until the taxes imposed by section 5701, I.R.C.,

have been determined. The payment of taxes on cigarette papers and tubes which are removed on determination of tax shall be made by return in accordance with the provisions of this subpart.

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

§ 270.355 Return of manufacturer.

(a) *Requirement for filing*. A manufacturer of cigarette papers and tubes shall file, for each factory, a semimonthly tax return on ATF Form 5000.24. A return shall be filed for each semimonthly return period regardless of whether cigarette papers and tubes were removed subject to tax or whether tax is due for that particular return period.

(b) *Waiver from filing*. The manufacturer need not file a return for each semimonthly return period if:

(1) Cigarette papers and tubes were not removed subject to tax during the period, and

(2) The regional director (compliance) has granted a waiver from filing in response to a written request from the manufacturer.

(c) *Semimonthly return periods*. Except as provided by paragraph (g) of this section, semimonthly return periods shall run from the first day of the month through the 15th day of the month, and from the 16th day of the month through the last day of the month.

(d) *Preparation and filing*. The return shall be executed and filed with ATF in accordance with the instructions on the form.

(e) *Remittance of tax*. Except as provided in § 270.357, remittance of the tax, if any, shall accompany the return.

(f) *Time for filing*. Except as provided by paragraph (g) of this section, for each semimonthly return period, the return shall be filed not later than the 14th day after the last day of the return period. 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 is not a Saturday, Sunday or legal holiday.

(g) *Special rule for taxes due for the month of September (effective after December 31, 1994)*. (1) Except as provided in paragraph (g)(2) of this section, the second semimonthly 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 manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The 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 § 270.357, the second semimonthly 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 manufacturer shall file a return on Form 5000.24, and remittance, for the period September 16–25, no later than September 28. The 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 (g)(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 semimonthly 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 (g)(2) of this section, if the amount paid no later than September 28 is not less than two-thirds (66.7 percent) of the tax liability incurred for the semimonthly 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, 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.

(Approved by the Office of Management and Budget under Control Number 1512–0467)

§ 270.356 Adjustments in the return of manufacturer.

Adjustments may be made in Schedules A and B of the manufacturer's semimonthly tax return, ATF Form 5000.24, as provided in this section. Schedule A of the return will be used where an unintentional error in a previous return resulted in an underpayment of tax. Schedule B of the return will be used where an unintentional error in a previous return resulted in an overpayment of tax, or where notice has been received from the regional director (compliance) that a claim for allowance of tax has been approved. In the case of an overpayment, the manufacturer shall have the option of filing a claim on ATF Form 2635 (5620.8) for refund or taking credit in Schedule B of the return, both subject to the period of limitations prescribed in 26 U.S.C. 6511. Any adjustment made in a return must be fully explained in the appropriate schedule or in a statement attached to and made a part of the return in which such adjustment is made.

(72 Stat. 1417, 68A Stat. 791; 26 U.S.C. 5703, 6402)

§ 270.357 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 millions dollars in taxes on tobacco products, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 275 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 in any other form of remittance, as authorized in § 270.355, 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 on all taxable withdrawals and importations (including tobacco products, cigarette papers, and cigarette tubes 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. 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 §§ 1.563–1 through 1.1563–4. 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 return, ATF Form 5000.24, for each factory from which 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 275 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 Department of the Treasury's General Account or the Federal Reserve Bank of New York

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 § 270.355. 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 combining tax liabilities incurred under this part and part 275 of this chapter 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 § 270.355. Upon filing 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 ATF Form 5000.24, 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 return, ATF Form 5000.24, information about remitting the tax for that return period by EFT and shall file the return with ATF, in accordance with the instructions of ATF Form 5000.24.

(2) Remittances shall be considered as made when the taxpayment by EFT is received by the Treasury Account. For purposes of this section, a taxpayment by EFT 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 EFT 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 AFT 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))

§ 270.358 Assessment.

Whenever any person required by law to pay tax on cigarette papers and 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)

§ 270.359 Employer identification number.

The employer identification number (EIN) (defined at 26 CFR 301.7701–12) of a manufacturer of cigarette papers and/or tubes who has been assigned such a number shall be shown on each semimonthly tax return, ATF Form 5000.24, and special tax return (including amended returns), ATF Form 5630.5, filed under this subpart. Failure of the taxpayer to include the EIN on ATF Form 5000.24 may result in assertion

and collection of the penalty specified in § 70.113 of this chapter. Failure of the taxpayer to include the EIN on ATF Form 5630.5 may result in the imposition of the penalty specified in 27 CFR 70.113 of this chapter.

(75 Stat. 828; 26 U.S.C. 6109, 6676)

§ 270.360 Application for employer identification number.

Each manufacturer of cigarette papers and tubes who has neither secured an EIN nor made application therefor shall file an application on IRS Form SS–4. IRS Form SS–4 may be obtained from any service center director or from any district director. Such application shall be filed on or before the seventh day after the date on which any tax return under this subpart is filed. Each manufacturer shall make application for and shall be assigned only one EIN for all internal revenue purposes.

(75 Stat. 828; 26 U.S.C. 6109)

§ 270.361 Execution and filing of Form SS–4.

The application on IRS form SS–4, together with any supplementary statement, shall be prepared in accordance with the applicable form, instructions, and regulations, and the data called for shall be set forth fully and clearly. The application shall be filed with the service center director serving the internal revenue district where the applicant is required to file returns under this subpart, except that hand-carried applications may be filed with the district director of any such district as provided for in 26 CFR § 301.6091–1. The application shall be signed by:

(a) The individual if the person is an individual;

(b) The president, vice president, or other principal officer if the person is a corporation;

(c) A responsible and duly authorized member or officer having knowledge of its affairs if the person is a partnership or other unincorporated organization; or

(d) The fiduciary if the person is a trust or estate.

(75 Stat. 828; 26 U.S.C. 6109)

SPECIAL (OCCUPATIONAL) TAXES

§ 270.371 Liability for special tax.

(a) *Manufacturer of cigarette papers and tubes.* Every manufacturer of cigarette papers and tubes shall pay a special (occupational) tax at a rate specified by § 270.372 of this part. The tax shall be paid on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Each place of business taxable.* A manufacturer of cigarette papers and tubes incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5731)

§ 270.372 Rate of special tax.

(a) *General.* Title 26 U.S.C. 5731(a)(2) imposes a special tax of $1,000 per year on every manufacturer of cigarette papers and tubes.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5731(b) provides for a reduced rate of $500 per year with respect to any manufacturer of cigarette papers and tubes whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 270.371 relates) are less than $500,000. The ''taxable year'' to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax

rate, unless the business is a member of a ''controlled group''; in that case the rules of paragraph (c) of this section shall apply.

(c) *Controlled group*. All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. ''Controlled group'' means 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. 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 this section.

(d) *Short taxable year*. Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances*. Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5731)

§ 270.373 Special tax returns.

(a) *General*. Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5*. All of the information called for on ATF Form 5630.5 shall be provided including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see §§ 270.359–361).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: That is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. ''Owner of the business'' shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax*.

A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by State, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 270.371.

(d) *Signing of ATF Forms 5630.5*—(1) *Ordinary returns*. The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by any officer. In each case, the

person signing the return shall designate his or her capacity as ''individual owner,'' ''member of firm,'' or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries.* Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact.* If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement.* ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

§ 270.374 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment required by § 270.373(c)(2), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5142, 5146, 6806)

§ 270.375 Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on ATF Form 5630.5, the manufacturer shall file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The manufacturer shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship.*—(1) *General.* If there is a change in the proprietorship of a cigarette papers and tubes factory, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on ATF Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which the successor began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The spouse or child, or executor, administrator, or other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency*. A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm*. The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location*. If there is a change in location of a taxable place of business, the manufacturer shall within 30 days after the change, file with ATF an amended special tax return covering the new location. The manufacturer shall attach the special tax stamp or stamps for endorsement of the change in location. No new special tax is required to be paid. However, if the manufacturer does not file the amended return within 30 days, the manufacturer is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

GENERAL

§ 270.382 Authority of ATF officers to enter premises.

Any ATF officer may enter in the daytime any premises where cigarette papers and 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 or her official duties. The owner of such premises, or person having the superintendence of the same, who refuses to admit any ATF officer or permit any AFT officer to examine such cigarette papers and tubes shall be liable to the penalties prescribed by law for the offense.

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

§ 270.383 Interference with administration.

Whoever, corruptly or by force or threats of force, endeavors to hinder or obstruct the administration of this subpart, or endeavors to intimidate or impede any ATF officer acting in an 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 or intended violation of this subpart, shall be liable to the penalties prescribed by law.

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

§ 270.384 Disposal of forfeited, condemned, and abandoned cigarette papers and tubes.

Forfeited, condemned, or abandoned cigarette papers or tubes in the custody of a Federal, State, or local officer upon which the Federal tax has not been paid shall not be sold or caused to be sold for consumption in the United States if, in the opinion of the officer, the sale of such papers and tubes will not bring a price equal to the tax due and payable, and the expenses incident to the sale. Where the cigarette papers or tubes are not sold the officer may deliver them to a Federal or State institution (if they are fit for consumption) or cause their destruction by burning completely or by rendering them unfit for consumption. Where such papers or tubes are sold, release by the officer having custody shall be made only after such papers and tubes are properly packaged and taxpaid. A receipt from the regional director (compliance) evidencing payment of tax on such papers or tubes shall be presented to the officer having custody of the articles, which tax shall be considered part of the sales price. Where cigarette papers or tubes which have been packaged under the provisions of part 295 of this chapter are to be released after payment of tax, the purchaser shall appropriately mark each package ''Federal Tax Paid (date)'' before the officer having custody of the papers or tubes releases them. However, the articles may be released without such marking of the packages if the purchaser is a qualified manufacturer of cigarette papers and tubes and does not intend to place such papers or tubes on the domestic market for taxable articles but will otherwise dispose of them. A written statement of notification of disposal by destruction or return to bond through claim for refund, shall be filed, in original only, with the officer having custody of the articles. In the case of cigarette papers and tubes forfeited under the internal revenue laws, the sale shall be subject to

the provisions of part 72 of this chapter.

(68A Stat. 870, as amended, 72 Stat. 1425, as amended; 26 U.S.C. 7325, 5753)

§ 270.385 Alternate methods or procedures.

A manufacturer of cigarette papers and tubes, 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 subpart. The Director may approve an alternate method or procedure, subject to stated conditions, when the Director 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 or 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 subpart.

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. A manufacturer who desires to employ an alternate method or procedure shall submit a written application, 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 manufacturer 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. Any authorization of the Director under this section shall be retained as part of the manufacturer's record in accordance with this subpart.

§ 270.386 Emergency variations from requirements.

The Director may approve methods of operation other than as specified in this subpart, where it is determined 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 subpart; 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 with such procedures, conditions and limitations shall automatically terminate the authority for such variations and the manufacturer thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this subpart is hindered by the continuation of such variation. Where a manufacturer desires to employ such variation, the manufacturer 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. In accordance with this subpart, any authorization of the Director under this section shall be retained as part of the manufacturer's records.

§ 270.387 Penalties and forfeitures.

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

(72 Stat. 1425, 1426; 26 U.S.C. 5761, 5762, 5763)

QUALIFICATION REQUIREMENTS FOR MANUFACTURERS

Original Qualifications

§ 270.391 Persons required to qualify.

Every person who makes up cigarette paper into books or sets containing more than 25 papers each, or into tubes, except for his or her own personal use or consumption, shall first qualify as a manufacturer of cigarette papers and tubes in accordance with the provisions of this subpart.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.392 Bond.

Every person, before commencing business as a manufacturer of cigarette papers and tubes, shall file a bond on ATF Form 2102 (5210.1). Such bond shall be filed in accordance with the applicable provisions of subpart G of this part and conditioned upon compliance with the provisions of 26 U.S.C. Chapter 52, and regulations thereunder, including, but not limited to, the timely payment of taxes imposed by such chapter and penalties and interest in connection therewith for which the manufacturer may become liable to the United States.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.393 Power of attorney.

If the bond or any other document required under this part is signed by an attorney in fact for an individual, partnership, association, company, or corporation, by one of the partners for a partnership, or by one of the members of an association, a power of attorney on ATF Form 1534 (5000.8) shall be furnished to the regional director (compliance). If such bond or other document is signed on behalf of a corporation by an officer thereof, it must be supported by duly authenticated extracts of the stockholders' meeting, by-laws, or directors' meeting authorizing such officer to execute such document for the corporation. ATF Form 5000.8 or support of authority does not have to be filed again with a regional director (compliance) where such form or support has previously been submitted to that regional director (compliance) and is still in effect.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.394 Notice of approval of bond.

If the bond required under this subpart is approved by the regional director (compliance), a number will be assigned to the factory of the manufacturer of cigarette papers and tubes for internal revenue purposes. The regional director (compliance) will immediately notify the manufacturer, in writing, of the bond approval, in order that the manufacturer may commence operations.

(72 Stat. 1421; 26 U.S.C. 5711)

Changes after Original Qualifications

§ 270.395 Change in name.

Where there is a change in the individual, trade, or corporate name of a manufacturer of cigarette papers and tubes, the manufacturer shall, within 30 days of the change, furnish the regional director (compliance) a written notice of such change.

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

§ 270.396 Change in proprietorship.

Where there is to be any change in proprietorship (including a change in the identity of the members of a partnership or association, but excluding any change in stock ownership in a corporation) of the business of a manufacturer of cigarette papers and tubes, the proposed successor shall, before commencing operations, qualify as a manufacturer of cigarette papers and tubes, in accordance with this part. If such manufacturer promptly files the required documentation with the regional director (compliance), an administrator, executor, receiver, trustee, assignee, or other fiduciary successor may liquidate the business without qualifying as a manufacturer. The manufacturer must promptly file with the regional director (compliance) a statement of the intent to liquidate and furnish a certified copy of the order of the court, or other pertinent documents. These documents must

show the appointment and qualification of any administrator, executor, receiver, trustee, assignee, or other fiduciary, together with an extension of coverage of the predecessor's bond executed by the administrator, executor, receiver, trustee, assignee, or other fiduciary and the surety, in accordance with the provisions of § 270.407. The predecessor shall make a closing inventory and closing report in accordance with the provisions of §§ 270.434 and 270.426, respectively, and the successor shall make an opening inventory and opening report, in accordance with the provision of §§ 270.432 and 270.423, respectively.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5721, and 5722)

§ 270.397 Change in location.

Whenever a manufacturer of cigarette papers and tubes contemplates a change in location of a factory within the same region, the manufacturer shall, before commencing operations at the new location, file an extension of coverage of bond in accordance with the provisions of § 270.407. Whenever a manufacturer of cigarette papers and tubes contemplates changing the location of a factory to another region, the manufacturer shall, before commencing operations at the new location, qualify as a manufacturer in the new region, in accordance with the applicable provisions of this subpart, and make a closing inventory and closing report, in accordance with the provisions of §§ 270.434 and 270.426, respectively.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5721, and 5722)

Bonds and Extensions of Coverage of Bonds

§ 270.401 Corporate surety.

(a) Surety bonds required by this subpart may be given only with corporate sureties holding certificates of authority from, and subject to any limitations prescribed by the Secretary of the Treasury as set forth 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) Each bond and each extension of coverage of bond shall at the time of filing be accompanied by a power of attorney authorizing the agent or officer who executed the bond to so act on behalf of the surety. The regional director (compliance) who is authorized to approve the bond may, whenever deemed necessary, require additional evidence of the authority of the agent or officer to execute the bond or extension of coverage of bond. The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed document, it shall be accompanied by a certificate of its validity.

(c) Treasury Department Circular No. 570 is published in the FEDERAL REGISTER annually as of the first workday in July. As they occur, interim revisions of the circular are published in the FEDERAL REGISTER. Copies may be obtained from the Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, D.C. 20220.

(July 30, 1947, ch. 390, 61 Stat. 648, as amended (31 U.S.C. 9304, 9306); sec. 202. Pub. L. 85–859, 72 Stat. 1421, as amended (26 U.S.C. 5711))

§ 270.402 Two or more corporate sureties.

A bond executed by two or more corporate sureties shall be the joint and several liability of the principal and the sureties. However, each corporate surety may limit its liability in terms upon the face of the bond in a definite, specific amount, which amount shall not exceed the limitations prescribed for such corporate surety by the Secretary, as set forth in the current revision of Treasury Department Circular 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies). (See § 270.401(c)) When the sureties so limit their liability, the aggregate of such limited liabilities must equal the required amount of the bond.

(July 30, 1947, ch. 390, 61 Stat. 648, as amended (31 U.S.C. 9304, 9306); sec. 202. Pub. L. 85–859, 72 Stat. 1421, as amended (26 U.S.C. 5711))

§ 270.403 Deposit of securities in lieu of corporate surety.

In lieu of corporate surety, the manufacturer of cigarette papers and tubes may pledge and deposit, as security for the bond, securities which are transferable and are guaranteed as to both interest and principal by the United States, in accordance with the provisions of 31 CFR Part 225—Acceptance of Bonds, Notes or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds.

(61 Stat. 650, 72 Stat. 1421, 31 U.S.C. 9301, 9303, 26 U.S.C. 5711, 5 U.S.C. 552(a) (80 Stat. 383, as amended))

§ 270.404 Amount of bond.

The amount of the bond of a manufacturer of cigarette papers and tubes shall be not less than the maximum amount of the tax liability on the cigarette papers and tubes manufactured in the factory, received without payment of tax from other factories, and released without payment of tax from customs custody as provided in § 270.452, during any month. In the case of a manufacturer commencing business, the production, receipts from other factories, and releases from customs custody, without payment of tax, shall be estimated for the purpose of this section. The amount of any such bond (or the total amount where strengthening bonds are filed) shall not exceed $20,000, nor be less than $1,000.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.405 Strengthening bond.

Where the regional director (compliance) determines that the amount of the bond, under which a manufacturer of cigarette papers and tubes is currently carrying on such business, no longer adequately protects the revenue, the regional director (compliance) may require the manufacturer to file a strengthening bond in an appropriate amount with the same surety as that on the bond already in effect, in lieu of a superseding bond to cover the full liability on the basis of § 270.404. The regional director (compliance) shall refuse to approve any strengthening bond 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.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.406 Superseding bond.

A manufacturer of cigarette papers and tubes shall file a new bond to supersede the current bond immediately when:

(a) The corporate surety on the current bond becomes insolvent,

(b) The regional director (compliance) approves a request from the surety of the current bond to terminate liability under the bond,

(c) Payment of any liability under a bond is made by the surety thereon, or

(d) The regional director (compliance) considers such a superseding bond necessary for the protection of the revenue.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.407 Extension of coverage of bond.

An extension of the coverage of bond filed under this subpart shall be manifested on ATF Form 2105 (5000.7), Extension of Coverage of Bond, by the manufacturer of cigarette papers and tubes and by the surety on the bond with the same formality and proof of authority as required for the execution of the bond.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.408 Approval of bond and extension of coverage of bond.

No person shall commence operations under any bond, nor extend operations, until such person receives from the regional director (compliance) notice of approval of the bond or an appropriate extension of coverage of the bond required under this subpart. Upon receipt of an approved bond or extension of coverage of bond from the regional director (compliance), such bond or extension of coverage of bond shall be retained by the manufacturer of cigarette papers and tubes in factory and shall be made available for inspection by any ATF officer upon request.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.409 Termination of liability of surety under bond.

The liability of a surety on any bond required by this subpart shall be terminated only as to operations on and after the effective date of a superseding bond, or the date of approval of the discontinuance of operations by the manufacturer of cigarette papers and tubes, or otherwise in accordance with the termination provisions of the bond. The surety shall remain bound in respect of any liability for unpaid taxes, penalties and interest, not in excess of the amount of the bond, incurred by the manufacturer while the bond is in force.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 270.410 Release of pledged securities.

Securities of the United States pledged and deposited as provided in § 270.403 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 liability under the bond for which they were pledged has been terminated. When the regional director (compliance) is satisfied that they may be released, the regional director (compliance) 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 is deemed necessary.

(61 Stat. 650, 72 Stat. 1421; 31 U.S.C. 9301, 9303; 26 U.S.C. 5711)

OPERATIONS BY MANUFACTURERS

Records

§ 270.421 General.

(a) Every manufacturer of cigarette papers and tubes must keep records of daily operations and transactions. Records maintained must reflect the date and number of cigarette papers and the date and number of cigarette tubes:

(1) Manufactured;

(2) Received, without payment of tax from another factory, an export warehouse, customs custody, or by withdrawal from the market;

(3) Removed, subject to tax;

(4) Removed, without payment of tax, for export purposes, use of the United States or transfer in bond pursuant to § 270.451; or

(5) Lost or destroyed.

(b) The entries for each day in the records maintained or kept under this subpart must be made by the close of the business day following that on which the operations or transactions occur. No particular form of records is prescribed, but the information required must be readily ascertainable from the records kept.

(c) Records maintained under this section prior to January 1, 2000, must reflect the date and number of books or sets of cigarette papers of each different numerical content and the date and number of cigarette tubes.

(26 U.S.C. 5741.)

[T.D. ATF–240, 64 FR 71941, Dec. 22, 1999]

Reports

§ 270.422 General.

Every manufacturer of cigarette papers and tubes must prepare a report on ATF Form 5230.3 in accordance with instructions for the form. The report must be prepared at the times specified in this subpart and must be prepared whether or not any operations or transactions occurred during the period covered by the report. The manufacturer must retain a copy of each report in accordance with the provisions of this subpart.

(a) *Reports for periods on or after January 1, 2000.* Reports submitted must reflect the total number of cigarette papers and cigarette tubes manufactured, received and lost or destroyed.

(b) *Reports for periods prior to January 1, 2000.* Reports submitted must reflect the number of books or sets of cigarette papers of each different numerical content and the number of cigarette tubes manufactured, received, removed and lost or destroyed.

(26 U.S.C. 5722)

[T.D. ATF–240, 64 FR 71942, Dec. 22, 1999]

§ 270.423 Opening.

An opening report, covering the period from the date of the opening inventory to the end of the month, shall be made on or before the 10th day following the end of the month in which the business was commenced.

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

§ 270.424 Monthly.

A report for each calendar month shall be made on or before the 20th day of the next succeeding month.

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

§ 270.425 Special.

A special report, covering the unreported period to the day preceding the date of any special inventory required by an ATF officer, shall be made with such inventory. Another report, covering the period from the date of the special inventory to the end of the month, shall be made on or before the 14th day following the end of the month in which the inventory was made.

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

§ 270.426 Closing.

A closing report, covering the period from the first of the month to the date of the closing inventory, shall be made with such inventory.

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

Inventories

§ 270.431 General.

Every manufacturer of cigarette papers and tubes must provide a true and accurate inventory on ATF Form 5230.2 in accordance with instructions for the form. Such inventory is subject to verification by an ATF officer. The manufacturer must retain a copy of each inventory completed on ATF Form 5230.2 in accordance with this subpart.

(a) *Reports of inventory for periods on or after January 1, 2000.* Reports of inventory submitted must reflect the total number of cigarette papers and cigarette tubes held at the times specified in the subpart.

(b) *Reports of inventory for periods prior to January 1, 2000.* Reports of inventory submitted must reflect the number of books or sets of cigarette papers of each different numerical content and the number of cigarette tubes held at the times specified in this subpart.

(26 U.S.C. 5721)

[T.D. ATF–240, 64 FR 71942, Dec. 22, 1999]

§ 270.432 Opening.

An opening inventory shall be made by the manufacturer of cigarette papers and tubes at the time of first commencing business.

(72 Stat. 1422; 26 U.S.C. 5721)

§ 270.433 Special.

A special inventory shall be made by the manufacturer of cigarette papers and tubes when required by any ATF officer.

(72 Stat. 1422; 26 U.S.C. 5721)

§ 270.434 Closing.

A closing inventory shall be made by the manufacturer of cigarette papers and tubes when a change in proprietorship occurs, or when the manufacturer changes location of the factory to another region, or concludes business. Where a change in proprietorship occurs, the closing inventory shall be made as of the day preceding the date of the opening inventory of the successor.

(72 Stat. 1422; 26 U.S.C. 5721)

Document Retention

§ 270.435 General.

All records and reports required to be kept or maintained under this subpart, including copies of authorizations, inventories, reports, returns, and claims filed with verified supporting schedules, shall be retained by the manufacturer for three years following the close of the calendar 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 available for inspection by any ATF officer upon request.

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

Packages

§ 270.441 General.

All cigarette papers and tubes shall, before removal subject to tax, be put up by the manufacturer in packages which shall be of such construction as will securely contain the papers or tubes therein. No package of cigarette papers or tubes shall have contained therein, attached thereto, 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)

Miscellaneous Operations

§ 270.451 Transfer in bond.

A manufacturer of cigarette papers and tubes may transfer such papers and tubes, under bond, without payment of tax, to the bonded premises of any manufacturer of cigarette papers and tubes, or to the bonded premises of a manufacturer of tobacco products solely for use in the manufacture of cigarettes. The transfer of cigarette papers and tubes, without payment of tax, to the bonded premises of an export warehouse proprietor shall be in accordance with the provisions of part 290 of this chapter.

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

§ 270.452 Release from customs custody.

Cigarette papers and tubes which were made in the United States, exported, and subsequently returned to the United States, may be removed from customs custody for transfer to the premises of a manufacturer without payment of the internal revenue tax, upon compliance with part 275 of this chapter.

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

§ 270.453 Use of the United States.

A manufacturer of cigarette papers and tubes may remove cigarette papers and tubes covered under bond, without payment of tax, for use of the United States. Such removal shall be in accordance with the provisions of part 295 of this chapter.

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

§ 270.454 Removal for export purposes.

The removal of cigarette papers and tubes, without payment of tax, for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States, shall be in accordance with the provisions of part 290 of this chapter.

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

Permanent Discontinuance of Business

§ 270.461 Discontinuance of operations.

Every manufacturer of cigarette papers and tubes who desires to discontinue operations and close out a factory shall dispose of all cigarette papers and tubes on hand, in accordance with this subpart, and make a closing inventory and closing report, in accordance with the provisions of §§ 270.434 and 270.426, respectively.

(72 Stat. 1422; 26 U.S.C. 5721, 5722)

CLAIMS BY MANUFACTURERS

General

§ 270.471 Abatement.

A claim for abatement of the unpaid portion of the assessment of any tax on 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 the expiration of the applicable period of limitation, or is erroneously or illegally assessed. Any claim under this section shall be prepared on ATF 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.

(68A Stat. 792, 6404)

§ 270.472 Allowance.

Relief from the payment of tax on cigarette papers and tubes may be extended to a manufacturer by allowance of the tax where the cigarette papers and tubes, after removal from the factory upon determination of tax and prior to the payment of such tax, are lost (otherwise than by theft) or destroyed by fire, casualty, or act of God, while in the possession or ownership of the manufacturer who removed such articles, or are withdrawn by the manufacturer from the market. Any claim for allowance under this section shall be filed on ATF Form 2635 (5620.8) with the regional director (compliance) for the region in which the articles were removed, shall be executed under penalties and perjury and shall show the date the cigarette papers and tubes were removed from the factory. A claim relating to articles lost or destroyed shall be supported as prescribed in § 270.475. In the case of a claim relating to cigarette papers or tubes withdrawn from the market the schedule prescribed in § 270.476 shall be filed with the regional director (compliance) for the region in which the articles are assembled. The manufacturer may not anticipate allowance of a claim by making the adjusting entry in a tax return pending consideration and action on the claim. Cigarette papers and tubes to which such a claim relates must be shown as removed on determination of tax in the return covering the period during which such articles were so removed. Upon action on the claim by the regional director (compliance) a copy of ATF Form 2635 (5620.8) will be returned to the manufacturer as notice of such action. This copy of ATF Form 2635 (5620.8), with the copy of any verified supporting schedules, shall be retained by the manufacturer. When such notification of allowance of the claim or any part thereof is received prior to the time the return covering the tax on the cigarette papers or tubes to which the claim relates is to be filed, the manufacturer may make an adjusting entry and explanatory statement in that tax return. Where the notice of allowance is received after the filing of the return and taxpayment of the cigarette papers or tubes to which the claim relates, the manufacturer may make an adjusting entry and explanatory statement in the next tax return(s) to the extent necessary to take credit in the amount of the allowance.

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

§ 270.473 Credit or refund.

The taxes paid on cigarette papers and tubes may be credited or refunded (without interest) to a manufacturer on proof satisfactory to the regional director (compliance) that the claimant manufacturer paid the tax on 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 manufacturer, or withdrawn by the manufacturer from the market. Any claim for credit or refund under this section shall be prepared on ATF Form 2635 (5620.8), in duplicate. Claims shall include a statement that the tax imposed on cigarette papers and tubes by 26 U.S.C. 7652 or Chapter 52, was paid in respect to the cigarette papers or tubes covered by the claim, and that the articles were lost, destroyed, or withdrawn from the market within 6 months preceding the date the claim is filed. A claim for credit or refund relating to articles lost or destroyed shall be supported as prescribed in § 270.475, and a claim relating to articles withdrawn from the market shall be accompanied by a schedule prepared and verified as prescribed in §§ 270.476, and 270.477. The original and one copy of ATF Form 2635 (5620.8), 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. Upon action by the regional director (compliance) on a claim for credit, a copy of ATF Form 2635 (5620.8) will be returned to the manufacturer as notification of allowance or disallowance of the claim or any part thereof. This copy, with the copy of any verified supporting schedules, shall be retained by the manufacturer. When the manufacturer is notified of allowance of the claim for credit

or any part thereof, the manufacturer shall make an adjusting entry and explanatory statement in the next tax return(s) to the extent necessary to take credit in the amount of the allowance. The manufacturer may not anticipate allowance of a claim by taking credit on a tax return prior to consideration and action on such claim. The duplicate of a claim for refund or credit, with a copy of any verified supporting schedules, shall be retained by the manufacturer.

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

§ 270.474 Remission.

Remission of the tax liability on cigarette papers and tubes may be extended to the manufacturer liable for the tax where cigarette papers and tubes in bond are lost (other than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such manufacturer. Where cigarette papers and tubes are so lost or destroyed the manufacturer shall report promptly such fact, and the circumstances, to the regional director (compliance) for the region in which the factory is located. If the manufacturer wishes to be relieved of the tax liability, a claim on ATF Form 2635 (5620.8), in duplicate, shall also be prepared, setting forth the nature, date, place, and extent of the loss or destruction. The original and one copy 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 factory is located. Upon action on 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 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)

[T.D. ATF–384, 61 FR 54085, Oct. 17, 1996, as amended by T.D. ATF–424, 64 FR 71932, Dec. 22, 1999]

§ 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 manufacturer 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

Subpart A—Scope of Regulations

Sec.
275.1 Importation of tobacco products and cigarette papers and tubes.

Subpart B—Definitions

275.11 Meaning of terms.

Subpart C—General

275.21 Forms prescribed.
275.22 Retention of records.
275.23 Authority of ATF officers to enter premises.
275.24 Interference with administration.
275.25 Disposal of forfeited, condemned, and abandoned tobacco products and cigarette papers and tubes.
275.26 Alternate methods or procedures.
275.27 Emergency variations from requirements.
275.28 Penalties and forfeitures.
275.29 Delegations of the Director.

Subpart D—Taxes

TAX RATES

275.30 Pipe tobacco and roll-your-own tobacco.
275.31 Cigar tax rates.
275.32 Cigarette tax rates.
275.33 Smokeless tobacco tax rates.
275.34 Cigarette papers.
275.35 Cigarette tubes.

CLASSIFICATION OF LARGE CIGARS AND CIGARETTES

275.37 Statistical classification of large cigars.
275.38 Cigarettes.
275.39 Determination of sale price of large cigars.

LIABILITY FOR AND PAYMENT OF TAXES

275.40 Persons liable for tax.
275.41 Determination and payment of tax.

EXEMPTIONS FROM TAXES AND PERMITS

275.50 Exemptions.

ASSESSMENT OF TAXES

275.60 Assessment.

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.
275.63 Payment of tax by electronic fund transfer.

Subpart E—Packages

275.71 Package.
275.72 Notice for smokeless tobacco.
275.72a Notice for pipe tobacco.
275.72b Notice for roll-your-own tobacco.
275.72c Package use-up rule.
275.73 Notice for cigars.
275.74 Notice for cigarettes.
275.75 Exemptions.

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

275.81 Taxpayment.
275.82 Return of exported products.

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

275.83 Penalties and forfeiture for relanded products.
275.85 Release from customs custody of imported tobacco articles.
275.85a Release from customs custody of returned articles.

275.86 Procedure for release.

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

275.101 General.

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

275.105 Prepayment of tax.
275.106 Examination and record of shipment by taxpayer.
275.107—275.108 [Reserved]

DEFERRED PAYMENT OF TAX IN PUERTO RICO ON TOBACCO PRODUCTS

275.109 Bond required for deferred taxpayment.
275.110 Record of tax computation and shipment by bonded manufacturer under deferred taxpayment.
275.111 Agreement to pay tax.
275.112 Tax return.
275.113 Return periods.
275.114 Time for filing.
275.114a Qualification for extended deferral.
275.115 Remittance with return.
275.115a Payment of tax by electronic fund transfer.
275.116 Default.
275.117–275.118 [Reserved]
275.119 Corporate surety.
275.120 Deposit of securities in lieu of corporate surety.
275.121 Amount and account of bond.
275.122 Strengthening bond.
275.123 Superseding bond.
275.124 Extension of coverage of bond.
275.125 Approval of bond and extension of coverage of bond.
275.126 Termination of bond.
275.127 Application of surety for relief from bond.
275.128 Relief of surety from bond.
275.129 Release of pledged securities.
275.135—275.138 [Reserved]
275.139 Records.
275.140 Taxpayment in the United States.
275.141 Reports.

Subpart H [Reserved]

275.151–275.153 [Reserved]

Subpart I—Claims

GENERAL

275.161 Abatement of assessment.
275.162 Losses caused by disaster occurring after September 2, 1958.
275.163 Refund of tax.

TOBACCO PRODUCTS, AND CIGARETTE PAPERS AND TUBES LOST OR DESTROYED

275.165 Action by taxpayer.

TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES WITHDRAWN FROM THE MARKET

275.170 Reduction of tobacco products to materials; ATF action.
275.171 Reduction of tobacco products to materials, action by regional director (compliance).
275.172 Return to nontaxpaid status; action by taxpayer.
275.173 Return to nontaxpaid status; action by regional director (compliance).
275.174 Disposition of tobacco products and cigarette papers and tubes, and schedule.

Subpart J—Records and Reports

275.181 Records of large cigars.
275.182 Availability of records.
275.183 [Reserved]

Subpart K—Tobacco Products Importers

275.190 Persons required to qualify.
275.191 Application for permit.
275.192 Transitional rule.
275.193 Corporate documents.
275.194 Articles of partnership or association.
275.195 Trade name certificate.
275.196 Power of attorney.
275.197 Additional information.
275.198 Investigation of applicant.
275.199 Notice of contemplated disapproval.
275.200 Issuance of permit.
275.201 Duration of permit.
275.202 Renewal of permit.
275.203 Retention of permit and supporting documents.

REQUIRED RECORDS AND REPORTS

275.204 General.
275.205 Recordkeeping requirements.

FILING AND RETENTION OF RECORDS AND REPORTS

275.206 Reports.
275.207 Filing.
275.208 Retention.

Subpart L—Changes After Original Qualification of Importers

CHANGES IN NAME

275.220 Change in individual name.
275.221 Change in trade name.
275.222 Change in corporate name.

CHANGES IN OWNERSHIP AND CONTROL

275.223 Fiduciary successor.
275.224 Transfer of ownership.
275.225 Change in officers, directors, or stockholders of a corporation.

275.226 Change in control of a corporation.

CHANGES IN LOCATION OR ADDRESS

275.227 Change in location.
275.228 Change in address.

AUTHORITY: 18 U.S.C. 2342; 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5712, 5713, 5721, 5722, 5723, 5741, 5754, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7651, 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 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; restrictions on the importation of previously exported tobacco products and cigarette papers and tubes; 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. ATF–421, 64 FR 71924, Dec. 22, 1999]

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.

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.16A, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 275, Importation of Tobacco Products and Cigarette Papers and Tubes and ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR Parts 270, 275 and 296.

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. The Bureau of Alcohol, Tobacco and Firearms.

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 cigarettes, large cigarettes, chewing tobacco, snuff, pipe tobacco, or roll-your-own tobacco) of tobacco products and the sale 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.

Customs officer. Any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person authorized by law or designated by the Secretary of the Treasury to perform any duties of an officer of the Customs Service.

Determine. To establish enough information about taxable products at the time of removal to calculate the tax, specifically the quantity (pounds or number) and kind (for example, cigarettes, snuff, paper tubes). Where the tax rate depends on additional information (such as number of cigarette papers to a set before 1/1/2000 or sale price of large cigars), that information must also be established as part of tax determination.

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

District director. A district director of internal revenue.

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.

Export warehouse. A bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

Export warehouse proprietor. Any person who operates an export warehouse.

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 papers or cigarette tubes, except for personal use or consumption.

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco but does not include:

(1) A person who produces tobacco products solely for that person's own consumption or use; or

(2) 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.

Port Director of Customs. The director of any port or port of entry as defined in 19 CFR 101.1. A list of ports is set forth in 19 CFR 101.3.

Records. Statements, declarations, books, papers, correspondence, accounts, technical data, automated record storage devices (*e.g.*, magnetic discs and tapes), computer programs necessary to retrieve information in a usable form, and other documents that:

(1) Pertain to any importation of tobacco products or cigarette papers or tubes, or to the information contained in the documents required by law or regulation under the Tariff Act of 1930, as amended, in connection with the importation or shipment into the United states from Puerto Rico of merchandise; and

(2) Are of the type normally kept in the ordinary course of business; and

(3) Are sufficiently detailed to:

(i) Establish the right to make the importation or shipment into the United States from Puerto Rico;

(ii) Establish the correctness of any importation or shipment into the United States from Puerto Rico;

(iii) Determine the liability of any person for duties and taxes due, or which may be due, to the United States;

(iv) Determine the liability of any person for fines, penalties, and forfeitures; and

(v) Determine whether the person has complied with the laws and regulations administered by ATF and the Customs Service, and any other documents required under laws or regulations administered by ATF and the Customs Service.

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

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

Relanding. Any tobacco products, cigarette papers or tubes, which have been labeled or shipped for exportation (including to Puerto Rico) as prescribed in this chapter, previously exported and returned within the jurisdiction of the United States. This term does not apply to any tobacco products, cigarette papers or tubes that are placed in appropriately marked receptacles by travelers or passengers prior to making their declaration to a U.S. Customs officer upon arrival in the United States.

Removal or Remove. The removal of tobacco products or cigarette papers or tubes from the factory or release from internal revenue bond under 26 U.S.C. 5704, or release from customs custody, including conditional release in accordance with 19 CFR 141.0a(i), and shall also include the smuggling or other unlawful importation of such articles into the United States.

Roll-your-own 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 for making cigarettes.

Sale price. The price for which large cigars are sold by the importer or manufacturer, determined in accordance with § 275.39 and used for computation of the excise tax.

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, pipe tobacco, and roll-your-own tobacco.

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.

(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; T.D. ATF–421, 64 FR 71924, Dec. 22, 1999; T.D. ATF–424, 64 FR 71932, Dec. 22, 1999; T.D. ATF–420, 64 FR 71942, Dec. 22, 1999; T.D. ATF–422, 64 FR 71948, Dec. 22, 1999; T.D. ATF–422c, 65 FR 63545, Oct. 24, 2000; T.D. ATF–444, 66 FR 13850, Mar. 8, 2001]

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 US.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 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 the Port Directors of Customs or other authorized customs officer in accordance with Customs regulations (19 CFR part 127) on sales of articles by customs officers, the payment of tax on such articles must be evidenced by presentation, to the officer having custody of the articles, of a receipt from the appropriate ATF officer 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; T.D. ATF–422, 64 FR 71948, Dec. 22, 1999]

§ 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]

§ 275.29 Delegations of the Director.

The Director has general authority to take action on all matters under the regulations in this part 275. Some of the authorities in this part are redelegated to ''appropriate ATF officers''. The title of the appropriate ATF officer for each delegation is listed by section in ATF Order 1130.16A, Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296. ATF delegation orders, such as ATF Order 1130.16A, are available from the ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150–5190, or from the ATF web site (*http://www.atf.treas.gov*).

[T.D. ATF–420, 64 FR 71942, Dec. 22, 1999, as amended by T.D. ATF–444, 66 FR 13850, Mar. 8, 2001]

Subpart D—Taxes

TAX RATES

§ 275.30 Pipe tobacco and roll-your-own tobacco.

Pipe tobacco and roll-your-own tobacco are taxed at the following rates under 26 U.S.C. 5701(f) and (g), respectively:

Product	Tax rate per pound [1] for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Pipe tobacco	$0.675	$0.9567	$1.0969

Product	Tax rate per pound [1] for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Roll-your-own tobacco	No tax	0.9567	1.0969

[1] Prorate tax for fractions of a pound.

[T.D. ATF–420, 64 FR 71942, Dec. 22, 1999]

§ 275.31 Cigar tax rates.

(a) Cigars are taxed at the following rates under 26 U.S.C. 5701(a):

Product	Tax rate for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Small cigars (per thousand)	$1.125	$1.594	$1.828
Large cigars [1]			
percentage of sale price	12.75%	18.063%	20.719%
but not to exceed per thousand	$30	$42.50	$48.75

[1] For large cigars, the percentage tax rate applies when the sale price is $235.294 per thousand or less, and the flat tax rate applies when the sale price is more than $235.294.

(b) See § 275.39 of this part for rules concerning determination of sale price of large cigars.

(c) Cigars not exempt from tax under 26 U.S.C. chapter 52 and the provisions of this part which are removed but not intended for sale shall be taxed at the same rate as similar cigars removed for sale.

[T.D. ATF–420, 64 FR 71942, Dec. 22, 1999]

§ 275.32 Cigarette tax rates.

Cigarettes are taxed at the following rates under 26 U.S.C. 5701(b):

Product	Tax rate per thousand for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Small cigarettes	$12	$17	$19.50
Large cigarettes up to 6½″ long	25.20	35.70	40.95
Large cigarettes over 6½″ long	Use tax rates for small cigarettes, but count each 2¾ inches or fraction thereof of the length of each as one cigarette.		

[T.D. ATF–420, 64 FR 71943, Dec. 22, 1999]

§ 275.33 Smokeless tobacco tax rates.

Smokeless tobacco products are taxed at the following rates under 26 U.S.C. 5701(e):

Product	Tax rate per pound [1] for removals during the years		
	1993 to 1999	2000 or 2001	2002 and after
Snuff	$0.36	$0.51	$0.585
Chewing tobacco	$0.12	$0.17	$0.195

[1] Prorate tax for fractions of a pound.

[T.D. ATF–420, 64 FR 71943, Dec. 22, 1999]

§ 275.34 Cigarette papers.

Cigarette papers are taxed at the following rates under 26 U.S.C. 5701(c):

Product	Tax rate for each 50 papers[1] for removals during the years		
	1993 to 1999[2]	2000 or 2001	2002 and after
Cigarette papers up to 6½″ long	$0.0075	$0.0106	$0.0122
Cigarette papers over 6½″ long	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette paper.		

[1] Tax rate for less than 50 papers is the same. The tax is not prorated.
[2] Before January 1, 2000, books or sets containing 25 papers or less were not taxable. On and after January 1, 2000, all cigarette papers are taxable.

[T.D. ATF–420, 64 FR 71943, Dec. 22, 1999]

§ 275.35 Cigarette tubes.

Cigarette tubes are taxed at the following rates under 26 U.S.C. 5701(d):

Product	Tax rate for each 50 tubes[1] for removals during the years		
	1993 to 1999	2000 and 2001	2002 and after
Cigarette tubes up to 6½″ long	$0.015	$0.0213	$0.0244
Cigarette tubes over 6½″ long	Use rates above, but count each 2¾ inches, or fraction thereof, of the length of each as one cigarette tube.		

[1] Tax rate for less than 50 tubes is the same. The tax is not prorated.

[T.D. ATF–420, 64 FR 71943, Dec. 22, 1999]

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 applicable 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.

The tax imposed on large cigars is computed based on the sale price (the price for which the large cigars are sold by the importer or manufacturer). In addition to money, goods or services exchanged for cigars may be considered as part of the sale price. See § 270.22(b) of this chapter for information on determining the sale price in special cases.

[T.D. ATF–420, 64 FR 71944, Dec. 22, 1999; T.D. ATF–422, 64 FR 71948, Dec. 22, 1999; T.D. ATF–422a, 65 FR 15058, Mar. 31, 2000]

LIABILITY FOR AND PAYMENT OF TAXES

§ 275.40 Persons liable for tax.

The importer of tobacco products or cigarette papers and tubes will be liable for the internal revenue taxes imposed thereon by 26 U.S.C. 5701 or 7652: *Provided*, That tobacco products or cigarette papers or tubes (other than those previously exported and returned) imported or brought into the United States, may be released from customs custody without payment of tax, for delivery to the proprietor of an export warehouse, to a manufacturer of tobacco products, or to a manufacturer of cigarette papers or tubes (except for tobacco products), if such articles are not put up in packages (see § 275.11). Under these circumstances the transferee will become liable for the internal revenue tax on such articles upon release from customs custody and the importer will thereupon be relieved of the liability for such tax. If the transferee is also the importer, then the importer will not be relieved of the 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. ATF–422, 64 FR 71948, Dec. 22, 1999]

§ 275.41 Determination and payment of tax.

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

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

[T.D. ATF–422, 64 FR 71949, Dec. 22, 1999]

EXEMPTIONS FROM TAXES AND PERMITS

§ 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. Those persons importing tobacco products and cigarette papers or tubes as described in this section are not required to obtain a permit.

[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; T.D. ATF–422, 64 FR 71949, Dec. 22, 1999]

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 the Port Director of Customs or other authorized customs employee, in accordance with this part, must be collected, accounted for, and deposited as internal revenue collections by the Port Director of Customs, in accordance with customs procedures and regulations.

[T.D. ATF–422, 64 FR 71949, Dec. 22, 1999]

§ 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 section, 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 elswhere 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 1512–0502)

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

[T.D. ATF–243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF–446, 66 FR 16602, Mar. 27, 2001]

§ 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]

§ 275.72b Notice for roll-your-own tobacco.

(a) *Product designation.* Before removal subject to tax, roll-your-own tobacco must have adequately imprinted on, or on a label securely affixed to, the package, the designation ''roll-your-own tobacco'' or ''cigarette tobacco'' or ''Tax Class J.''

(b) *Product weight.* Before removal subject to tax, roll-your-own tobacco must have a clear statement of the actual weight in pounds and ounces of the product in the package. This statement must be adequately imprinted on, or on a label securely affixed to, the package.

(Approved by the Office of Management and Budget under control number 1512–0502)

[T.D. ATF–429, 65 FR 57547, Sept. 25, 2000]

§ 275.72c Package use-up rule.

(a) An importer must have used such packaging for roll-your-own tobacco before January 1, 2000.

(b) An importer of roll-your-own tobacco may continue to place roll-your-own tobacco in packages that do not meet the marking requirements of § 275.72b(b) until April 1, 2000.

(c) An importer of roll-your-own tobacco may continue to place roll-your-own tobacco in packages that do not meet the requirements of § 275.72b(a) until October 1, 2000.

[T.D. ATF–427, 65 FR 40051, June 29, 2000]

§ 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 products, 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. For provisions relating to the importation of previously exported tobacco products and cigarette papers and tubes, see section 275.82.

(b) *Method of payment.* Except in the case of articles imported or brought into the United States under §§ 275.85 and 275.85a, the internal revenue tax must be determined and paid to the Port Director of Customs before the tobacco products, cigarette papers, or cigarette tubes are removed from customs custody. The tax must be paid on the basis of a return on the customs form or by authorized electronic transmission by which the tobacco products, cigarette papers, or cigarette tubes are duty and tax paid to Customs.

(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 must include on the customs form or authorized electronic transmission the following internal revenue tax information.

(1) *For cigarette papers:* For cigarette papers imported on or after January 1, 2000, the importer will show the total number of cigarette papers, the rate of tax, and the amount of tax due. For cigarette papers imported prior to January 1, 2000, 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 amount of 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 sale price of not more than $235.294 per thousand, the number and total sale price of such cigars;

(iii) For large cigars with a sale price 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.

(7) *For roll-your-own tobacco:* The importer will show the designation ''roll-your-own'' or ''Tax Class J'', the number of pounds and ounces, the rate of tax and the amount of 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);

(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: T.D. ATF–421, 64 FR 71924, Dec. 22, 1999; T.D. ATF–424, 64 FR 71932, Dec. 22, 1999; T.D. ATF–420, 64 FR 71944, Dec. 22, 1999; T.D. ATF–422a, 65 FR 15059, Mar. 21, 2000]

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

§ 275.82 Return of exported products.

(a) The provisions of this section apply to articles imported or brought into the United States after December 31, 1999. After such date, the importation or bringing in of tobacco products and cigarette papers and tubes that were previously exported from the United States is restricted. Such products may only be imported or brought into the United States by release from customs custody for delivery to a manufacturer of tobacco products or cigarette papers or tubes, or to the proprietor of an export warehouse. These products are transferred in bond and are released from customs custody without payment of that part of the duty attributable to internal revenue tax.

(b) The products described in paragraph (a) of this section may only be sold, transferred, or delivered onto the domestic U.S. market by a manufacturer of tobacco products after repackaging of the product. For the purposes of this subsection, ''repackaging'' shall mean the removal of the tobacco product from its original package bearing the export marks and placement of the product in a new package. The new packages, marks and notices must conform to the requirements of 27 CFR part 270.

[T.D. ATF–421, 64 FR 71924, Dec. 22, 1999]

§ 275.83 Penalties and forfeiture for relanded products.

Except for the return of exported products that are specifically authorized under § 275.82:

(a) Every person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or cigarette papers or tubes which have been labeled or shipped for exportation;

(b) Every person who sells or receives such relanded tobacco products or cigarette papers or tubes; and,

(c) Every person who aids or abets in such selling, relanding, or receiving, shall, in addition to the tax and any other penalty provided for in Title 26 U.S.C., be liable for a penalty equal to

the greater of $1,000 or 5 times the amount of the tax imposed by Title 26 U.S.C. All tobacco products and cigarette papers and tubes relanded within the jurisdiction of the United States, and all vessels, vehicles and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States. This section shall apply only to tobacco products, cigarette papers and tubes removed after December 31, 1999.

[T.D. ATF–421, 64 FR 71924, Dec. 22, 1999]

§ 275.85 Release from customs custody of imported tobacco articles.

(a) The provisions of this section apply only to tobacco products, cigarette papers, and cigarettes tubes, which are not put up in packages, *i.e.*, not placed by the manufacturer or importer in packages in which the products will be sold to consumers. Tobacco products manufactured in a foreign country, the Virgin Islands, or a possession of the United States may be released by the Port Director of Customs or authorized customs officer from customs custody, without payment of internal revenue tax, for transfer to the factory of any manufacturer of tobacco products under the internal revenue bond of the manufacturer to whom such articles are released. Cigarette papers and tubes manufactured in a foreign country, the Virgin Islands, or a possession of the United States may be released by the Port Director of Customs or authorized customs officer from customs custody, without payment of internal revenue tax, for transfer, under the internal revenue bond of the manufacturer to whom such articles are released, to the factory of a manufacturer of cigarette papers and tubes; or a manufacturer of tobacco products solely for use in the manufacture of cigarettes. Releases under this section must be in accordance with § 275.86: *Provided*, *however*, that in the case of products exported from the Virgin Islands, in order for a manufacturer of tobacco products or a manufacturer of cigarette papers and tubes to remove such products from customs custody in the United States under the manufacturer's internal revenue bond without payment of internal revenue tax, the manufacturer must file an extension of coverage of the internal revenue bond on ATF Form 2105, and receive a notice of approval from the appropriate ATF officer. The extension of coverage must be executed by the principal and the surety and must be in the following form:

"Whereas the purpose of this extension is to bind the obligors for the purpose of the tax imposed by 26 U.S.C. 7652(b), on tobacco products and tubes exported from the Virgin Islands and removed from customs custody in the United States without payment of internal revenue tax, for delivery to the principal on said bond."

"Now, therefore, the said bond is further specifically conditioned that the principal named therein must pay all taxes imposed by 26 U.S.C. 7652(b) plus penalties, if any, and interest, for which he may become liable with respect to these products exported from the Virgin Islands and removed from customs custody in the United States without payment of internal revenue tax thereon, and must comply with all provision of law and regulations with respect thereto."

(b) Articles received into the factory of a manufacturer under the provision of this section are subject to the provisions of part 270 of this chapter.

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

[T.D. ATF–422, 64 FR 71949, Dec. 22, 1999]

§ 275.85a Release from customs custody of returned articles.

(a) 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 to the United States without change to the product or the shipping container may be released, under the bond of the manufacturer or export warehouse proprietor to whom such articles are released, from customs custody in the United States without payment of that part of the duty attributable to the internal revenue tax for delivery to the factory of any tobacco products manufacturer or to the permit premises of an export warehouse proprietor.

(b) 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 to the United States without change to the product or the shipping container

may be released from customs custody in the United States 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:

(1) A manufacturer of cigarette papers and tubes; or

(2) A manufacturer of tobacco products solely for use in the manufacture of cigarettes.

(c) Releases under this section must be in accordance with the procedures set forth in § 275.86. Once released, the tobacco products and cigarette papers and tubes will be subject to the tax and all other provisions of 26 U.S.C. chapter 52, 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. ATF–422, 64 FR 71949, Dec. 22, 1999]

§ 275.86 Procedure for release.

(a) Every manufacturer of tobacco products and cigarette papers and tubes and every export warehouse proprietor who desires to obtain the release of tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax, under its internal revenue bond, as provided in §§ 275.85 or 275.85a, must prepare a notice of release, Form 5200.11, in triplicate, and file the three copies of the form with the appropriate ATF officer. The appropriate ATF officer will not certify Form 5200.11 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.

(b) Importers who are either manufacturers of tobacco products and cigarette papers and tubes or export warehouse proprietors, or their authorized agents, who request the release of tobacco products or cigarette papers and tubes from customs custody in the United States under this section, using customs electronic filing procedures, must not request such release until they have received the ATF Form 5200.11 certified by the appropriate ATF officer. Once Customs releases the tobacco products or cigarette papers and tubes in accordance with 19 CFR Part 143, Customs Directives, and any other applicable instructions, the importer will send a copy of the ATF Form 5200.11 along with a copy of the electronic filing and customs release to the appropriate ATF officer at the address shown thereon. The importer will retain one copy of the ATF Form 5200.11 to meet ATF recordkeeping requirements and one copy to meet customs recordkeeping requirements.

(c) Importers or their authorized agents requesting release of tobacco products or cigarette papers and tubes from customs custody in the United States under any other authorized procedure will submit all copies of the ATF Form 5200.11 to the appropriate customs officer along with their request for release. The customs officer will verify that the ATF Form 5200.11 has been certified by the appropriate ATF officer and return all copies to the importer or the importer's authorized representative.

(d) Once Customs releases the tobacco products or cigarette papers and tubes in accordance with 19 CFR Part 143, Customs Directives, and any other applicable instructions, the importer will send a copy of the ATF Form 5200.11 along with a copy of the customs release to the appropriate ATF office at the address shown thereon. The importer will retain one copy of the ATF Form 5200.11 to meet ATF recordkeeping requirements and one copy to meet customs recordkeeping requirements.

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

[T.D. ATF–422, 64 FR 71950, Dec. 22, 1999]

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 semimonthly return in accordance with the applicable provisions of this subpart.

(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; T.D. ATF–422, 64 FR 71950, Dec. 22, 1999]

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

§ 275.105 Prepayment of tax.

To prepay, 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 must file, or cause to be filed, a tax return, ATF Form 5000.25, with full remittance of tax which will become due on such tobacco products and cigarette papers and tubes.

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

[T.D. ATF–444, 66 FR 13850, Mar. 8, 2001]

§ 275.106 Examination and record of shipment by taxpayer.

(a) *Shipments other than noncommercial mail shipment.* The taxpayer will ensure that the tax has been prepaid on the tobacco products and cigarette papers and tubes in each shipment. The taxpayer will identify the tobacco products or cigarette papers or tubes on the bill of lading or similar record to accompany the shipment with the following information:

(1) The marks and numbers on shipping containers;

(2) The number of containers;

(3) The kind of taxable article and the rate of tax, as specified by 275.30 through 275.35;

(4) The number of small cigarettes, large cigarettes or small cigars to be shipped;

(5) The number and total sale price of large cigars with a price of not more than $235.294 per thousand to be shipped;

(6) The number of large cigars with a sale price of more than $235.294 per thousand to be shipped;

(7) The pounds and ounces of chewing tobacco or snuff to be shipped;

(8) The pounds and ounces of pipe tobacco or roll-your-own tobacco to be shipped;

(9) The number of cigarette papers or tubes to be shipped;

(10) The amount of the tax paid on such articles under the provisions of this subpart; and

(11) The name and address of the consignee in the United States to whom such products are being shipped. The taxpayer will note such bills of lading or similar records to identify the particular ATF Form 5000.25 on which taxes have been prepaid.

(b) *Noncommercial mail shipments.* Noncommercial mail shipments of tobacco products and cigarette papers and tubes to the United States are exempt from the provisions of paragraph (a) of this section, except that the taxpayer will provide a copy of the ATF Form 5000.25 upon request of an appropriate ATF officer.

(Approved by the Office of Management and Budget under control number 1512–0560)

[T.D. ATF–444, 66 FR 13850, Mar. 8, 2001]

§§ 275.107—275.108 [Reserved]

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 Record of tax computation and shipment by bonded manufacturer under deferred taxpayment.

Where tobacco products or cigarette papers or tubes are to be shipped to the United States involving deferred taxpayment, the bonded manufacturer must calculate the tax from the information contained in the bill of lading or a similar record. The bonded manufacturer will identify each shipment on such record with the following information:

(a) The marks and numbers on shipping containers;

(b) The number of containers;

(c) The kind of taxable article and the rate of tax as specified in 275.30 through 275.35;

(d) The number of small cigarettes, large cigarettes or small cigars to shipped;

(e) The number and total sale price of large cigars with a price of not more than $235.294 per thousand to be shipped;

(f) The number of large cigars with a sale price of more than $235.294 per thousand to be shipped;

(g) The pounds and ounces of chewing tobacco or snuff to be shipped;

(h) The pounds and ounces of pipe tobacco or roll-your-own tobacco to be shipped;

(i) The number of cigarette papers or tubes;

(j) The amount of the tax to be paid on such articles under the provisions of this subpart; and

(k) The name and address of the consignee in the United States to whom such products are being shipped. The date of completing such record will be treated as the date of computation of the tax. Tobacco products or cigarette papers or tubes may be shipped to the United States in accordance with the provisions of this section only after computation of the tax.

(Approved by the Office of Management and Budget under control number 1512–0560)

[T.D. ATF–444, 66 FR 13851, Mar. 8, 2001]

§ 275.111 Agreement to Pay Tax.

Upon shipment of tobacco products and cigarette papers or tubes the bonded manufacturer agrees:

(a) To pay the tax on the shipment;

(b) That there is no default in payment of tax chargeable against the manufacturer's bond on ATF Form 2986 (5210.12); and

(c) That the amount of the manufacturer's bond is sufficient or in the maximum penal sum to cover the tax due on the shipment.

[T.D. ATF–444, 66 FR 13851, Mar. 8, 2001]

§ 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 semimonthly 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 semimonthly 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 5000.25, and make remittance, for the period September 16–26, no later than September 29. The bonded manufacturer shall file a return on Form 5000.25, 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 semimonthly 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 5000.25, and make remittance, for the period September 16–25, no later than September 28. The bonded manufacturer shall file a return on Form 5000.25, 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 semimonthly 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 semimonthly 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 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; T.D. ATF–444, 66 FR 13851, Mar. 8, 2001]

§ 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 section 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 calender 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 appropriate ATF officer 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.

(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; T.D. ATF–422, 64 FR 71951, Dec. 22, 1999]

§ 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]

§§ 275.117–275.118 [Reserved]

§ 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 and Account of bond.

(a) *Bond amount.* Except for the maximum and minimum amounts stated in this paragraph, the total amount of the bond or bonds for tobacco products or cigarette papers or tubes under the provisions of this subpart must be in an amount not less than the amount of unpaid tax chargeable at any one time against the bond. A manufacturer who will defer payment of tax for a shipment of tobacco products or cigarette papers or tubes under the provisions of this subpart must have sufficient credit in this account to cover the taxes prior to making the shipment to the United States. The maximum and minimum amounts of such bond or bonds are as follows:

Taxable article	Bond amount maximum	Bond amount minimum
(1) Cigarettes	$250,000	$1,000
(2) Any combination of taxable articles	250,000	1,000
(3) One kind of taxable article other than cigarettes	150,000	1,000

(b) *Bond Account.* Where the amount of a bonded manufacturer's bond is less than the maximum amount prescribed in paragraph (a) of this section, a bonded manufacturer must maintain an account reflecting all outstanding taxes with which the manufacturer's bond is chargeable. A manufacturer must debit such account with the amount of tax that was agreed to be paid under § 275.111 or is otherwise chargeable against such bond and then must credit the account for the amount paid on Form 5000.25 or other ATF-prescribed document, at the time it is filed.

(Approved by the Office of Management and Budget under control number 1512–0560)

[T.D. ATF–444, 66 FR 13851, Mar. 8, 2001]

§ 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]

§§ 275.135—275.138 [Reserved]

§ 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, pipe tobacco and roll-your-own 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—roll-your-own tobacco).

(b) The sale price 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) Cigarette papers:

(1) Before January 1, 2000, the date and number of books or sets of cigarette papers of each numerical content.

(2) On and after January 1, 2000, the date and number of cigarette papers.

(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; T.D. ATF–424, 64 FR 71933, Dec. 22, 1999; T.D. ATF–420, 64 FR 71944, Dec. 22, 1999]

§ 275.140 Taxpayment in the United States.

Every manufacturer of tobacco products or cigarette papers or tubes in the United States who receives Puerto Rican tobacco products or cigarette papers or tubes without payment of internal revenue tax, under his bond, and subsequently removes such products, subject to tax, must 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 cigarettes papers and tubes shall be separately listed and identified as articles of Puerto Rican manufacture on Form 5000.24. The amount of tax paid on such articles shall be separately stated on Form 5000.24.

[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; T.D. ATF–424, 64 FR 71933, Dec. 22, 1999; T.D. ATF–422, 64 FR 71951, Dec. 22, 1999]

§ 275.141 Reports.

Every manufacturer of tobacco products or cigarette papers or tubes in the United States who receives Puerto Rican tobacco products, or cigarette papers or tubes without payment of internal revenue tax, under his bond, must 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 5210.5 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; T.D. ATF–424, 64 FR 71933, Dec. 22, 1999; T.D. ATF–422, 64 FR 71951, Dec. 22, 1999]

Subpart H [Reserved]

§§ 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 satisfaction 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; ATF action.

(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 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 lowest tax 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 must include a certification on either ATF Form 5200.7 or ATF Form 2635 (5620.8) to read as follows:

The amounts claimed relating to large cigars are based on the lowest sale price 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.

(See 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; T.D. ATF–424, 64 FR 71933, Dec. 22, 1999; T.D. ATF–420, 64 FR 71944, Dec. 22, 1999]

§ 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 Form 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 lowest tax 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 must include a certification on either ATF Form 5200.7 or ATF Form 2635 (5620.8) to read as follows:

The amounts claimed relating to large cigars are based on the lowest sale price 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.

(See 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; T.D. ATF–424, 64 FR 71933, Dec. 22, 1999; T.D. ATF–420, 64 FR 71944, Dec. 22, 1999]

§ 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 must keep such records as are necessary to establish and verify the sale price that applies to large cigars removed (entered or withdrawn).

(a) *Basic record*. The importer must keep a record to show each sale price (as determined under § 275.39), which is applicable to large cigars removed. No later than the tenth business day in January of each year the importer must prepare such a record to show the sale price in effect on the first day of that year for each brand and size of large cigars. The importer must note any change in a price from that shown in the record within ten business days after such change in price. The record must 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. If an importer removes new types of large cigars after the beginning of the year, the importer must enter the sale price and its effective date for such large cigars in the basic record within ten business days after such removal.

(b) *Copies of price announcements*. The importer must keep a copy of each general announcement that is issued internally or to the trade about establishment or change of large cigar sale prices. If the copy does not show the actual date when issued it must be annotated to show this information.

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

(d) *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 (c) of this section will provide an adequate record of sale prices, then the record required under paragraph (a) 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 sale price for each. If such information was not originally entered on the form it may be included by annotation. Whenever the appropriate ATF officer finds that alternative records being kept pursuant to this paragraph are inadequate for the intended purpose, he or she may so notify the importer in writing, after which time the importer must keep the record required under paragraph (a) of this section.

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

[T.D. ATF–420, 64 FR 71944, Dec. 22, 1999]

§ 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]

Subpart K—Tobacco Products Importers

SOURCE: T.D. ATF–422, 64 FR 71951, Dec. 22, 1999, unless otherwise noted.

§ 275.190 Persons required to qualify.

Any person who engages in the business as an importer of tobacco products must qualify as an importer of tobacco products in accordance with the provisions of this part. Any person eligible for the exemption in § 275.50 is not engaged in the business as an importer of tobacco products.

Persons importing tobacco products and cigarette papers and tubes for personal use, in such quantities as may be allowed by Customs without payment of tax, do not require an importer's permit.

§ 275.191 Application for permit.

Except as provided in § 275.192, every person, before commencing business as an importer of tobacco products as defined in § 275.11, must make application for, and obtain, the permit provided by this subpart K. Such application must be made on ATF Form 5230.4, according to the instructions for the form. All documents required under this part to be furnished with such application must be made a part thereof.

§ 275.192 Transitional rule.

Any person who—

(a) Was engaged in the business as an importer of tobacco products before January 1, 2000, and

(b) Who files an application with ATF before January 1, 2000, may continue to import tobacco products and cigarette papers and tubes pending action on their application by ATF. Pending such final action, all provisions of chapter 52 of the Internal Revenue Code of 1986 will apply to such applicant.

§ 275.193 Corporate documents.

Every corporation, before commencing business as an importer of tobacco products, must furnish with its application for permit, required by § 275.191, a true copy of the corporate charter or a certificate of corporate existence or incorporation executed by the appropriate officer of the State in which incorporated. The corporation must likewise furnish duly authenticated extracts of the stockholders' meetings, bylaws, or directors' meetings, listing the offices the incumbents of which are authorized to sign documents or otherwise act in behalf of the corporation in matters relating to 26 U.S.C. chapter 52, and regulations issued thereunder. The corporation must also furnish evidence, in duplicate, of the identity of the officers and directors and each person who holds more than ten percent of the stock of such corporation. Where any of the information required by this section has previously been filed with the appropriate ATF officer, and such information is currently complete and accurate, a written statement to that effect, in duplicate, will be sufficient for the purpose of this section.

§ 275.194 Articles of partnership or association.

Every partnership or association, before commencing business as an importer of tobacco products, must furnish with its application for permit required by § 275.191 a true copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality. Where a partnership or association has previously filed such documents with the appropriate ATF officer and such documents are currently complete and accurate, a written statement, in duplicate, to that effect by the partnership or association will be sufficient for the purpose of this section.

§ 275.195 Trade name certificate.

Every person, before commencing business under a trade name as an importer of tobacco products, must furnish with his application for a permit, required by § 275.191, a true copy of the certificate or other document, if any, issued by a State, county, or municipal authority in connection with the transaction of business under such trade name. If no such true copy of the certificate or other document is so required, a written statement, in duplicate, to that effect by such person will

be sufficient for the purpose of this section.

§ 275.196 Power of attorney.

If the application for permit or any report, return, notice, schedule, or other document required to be executed is to be signed by an individual (including one of the partners for a partnership or one of the members of an association) as an attorney in fact for any person, or if an individual is to otherwise officially represent such person, power of attorney on Form 1534 must be furnished to the appropriate ATF officer. (For power of attorney in connection with conference and practice requirements see subpart E, part 70 of this chapter.) Such power of attorney is not required for persons whose authority is furnished with the corporate documents as required by § 275.194. Form 1534 does not have to be filed again with the appropriate ATF officer if such form has previously been submitted to ATF and is still in effect.

§ 275.197 Additional information.

The appropriate ATF officer may require such additional information as may be deemed necessary to determine whether the applicant is entitled to a permit under the provisions of this part. The applicant must, when required by the appropriate ATF officer, furnish as a part of his application for such permit such additional information as the appropriate ATF officer deems necessary to determine whether the applicant is entitled to a permit.

§ 275.198 Investigation of applicant.

Appropriate ATF officers may inquire or investigate to verify the information in connection with an application for a permit. The investigation will ascertain whether the applicant is, by reason of his business experience, financial standing, and trade connections, likely to maintain operations in compliance with 26 U.S.C. chapter 52, and regulations thereunder; whether the applicant has disclosed all material information required, or whether the applicant has made any material false statement in the application for such permit.

§ 275.199 Notice of contemplated disapproval.

If the appropriate ATF officer has reason to believe that the applicant is not entitled to a permit, the appropriate ATF officer will promptly give to the applicant a notice of the contemplated disapproval of the application and opportunity for hearing thereon in accordance with part 200 of this chapter. If, after such notice and opportunity for hearing, the appropriate ATF officer finds that the applicant is not entitled to a permit, an order will be prepared stating the findings on which the permit request is denied.

§ 275.200 Issuance of permit.

If the application for permit, together with the required supporting documents, is approved, the appropriate ATF officer will issue a permit on ATF F 5200.24 to the applicant as an importer of tobacco products.

§ 275.201 Duration of permit.

(a) Permits other than temporary permits issued under paragraph (b) of this section will be valid for a period of three years from the effective date shown on the permit, ATF F 5200.24.

(b) Temporary permits will be issued for a one-year period to those applicants described in § 275.192.

§ 275.202 Renewal of permit.

Importers wishing to continue operations beyond the expiration of their current permit must renew their permit by making application within 30 days of such expiration on ATF F 5200.24, in accordance with instructions for the form. The expiring permit will continue in effect until final action is taken by ATF on the application for renewal, provided a timely application for renewal is filed.

§ 275.203 Retention of permit and supporting documents.

The importer must retain the permit, together with the copy of the application and supporting documents returned with the permit, at the same place where the records required by this part are kept. The permit and supporting documents must be made available for inspection by any appropriate ATF officer upon request.

REQUIRED RECORDS AND REPORTS

§ 275.204 General.

Every tobacco products importer must keep such records and, when required by this part, submit such reports, of the physical receipt and disposition of tobacco products. Records and reports will not be required under this part with respect to tobacco products while in customs custody.

§ 275.205 Recordkeeping requirements.

Any owner, importer, consignee, or their agent who imports, or knowingly causes to be imported, any tobacco product or cigarette papers or tubes must make and keep records. A person purchasing a tobacco product from the importer in a domestic transaction and who does not knowingly cause merchandise to be imported is not required to make and keep records unless:

(a) The terms and conditions of the importation are controlled by the person placing the order with the importer (*e.g.*, the importer is not an independent contractor but the agent of the person placing the order).

(b) The tobacco products purchased from the importer include more than 60,000 cigarettes, in which case the importer and the person placing the order with the importer must keep the records required by 27 CFR Part 296, Subpart F, Distribution of Cigarettes. Dividing a single shipment of more than 60,000 cigarettes into smaller components of 60,000 cigarettes or less does not exempt any person from the recordkeeping requirements of this subpart.

FILING AND RETENTION OF RECORDS AND REPORTS

§ 275.206 Reports.

(a) Importers must file a monthly report on ATF F 5220.6 in accordance with the format and instructions for the form.

(b) The first report(s) must be submitted by the 15th day of the month following the month in which the permit is issued; all previous months beginning January 1, 2000, must also be reported at that time.

For example:

An importer who is issued a permit with a date of August 17, 2000, would be required to submit by September 15, 2000, a total of eight reports for the months January–August, 2000.

(c) Reports with the notation ''No Activity'' must be made for those months in which no activity occurs.

(d) When a transfer of ownership of the business of an importer of tobacco products described in § 275.224, or when a change in control of a corporation described in § 275.226 occurs, a concluding report with the notation ''Concluding Report'' must be made for the month or partial month during which the transfer of ownership or change in control becomes effective.

§ 275.207 Filing.

All records and reports required by this part will be maintained separately, chronologically by transaction or reporting date, at the importer's place of business. The appropriate ATF officer may, pursuant to an application, authorize files, or an individual file, to be maintained at another business location under the control of the importer, if the alternative location does not cause undue inconvenience to ATF or Customs officers desiring to examine the files or delay in the timely transmittal of any documents required to be submitted.

§ 275.208 Retention.

(a) All records and reports required by this part, documents or copies of documents supporting these records or reports, and file copies of reports required by this part to be submitted to ATF must be retained for not less than three years following the close of the calendar year in which filed or made, and during this period must be available for inspection and copying by ATF during business hours.

(b) Furthermore, the appropriate ATF officer may require these records to be kept for an additional period of not more than three years in any case where it is determined that such record retention is necessary to protect the revenue. Any records, or copies thereof, containing any of the information required by this part to be prepared, wherever kept, must also be made available for inspection and copying.

Subpart L—Changes After Original Qualification of Importers

SOURCE: T.D. ATF–422, 64 FR 71953, Dec. 22, 1999, unless otherwise noted.

CHANGES IN NAME

§ 275.220 Change in individual name.

Where there is a change in the name of an individual operating as an importer of tobacco products, the importer must make application on ATF Form 5230.5 for an amended permit within 30 days of such change.

§ 275.221 Change in trade name.

Where there is a change in, or an addition or discontinuance of, a trade name used by an importer of tobacco products in connection with operations authorized by the permit, the importer must make application on ATF Form 5230.5 for an amended permit to reflect such change within 30 days of such change. The importer must also furnish a true copy of any new trade name certificate or document issued to the business, or statement in lieu thereof, required by § 275.195.

§ 275.222 Change in corporate name.

Where there is a change in the corporate name of an importer of tobacco products, the importer must make application on ATF Form 5230.5 for an amended permit within 30 days of such change. The importer must also furnish such documents as may be necessary to establish that the corporate name has been changed.

CHANGES IN OWNERSHIP AND CONTROL

§ 275.223 Fiduciary successor.

If an administrator, executor, receiver, trustee, assignee, or other fiduciary, is to take over the business of an importer of tobacco products, as a continuing operation, such fiduciary must make application for permit, before commencing operations as required by subpart K of this part, furnish certified copies, in duplicate, of the order of the court, or other pertinent documents, showing his appointment and qualification as such fiduciary. However, where a fiduciary intends only to liquidate the business, qualification as an importer of tobacco products will not be required if the fiduciary promptly files with the appropriate ATF officer a written statement to that effect.

§ 275.224 Transfer of ownership.

If a transfer is to be made in ownership of the business of an importer of tobacco products (including a change of any member of a partnership or association), such importer must give notice, in writing, to the appropriate ATF officer, naming the proposed successor and the desired effective date of such transfer. The proposed successor must qualify as an importer of tobacco products, before commencing operations, in accordance with the applicable provisions of subpart K of this part. The importer must give such notice of transfer, and the proposed successor must make application for permit in ample time for examination and approval thereof before the desired date of such change. The predecessor must make a concluding report, in accordance with the provisions of § 275.205, and surrender the permit with such report. The successor must make a commencing report, in accordance with the provisions of § 275.206.

§ 275.225 Change in officers, directors, or stockholders of a corporation.

Upon election or appointment (excluding successive reelection or reappointment) of any officer or director of a corporation operating the business of an importer of tobacco products, or upon any occurrence which results in a person acquiring ownership or control of more than ten percent in aggregate of the outstanding stock of such corporation, the importer must, within 30 days of such action, so notify the appropriate ATF officer in writing, giving the identity of such person. In the event that the acquisition of ten or more percent in aggregate of the outstanding stock of such corporation results in a change of control of such corporation, the provisions of § 275.226 will apply. When there is any change in the authority furnished under § 275.196 for officers to act on behalf of the corporation the importer must immediately so notify the appropriate ATF officer in writing.

§ 275.226 Change in control of a corporation.

Where the issuance, sale, or transfer of the stock of a corporation operating as an importer of tobacco products results in a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation, the corporate importer must make application on ATF Form 5230.4 for a new permit within 30 days after the change occurs. Otherwise, the present permit will be automatically terminated at the expiration of such 30-day period, and the importer will dispose of all tobacco products on hand, in accordance with this part, make a concluding report, in accordance with the provisions of § 275.206, and surrender his permit with such report. If the application for a new permit is timely made, the present permit will continue in effect pending final action with respect to such application.

CHANGES IN LOCATION OR ADDRESS

§ 275.227 Change in location.

Whenever an importer of tobacco products intends to relocate the principal business office, the importer must, before commencing operations at the new location, make application on ATF Form 5230.5 for, and obtain, an amended permit.

§ 275. 228 Change in address.

Whenever any change occurs in the address, but not the location, of the principal business office of an importer of tobacco products, as a result of action of local authorities, the importer must make application on ATF Form 5230.5 for an amended permit within 30 days of such change.

PART 285 [RESERVED]

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

Subpart A—Scope of Regulations

Sec.
290.1 Exportation of tobacco products, and cigarette papers and tubes, without payment of tax, or with drawback of tax.
290.2 Forms prescribed.

Subpart B—Definitions

290.11 Meaning of terms.

Subpart Ba—Special (Occupational) Taxes

290.31 Liability for special tax.
290.32 Rate of special tax.
290.33 Special tax returns.
290.34 Employer identification number.
290.35 Issuance, distribution, and examination of special tax stamps.
290.36 Changes in special tax stamps.

Subpart C—General

290.61 Removals, withdrawals, and shipments authorized.
290.61a Deliveries to foreign-trade zones—export status.
290.62 Restrictions on deliveries of tobacco products, and cigarette papers and tubes to vessels and aircraft, as supplies.
290.63 Restrictions on disposal of tobacco products, and cigarette papers and tubes on vessels and aircraft.
290.64 Responsibility for delivery or exportation of tobacco products, and cigarette papers and tubes.
290.65 Liability for tax on tobacco products, and cigarette papers and tubes.
290.66 Relief from liability for tax.
290.67 Payment of tax.
290.68 [Reserved]
290.69 Assessment.
290.70 Authority of ATF officers to enter premises.
290.71 Interference with administration.

VARIATIONS FROM REQUIREMENTS

290.72 Alternate methods or procedures.
290.73 Emergency variations from requirements.

Subpart D—Qualification Requirements for Export Warehouse Proprietors

290.81 Persons required to qualify.
290.82 Application for permit.
290.83 Corporate documents.
290.84 Articles of partnership or association.
290.85 Trade name certificate.
290.86 Bond.
290.87 Power of attorney.
290.88 Description and diagram of premises.
290.89 Separation of premises.
290.90 Restrictions relating to export warehouse premises.
290.91 Additional information.
290.92 Investigation of applicant.
290.93 Issuance of permit.

Subpart E—Changes Subsequent to Original Qualification of Export Warehouse Proprietors

CHANGES IN NAME

290.101 Change in individual name.
290.102 Change in trade name.
290.103 Change in corporate name.

CHANGES IN OWNERSHIP AND CONTROL

290.104 Fiduciary successor.
290.105 Transfer of ownership.
290.106 Change in officers or directors of a corporation.
290.107 Change in stockholders of a corporation.

CHANGES IN LOCATION AND PREMISES

290.108 Change in location within same region.
290.109 Change in address.
290.110 Change in location to another region.
290.111 Change in export warehouse premises.
290.112 Emergency premises.

Subpart F—Bonds and Extensions of Coverage of Bonds

290.121 Corporate surety.
290.122 Deposits of bonds, notes, or obligations in lieu of corporate surety.
290.123 Amount of bond.
290.124 Strengthening bond.
290.125 Superseding bond.
290.126 Extension of coverage of bond.
290.127 Approval of bond and extension of coverage of bond.
290.128 Termination of liability of surety under bond.
290.129 Release of bonds, notes, and obligations.

Subpart G—Operations by Export Warehouse Proprietors

290.141 Sign.
290.142 Records.

INVENTORIES

290.143 General.
290.144 Opening.
290.145 Special.
290.146 Closing.

REPORTS

290.147 General.
290.148 Opening.
290.149 Monthly.
290.150 Special.
290.151 Closing.

CLAIMS

290.152 Claim for remission of tax liability.
290.153 Claim for abatement of assessment.
290.154 Claim for refund of tax.

Subpart H—Suspension and Discontinuance of Operations

290.161 Discontinuance of operations.
290.162 Suspension and revocation of permit.

Subpart I [Reserved]

Subpart J—Removal of Shipments of Tobacco Products and Cigarette Papers and Tubes by Manufacturers and Export Warehouse Proprietors

PACKAGING REQUIREMENTS

290.181 Packages.
290.182 Lottery features.
290.183 Indecent or immoral material.
290.184 Mark.
290.185 Label or notice.
290.186 Tax classification for cigars.
290.187 Shipping containers.

CONSIGNMENT OF SHIPMENT

290.188 General.
290.189 Transfers between factories and export warehouses.
290.190 Return of shipment to a manufacturer or customs warehouse proprietor.
290.191 To officers of the armed forces for subsequent exportation.
290.192 To vessels and aircraft for shipment to noncontiguous foreign countries and possessions of the United States.
290.193 To a Federal department or agency.
290.194 To district director of customs for shipment to contiguous foreign countries.
290.195 To Government vessels and aircraft for consumption as supplies.
290.196 To district director of customs for consumption as supplies on commercial vessels and aircraft.
290.196a To a foreign-trade zone.
290.197 For export by parcel post.

NOTICE OF REMOVAL OF SHIPMENT

290.198 Preparation.
290.199 Disposition.
290.200 Transfers between factories and export warehouses.
290.201 Return to manufacturer or customs warehouse proprietor.
290.202 To officers of the armed forces for subsequent exportation.
290.203 To noncontiguous foreign countries and possessions of the United States.
290.204 To a Federal department or agency.
290.205 To contiguous foreign countries.
290.206 To Government vessels and aircraft for consumption as supplies.
290.207 To commercial vessels and aircraft for consumption as supplies.
290.207a To a foreign-trade zone.
290.208 For export by parcel post.

MISCELLANEOUS PROVISIONS

290.209 Diversion of shipment to another consignee.
290.210 Return of shipment to factory or export warehouse.
290.211 [Reserved]
290.212 Delay in lading at port of exportation.
290.213 Destruction of tobacco products, and cigarette papers and tubes.

Subpart K—Drawback of Tax

290.221 Application of drawback of tax.
290.222 Claim.
290.223 Drawback bond.
290.224 Inspection by an ATF officer.
290.225 Delivery of tobacco products, or cigarette papers or tubes for export other than by parcel post.
290.226 Delivery of tobacco products, and cigarette papers and tubes for export by parcel post.
290.227 Customs procedure.
290.228 Landing certificate.
290.229 Collateral evidence as to landing.
290.230 Proof of loss.
290.231 Extension of time.
290.232 Allowance of claim.

Subpart L—Withdrawal of Cigars From Customs Warehouses

290.241 Shipment restricted.
290.242 Responsibility for tax on cigars.

BONDS

290.243 Bond required.
290.244 Amount of bond.
290.245 Strengthening bond.
290.246 Superseding bond.
290.247 Termination of liability of surety under bond.

PACKAGING REQUIREMENTS

290.248 Packages.
290.249 Lottery features.
290.250 Indecent or immoral material.
290.251 Mark.
290.252 Label or notice.
290.253 Tax classification for cigars.
290.254 Shipping containers.

CONSIGNMENT OF SHIPMENT

290.255 Consignment of cigars.

NOTICE OF REMOVAL OF SHIPMENT

290.256 Preparation.
290.257 Disposition.
290.258 To officers of the armed forces for subsequent exportation.
290.259 To noncontiguous foreign countries and possessions of the United States.
290.260 To a Federal department or agency.
290.261 To contiguous foreign countries.
290.262 To Government vessels and aircraft for consumption as supplies.
290.263 To commercial vessels and aircraft for consumption as supplies.
290.264 To export warehouses.
290.264a To a foreign-trade zone.
290.265 For export by parcel post.

RETURN OF SHIPMENT

290.266 Return of cigars from export warehouses.
290.267 Return of cigars from other sources.

AUTHORITY: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5754, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Subpart A—Scope of Regulations

§ 290.1 Exportation of tobacco products, and cigarette papers and tubes, without payment of tax, or with drawback of tax.

This part contains the regulations relating to the exportation (including supplies for vessels and aircraft) of tobacco products and cigarette papers and tubes, without payment of tax; the qualification of, and operations by, export warehouse proprietors; and the allowance of drawback of tax paid on tobacco products, and cigarette papers and tubes exported.

[T.D. 6871, 31 FR 48, 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]

§ 290.2 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.

(b) Requests for forms should be mailed to the ATF 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 28087, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–372, 61 FR 20725, May 8, 1996]

Subpart B—Definitions

§ 290.11 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.

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 definition of ''cigarette'' given in this section).

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

(b) 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 (a) of this definition.

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

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

Cigarette papers. Taxable books or sets of cigarette papers.

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

Customs warehouse. A customs bonded manufacturing warehouse, class 6, where cigars are manufactured of imported tobacco.

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

District director of customs. The district director of customs at a 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.

Exportation or export. A severance of tobacco products or cigarette papers or tubes from the mass of things belonging to the United States with the intention of uniting them to the mass of things belonging to some foreign country. For the purposes of this part, shipment from the United States to Puerto Rico, the Virgin Islands, or a possession of the United States, shall be deemed exportation, as will the clearance from the United States of tobacco products and cigarette papers and tubes for consumption beyond the jurisdiction of the internal revenue laws of the United States, i.e., beyond the 3-mile limit or international boundary, as the case may be.

Export warehouse. A bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

Export warehouse proprietor. Any person who operates an export warehouse.

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

Foreign-trade zone. A foreign-trade zone established and operated pursuant to the Act of June 18, 1934, as amended.

In bond. The status of tobacco products and cigarette papers and tubes, which come within the coverage of a bond securing the payment of internal revenue taxes imposed by 26 U.S.C. 5701 or 7652, and in respect to which such taxes have not been determined as provided by regulations in this chapter, including (a) such articles in a factory or an export warehouse, (b) such articles removed, transferred, or released, pursuant to 26 U.S.C. 5704, and with respect to which relief from the tax liability has not occurred, and (c) such articles on which the tax has been determined, or with respect to which relief from the tax liability has occurred, which have been returned to the coverage of a bond.

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, pipe tobacco, or roll-your-own tobacco but does not include:

(1) A person who produces tobacco products solely for that person's own consumption or use; or

(2) 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 and delivered 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 either the factory or the export warehouse covered by the bond of the manufacturer or proprietor.

Roll-your-own 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 for making cigarettes.

Sale price. The price for which large cigars are sold by the manufacturer, determined in accordance with §§ 270.22 or 275.39.

State. ''State'' shall, for the purposes of this part, be construed to include the District of Columbia.

Smokeless tobacco. Any snuff or chewing tobacco.

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

Tobacco products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

United States. ''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.

Zone operator. The person to whom the privilege of establishing, operating, and maintaining a foreign-trade zone has been granted by the Foreign-Trade Zones Board created by the Act of June 18, 1934, as amended.

Zone restricted status. Tobacco products, cigarette papers and cigarette tubes which have been taken into a foreign trade zone from the United States Customs territory for the sole purpose of exportation or storage until exported.

[T.D. ATF–48, 43 FR 13556, Mar. 31, 1978; 44 FR 55856, Sept. 28, 1979, as 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–289, 54 FR 48841, Nov. 27, 1989; T.D. ATF–421, 64 FR 71925, Dec. 22, 1999; T.D. ATF–424, 64 FR 71933, Dec. 22, 1999; T.D. ATF–420, 64 FR 71945, Dec. 22, 1999]

Subpart Ba—Special (Occupational) Taxes

SOURCE: T.D. ATF-271, 53 FR 17563, May 17, 1988, unless otherwise noted.

§ 290.31 Liability for special tax.

(a) *Export warehouse proprietor*. Every export warehouse proprietor shall pay a special (occupational) tax at a rate specified by § 290.32. The tax shall be paid on or before the date of commencing the business of an export warehouseman, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

(b) *Transition rule*. For purposes of paragraph (a) of this section, a proprietor engaged in the business of an export warehouseman on January 1, 1988, shall be treated as having commenced business on that date. The special tax imposed by this transition rule shall cover the period January 1, 1988, through June 30, 1988, and shall be paid on or before April 1, 1988.

(c) *Each place of business taxable*. An export warehouse proprietor under this part incurs special tax liability at each place of business in which an occupation subject to special tax is conducted. A place of business means the entire office, plant or area of the business in any one location under the same proprietorship. Passageways, streets, highways, rail crossings, waterways, or partitions dividing the premises are not sufficient separation to require additional special tax, if the divisions of the premises are otherwise contiguous.

(26 U.S.C. 5143, 5731)

§ 290.32 Rate of special tax.

(a) *General*. Title 26 U.S.C. 5731(a)(3) imposes a special tax of $1,000 per year on every export warehouse proprietor.

(b) *Reduced rate for small proprietors*. Title 26 U.S.C. 5731(b) provides for a reduced rate of $500 per year with respect to any export warehouse proprietor whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 290.31 relates) are less than $500,000. The ''taxable year'' to be used for determining gross receipts is the taxpayer's income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a ''controlled group''; in that case, the rules of paragraph (c) of this section shall apply.

(c) *Controlled group*. All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. ''Controlled group'' means 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 they appear 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 this section.

(d) *Short taxable year*. Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances*. Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5731)

§ 290.33 Special tax returns.

(a) *General*. Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(b) *Preparation of ATF Form 5630.5*. All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see § 290.34).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class(es) of special tax to which the taxpayer is subject.

(6) Ownership and control information: that is, the name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. ''Owner of the business'' shall include every partner, if the taxpayer is a partnership, and every person owning 10% or more of its stock, if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF in connection with a permit application, and if the information previously provided is still current.

(c) *Multiple locations and/or classes of tax*. A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on ATF Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 290.142.

(d) *Signing of ATF Forms 5630.5*—(1) *Ordinary returns*. The return of an individual proprietor shall be signed by the individual. The return of a partnership shall be signed by a general partner. The return of a corporation shall be signed by an officer. In each case, the person signing the return shall designate his or her capacity as ''individual owner,'' ''member of firm,'' or, in the case of a corporation, the title of the officer.

(2) *Fiduciaries*. Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

(3) *Agent or attorney in fact*. If a return is signed by an agent or attorney in fact, the signature shall be preceded by the name of the principal and followed by the title of the agent or attorney in fact. A return signed by a person as agent will not be accepted unless there is filed, with the ATF office with which the return is required to be filed, a power of attorney authorizing the agent to perform the act.

(4) *Perjury statement*. ATF Forms 5630.5 shall contain or be verified by a written declaration that the return has been executed under the penalties of perjury.

(26 U.S.C. 6061, 6065, 6151, 7011)

§ 290.34 Employer identification number.

(a) *Requirement*. The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return, including amended returns, filed under this subpart. Failure of the taxpayer to include the employer identification number may result in the imposition of

the penalty specified in § 70.113 of this chapter.

(b) *Application for employer identification number.* Each taxpayer who files a special tax return, who has not already been assigned an employer identification number, shall file IRS Form SS–4 to apply for one. The taxpayer shall apply for and be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file a special tax return. The employer identification number shall be applied for no later than 7 days after the filing of the taxpayer's first special tax return. IRS Form SS–4 may be obtained from the director of an IRS service center or from any IRS district director.

(c) *Preparation and filing of IRS Form SS–4.* The taxpayer shall prepare and file IRS Form SS–4, together with any supplementary statement, in accordance with the instructions on the form or issued in respect to it.

(26 U.S.C. 6109)

[T.D. ATF-271, 53 FR 17563, May 17, 1988, as amended by T.D. ATF–301, 55 FR 47658, Nov. 14, 1990]

§ 290.35 Issuance, distribution, and examination of special tax stamps.

(a) *Issuance of special tax stamps.* Upon filing a properly executed return on ATF Form 5630.5 together with the full remittance, the taxpayer will be issued an appropriately designated special tax stamp. If the return covers multiple locations, the taxpayer will be issued one appropriately designated stamp for each location listed on the attachment to ATF Form 5630.5 required by § 290.33(c)(2), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

(b) *Distribution of special tax stamps for multiple locations.* On receipt of the special tax stamps, the taxpayer shall verify that there is one stamp for each location listed on the attachment to ATF Form 5630.5. The taxpayer shall designate one stamp for each location and type on each stamp the address of the business conducted at the location for which that stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

(c) *Examination of special tax stamps.* All stamps denoting payment of special tax shall be kept available for inspection by ATF officers, at the location for which designated, during business hours.

(26 U.S.C. 5146, 6806)

§ 290.36 Changes in special tax stamps.

(a) *Change in name.* If there is a change in the corporate or firm name, or in the trade name, as shown on ATF Form 5630.5, the export warehouse proprietor shall file an amended special tax return as soon as practicable after the change, covering the new corporate or firm name, or trade names. No new special tax is required to be paid. The export warehouse proprietor shall attach the special tax stamp for endorsement of the change in name.

(b) *Change in proprietorship*—(1) *General.* If there is a change in the proprietorship of an export warehouse, the successor shall pay a new special tax and obtain the required special tax stamps.

(2) *Exemption for certain successors.* Persons having the right of succession provided for in paragraph (c) of this section may carry on the business for the remainder of the period for which the special tax was paid, without paying a new special tax, if within 30 days after the date on which the successor begins to carry on the business, the successor files a special tax return on ATF Form 5630.5 with ATF, which shows the basis of succession. A person who is a successor to a business for which special tax has been paid and who fails to register the succession is liable for special tax computed from the first day of the calendar month in which he or she began to carry on the business.

(c) *Persons having right of succession.* Under the conditions indicated in paragraph (b)(2) of this section, the right of succession will pass to certain persons in the following cases:

(1) *Death.* The widowed spouse or child, or executor, administrator or other legal representative of the taxpayer;

(2) *Succession of spouse.* A husband or wife succeeding to the business of his or her spouse (living);

(3) *Insolvency.* A receiver or trustee in bankruptcy, or an assignee for benefit of creditors;

(4) *Withdrawal from firm.* The partner or partners remaining after death or withdrawal of a member.

(d) *Change in location.* If there is a change in location of a taxable place of business, the export warehouse proprietor shall, within 30 days after the change, file with ATF an amended special tax return covering the new location. The export warehouse proprietor shall attach the special tax stamp or stamps, for endorsement of the change in location. No new special tax is required to be paid. However, if the export warehouse proprietor does not file the amended return within 30 days, he or she is required to pay a new special tax and obtain a new special tax stamp.

(26 U.S.C. 5143, 7011)

Subpart C—General

§ 290.61 Removals, withdrawals, and shipments authorized.

(a) Tobacco products, and cigarette papers and tubes may be removed from a factory or an export warehouse, and cigars may be withdrawn from a customs warehouse, without payment of tax, for direct exportation or for delivery for subsequent exportation, in accordance with the provisions of this part.

(b) Tobacco products and cigarette papers and tubes are not eligible for removal or transfer in bond under this part unless they bear the marks, labels or notices required by this part.

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

[T.D. ATF–421, 64 FR 71925, Dec. 22, 1999]

§ 290.61a Deliveries to foreign-trade zones—export status.

Tobacco products, and cigarette papers and tubes may be removed from a factory or an export warehouse and cigars may be withdrawn from a customs warehouse, without payment of tax, for delivery to a foreign-trade zone for exportation or storage pending exportation in accordance with the provisions of this part. Such articles delivered to a foreign-trade zone under this part shall be considered exported for the purpose of the statutes and bonds under which removed and for the purposes of the internal revenue laws generally and the regulations thereunder. However, export status is not acquired until an application for admission of the articles into the zone with zone restricted status has been approved by the district director of customs pursuant to the appropriate provisions of 19 CFR chapter I and the required certificate of receipt of the articles in the zone has been made on Form 5200.14 as prescribed in this part.

(48 Stat. 999, as amended, 72 Stat. 1418, as amended; 19 U.S.C. 81c; 26 U.S.C. 5704)

[T.D. 6961, 33 FR 9491, June 28, 1968. 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; T.D. ATF–421, 64 FR 71925, Dec. 22, 1999]

§ 290.62 Restrictions on deliveries of tobacco products, and cigarette papers and tubes to vessels and aircraft, as supplies.

Tobacco products, and cigarette papers and tubes may be removed from a factory or an export warehouse and cigars may be withdrawn from a customs warehouse, without payment of tax, for delivery to vessels and aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States, subject to the applicable provisions of this part. Deliveries may be made to vessels actually engaged in foreign, intercoastal, or noncontiguous territory trade (i.e., vessels operating on a regular schedule in trade or actually transporting passengers and/or cargo (a) between a port in the United States and a foreign port; (b) between the Atlantic and Pacific ports of the United States; or (c) between a port on the mainland of the United States and a port in Alaska, Hawaii, Puerto Rico, the Virgin Islands, or a possession of the United States; between a port in Alaska and a port in Hawaii; or between a port in Alaska or Hawaii and a port in Puerto Rico, the Virgin Islands, or a possession of the United States); to vessels clearing through customs for a port beyond the jurisdiction of the internal revenue laws of the United States; to vessels of

war or other governmental activity; or to vessels of the United States documented to engage in the fishing business (including the whaling business), and foreign fishing (including whaling) vessels of 5 net tons or over. Such deliveries to vessels shall be subject to lading under customs supervision as provided in §§ 290.207 and 290.263. As a condition to the lading of the tobacco products, and cigarette papers and tubes, the customs authorities at the port of lading may, if they deem it necessary in order to protect the revenue, require assurances, satisfactory to them, from the master of the receiving vessel that the quantities to be laden are reasonable, considering the number of persons to be carried, the vessel's itinerary, the duration of its intended voyage, etc., and that such articles are to be used exclusively as supplies on the voyage. For this purpose, the customs authorities may require the master of the receiving vessel to submit for customs approval, prior to lading, customs documentation for permission to lade the articles. Where the customs authorities allow only a portion of a shipment to be laden, the remainder of the shipment shall be returned to the bonded premises of the manufacturer, export warehouse proprietor, or customs warehouse proprietor making the shipment, or otherwise disposed of as approved by the regional director (compliance) for the region from which the articles were shipped. Deliveries may be made to aircraft clearing through customs en route to a place or places beyond the jurisdiction of the internal revenue laws of the United States, and to aircraft operating on a regular schedule between U.S. customs areas as defined in the Air Commerce Regulations (19 CFR part 122). Deliveries may not be made to a vessel or aircraft stationed in the United States for an indefinite period and where its schedule does not include operations outside such jurisdiction.

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

[T.D. 6871, 31 FR 48, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–421, 64 FR 71925, Dec. 22, 1999]

§ 290.63 Restrictions on disposal of tobacco products, and cigarette papers and tubes on vessels and aircraft.

Tobacco products, and cigarette papers and tubes delivered to a vessel or aircraft, without payment of tax, pursuant to § 290.62, shall not be sold, offered for sale, or otherwise disposed of until the vessel or aircraft is outside the jurisdiction of the internal revenue laws of the United States, i.e., outside the 3-mile limit or international boundary, as the case may be, of the United States. Where the vessel or aircraft returns within the jurisdiction of the internal revenue laws with such articles on board, the articles shall be subject to treatment under the tariff laws of the United States.

(72 Stat. 1418, as amended; 26 U.S.C. 5704; 19 U.S.C. 1317)

[T.D. 6871, 31 FR 49, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.64 Responsibility for delivery or exportation of tobacco products, and cigarette papers and tubes.

Responsibility for compliance with the provisions of this part with respect to the removal under bond of tobacco products, and cigarette papers and tubes, without payment of tax, for export, and for the proper delivery or exportation of such articles, and with respect to the exportation of tobacco products, and cigarette papers and tubes with benefit of drawback of tax, shall rest upon the manufacturer of such articles or the proprietor of an export warehouse or customs warehouse from whose premises such articles are removed for export, and upon the exporter who exports tobacco products, and cigarette papers and tubes with benefit of drawback of tax.

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

[T.D. 6871, 31 FR 49, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.65 Liability for tax on tobacco products, and cigarette papers and tubes.

The manufacturer of tobacco products and cigarette papers and tubes shall be liable for the taxes imposed thereon by 26 U.S.C. 5701: *Provided*, That when tobacco products, and cigarette papers and tubes are transferred, without payment of tax, pursuant to 26 U.S.C. 5704, between the bonded premises of manufacturers and/or export warehouse proprietors, the transferee shall become liable for the tax upon receipt by him of such articles. Any person who possesses tobacco products, or cigarette papers or tubes in violation of 26 U.S.C. 5751(a)(1) or (2), shall be liable for a tax equal to the tax on such articles.

(72 Stat. 1417, 1424; 26 U.S.C. 5703, 5751)

[T.D. 6871, 31 FR 49, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55856, Sept. 28, 1979; T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.66 Relief from liability for tax.

A manufacturer of tobacco products or cigarette papers and tubes or an export warehouse proprietor shall be relieved of the liability for tax on tobacco products, or cigarette papers or tubes when he furnishes the regional director (compliance), for the region in which the factory or warehouse is located, evidence satisfactory to the regional director (compliance) of exportation or proper delivery, as required by this part, or satisfactory evidence of such other disposition as may be used as the lawful basis for such relief. Such evidence shall be furnished within 90 days of the date of removal of the tobacco products, or cigarette papers or tubes: *Provided*, That this period may be extended for good cause shown.

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

[T.D. 6871, 31 FR 49, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.67 Payment of tax.

(a) *General*. The taxes on tobacco products, and cigarette papers and tubes with respect to which the evidence described in § 290.66 is not timely furnished shall become immediately due and payable. The taxes shall be paid to ATF, with sufficient information to identify the taxpayer, the nature and purpose of the payment, and the articles covered by the payment. (ATF Form 5000.24 may be used for this purpose.)

(b) *Large cigars*. The amount of tax liability on large cigars shall be based on the maximum tax rate prescribed in § 270.21 of this part, unless the person liable for the tax establishes that a lower tax rate is applicable.

(All recordkeeping requirements have been approved under OMB Control No. 1512–0180)

[T.D. ATF–80, 46 FR 18311, Mar. 24, 1981, as amended by T.D. ATF–232, 51 FR 28088, 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]

§ 290.68 [Reserved]

§ 290.69 Assessment.

Whenever any person required by law to pay tax on tobacco products, and cigarette papers and 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 49, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55856, Sept. 28, 1979; T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.70 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 49, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.71 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)

[25 FR 4716, May 28, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975]

VARIATIONS FROM REQUIREMENTS

§ 290.72 Alternate methods or procedures.

A manufacturer of tobacco products, an export warehouse proprietor, or a customs warehouse proprietor, 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 or 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. Where a manufacturer or proprietor 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 manufacturer or proprietor 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 manufacturer or proprietor shall retain, as part of his records, any authorization of the Director under this section.

[T.D. 6871, 31 FR 49, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 290.73 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 with such procedures, conditions, and limitations shall automatically terminate the authority for such variations and the manufacturer, export warehouse proprietor, or customs warehouse proprietor, 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 a manufacturer or proprietor 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 manufacturer or proprietor shall retain, as part of his records, any authorization of the Director under this section.

[T.D. 6871, 31 FR 50, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

Subpart D—Qualification Requirements for Export Warehouse Proprietors

SOURCE: 25 FR 4716, May 28, 1960, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

§ 290.81 Persons required to qualify.

Every person who intends to engage in business as an export warehouse proprietor, as defined in this part, shall qualify as such in accordance with the provisions of this part.

(72 Stat. 1421; 26 U.S.C. 5711, 5712, 5713)

§ 290.82 Application for permit.

Every person, before commencing business as an export warehouse proprietor, shall make application, on Form 2093, to the regional director (compliance) for, and obtain, the permit provided for in § 290.93. All documents required under this part to be furnished with such application shall be made a part thereof.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 290.83 Corporate documents.

Every corporation, before commencing business as an export warehouse proprietor, shall furnish with its application for permit required by § 290.82, a true copy of the corporate charter or a certificate of corporate existence or incorporation, executed by the appropriate officer of the State in which incorporated. The corporation shall also furnish, in duplicate, evidence which will establish the authority of the officer or other person who executes the application for permit to execute the same; the authority of persons to sign other documents, required by this part, for the corporation; and the identity of the officers and directors, and each person who holds more than ten percent of the stock of such corporation. Where a corporation has previously filed such documents or evidence with the same regional director (compliance), a written statement by the corporation, in duplicate, to that effect will be sufficient for the purpose of this section.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 290.84 Articles of partnership or association.

Every partnership or association, before commencing business as an export warehouse proprietor, shall furnish with its application for permit, required by § 290.82 a true copy of the articles of partnership or association, if any, or certificate of partnership or association where required to be filed by any State, county, or municipality. Where a partnership or association has previously filed such documents with the same regional director (compliance), a written statement by the partnership or association, in duplicate, to that effect will be sufficient for the purpose of this section.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 290.85 Trade name certificate.

Every person, before commencing business under a trade name as an export warehouse proprietor, shall furnish with his application for permit,

required by § 290.82, a true copy of the certificate or other document, if any, issued by a State, county, or municipal authority in connection with the transaction of business under such trade name. If no such certificate or other document is so required a written statement, in duplicate, to that effect by such person will be sufficient for the purpose of this section.

(72 Stat. 1421; 26 U.S.C. 5712)

[T.D. 6961, 33 FR 9491, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 290.86 Bond.

Every person, before commencing business as an export warehouse proprietor, shall file, in connection with his application for permit, a bond, Form 2103, in accordance with the applicable provisions of § 290.88 and subpart F, conditioned upon compliance with the provisions of chapter 52, I.R.C., and regulations thereunder, including, but not limited to, the timely payment of taxes imposed by such chapter and penalties and interest in connection therewith for which he may become liable to the United States.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 290.87 Power of attorney.

If the application for permit or other qualifying documents are signed by an attorney in fact for an individual, partnership, association, company, or corporation, or by one of the partners for a partnership, or by an officer of an association or company, or, in the case of a corporation, by an officer or other person not authorized to sign by the corporate documents described in § 290.83, power of attorney conferring authority upon the person signing the documents shall be manifested on Form 1534 and furnished to the regional director (compliance).

§ 290.88 Description and diagram of premises.

The premises to be used by an export warehouse proprietor as his warehouse shall be described, in the application for permit required by § 290.82, and bond required by § 290.86, by number, street, and city, town, or village, and State. Such premises may consist of more than one building, which need not be contiguous: *Provided*, That such premises are located in the same city, town, or village and each located is described in the application for permit and the bond by number and street. Where such premises consist of less than an entire building, a diagram, in duplicate, shall also be furnished showing the particular floor or floors, or room or rooms, comprising the warehouse.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 290.89 Separation of premises.

Where the export warehouse premises consist of less than an entire building, the premises shall be completely separated from adjoining portions of the building, which separation shall be constructed of materials generally used in the construction of buildings and may include any necessary doors or other openings.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 290.90 Restrictions relating to export warehouse premises.

Export warehouse premises shall be used exclusively for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent removal under this part: *Provided*, That smoking tobacco may also be stored in an export warehouse.

[T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.91 Additional information.

The regional director (compliance) may require such additional information as may be deemed necessary to determine whether the applicant is entitled to a permit. The applicant shall, when required by the regional director (compliance), furnish as a part of his application for permit such additional information as may be necessary for the regional director (compliance) to determine whether the applicant is entitled to a permit.

§ 290.92 Investigation of applicant.

The regional director (compliance) shall promptly cause such inquiry or investigation to be made, as he deems necessary, to verify the information furnished in connection with an application for permit and to ascertain

whether the applicant is, by reason of his business experience, financial standing, and trade connections, likely to maintain operations in compliance with 26 U.S.C. chapter 52, and regulations thereunder; whether such person has disclosed all material information required or made any material false statement in the application for such permit; and whether the premises on which it is proposed to establish the export warehouse are adequate to protect the revenue. If the regional director (compliance) has reason to believe that the applicant is not entitled to a permit, he shall promptly give the applicant notice of the contemplated disapproval of his application and opportunity for hearing thereon in accordance with part 200 of this chapter, which part (including the provisions relating to the recommended decision and to appeals) is made applicable to such proceedings. If, after such notice and opportunity for hearing, the regional director (compliance) finds that the applicant is not entitled to a permit, he shall, by order stating the findings on which his decision is based, deny the permit.

(72 Stat. 1421; 26 U.S.C. 5712)

[25 FR 4716, May 28, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55856, Sept. 28, 1979]

§ 290.93 Issuance of permit.

If the application for permit, bond, and supporting documents, required under this part, are approved by him, the regional director (compliance) shall issue a permit, Form 2096, to the export warehouse proprietor. The permit shall bear a number and shall fully set forth where the business of the export warehouse proprietor is to be conducted. The proprietor shall retain such permit at all times within his export warehouse and it shall be readily available for inspection by any ATF officer upon his request. Where the warehouse consists of more than one building, the permit shall be retained in the building in which the records, required by § 290.142, are kept.

(72 Stat. 1421; 26 U.S.C. 5713)

Subpart E—Changes Subsequent to Original Qualification of Export Warehouse Proprietors

SOURCE: 25 FR 4717, May 28, 1960, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

CHANGES IN NAME

§ 290.101 Change in individual name.

Where there is a change in the name of an individual operating as an export warehouse proprietor he shall, within 30 days of such change, make application on Form 2098 for an amended permit.

(72 Stat. 1421; 26 U.S.C. 5712)

[T.D. 6961, 33 FR 9491, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 290.102 Change in trade name.

Where there is a change in, or an addition or discontinuance of, a trade name used by an export warehouse proprietor in connection with operations authorized by his permit, the proprietor shall, within 30 days of such change, addition, or discontinuance, make application on Form 2098 for an amended permit to reflect such change. The proprietor shall also furnish a true copy of any new trade name certificate or document issued to him, or statement in lieu thereof, required by § 290.85.

(72 Stat. 1421; 26 U.S.C. 5712)

[T.D. 6961, 33 FR 9491, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 290.103 Change in corporate name.

Where there is a change in the name of a corporate export warehouse proprietor the proprietor shall, within 30 days of such change, make application on Form 2098 for an amended permit. The proprietor shall also furnish such documents as may be necessary to establish that the corporate name has been changed.

(72 Stat. 1421; 26 U.S.C. 5712)

[T.D. 6961, 33 FR 9491, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975]

CHANGES IN OWNERSHIP AND CONTROL

§ 290.104 Fiduciary successor.

If an administrator, executor, receiver, trustee, assignee, or other fiduciary, is to take over the business of an export warehouse proprietor, as a continuing operation, such fiduciary shall, before commencing operations, make application for permit and file bond as required by subpart D of this part, furnish certified copies, in duplicate, of the order of the court, or other pertinent documents, showing his appointment and qualification as such fiduciary, and make an opening inventory, in accordance with the provisions of § 290.144; *Provided*, That where a diagram has been furnished by the predecessor, in accordance with the provisions of § 290.88, the successor may adopt such diagram. However, where a fiduciary intends merely to liquidate the business, qualification as an export warehouse proprietor will not be required if he promptly files with the regional director (compliance) a statement to that effect, together with an extension of coverage of the predecessor's bond, executed by the fiduciary, also by the surety on such bond, in accordance with the provisions of § 290.126.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5712, 5721)

§ 290.105 Transfer of ownership.

If a transfer is to be made in ownership of the business of an export warehouse proprietor (including a change in the identity of the members of a partnership or association), such proprietor shall give notice, in writing, to the regional director (compliance), naming the proposed successor and the desired effective date of such transfer. The proposed successor shall, before commencing operations, qualify as a proprietor, in accordance with the applicable provisions of subpart D of this part: *Provided*, That where a diagram has been furnished by the proprietor in accordance with the provisions of § 290.88, the proposed successor may adopt such diagram. The proprietor shall give such notice of transfer, and the proposed successor shall make application for permit and file bond, as required, in ample time for examination and approval thereof before the desired date of such change. The predecessor shall make a closing inventory and closing report, in accordance with the provisions of §§ 290.146 and 290.151, respectively, and surrender, with such inventory and report, his permit, and the successor shall make an opening inventory, in accordance with the provisions of § 290.144.

(72 Stat. 1421, 1422; 26 U.S.C. 5712, 5713, 5721, 5722)

§ 290.106 Change in officers or directors of a corporation.

Where there is any change in the officers or directors of a corporation operating the business of an export warehouse proprietor, the proprietor shall furnish to the regional director (compliance) notice, in writing, of the election of the new officers or directors within 30 days after such election.

(72 Stat. 1421; 26 U.S.C. 5712)

§ 290.107 Change in stockholders of a corporation.

Where the issuance, sale, or transfer of the stock of a corporation, operating as an export warehouse proprietor, results in a change in the identity of the principal stockholders exercising actual or legal control of the operations of the corporation, the corporate proprietor shall, within 30 days after the change occurs, make application for a new permit; otherwise, the present permit shall be automatically terminated at the expiration of such 30-day period, and the proprietor shall dispose of all cigars, cigarettes, and cigarette papers and tubes on hand, in accordance with this part, make a closing inventory and closing report, in accordance with the provisions of §§ 290.146 and 290.151, respectively, and surrender his permit with such inventory and report. If the application for a new permit is timely made, the present permit shall continue in effect pending final action with respect to such application.

(72 Stat. 1421, 1422; 26 U.S.C. 5712, 5713, 5721, 5722)

[T.D. 6871, 31 FR 50, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

CHANGES IN LOCATION AND PREMISES

§ 290.108 Change in location within same region.

Whenever an export warehouse proprietor contemplates changing the location of his warehouse within the same region, the proprietor shall, before commencing operations at the new location, make an application, to the regional director (compliance), on Form 2098 for an amended permit. The application shall be supported by an extension of coverage of the bond filed under this part, in accordance with the provisions of § 290.126.

(72 Stat. 1421; 26 U.S.C. 5711, 5712)

§ 290.109 Change in address.

Whenever any change occurs in the address, but not the location, of the warehouse of an export warehouse proprietor, as a result of action of local authorities, the proprietor shall, within 30 days of such change, make application on Form 2098 for an amended permit.

(72 Stat. 1421; 26 U.S.C. 5712)

[T.D. 6961, 33 FR 9492, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 290.110 Change in location to another region.

Whenever an export warehouse proprietor contemplates changing the location of his warehouse to another region, he shall, before commencing operations at the new location, qualify as such a proprietor in the new region, in accordance with the applicable provisions of subpart D. The proprietor shall notify the regional director (compliance) of the region from which he is removing of his qualification in the new region, giving the address of the new location of his warehouse and the number of the permit issued to him in the new region, make a closing inventory and closing report, in accordance with the provisions of §§ 290.146 and 290.151, respectively, and surrender, with such inventory and report, the permit for his old location.

(72 Stat. 1421, 1422; 26 U.S.C. 5711, 5712, 5713, 5721, 5722)

§ 290.111 Change in export warehouse premises.

Where an export warehouse is to be changed to an extent which will make inaccurate the description of the warehouse as set forth in the last application by the proprietor for permit, or the diagram, if any, furnished with such application, the proprietor shall first make application on Form 2098 for, and obtain, an amended permit. Such application shall describe the proposed change in the warehouse and shall be accompanied by a new diagram if required under § 290.88.

(72 Stat. 1421; 26 U.S.C. 5712)

[T.D. 6961 33 FR 9492, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 290.112 Emergency premises.

In cases of emergency, the regional director (compliance) may authorize, for a stated period, the temporary use of a place for the temporary storage of tobacco products, and cigarette papers and tubes, without making the application or furnishing the extension of coverage of bond required under §§ 290.111 and 290.126, or the temporary separation of warehouse premises by means other than those specified in § 290.89, where such action will not hinder the effective administration of this part, is not contrary to law, and will not jeopardize the revenue.

[T.D. 6871, 31 FR 50, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

Subpart F—Bonds and Extensions of Coverage of Bonds

SOURCE: 25 FR 4718, May 28, 1960, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

§ 290.121 Corporate surety.

(a) Surety bonds required under the provisions of this part 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 Treasury Department Circular No. 570, as revised

(see paragraph (c) of this section). The surety shall have no interest whatever in the business covered by the bond.

(b) Each bond and each extension of coverage of bond shall at the time of filing be accompanied by a power of attorney authorizing the agent or officer who executed the bond to so act on behalf of the surety. The regional director (compliance) who is authorized to approve the bond may, whenever he deems it necessary, require additional evidence of the authority of the agent or officer to execute the bond or extension of coverage of bond. The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed document, it shall be accompanied by a certificate of its validity.

(c) Treasury Department Circular No. 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies) is published in the FEDERAL REGISTER annually as of the first workday in 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); sec. 202, Pub. L. 85–859, 72 Stat. 1421, as amended (26 U.S.C. 5711))

[T.D. ATF–92, 46 FR 46923, Sept. 23, 1981]

§ 290.122 Deposits of bonds, notes, or obligations in lieu of corporate surety.

Bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by the export warehouse proprietor as security in connection with bond to cover his operations, in lieu of the corporate surety, in accordance with the provisions of Treasury Department Circular No. 154, revised (31 CFR part 225). Such bonds or notes which are nontransferable, or the pledging of which will not be recognized by the Treasury Department, are not acceptable as security in lieu of corporate surety.

(72 Stat. 1421, 61 Stat. 650; 26 U.S.C. 5711, 6 U.S.C. 15)

§ 290.123 Amount of bond.

The amount of the bond filed by the export warehouse proprietor, as required by § 290.86, shall be not less than the estimated amount of tax which may at any time constitute a charge against the bond: *Provided*, That the amount of any such bond (or the total amount where original and strengthening bonds are filed) shall not exceed $200,000 nor be less than $1,000. The charge against such bond shall be subject to increase upon receipt of tobacco products, and cigarette papers and tubes into the export warehouse and to decrease as satisfactory evidence of exportation, or satisfactory evidence of such other disposition as may be used as the lawful basis for crediting such bond, is received by the regional director (compliance) with respect to such articles transferred or removed. When the limit of liability under a bond given in less than the maximum amount has been reached, no additional shipments shall be received into the warehouse until a strengthening or superseding bond is filed, as required by § 290.124 or § 290.125.

(72 Stat. 1421, as amended; 26 U.S.C. 5711)

[T.D. 6871, 31 FR 50, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.124 Strengthening bond.

Where the regional director (compliance) determines that the amount of the bond, under which an export warehouse proprietor is currently carrying on business, no longer adequately protects the revenue, and such bond is in an amount of less than $200,000, the regional director (compliance) administrator may require the proprietor to file a strengthening bond in an appropriate amount with the same surety as that on the bond already in effect, in lieu of a superseding bond to cover the full liability on the basis of § 290.123. The regional director (compliance)

shall refuse to approve any strengthening bond 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.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 290.125 Superseding bond.

An export warehouse proprietor shall file a new bond to supersede his current bond, immediately 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) payment of any liability under a bond is made by the surety thereon, or (d) the regional director (compliance) considers such a superseding bond necessary for the protection of the revenue.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 290.126 Extension of coverage of bond.

An extension of the coverage of any bond filed under this part shall be manifested on Form 2105 by the export warehouse proprietor and by the surety on the bond with the same formality and proof of authority as required for the execution of the bond.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 290.127 Approval of bond and extension of coverage of bond.

No person shall commence operations under any bond, nor extend his operations, until he receives from the regional director (compliance) notice of his approval of the bond or of an appropriate extension of coverage of the bond required under this part.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 290.128 Termination of liability of surety under bond.

The liability of a surety on any bond required by this part shall be terminated only as to operations on and after the effective date of a superseding bond, or the date of approval of the discontinuance of operations by the export warehouse proprietor, or otherwise in accordance with the termination provisions of the bond. The surety shall remain bound in respect of any liability for unpaid taxes, penalties, and interest, not in excess of the amount of the bond, incurred by the proprietor while the bond is in force.

(72 Stat. 1421; 26 U.S.C. 5711)

§ 290.129 Release of bonds, notes, and obligations.

(a) Bonds, notes, and other obligations of the United States, pledged and deposited as security in connection with bonds required by this part, shall be released only in accordance with the provisions of Treasury Department Circular No. 154 (31 CFR Part 225—Acceptance of Bonds, Notes or Other Obligations Issued or Guaranteed by the United States as Security in Lieu of Surety or Sureties on Penal Bonds). When the regional director (compliance) is satisfied that it is no longer necessary to hold such security, he shall fix the date or dates on which a part or all of such security may be released. At any time prior to the release of such security, the regional director (compliance) may, for proper cause, extend the date of release of such security for such additional length of time as in his judgment may be appropriate.

(b) Treasury Department Circular No. 154 is periodically revised and contains the provisions of 31 CFR part 225 and the forms prescribed in 31 CFR part 225. Copies of the circular may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, DC 20226.

(Sec. 202, Pub. L. 85–859, 72 Stat. 1421 (26 U.S.C. 5711); July 30, 1947, ch. 390, 61 Stat. 650 (6 U.S.C. 15))

[T.D. ATF–92, 46 FR 46923, Sept. 23, 1981; 46 FR 48644, Oct. 2, 1981]

Subpart G—Operations by Export Warehouse Proprietors

SOURCE: 25 FR 4719, May 28, 1960, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

§ 290.141 Sign.

Every export warehouse proprietor shall place and keep, on the outside of

the building in which his warehouse is located, or at the entrance of his warehouse, where it can be plainly seen, a sign, in plain and legible letters, exhibiting the name under which he operates and (a) the type of business (''Export Warehouse Proprietor'') or (b) the number of the permit issued to the export warehouse proprietor under this part.

§ 290.142 Records.

Every export warehouse proprietor must keep in such warehouse complete and concise records, containing the:

(a) Number of containers;

(b) Unit type (*e. g.*, cartons, cases);

(c) Kind of articles (*e. g.*, small cigarettes);

(d) Name of manufacturer and brand; and,

(e) Quantity of tobacco products, cigarette papers and tubes received, removed, transferred, destroyed, lost or returned to manufacturers or to customs warehouse proprietors. In addition to such records, the export warehouse proprietor shall retain a copy of each Form 5200.14 received from a manufacturer, another export warehouse proprietor, or customs warehouse proprietor, from whom tobacco products and cigarette papers and tubes are received and a copy of each Form 5200.14 covering the tobacco products, and cigarette papers and tubes removed from the warehouse. The entries for each day in the records maintained or kept under this section shall be made by the close of the business day following that on which the transactions occur. No particular form of records is prescribed, but the information required shall be readily ascertainable. The records and copies of Form 5200.14 shall be retained for 3 years following the close of the calendar year in which the shipments were received or removed and shall be made available for inspection by any ATF officer upon request.

(Approved by the Office of Management and Budget under control number 1512–0367)

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

[T.D. ATF–421, 64 FR 71925, Dec. 22, 1999]

INVENTORIES

§ 290.143 General.

(a) Every export warehouse proprietor shall at the times specified in this subpart make a true and accurate inventory of products held on ATF Form 5220.3 (3373). This inventory must be submitted to the Regional Director (Compliance), and must specify the following:

(1) The number of small cigars, large cigars, small cigarettes, large cigarettes, cigarette papers, and cigarette tubes held by such proprietor at the times specified in this subpart.

(2) The pounds and ounces of chewing tobacco, snuff, pipe tobacco and roll-your-own tobacco held by such proprietor at the times specified in this subpart.

(b) This inventory shall be subject to verification by an ATF officer. A copy of each inventory shall be retained by the export warehouse proprietor for 3 years following the close of the calendar year in which the inventory is made and shall be made available for inspection by any ATF officer upon request.

[T.D. ATF–289, 54 FR 48841, Nov. 27, 1989, as amended by T.D. ATF–421, 64 FR 71925, Dec. 22, 1999; T.D. ATF–424, 64 FR 71933, Dec. 22, 1999]

§ 290.144 Opening.

An opening inventory shall be made by the export warehouse proprietor at the time of commencing business. The date of commencing business under this part shall be the effective date indicated on the permit issued under § 290.93. A similar inventory shall be made by the export warehouse proprietor when he files a superseding bond. The date of such inventory shall be the effective date of such superseding bond as indicated thereon by the regional director (compliance).

(72 Stat. 1422; 26 U.S.C. 5721)

§ 290.145 Special.

A special inventory shall be made by the export warehouse proprietor whenever required by any ATF officer.

(72 Stat. 1422; 26 U.S.C. 5721)

§ 290.146 Closing.

A closing inventory shall be made by the export warehouse proprietor when he transfers ownership, changes his location to another region, or concludes business. Where the proprietor transfers ownership the closing inventory shall be made as of the day preceding the date of the opening inventory of the successor.

(72 Stat. 1422; 26 U.S.C. 5721)

REPORTS

§ 290.147 General.

Every export warehouse proprietor shall make a report on Form 5220.4, to the regional director (compliance), of all tobacco products, and cigarette papers and tubes on hand, received, removed, transferred, and lost or destroyed. Such report shall be made at the times specified in this subpart and shall be made whether or not any operations or transactions occurred during the period covered by the report. A copy of each report shall be retained by the export warehouse proprietor at his warehouse for 3 years following the close of the calendar year covered in such reports, and made available for inspection by any ATF officer upon his request.

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

[T.D. 6871, 31 FR 51, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–421, 64 FR 71925, Dec. 22, 1999; T.D. ATF–424, 64 FR 71933, Dec. 22, 1999]

§ 290.148 Opening.

An opening report, covering the period from the date of the opening inventory, or inventory made in connection with a superseding bond, to the end of the month, shall be made on or before the 20th day following the end of the month in which the business was commenced.

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

§ 290.149 Monthly.

A report for each full month shall be made on or before the 20th day following the end of the month covered in the report.

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

§ 290.150 Special.

A special report, covering the unreported period to the day preceding the date of any special inventory required by an ATF officer, shall be made with such inventory. Another report, covering the period from the date of such inventory to the end of the month, shall be made on or before the 20th day following the end of the month in which the inventory was made.

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

§ 290.151 Closing.

A closing report, covering the period from the first of the month to the date of the closing inventory, or the day preceding the date of an inventory made in connection with a superseding bond, shall be made with such inventory.

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

CLAIMS

§ 290.152 Claim for remission of tax liability.

Remission of the tax liability on tobacco products, and cigarette papers and tubes may be extended to the export warehouse proprietor liable for the tax where such articles in bond are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such proprietor. Where articles are so lost or destroyed the proprietor shall report promptly such fact, and the circumstances, to the regional director (compliance) for the region in which the warehouse is located. If the proprietor wishes to be relieved of the tax liability thereon he shall also prepare a claim on Form 5620.8, in duplicate, setting forth the nature, date, place, and extent of the loss or destruction. Both copies 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 warehouse is located. Upon action on the claim by the

regional director (compliance) he will return the copy of Form 5620.8 to the proprietor as notice of such action, which copy shall be retained by the proprietor for 3 years following the close of the calendar year in which the claim is filed.

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

[T.D. 6961, 33 FR 9492, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–421, 64 FR 71925, Dec. 22, 1999]

§ 290.153 Claim for 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 of such tax, alleged to be excessive in amount, assessed after the expiration of the period of limitation applicable thereto, or erroneously or illegally assessed, shall be filed on Form 5620.8 with the regional director (compliance). Such claim shall set forth the reasons relied upon for the allowance of the claim and shall be supported by such evidence as is necessary to establish to the satisfaction of the regional director (compliance) that the claim is valid.

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

[T.D. 6871, 31 FR 51, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28088, 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–421, 64 FR 71925, Dec. 22, 1999]

§ 290.154 Claim for refund of tax.

The taxes paid on tobacco products, and cigarette papers and tubes may be refunded (without interest) to an export warehouse proprietor on proof satisfactory to the regional director (compliance) that the claimant proprietor paid the tax on such articles which were after taxpayment lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of such export warehouse proprietor, or withdrawn by him from the market. Any claim for refund under this section shall be prepared on Form 5620.8, in duplicate, and shall include a statement that the tax imposed by 26 U.S.C. 7652 or chapter 52, was paid in respect to the articles covered by the claim, and that the articles were lost, destroyed, or withdrawn from the market within 6 months preceding the date the claim is filed. The claim shall be filed with the regional director (compliance) for the region in which the tax was paid and shall be supported by such evidence as is necessary to establish to the satisfaction of the regional director (compliance) that the claim is valid. The duplicate of the claim shall be retained by the export warehouse proprietor for 3 years following the close of the calendar year in which the claim is filed. Where an export warehouse proprietor has paid the tax on tobacco products, or cigarette papers or tubes, he may file claim for refund of an overpayment of tax under subpart A of part 296 of this chapter if, at the time the tax was paid, these articles had been exported, destroyed, or otherwise disposed of in such a manner that tax was not due and payable.

(68A Stat. 791, 72 Stat. 9, 1419, as amended; 26 U.S.C. 6402, 6423, 5705)

[T.D. 6961, 33 FR 9492, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55856, Sept. 28, 1979; T.D. ATF–232, 51 FR 28088, 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–421, 64 FR 71925, Dec. 22, 1999]

Subpart H—Suspension and Discontinuance of Operations

§ 290.161 Discontinuance of operations.

Every export warehouse proprietor who desires to discontinue operations and close out his warehouse shall dispose of all cigars, cigarettes, and cigarette papers and tubes on hand, in accordance with this part, making a closing inventory and closing report, in accordance with the provisions of §§ 290.146 and 290.151, respectively, and surrender, with such inventory and report, his permit to the regional director (compliance) as notice of such discontinuance, in order that the regional director (compliance) may terminate

the liability of the surety on the bond of the export warehouse proprietor.

(72 Stat. 1422; 26 U.S.C. 5721, 5722)

[T.D. 6871, 31 FR 51, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 290.162 Suspension and revocation of permit.

Where the regional director (compliance) has reason to believe that an export warehouse proprietor has not in good faith complied with the provisions of 26 U.S.C. chapter 52, and regulations thereunder, or with any other provision of 26 U.S.C. with intent to defraud, or has violated any condition of his permit, or has failed to disclose any material information required or made any material false statement in the application for permit, or has failed to maintain his premises, in such manner as to protect the revenue, the regional director (compliance) shall issue an order, stating the facts charged, citing such export warehouse proprietor to show cause why his permit should not be suspended or revoked after hearing thereon in accordance with part 200 of this chapter, which part (including the provisions relating to appeals) is made applicable to such proceedings. If the hearing examiner, or the Director, on appeal, decides the permit should be suspended, for such time as to him seems proper, or be revoked, the regional director (compliance) shall by order give effect to such decision.

(72 Stat. 1421; 26 U.S.C. 5713)

[25 FR 4720, May 28, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55856, Sept. 28, 1979]

Subpart I [Reserved]

Subpart J—Removal of Shipments of Tobacco Products and Cigarette Papers and Tubes by Manufacturers and Export Warehouse Proprietors

PACKAGING REQUIREMENTS

§ 290.181 Packages.

All tobacco products, and cigarette papers and tubes will, before removal or transfer under this subpart, be put up by the manufacturer in packages which shall bear the label or notice, tax classification, and mark, as required by this subpart. For purposes of this subpart, the package does not include the cellophane wrapping material.

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

[T.D. ATF–421, 64 FR 71925, Dec. 22, 1999]

§ 290.182 Lottery features.

No 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 shall be contained in, attached to, or stamped, marked, written, or printed on any package of tobacco products, or cigarette papers or tubes.

(72 Stat. 1422; 26 U.S.C. 5723, 18 U.S.C. 1301)

[T.D. 6871, 31 FR 51, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.183 Indecent or immoral material.

No indecent or immoral picture, print, or representation shall be contained in, attached to, or stamped, marked, written, or printed on any package of tobacco products, or cigarette papers or tubes.

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

[T.D. 6871, 31 FR 51, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.184 Mark.

Every package of tobacco products shall, before removal from the factory under this subpart, have adequately imprinted thereon, or on a label securely affixed thereto, a mark as specified in this section. The mark may consist of the name of the manufacturer removing the product and the location (by city and State) of the factory from which the products are to be so removed, or may consist of the permit number of the factory from which the products are to be so removed. Any trade name of the manufacturer approved as provided in § 270.65 of this chapter may be used in the mark as the

name of the manufacturer.) As an alternative, where tobacco products are both packaged and removed by the same manufacturer, either at the same or different factories, the mark may consist of the name of such manufacturer if the factory where package is identified on or in the package by a means approved by the Director. Before using the alternative, the manufacturer shall notify the Director in writing of the name to be used as the name of the manufacturer and the means to be used for identifying the factory where packaged. If approved by him the Director shall return approved copies of the notice to the manufacturer. A copy of the approved notice shall be retained as part of the factory records at each of the factories operated by the manufacturer.

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

[T.D. 6871, 31 FR 51, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.185 Label or notice.

Every package of tobacco products shall, before removal from the factory under this subpart, have adequately imprinted thereon, or on a label securely affixed thereto, the words ''Tax-exempt. For use outside U.S.'' or the words ''U.S. Tax-exempt. For use outside U.S.'' except where a stamp, sticker, or notice, required by a foreign country or a possession of the United States, which identifies such country or possession, is so imprinted or affixed.

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

[T.D. 6871, 31 FR 52, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.186 Tax classification for cigars.

Before removal from a factory under this subpart, every package of cigars 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 18312, Mar. 24, 1981]

§ 290.187 Shipping containers.

Each shipping case, crate, or other container in which tobacco products, or cigarette papers or tubes are to be shipped or removed, under this part, shall bear a distinguishing number, such number to be assigned by the manufacturer or export warehouse proprietor. Removals of tobacco products, and cigarette papers and tubes from an export warehouse shall be made, insofar as practicable, in the same containers in which they were received from the factory.

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

[T.D. 6871, 31 FR 52, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

CONSIGNMENT OF SHIPMENT

§ 290.188 General.

Tobacco products, and cigarette papers and tubes transferred or removed from a factory or an export warehouse, under this part, without payment of tax, shall be consigned as required by this subpart.

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

[T.D. 6871, 31 FR 52, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.189 Transfers between factories and export warehouses.

Where tobacco products, and cigarette papers and tubes are transferred, without payment of tax, from a factory to an export warehouse or between export warehouses, such articles shall be

consigned to the export warehouse proprietor to whom such articles are to be delivered.

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

[T.D. 6871, 31 FR 52, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.190 Return of shipment to a manufacturer or customs warehouse proprietor.

Where tobacco products, and cigarette papers and tubes are returned by an export warehouse proprietor to a manufacturer or where cigars are so returned to a customs warehouse proprietor, such articles shall be consigned to the manufacturer or customs warehouse proprietor to whom the shipment is to be returned.

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

[T.D. 6871, 31 FR 52, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.191 To officers of the armed forces for subsequent exportation.

Where tobacco products, and cigarette papers and tubes are removed from a factory or an export warehouse for delivery to officers of the armed forces of the United States in this country for subsequent shipment to, and use by, the armed forces outside the United States, the manufacturer or export warehouse proprietor shall consign such articles to the receiving officer at the armed forces base or installation, in this country, to which they are to be delivered.

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

[T.D. 6871, 31 FR 52, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.192 To vessels and aircraft for shipment to noncontiguous foreign countries and possessions of the United States.

Where tobacco products, and cigarette papers and tubes are removed from a factory or an export warehouse, for direct delivery to a vessel or aircraft for transportation to a noncontiguous foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, the manufacturer or export warehouse proprietor shall consign the shipment directly to the vessel or aircraft, or to his agent at the port for delivery to the vessel or aircraft.

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

[T.D. 6871, 31 FR 52, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.193 To a Federal department or agency.

Where tobacco products, and cigarette papers and tubes are removed from a factory or an export warehouse and are destined for ultimate delivery in a noncontiguous foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, but the shipment is to be delivered in the United States to a Federal department or agency, or to an authorized dispatch agent, transportation officer, or port director of such a department or agency for forwarding on to the place of destination of the shipment, the manufacturer or export warehouse proprietor shall consign the shipment to the Federal department or agency, or to the proper dispatch agent, transportation officer, or port director of such department or agency.

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

[T.D. 6871, 31 FR 52, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28088, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.194 To district director of customs for shipment to contiguous foreign countries.

Where tobacco products, or cigarette papers or tubes are removed from a factory or an export warehouse for export to a contiguous foreign country, the manufacturer or export warehouse proprietor shall consign the shipment to

the district director of customs at the border or other port of exit.

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

[T.D. 6961, 33 FR 9492, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.195 To Government vessels and aircraft for consumption as supplies.

Where tobacco products, and cigarette papers and tubes are removed from a factory or an export warehouse for delivery to a vessel or aircraft engaged in an activity for the Government of the United States or a foreign government, for consumption as supplies beyond the jurisdiction of the internal revenue laws of the United States, the manufacturer or export warehouse proprietor shall consign the shipment to the proper officer on board the vessel or aircraft to which the shipment is to be delivered.

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

[T.D. 6871, 31 FR 52, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.196 To district director of customs for consumption as supplies on commercial vessels and aircraft.

Where tobacco products, or cigarette papers or tubes are removed from a factory or an export warehouse for consumption as supplies beyond the jurisdiction of the internal revenue laws of the United States, the manufacturer or export warehouse proprietor shall consign the shipment to the district director of customs at the port at which the shipment is to be laden.

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

[T.D. 6961, 33 FR 9493, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.196a To a foreign-trade zone.

Where tobacco products, and cigarette papers and tubes are removed from a factory or an export warehouse for delivery to a foreign-trade zone, under zone restricted status for the purpose of exportation or storage, the manufacturer or export warehouse proprietor shall consign the shipment to the Zone Operator in care of the customs officer in charge of the zone.

(48 Stat. 999, as amended, 72 Stat. 1418, as amended; 19 U.S.C. 81c, 26 U.S.C. 5704)

[T.D. 6871, 31 FR 53, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.197 For export by parcel post.

Tobacco products, and cigarette papers and tubes removed from a factory or an export warehouse, for export by parcel post to a person in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, shall be addressed and consigned to such person when the articles are deposited in the mails. Waiver of his right to withdraw such articles from the mails shall be stamped or written on each shipping container and be signed by the manufacturer or export warehouse proprietor making the shipment.

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

[T.D. 6871, 31 FR 53, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

NOTICE OF REMOVAL OF SHIPMENT

§ 290.198 Preparation.

For each shipment of tobacco products, and cigarette papers and tubes transferred or removed from his factory, under bond and this part, the manufacturer shall prepare a notice of removal, Form 5200.14, and for each shipment of tobacco products, and cigarette papers and tubes transferred or removed from his export warehouse, under bond and this part, the export warehouse proprietor shall prepare a notice of removal, Form 5200.14. Each such notice shall be given a serial number by the manufacturer or export warehouse proprietor in a series beginning with number 1, with respect to the first shipment removed from the factory or export warehouse under this

part and commencing again with number 1 on January 1 of each year thereafter.

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

[T.D. 6871, 31 FR 53, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–421, 64 FR 71925, Dec. 22, 1999]

§ 290.199 Disposition.

After actual removal from his factory or export warehouse of the shipment described on the notice of removal, Form 5200.14, the manufacturer or export warehouse proprietor shall, except where the shipment is to be exported by parcel post, promptly forward one copy of the notice of removal to the regional director (compliance) for the region in which is located the factory or warehouse from which the shipment is removed. A copy of each such notice shall be retained by the manufacturer or export warehouse proprietor as a part of his records, for 3 years following the close of the calendar year in which the shipment was removed and shall be made available for inspection by any ATF officer upon his request. The manufacturer or export warehouse proprietor shall dispose of the other copies of each notice of removal as required by this subpart.

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

[25 FR 4722, May 28, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975; T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.200 Transfers between factories and export warehouses.

Where tobacco products, and cigarette papers and tubes are transferred from a factory to an export warehouse or between export warehouses, the manufacturer or export warehouse proprietor making the shipment shall forward three copies of the notice of removal, Form 5200.14 to the export warehouse proprietor to whom the shipment is consigned. Immediately upon receipt of the shipment at his warehouse, the export warehouse proprietor shall properly execute the certificate of receipt on each copy of the notice of removal, noting thereon any discrepancy; return one copy to the manufacturer or export warehouse proprietor making the shipment for filing with his regional director (compliance); retain one copy at his warehouse as a part of his records; and file the remaining copy with his report, required by § 290.147.

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

[T.D. 6871, 31 FR 53, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.201 Return to manufacturer or customs warehouse proprietor.

Where tobacco products, and cigarette papers and tubes are removed from an export warehouse for return to the factory, or cigars are removed from such a warehouse for return to a customs warehouse, the export warehouse proprietor making the shipment shall forward two copies of the notice of removal, Form 5200.14, to the manufacturer or customs warehouse proprietor to whom the shipment is consigned. Immediately upon receipt of the shipment at his factory or warehouse, the manufacturer or customs warehouse proprietor shall properly execute the certificate of receipt on both copies of the notice of removal, noting thereon any discrepancy, and return one copy to the export warehouse proprietor making the shipment for filing with his regional director (compliance). The other copy of the notice of removal shall be retained by the manufacturer or customs warehouse proprietor, as a part of his records, for 3 years following the close of the calendar year in which the shipment was received and shall be made available for inspection by any ATF officer upon his request.

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

[T.D. 6871, 31 FR 53, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.202 To officers of the armed forces for subsequent exportation.

Where tobacco products, and cigarette papers and tubes are removed from a factory or an export warehouse for delivery to officers of the armed forces of the United States in this country for subsequent shipment to, and use by, the armed forces outside

the United States, the manufacturer or export warehouse proprietor making the removal shall forward a copy of the notice of removal, Form 5200.14, to the officer at the base or installation authorized to receive the articles described on the notice of removal. Upon execution by the armed forces receiving officer of the certificate of receipt on the copy of the notice of removal, he shall return such copy to the manufacturer or export warehouse proprietor making the shipment for filing with his regional director (compliance).

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

[T.D. 6871, 31 FR 53, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.203 To noncontiguous foreign countries and possessions of the United States.

Where tobacco products, or cigarette papers or tubes are removed from a factory or an export warehouse for direct delivery to a vessel or aircraft for transportation to a noncontiguous foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, the manufacturer or export warehouse proprietor making the shipment shall file two copies of the notice of removal, Form 5200.14, with the office of the district director of customs at the port where the shipment is to be laden. Such copies of the notice of removal should be filed with the related shipper's export declaration, Commerce Form 7525–V. In the event the copies of the notice of removal are not filed with the shipper's export declaration, when the copies of the notice are filed with the district director of customs they shall show all particulars necessary to enable that officer to associate the notice with the related shipper's export declaration and any other documents filed with his office in connection with the shipment. After the vessel or aircraft on which the shipment has been laden clears or departs from the port of lading the customs authority shall execute the certificate of exportation on both copies of the notice of removal, retain one copy for his records, and deliver or transmit the other copy to the manufacturer or export warehouse proprietor making the shipment for filing with his regional director (compliance).

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

[T.D. 6961, 33 FR 9493, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.204 To a Federal department or agency.

Where tobacco products, and cigarette papers and tubes are removed from a factory or an export warehouse and are destined for ultimate delivery in a noncontiguous foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, but the shipment is to be delivered to a Federal department or agency, or to an authorized dispatch agent, transportation officer, or port director of such a department or agency for forwarding on to the place of destination of the shipment, the manufacturer or export warehouse proprietor making the shipment shall furnish a copy of the notice of removal, Form 5200.14, to the Federal department or agency, or an officer thereof at the port, receiving the shipment for ultimate transmittal to the place of destination, in order that such department, agency, or officer can properly execute the certificate of receipt on such notice to evidence receipt of the shipment for transmittal to a place beyond the jurisdiction of the internal revenue laws of the United States. After completing such certificate, the Federal department, agency, or officer shall return the copy of the notice of removal, so executed, to the manufacturer or export warehouse proprietor making the shipment for filing with his regional director (compliance).

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

[T.D. 6871, 31 FR 53, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.205 To contiguous foreign countries.

(a) Where tobacco products, or cigarette papers or tubes are removed from a factory or an export warehouse for export to a contiguous foreign country, the manufacturer or export warehouse proprietor making the shipment shall—

(1) Furnish to the district director of Customs at the port of exit two copies of the notice of removal, Form 5200.14, together with the related shipper's export declaration, Commerce Form 7525–V (if required); and,

(2) If copies of the notice of removal are not filed with the shippers export declaration, or if a shipment is for the armed forces of the United States in the contiguous foreign country and a shipper's export declaration is not required, show all the information on the notice of removal when it is filed so that the Customs officer is able to associate the notice with the related shipper's export declaration (if any) or other documents filed with Customs for the shipment.

(b) When a shipment has been cleared by Customs from the United States, and when the Customs officer at the port of exit is satisfied that the products have departed from the United States, he shall—

(1) Complete the certificate of exportation on both copies of the notice of removal;

(2) Retain one copy of the notice of removal for his records; and,

(3) Return the other copy to the manufacturer or export warehouse proprietor making the shipment for filing with his regional director (compliance).

(c) The Customs officer may, when he considers it necessary to establish that the merchandise was actually exported, require a landing certificate before he completes the certificate of exportation specified in paragraph (b)(1) of this section. If practical, the Customs officer will give advance notice to the manufacturer or export warehouse proprietor of the type of transactions for which a landing certificate will be required. However, failure to notify the manufacturer or proprietor in advance will not prevent the Customs officer from requiring a landing certificate for specific exportations when he considers it necessary to protect the revenue. In any case, the Customs officer will advise the manufacturer or proprietor before departure of the shipment from the United States as to those exports for which a landing certificate will be required.

(d) The provisions of this section relating to landing certificates also apply when a Form 5200.14 is not required for each transaction (for example: When multiple exportations, individually documented by commercial records, are consolidated on a single Form 5200.14 pursuant to an approved alternate procedure under § 290.72). The provisions apply to each transaction, regardless of the manner in which it is documented, unless specifically provided otherwise in the alternate procedure.

(Sec. 202, Pub. L. 85–859, 72 Stat. 1418; (26 U.S.C. 5704); Sec. 622, Act of June 17, 1930, 49 Stat. 759 (19 U.S.C. 1622))

[T.D. ATF–52, 43 FR 59287, Dec. 19, 1978, as amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.206 To Government vessels and aircraft for consumption as supplies.

Where tobacco products, and cigarette papers and tubes are removed from a factory or an export warehouse for direct delivery to a vessel or aircraft, engaged in an activity for the Government of the United States or a foreign government, for consumption as supplies beyond the jurisdiction of the internal revenue laws of the United States, the manufacturer or export warehouse proprietor making the shipment shall forward a copy of the notice of removal, Form 5200.14, to the officer of the vessel or aircraft authorized to receive the shipment. Upon execution by the receiving officer of the vessel or aircraft of the certificate of receipt on the copy of the notice of removal, he shall return such copy to the manufacturer or export warehouse proprietor

making the shipment for filing with his regional director (compliance).

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

[T.D. 6871, 31 FR 54, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.207 To commercial vessels and aircraft for consumption as supplies.

Where tobacco products, or cigarette papers or tubes are removed from a factory or an export warehouse for delivery to a vessel or aircraft entitled to receive such articles for consumption as supplies beyond the jurisdiction of the internal revenue laws of the United States, the manufacturer or export warehouse proprietor making the shipment shall file two copies of the notice of removal, Form 5200.14, with the district director of customs at the port where the shipment is to be laden in sufficient time to permit delivery of the two copies of the notice of removal to the customs officer who will inspect the shipment and supervise its lading. After inspection and lading of the shipment the customs officer shall note on the copies of the notice of removal any discrepancy between the shipment inspected and laden under his supervision and that described on the notice of removal or any limitation on the quantity to be laden; complete and sign the certificate of inspection and lading; and return both copies of the notice of removal to the district director of customs. The district director of customs shall execute the certificate of clearance on both copies of the notice of removal, retain one copy for his records, and forward the other copy to the manufacturer or export warehouse proprietor making the shipment for filing with his regional director (compliance). Where the vessel or aircraft does not clear from the port at which the shipment is laden, the customs officer supervising the lading of the shipment shall require the person on board the vessel or aircraft authorized to receive the shipment to execute the certificate of receipt on both copies of the notice of removal to indicate the trade or activity in which the vessel or aircraft is engaged.

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

[T.D. 6961, 33 FR 9493, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.207a To a foreign-trade zone.

Where tobacco products, and cigarette papers and tubes are removed from a factory or an export warehouse for delivery to a foreign-trade zone, under zone restricted status for the purpose of exportation or storage, the manufacturer or export warehouse proprietor making the shipment shall forward two copies of the notice of removal, Form 5200.14, to the customs officer in charge of the zone. Upon receipt of the shipment, the customs officer shall execute the certificate of receipt on each copy of the form, noting thereon any discrepancy, retain one copy for his records, and forward the other copy to the manufacturer or export warehouse proprietor making the shipment for filing with his regional director (compliance).

(48 Stat. 999, as amended, 72 Stat. 1418, as amended; 19 U.S.C. 81c, 26 U.S.C. 5704)

[T.D. 6871, 31 FR 54, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.208 For export by parcel post.

Where tobacco products, and cigarette papers and tubes are removed from a factory or an export warehouse, for export by parcel post, the manufacturer or export warehouse proprietor shall present one copy of the notice of removal, Form 5200.14, together with the shipping containers, to the postal authorities with the request that the postmaster or his agent execute the certificate of mailing on the form. Where the manufacturer or export warehouse proprietor so desires, he may cover under one notice of removal all the merchandise removed under this part for export by parcel post which is delivered at one time to the postal service for that purpose. The manufacturer or export warehouse proprietor

shall immediately file the receipted copy of the notice of removal with his regional director (compliance).

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

[T.D. 6871, 31 FR 54, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

MISCELLANEOUS PROVISIONS

§ 290.209 Diversion of shipment to another consignee.

If, after removal of a shipment from a factory or an export warehouse, the manufacturer or export warehouse proprietor desires to divert the shipment to another consignee, he shall so notify his regional director (compliance). The manufacturer or export warehouse proprietor shall describe the shipment, set forth the serial number and date of the notice of removal under which the shipment was removed from his factory or export warehouse, and furnish the name and address of the new consignee, who shall comply with all applicable provisions of this part.

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

[25 FR 4723, May 28, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 290.210 Return of shipment to factory or export warehouse.

A manufacturer or export warehouse proprietor may return to his factory or export warehouse, without internal revenue supervision when so authorized by the regional director (compliance), tobacco products, and cigarette papers and tubes previously removed therefrom, under this part, but not yet exported. The manufacturer or export warehouse proprietor shall, prior to returning the articles to his factory or export warehouse, make application to the regional director (compliance) for permission so to do, which application shall be accompanied by two copies of the notice of removal, Form 5200.14, under which the articles were originally removed. If less than the entire shipment is intended to be returned to the factory or export warehouse, the application shall set forth accurately the articles to be returned and shall show what disposition was made of the remainder of the original shipment and any other facts pertinent to such shipment. Where the regional director (compliance) approves the application, he shall so indicate by endorsement to that effect on each of the copies of the notice of removal, set forth the articles for which return is approved, and return both copies of the notice of removal to the manufacturer or export warehouse proprietor concerned. Upon receipt of the copies of the notice of removal bearing the endorsement of the regional director (compliance), the manufacturer or export warehouse proprietor shall return the articles to his factory or export warehouse, properly modify and execute the certificate of receipt on each copy of the notice of removal, return one such copy to the regional director (compliance), and retain the other copy as a part of his records.

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

[T.D. 6871, 31 FR 54, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.211 [Reserved]

§ 290.212 Delay in lading at port of exportation.

If, on arrival of tobacco products, and cigarette papers and tubes at the port of exportation, the vessel or aircraft for which they are intended is not prepared to receive the articles, they may be properly stored at the port for not more than 30 days. In the event of any further delay, the facts shall be reported by the manufacturer or export warehouse proprietor to his regional director (compliance) and unless he approves an extension of time in which to effect lading and clearance of the shipment it must be returned to the factory or export warehouse.

[T.D. 6871, 31 FR 55, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1987; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.213 Destruction of tobacco products, and cigarette papers and tubes.

Where an export warehouse proprietor desires to destroy any of the tobacco products, or cigarette papers or tubes stored in his warehouse, he shall notify the regional director (compliance) of the kind and quantity of such articles to be destroyed and the date on which he desires the destruction to take place in order that the regional director (compliance) may assign an ATF officer to inspect the articles and supervise their destruction. The export warehouse proprietor shall prepare a notice of removal, Form 5200.14, describing the articles to be destroyed. After witnessing the destruction of the articles, the ATF officer shall certify to their destruction on two copies of the notice of removal and return them to the export warehouse proprietor, who shall retain one copy for his records and file the other copy with his regional director (compliance).

[T.D. 6871, 31 FR 55, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

Subpart K—Drawback of Tax

§ 290.221 Application of drawback of tax.

Allowance of drawback of tax shall apply only to tobacco products, and cigarette papers and tubes, on which tax has been paid, when such articles are shipped to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States. Such drawback shall be allowed only to the person who paid the tax on such articles and who files claim and otherwise complies with the provisions of this subpart.

(72 Stat. 1419, 68A Stat. 908; 26 U.S.C. 5706, 7653)

[T.D. 6871, 31 FR 55, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.222 Claim.

Claim for allowance of drawback of tax, under this subpart, shall be filed on Form 5620.7 with the regional director (compliance) for the region in which the tobacco products, and cigarette papers and tubes covered by the claim are held by the claimant. Such claim shall be so filed in sufficient time to permit the regional director (compliance) to detail an ATF officer to inspect the articles and supervise destruction of the stamps thereon denoting payment of tax or, where the tax has been paid by return, to supervise the affixture of a label or notice bearing the legend ''For Export With Drawback of Tax.'' Upon receipt of a claim supported by satisfactory bond, as required by this subpart, the regional director (compliance) shall assign an ATF officer to proceed to the place where the articles involved are held and there perform the functions required in § 290.224.

(72 Stat. 1419; 26 U.S.C. 5706)

[T.D. 6871, 31 FR 55, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–424, 64 FR 71933, Dec. 22, 1999]

§ 290.223 Drawback bond.

Each claim for allowance of drawback of tax, under this subpart, shall be accompanied by a bond, Form 2148, satisfactory to the regional director (compliance) with whom the claim is filed. Such bond shall be in an amount not less than the amount of tax for which drawback is claimed, conditioned that the claimant shall furnish, within a reasonable time, evidence satisfactory to the regional director (compliance) that the tobacco products, and cigarette papers and tubes have been landed at some port beyond the jurisdiction of the internal revenue laws of the United States, or that after clearance from the United States, the articles were lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, and have not been relanded within the limits of the United States. The provisions of §§ 290.121 and 290.122 are applicable with respect to any

drawback bond required under this section.

(72 Stat. 1419; 26 U.S.C. 5706)

[T.D. 6871, 31 FR 55, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.224 Inspection by an ATF officer.

The ATF officer assigned in connection with a claim for drawback of tax, under this subpart, shall, at the place where the tobacco products, and cigarette papers and tubes covered by the claim are held by the claimant, examine such articles and satisfy himself as to the accuracy of the schedule of such articles appearing in the claim, Form 5620.7. Where the tax has been paid by stamp, the ATF officer will supervise destruction of the stamps on the packages. No particular mode of destruction of such stamps is prescribed, but the use of any indelible preparation which will render them illegible is approved. Where the tax on such articles has been paid by return, the ATF officer will satisfy himself that the articles have in fact been taxpaid and each package bears the label or notice required by § 290.222. When the stamps have been properly destroyed, or the packages bear the required label or notice, the ATF officer will supervise the packing of such articles in shipping containers, the numbering of each such container, and the affixture thereto of the following:

Drawback of tax claimed on contents.
Sale, consumption, or use in U.S. prohibited.

Thereafter, the ATF officer will execute his report on each copy of the claim, return two copies to the claimant, deliver one copy to the regional director (compliance), and release the shipment to the claimant for delivery to the port of exportation.

(72 Stat. 1419; 26 U.S.C. 5706)

[T.D. 6871, 31 FR 55, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–424, 64 FR 71933, Dec. 22, 1999]

§ 290.225 Delivery of tobacco products, or cigarette papers or tubes for export other than by parcel post.

The claimant, upon release of the tobacco products, or cigarette papers or tubes by the ATF officer for exportation with benefit of drawback of tax under this subpart, shall be responsible for delivery of such articles to the port of exportation for customs inspection, supervision of lading, and clearance of the articles. The claimant shall file with the district director of customs at the port of exportation the two copies of Form 5620.7 returned to the claimant by the ATF officer in accordance with § 290.224. Such copies shall be filed in sufficient time prior to lading to permit customs inspection and supervision of lading of the tobacco products, or cigarette papers or tubes.

(72 Stat. 1419; 26 U.S.C. 5706)

[T.D. 6961, 33 FR 9493, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–424, 64 FR 71933, Dec. 22, 1999]

§ 290.226 Delivery of tobacco products, and cigarette papers and tubes for export by parcel post.

Where the tobacco products, and cigarette papers and tubes are to be shipped by parcel post to a destination in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, a waiver of his right to withdraw such articles from the mails shall be stamped or written on each shipping container and be signed by the claimant, after which the claimant shall present the shipment to the post office. The claimant shall request the postmaster or his agent to execute the certificate of mailing on the copy of the claim, Form 5620.7, returned to the claimant by the ATF officer in accordance with § 290.224. When so executed by the postal authorities, the Form 5620.7 shall be transmitted at once to the regional director (compliance) with whom the form was previously filed.

(72 Stat. 1419; 26 U.S.C. 5706)

[T.D. 6871, 31 FR 55, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–424, 64 FR 71933, Dec. 22, 1999]

§ 290.227 Customs procedure.

The customs officer shall satisfy himself that the tobacco products, and cigarette papers and tubes described on the Form 5620.7 and those inspected by him are the same and shall note on the form any discrepancy. After having inspected the articles and supervised the lading thereof on the export carrier, the customs officer shall complete and sign the certificate of inspection and lading on both copies of Form 5620.7 and deliver or transmit such copies to the office of his district director of customs for further processing. After clearance from the port of the export carrier on which the articles are laden, the district director of customs shall execute the certificate of exportation on both copies of Form 5620.7. The district director of customs shall retain one copy of the form for his records and transmit the other copy to the regional director (compliance) for the region from which the articles were shipped.

(72 Stat. 1419; 26 U.S.C. 5706)

[T.D. 6961, 33 FR 9493, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–424, 64 FR 71933, Dec. 22, 1999]

§ 290.228 Landing certificate.

Each claimant for drawback under this subpart agrees in the bond filed by him that he will furnish, within a reasonable time, evidence satisfactory to the regional director (compliance) that the tobacco products, and cigarette papers and tubes covered by his claim have been landed at some port beyond the jurisdiction of the internal revenue laws of the United States, or that after shipment from the United States the articles were lost, and have not been relanded within the limits of the United States. The landing certificate shall accurately describe the articles involved, so as to readily identify the drawback claim to which it relates. The landing certificate shall be signed by a revenue officer at the place of destination, unless it is shown that no such officer can furnish such landing certificate, in which case the certificate of landing shall be signed by the consignee, or by the vessel's agent at the place of landing, and shall be sworn to before a notary public or other officer authorized to administer oaths and having an official seal. The landing certificate shall be filed with the regional director (compliance), with whom the drawback claim was filed, within 6 months from the date of clearance of the tobacco products, and cigarette papers and tubes from the United States. A landing certificate prepared in a foreign language shall be accompanied by an accurate translation thereof in English.

(72 Stat. 1419; 26 U.S.C. 5706)

[T.D. 6871, 31 FR 56, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.229 Collateral evidence as to landing.

In case of inability to furnish the prescribed evidence of landing, application for relief shall be promptly made by the claimant to the regional director (compliance) with whom the drawback claim and bond were filed. Such application shall set forth the facts connected with the alleged exportation, and indicate the date of shipment, the kind, quantity, and value of tobacco products and cigarette papers and tubes shipped, the name of the consignee, the name of the vessel, the port or place of destination to which the shipment was made, and the date and amount of the bond covering such shipment. The application shall also state in what particular the provisions of this subpart, respecting the proofs of landing, have not been complied with, and the cause of failure to furnish such proofs; that such failure was not occasioned by any lack of diligence on the part of the claimant, or that of his agents; and that he is unable to furnish any other or better evidence than that furnished with his application. Each such application shall be supported by the best collateral evidence the claimant may be able to submit. The evidence may consist of the original or verified copies of letters from the consignee advising the claimant of the arrival or sale of the tobacco products, and cigarette papers and tubes, with such other statements respecting the

failure to furnish the prescribed evidence of landing as may be obtained from the consignee or other persons having knowledge thereof. Such letters and other documents in a foreign language shall be accompanied by accurate translations thereof in English, and, when the letters fail to identify sufficiently the tobacco products, and cigarette papers and tubes, the original sales account must be produced.

(72 Stat. 1419; 26 U.S.C. 5706)

[T.D. 6871, 31 FR 56, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.230 Proof of loss.

When the claimant is unable to procure a certificate of landing, in accordance with the provisions of § 290.228, in consequence of loss of the tobacco products, and cigarette papers and tubes, his application for relief shall set forth the extent of the loss and, if possible, the location and manner of shipwreck or other casualty and the time of its occurrence. When obtainable, affidavits of the vessel's owners should be furnished detailing the manner and extent of the loss and the time and location of the disaster. If the tobacco products, and cigarette papers and tubes were insured, the claimant shall furnish certificates by officers of the insurance companies that the insurance has been paid, and that, to the best of their knowledge and belief, the tobacco products, and cigarette papers and tubes were actually destroyed. The aforesaid proof shall be furnished to the regional director (compliance) within 6 months from the date of clearance of the tobacco products, and cigarette papers and tubes from the United States.

(72 Stat. 1419; 26 U.S.C. 5706)

[T.D. 6871, 31 FR 56, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 290.231 Extension of time.

In case the claimant, from causes beyond his control, is unable to furnish the landing certificate or proof of loss, within the time prescribed therefor, he may make an application to the regional director (compliance) for an extension of time in which to do so. Such application must state specifically the cause of failure to furnish the evidence. Two extensions of three months each may be granted by the regional director (compliance), provided the surety on the drawback bond of the claimant assents in writing thereto.

(72 Stat. 1419; 26 U.S.C. 5706)

[25 FR 4725, May 28, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 290.232 Allowance of claim.

On receipt of the executed Form 5620.7 from the district director of customs, the regional director (compliance) will allow or disallow the claim in accordance with existing law and regulations. If the claim is not allowed in full the regional director (compliance) will notify the claimant, in writing, of the reasons for any disallowance.

(72 Stat. 1419; 26 U.S.C. 5706)

[25 FR 4725, May 28, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–424, 64 FR 71933, Dec. 22, 1999]

Subpart L—Withdrawal of Cigars From Customs Warehouses

SOURCE: 25 FR 4725, May 28, 1960, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

§ 290.241 Shipment restricted.

Cigars produced in a customs warehouse in accordance with customs laws and regulations may be withdrawn under this subpart, without payment of tax, for export or for delivery for subsequent exportation. Duties paid on the tobacco used in the manufacture of such cigars may not be recovered on the exportation of the cigars under this subpart.

§ 290.242 Responsibility for tax on cigars.

A customs warehouse proprietor who withdraws cigars for export under his bond, without payment of tax, in accordance with the provisions of this part, shall be responsible for payment

of such tax until he is relieved of such responsibility by furnishing the regional director (compliance), for the region in which is located the customs warehouse from which the cigars were withdrawn, evidence satisfactory to the regional director (compliance) of exportation or proper delivery, as required by this subpart, or satisfactory evidence of such other disposition as may be used as the lawful basis for such relief. Such evidence shall be furnished within 90 days of the date of withdrawal of the cigars: *Provided,* That this period may be extended for good cause shown.

BONDS

§ 290.243 Bond required.

Where the customs warehouse proprietor desires to withdraw cigars from his warehouse, without payment of tax, under this subpart, he shall, prior to making the first withdrawal, file with the regional director (compliance) a bond, Form 2104, conditioned upon compliance with the provisions of 26 U.S.C. chapter 52, and regulations thereunder, including, but not limited to, the timely payment of taxes imposed by such chapter, for which he may be responsible to the United States, and penalties and interest in connection therewith. The provisions of §§ 290.121 and 290.122 are applicable to the bond required under this section. However, such bond shall not be required where the customs warehouse proprietor has in effect a bond, Form 2100, pursuant to § 270.199 of this subchapter, conditioned upon compliance with 26 U.S.C. chapter 52, and regulations thereunder.

[25 FR 4725, May 28, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55856, Sept. 28, 1979]

§ 290.244 Amount of bond.

The amount of the bond filed by the customs warehouse proprietor, as required by § 290.243, shall be not less than the estimated amount of tax which may at any time constitute a charge against the bond: *Provided,* That the amount of any such bond (or the total amount where original and strengthening bonds are filed) shall not exceed $25,000 nor be less than $1,000. The charges against such bond shall be subject to increase as withdrawals are made and decrease as required evidence of exportation is received by the regional director (compliance) with respect to cigars withdrawn. When the limit of liability under a bond given in less than the maximum amount has been reached, further withdrawals shall not be made thereunder until a strengthening or superseding bond is filed as required by § 290.245 or § 290.246.

§ 290.245 Strengthening bond.

Where the regional director (compliance) determines that the amount of the bond, under which the customs warehouse proprietor is withdrawing cigars for shipment under this subpart, no longer adequately protects the revenue, and such bond is in an amount of less than $25,000, the regional director (compliance) may require the proprietor to file a strengthening bond in an appropriate amount with the same surety as that on the bond already in effect, in lieu of a superseding bond to cover the full liability on the basis of § 290.244. The regional director (compliance) shall refuse to approve any strengthening bond 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.

§ 290.246 Superseding bond.

The customs warehouse proprietor shall file a new bond to supersede his current bond, immediately 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) payment of any liability under a bond is made by the surety thereon, or (d) the regional director (compliance) considers such a superseding bond necessary for the protection of the revenue.

§ 290.247 Termination of liability of surety under bond.

The liability of a surety on any bond required by this subpart shall be terminated only as to operations on and after the effective date of a superseding

bond, or the date of approval of the customs warehouse proprietor's request for termination, or otherwise, in accordance with the termination provisions of the bond. The surety shall remain bound in respect of any liability for unpaid taxes, penalties, and interest, not in excess of the amount of the bond, incurred by the proprietor while the bond is in force.

PACKAGING REQUIREMENTS

§ 290.248 Packages.

Cigars shall, before withdrawal under this part, be put up by the customs warehouse proprietor in packages which shall bear the label or notice, tax classification, and mark, as required by this subpart.

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

[T.D. ATF–40, 42 FR 5009, Jan. 26, 1977]

§ 290.249 Lottery features.

No 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 shall be contained in, attached to, or stamped, marked, written, or printed on any package of cigars withdrawn under this subpart.

(72 Stat. 1422; 26 U.S.C. 5723; 18 U.S.C. 1301)

§ 290.250 Indecent or immoral material.

No indecent or immoral picture, print, or representation shall be contained in, attached to, or stamped, marked, written, or printed on any package of cigars withdrawn under this subpart.

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

§ 290.251 Mark.

Every package of cigars shall, before withdrawal from the customs warehouse under this subpart, have adequately imprinted thereon, or on a label securely affixed thereto, the name and location of the manufacturer. There shall also be adequately stated on each such package the number of cigars contained in the package.

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

§ 290.252 Label or notice.

Every package of cigars shall, before withdrawal from the customs warehouse under this subpart, have adequately imprinted thereon, or on a label securely affixed the words ''Tax-exempt. For use outside U.S.'' or the words ''U.S. Tax-exempt. For use outside U.S.'', except where a stamp, sticker, or notice, required by a foreign country or a possession of the United States, which identifies such country or possession, is so imprinted or affixed.

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

§ 290.253 Tax classification for cigars.

Before withdrawal of cigars from a customs warehouse under this subpart, every package of cigars 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 18312, Mar. 24, 1981]

§ 290.254 Shipping containers.

Each shipping case, crate, or other container, in which cigars are to be withdrawn, under this subpart, shall bear a distinguishing number, such number to be assigned by the customs warehouse proprietor.

CONSIGNMENT OF SHIPMENT

§ 290.255 Consignment of cigars.

Cigars withdrawn from a customs warehouse, without payment of tax, under internal revenue bond and this part, shall be consigned in the same manner as provided by subpart J of this part with respect to the removal of tobacco products, and cigarette papers and tubes from a factory or an export warehouse.

[T.D. 6871, 31 FR 56, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

NOTICE OF REMOVAL OF SHIPMENT

§ 290.256 Preparation.

For each shipment to be withdrawn under this subpart, the customs warehouse proprietor shall prepare a notice of removal, Form 5200.14. Each such notice shall be given a serial number by the proprietor in a series beginning with number 1, with respect to the first shipment withdrawn under this subpart and commencing again with number 1 on January 1 of each year thereafter.

[25 FR 4725, May 28, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.257 Disposition.

After actual withdrawal from his warehouse of the shipment described on the notice of removal, Form 5200.14, the customs warehouse proprietor shall, except where the shipment is to be exported by parcel post, promptly forward one copy of the notice of removal to the regional director (compliance) for the region in which is located the customs warehouse from which the shipment is withdrawn. A copy of each such notice shall be retained by the customs warehouse proprietor as a part of his records, for 3 years following the close of the calendar year in which the shipment was withdrawn, and shall be made available for inspection by any ATF officer upon his request. The proprietor shall dispose of the other copies of each notice of removal as required by this subpart.

[25 FR 4725, May 28, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.258 To officers of the armed forces for subsequent exportation.

Where cigars are withdrawn from a customs warehouse for delivery to officers of the armed forces of the United States in this country for subsequent shipment to, and use by, the armed forces outside the United States, the customs warehouse proprietor making the shipment shall forward a copy of the notice of removal, Form 5200.14, to the officer at the base or installation authorized to receive the cigars described on the notice of removal. Upon execution by the armed forces receiving officer of the certificate of receipt on the copy of the notice of removal, he shall return such copy to the customs warehouse proprietor making the shipment for filing with the appropriate regional director (compliance).

[25 FR 4725, May 28, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.259 To noncontiguous foreign countries and possessions of the United States.

Where cigars are withdrawn from a customs warehouse for direct delivery to a vessel or aircraft for transportation to a noncontiguous foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, the customs warehouse proprietor making the withdrawal shall file two copies of the notice of removal, Form 5200.14, with the office of the district director of customs at the port where the shipment is to be laden. Such copies of the notice of removal should be filed with the related shipper's export declaration, Commerce Form 7525–V. In the event the copies of the notice of removal are not filed with the shipper's export declaration, when the copies of the notice are filed with the district director of customs they shall show all particulars necessary to enable that officer to associate the notice with the related shipper's export declaration and any other documents filed with his office in connection with the shipment. After the vessel or aircraft on which the shipment has been laden clears or departs from the port of lading the customs authority shall execute the certificate of exportation on both copies of the notice of removal, retain one copy for his records, and deliver or transmit the other copy to the customs warehouse proprietor making the shipment for filing with the appropriate regional director (compliance).

[T.D. 6961, 33 FR 9494, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.260 To a Federal department or agency.

Where cigars are withdrawn from a customs warehouse and are destined for ultimate delivery in a noncontiguous foreign country, Puerto Rico, the Virgin Islands, or a possession of the

United States, but the shipment is to be delivered to a Federal department or agency, or to an authorized dispatch agent, transportation officer, or port director of such a department or agency for forwarding on to the place of destination of the shipment, the customs warehouse proprietor making the shipment shall furnish a copy of the notice of removal, Form 5200.14, to the Federal department or agency, or an officer thereof at the port, receiving the shipment for ultimate transmittal to the place of destination, in order that such department, agency, or officer, can properly execute the certificate of receipt on such notice to evidence receipt of the shipment for transmittal to a place beyond the jurisdiction of the internal revenue laws of the United States. After completing such certificate, the Federal department, agency, or officer, shall return the copy of the notice of removal, so executed, to the customs warehouse proprietor making the shipment for filing with the appropriate regional director (compliance).

[25 FR 4725, May 28, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.261 To contiguous foreign countries.

Where cigars are withdrawn from a customs warehouse for export to a contiguous foreign country, the customs warehouse proprietor making the shipment shall furnish to the district director of customs at the border or other port of exit two copies of the notice of removal, Form 5200.14, together with the related shipper's export declaration, Commerce Form 7525–V. In the event the copies of the notice of removal are not filed with the shipper's export declaration or, in the case of a shipment for the armed forces of the United States in the contiguous foreign country where no shipper's export declaration is required, the copies of the notice when filed with the district director of customs shall show all particulars necessary to enable that officer to associate the notice with the related shipper's export declaration, if any, and any other documents filed with his office in connection with the shipment. After the shipment has been cleared by customs from the United States, the customs authority at the port of exit shall complete the certificate of exportation on both copies of the notice of removal, retain one copy for his records, and transmit the other copy to the customs warehouse proprietor making the shipment for filing with the appropriate regional director (compliance).

[T.D. 6961, 33 FR 9494, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.262 To Government vessels and aircraft for consumption as supplies.

Where cigars are withdrawn from a customs warehouse for direct delivery to a vessel or aircraft, engaged in an activity for the Government of the United States or a foreign government, for consumption as supplies beyond the jurisdiction of the internal revenue laws of the United States, the customs warehouse proprietor making the shipment shall forward a copy of the notice of removal, Form 5200.14, to the officer of the vessel or aircraft authorized to receive the shipment. Upon execution by the receiving officer of the vessel or aircraft of the certificate of receipt on the copy of the notice of removal, he shall return such copy to the customs warehouse proprietor making the shipment for filing with the appropriate regional director (compliance).

[25 FR 4725, May 28, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.263 To commercial vessels and aircraft for consumption as supplies.

Where cigars are withdrawn from a customs warehouse for delivery to a vessel or aircraft entitled to receive such articles for consumption as supplies beyond the jurisdiction of the internal revenue laws of the United States, the customs warehouse proprietor making shipment shall file two copies of the notice of removal, Form 5200.14, with the district director of customs at the port where the shipment is to be laden in sufficient time to permit delivery of the two copies of the notice of removal to the customs officer who will inspect the shipment

and supervise its lading. After inspection and lading of the shipment the customs officer shall note on the copies of the notice of removal any discrepancy between the shipment inspected and laden under his supervision and that described on the notice of removal or any limitation on the quantity to be laden; complete and sign the certificate of inspection and lading; and return both copies of the notice of removal to the district director of customs. The district director of customs shall execute the certificate of clearance on both copies of the notice of removal, retain one copy for his records, and forward the other copy to the customs warehouse proprietor making the shipment for filing with the appropriate regional director (compliance). Where the vessel or aircraft does not clear from the port at which the shipment is laden, the customs officer supervising the lading of the shipment shall require the person on board the vessel or aircraft authorized to receive the shipment to execute the certificate of receipt on both copies of the notice of removal to indicate the trade or activity in which the vessel or aircraft is engaged.

[T.D. 6961, 33 FR 9494, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.264 To export warehouses.

Where cigars are withdrawn from a customs warehouse for delivery to an export warehouse, the proprietor of the customs warehouse shall forward to the proprietor of the export warehouse three copies of the notice of removal, Form 5200.14, covering the shipment, for execution and disposition in accordance with procedure similar to that set forth in § 290.200 in connection with a shipment of tobacco products, and cigarette papers and tubes from a factory to an export warehouse. The executed copy of the notice of removal, Form 2149, returned to the customs warehouse proprietor by the export warehouse proprietor shall be filed with the appropriate regional director (compliance).

[T.D. ATF–48, 44 FR 55856, Sept. 28, 1979, as amended by T.D. ATF–232, 51 FR 28089, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.264a To a foreign-trade zone.

Where cigars are withdrawn from a customs warehouse for delivery to a foreign-trade zone, under zone restricted status for the purpose of exportation or storage, the customs warehouse proprietor making the shipment shall forward two copies of the notice of removal, Form 5200.14, to the customs officer in charge of the zone. Upon receipt of the shipment, the customs officer shall execute the certificate of receipt on each copy of the form, noting thereon any discrepancy, retain one copy for his records, and forward the other copy to the customs warehouse proprietor making the shipment for filing with the appropriate regional director (compliance).

[T.D. 6564, 26 FR 4362, May 19, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.265 For export by parcel post.

Where cigars are withdrawn from a customs warehouse for export by parcel post, the customs warehouse proprietor shall present one copy of the notice of removal, Form 5200.14, together with the shipping containers, to the postal authorities with the request that the postmaster or his agent execute the certificate of mailing on the form. Where a customs warehouse proprietor so desires, he may cover under one notice of removal all the cigars removed under this part for export by parcel post which are delivered at one time to the postal service for that purpose. The customs warehouse proprietor shall immediately file the receipted copy of the notice of removal with the appropriate regional director (compliance).

[25 FR 4725, May 28, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

RETURN OF SHIPMENT

§ 290.266 Return of cigars from export warehouses.

Where cigars are returned to a customs warehouse from an export warehouse, the officer in charge of the customs warehouse shall execute the certificate of receipt on each of the copies of the related Form 5200.14 received from the export warehouse proprietor,

after checking the containers to determine whether all the cigars described on the notice have been received. Thereafter, both copies of the Form 5200.14 shall be turned over to the proprietor of the customs warehouse who shall return one copy to the export warehouse proprietor for disposition as provided in § 290.201. The customs warehouse proprietor shall retain the other copy of the notice of removal, as a part of his records, for 3 years following the close of the calendar year in which the shipment was received. Such copy shall be made available for inspection by any ATF officer upon his request.

[T.D. ATF–48, 44 FR 55856, Sept. 28, 1979, as amended by T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

§ 290.267 Return of cigars from other sources.

A customs warehouse proprietor may return to his warehouse cigars previously withdrawn therefrom, under this subpart, provided he promptly files with the appropriate regional director (compliance) a copy of the Form 5200.14 under which the cigars were originally withdrawn, with the certificate of receipt properly modified and executed by the customs officer in charge of the warehouse to show return of the shipment. If less than the entire shipment is returned to the warehouse, the form shall state what disposition was made of the remainder of the original shipment and any other facts pertinent to such shipment. The customs warehouse proprietor shall retain a copy of such form as a part of his records for 3 years after the close of the calendar year in which the shipment was returned. Such copy shall be made available for inspection by any ATF officer upon request.

[25 FR 4725, May 28, 1960. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF–421, 64 FR 71926, Dec. 22, 1999]

PART 295—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX FOR USE OF THE UNITED STATES

Subpart A—Scope of Regulations

Sec.
295.1 Removal of tobacco products, and cigarette papers and tubes, without payment of tax, for use of the United States.

Subpart B—Definitions

295.11 Meaning of terms.

Subpart C—Administrative Provisions

295.21 Alternate methods or procedures.
295.22 Emergency variations from requirements.
295.23 Authority of ATF officers to enter premises.
295.24 Interference with administration.
295.25 Unlawful purchase, receipt, possession, or sale of tobacco products, or cigarette papers or tubes, after removal.

Subpart D—Removals

295.31 Restrictions.
295.32 Under manufacturer's bond.
295.33 Return of shipment to factory.
295.34 Loss or shortage in shipment.
295.35 Liability for tax.
295.36 Payment of tax.
295.37 Assessment.

Subpart E—Packaging Requirements

295.41 Packages.
295.42 Mark.
295.43 Notice for smokeless tobacco.
295.44 Notice for cigars.
295.45 Notice for cigarettes.
295.45a Notice for pipe tobacco.
295.45b Notice for roll-your-own tobacco.
295.45c Package use-up rule.
295.46 Tax-exempt label.

Subpart F—Records

295.51 Supporting records.

AUTHORITY: 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

Subpart A—Scope of Regulations

§ 295.1 Removal of tobacco products, and cigarette papers and tubes, without payment of tax, for use of the United States.

This part contains the regulations relating to the removal of tobacco products, and cigarette papers and tubes, without payment of tax, for use of the United States.

[T.D. 6871, 31 FR 57, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28090, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

Subpart B—Definitions

§ 295.11 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.

Armed forces. The Army, Navy (including the Marine Corps), Air Force, and Coast Guard.

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.

Charge of the United States. A patient in a hospital or similar institution, or a Federal prisoner, if the hospital, institution, or prison is operated by a Federal agency and the support or care of such person results in a charge on, or an expense to, the United States Government.

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

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.

District director. A district director of internal revenue.

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

Federal agency. A department or agency of the United States Government, including the American National Red Cross, and the U.S. Soldiers Home, Washington, D.C.

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, pipe tobacco, or roll-your-own tobacco but does not include:

(1) A person who produces tobacco products solely for that person's own consumption or use; or

(2) 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 and offered for sale or 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.

Roll-your-own 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 for making cigarettes.

Sale price. The price for which large cigars are sold by the manufacturer or importer, determined in accordance with §§ 270.22 or 275.39 and used in computation of the tax.

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 26, Code of Federal Regulations.

Tobacco products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

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.

[T.D. ATF–48, 43 FR 13557, Mar. 31, 1978; 44 FR 55856, Sept. 28, 1979, as amended by T.D. ATF–232, 51 FR 28090, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986; T.D. ATF–289, 54 FR 48842, Nov. 27, 1989; T.D. ATF–424, 64 FR 71933, Dec. 22, 1999; T.D. ATF–420, 64 FR 71945, Dec. 22, 1999]

Subpart C—Administrative Provisions

§ 295.21 Alternate methods or procedures.

A manufacturer, 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 or 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. Where a manufacturer 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 manufacturer 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 manufacturer shall retain, as part of his records, any authorization of the Director under this section for three

years following the close of the calendar year in which the operation under such authorization is concluded.

§ 295.22 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 with such procedures, conditions, and limitations shall automatically terminate the authority for such variations and the manufacturer 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 a manufacturer 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 manufacturer shall retain, as part of his records, any authorization of the Director under this section for three years following the close of the calendar year in which the operation under such authorization is concluded.

[27 FR 4476, May 10, 1962. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 295.23 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 removed under this part are 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 the articles removed under this part 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 57, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28090, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 295.24 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)

[27 FR 4476, May 10, 1962. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 295.25 Unlawful purchase, receipt, possession, or sale of tobacco products, or cigarette papers or tubes, after removal.

Any person who, with intent to defraud the United States, purchases, receives, possesses, offers for sale, or sells or otherwise disposes of tobacco products, or cigarette papers or tubes which, after removal under this part, without payment of tax, have been diverted from the purpose or use specified in this part, shall be subject to the

criminal penalties and provisions for forfeiture prescribed by law.

(72 Stat. 1424, 1425, as amended, 1426; 26 U.S.C. 5751, 5762, 5763)

[T.D. 6871, 31 FR 57, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–232, 51 FR 28090, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

Subpart D—Removals

SOURCE: T.D. 6871, 31 FR 57, Jan. 14, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975.

§ 295.31 Restrictions.

Tobacco products, and cigarette papers and tubes purchased by a Federal agency with funds appropriated by the Congress of the United States may be removed, without payment of tax, in accordance with this part, for delivery to such Federal agency for gratuitous distribution under the supervision of such agency. Such articles purchased by a donor from a manufacturer, or donated directly by a manufacturer, may also be removed, without payment of tax, in accordance with this part, for delivery to a Federal agency for gratuitous distribution under the supervision of such agency to (a) charges of the United States or (b) patients in a hospital or institution operated by the Government of a State or the District of Columbia where the Federal agency maintains a program for such distribution to members or veterans of the armed forces of the United States in such hospital or institution. Tobacco products, and cigarette papers and tubes removed under the provisions of this part may not be sold subsequent to removal.

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

[T.D. 6871, 31 FR 57, as amended by T.D. ATF–243, 51 FR 28090, Aug. 5, 1986; 51 FR 43194, Dec. 1, 1986]

§ 295.32 Under manufacturer's bond.

Removals of tobacco products, and cigarette papers and tubes under this part shall be made under the bond filed by the manufacturer of such articles to cover the operations of his factory as required by section 5711, I.R.C., and regulations issued thereunder.

(72 Stat. 1418, as amended, 1421, as amended; 26 U.S.C. 5704, 5711)

[T.D. 6871, 31 FR 57, as amended by T.D. ATF–243, 51 FR 28090, Aug. 5, 1986; 51 FR 43194, Dec. 1, 1986]

§ 295.33 Return of shipment to factory.

Tobacco products, and cigarette papers and tubes which have been removed, under this part, may be returned to the factory without internal revenue supervision.

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

[T.D. 6871, 31 FR 57, as amended by T.D. ATF–243, 51 FR 28090, Aug. 5, 1986; 51 FR 43194, Dec. 1, 1986]

§ 295.34 Loss or shortage in shipment.

Immediately upon receipt of information of a loss of all or part of a shipment, or of a shortage therein, of tobacco products, or cigarette papers or tubes removed under this part, the manufacturer shall notify the regional director (compliance) for the region in which the factory from which the articles were removed is located, furnish all pertinent details with respect to the loss or shortage, and either pay the tax due thereon in accordance with the provisions of § 295.36, or file claim for remission of the tax liability under the provisions of part 270 of this chapter, as the case may be.

(72 Stat. 1417, 1419, as amended; 26 U.S.C. 5703, 5705)

[T.D. 6871, 31 FR 57, as amended by T.D. ATF–243, 51 FR 28090, Aug. 5, 1986; 51 FR 43194, Dec. 1, 1986; T.D. ATF–384, 61 FR 54096, Oct. 17, 1996]

§ 295.35 Liability for tax.

The manufacturer who removes tobacco products, or cigarette papers or tubes under this part shall be liable for the taxes imposed thereon by 26 U.S.C. 5701, until such tobacco products, or cigarette papers or tubes are received by the Federal agency. Any person who possesses tobacco products, or cigarette papers or tubes in violation of 26 U.S.C. 5751(a)(1) or (2), shall be liable

for a tax equal to the tax on such articles.

(72 Stat. 1417, 1424; 26 U.S.C. 5703, 5751)

[T.D. 6871, 31 FR 57, Jan. 14, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55856, Sept. 28, 1979; T.D. ATF–232, 51 FR 28090, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 295.36 Payment of tax.

Any tax which becomes due and payable on tobacco products, and cigarette papers and tubes removed under this part shall be paid to regional director (compliance), for the region in which the factory from which such articles were removed is located, with sufficient information to identify the taxpayer, the nature and purpose of the payment, and the articles covered by the payment: *Provided,* That a manufacturer of tobacco products or cigarette papers or tubes may pay any tax for which he becomes liable under this part by an appropriate adjustment in his current tax return Form 5000.24. 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.

[T.D. ATF–232, 51 FR 28090, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF–251, 52 FR 19341, May 22, 1987]

§ 295.37 Assessment.

Whenever any person required by law to pay tax on tobacco products, and cigarette papers and 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 57, Jan. 14, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55856, Sept. 28, 1979; T.D. ATF–232, 51 FR 28090, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

Subpart E—Packaging Requirements

§ 295.41 Packages.

All tobacco products, and cigarette papers and tubes shall, before removal under this part, be put up by the manufacturer in packages which shall be of such construction as will securely contain the articles therein and maintain the mark, notice, and label thereon, as required by this subpart. No package of tobacco products, or cigarette papers or tubes shall have contained therein, attached thereto, 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, or (b) any indecent or immoral picture, print, or representation.

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

[T.D. 6871, 31 FR 58, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF–232, 51 FR 28090, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 295.42 Mark.

Every package of tobacco products shall before removal from the factory under this part, have adequately imprinted thereon, or on a label securely affixed thereto, a mark as specified in this section. The mark may consist of the name of the manufacturer removing the product and the location (by city and State) of the factory from which the products are to be so removed, or may consist of the permit number of the factory from which the products are to be so removed. (Any trade name of the manufacturer approved as provided in § 270.65 of this chapter may be used in the mark as the name of the manufacturer.) As an alternative, where tobacco products are

both packaged and removed by the same manufacturer, either at the same or different factories, the mark may consist of the name of such manufacturer if the factory where packaged is identified on or in the package by a means approved by the Director. Before using the alternative, the manufacturer shall notify the Director in writing of the name to be used as the name of the manufacturer and the means to be used for identifying the factory where packaged. If approved by him the Director shall return approved copies of the notice to the manufacturer. A copy of the approved notice shall be retained as part of the factory records at each of the factories operated by the manufacturer.

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

[T.D. 6871, 31 FR 58, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF–232, 51 FR 28090, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 295.43 Notice for smokeless tobacco.

(a) *Product designation.* Every package of chewing tobacco or snuff shall, before removal under this part, 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 under this part, 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–232, 51 FR 28090, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 295.44 Notice for cigars.

Before removal under this part, every package of cigars 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 18312, Mar. 24, 1981]

§ 295.45 Notice for cigarettes.

Every package of cigarettes shall, before removal under this part, 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)

[27 FR 4478, May 10, 1962. Redesignated at 40 FR 16835, Apr. 15, 1975]

§ 295.45a Notice for pipe tobacco.

(a) *Product designation.* Every package of pipe tobacco shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed 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 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 48842, Nov. 27, 1989]

§ 295.45b Notice for roll-your-own tobacco.

(a) *Product designation.* Before removal subject to tax, roll-your-own tobacco must have adequately imprinted on, or on a label securely affixed to, the package, the designation roll-your-own tobacco'' or ''cigarette tobacco'' or ''Tax Class J.''

(b) *Product weight.* Before removal subject to tax, roll-your-own tobacco must have a clear statement of the actual weight in pounds and ounces of the product in the package. This statement must be adequately imprinted on, or on a label securely affixed to, the package.

(Approved by the Office of Management and Budget under control number 1512–0502)

[T.D. ATF–429, 65 FR 57547, Sept. 25, 2000]

§ 295.45c Package use-up rule.

(a) A manufacturer must have used such packaging for roll-your-own tobacco before January 1, 2000.

(b) A manufacturer of roll-your-own tobacco, may continue to place roll-your-own tobacco in packages that do not meet the marking requirements of §§ 270.212 and 270.216b(b) until April 1, 2000.

(c) A manufacturer of roll-your-own tobacco may continue to place roll-your-own tobacco in packages that do not meet the marking requirements of § 270.216b(a) until October 1, 2000.

[T.D. ATF–427, 65 FR 40051, June 29, 2000]

§ 295.46 Tax-exempt label.

Every package of tobacco products, and cigarette papers and tubes removed under this part shall have the words ''Tax-Exempt. For Use of U.S. Not To Be Sold.'' adequately imprinted on the package or on a label securely affixed thereto.

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

[T.D. 6871, 31 FR 58, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975; and amended by T.D. ATF–232, 51 FR 28090, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

Subpart F—Records

§ 295.51 Supporting records.

(a) *Records of removals.* Every manufacturer who removes tobacco products, and cigarette papers and tubes under this part must, in addition to the records kept under part 270 of this chapter, keep a supporting record of such removals and must make appropriate entries therein at the time of removal. The supporting record for each removal must show:

(1) The date of removal;

(2) The name and address of the Federal agency to which shipped or delivered;

(3) The kind and quantity and,

(4) for large cigars, the sale price.

(b) *Records of returns.* If any tobacco products, or cigarette papers or tubes removed under this part are returned to the factory, such returns must be noted in the supporting record.

(c) *Commercial records.* Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each removal, in such manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section.

(d) *Retention period.* The manufacturer must retain the supporting record for 3 years following the close of the year covered therein. The record must be made available for inspection by any ATF officer upon request.

(Approved by the Office of Management and Budget under control number 1512–0363)

(See 26 U.S.C. 5741)

[T.D. ATF–420, 64 FR 71945, Dec. 22, 1999]

PART 296—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Subpart A—Application of 26 U.S.C. 6423, as Amended, to Refund or Credit of Tax on Tobacco Products, and Cigarette Papers and Tubes

GENERAL

Sec.
296.1 Scope of regulations in this subpart.
296.2 Meaning of terms.

296.3 Applicability to certain credits or refunds.
296.4 Ultimate burden.
296.5 Conditions to allowance of credit or refund.
296.6 Requirements for persons intending to file claim.

CLAIM PROCEDURE

296.7 Execution and filing of claim.
296.8 Data to be shown in claim.
296.9 Time for filing claim.

BOND

296.10 Bond, Form 2490.
296.11 Corporate surety.
296.12 Deposit of securities in lieu of corporate surety.
296.13 Authority to approve bonds.
296.14 Termination of liability.
296.15 Release of pledged securities.

PENALTIES

296.16 Penalties.

Subpart B [Reserved]

Subpart C—Disaster Loss Claims

296.71 Scope of subpart.

DEFINITIONS

296.72 Meaning of terms.

PAYMENTS

296.73 Circumstances under which payment may be made.

CLAIMS PROCEDURE

296.74 Execution of claims.
296.75 Required information for claim.
296.76 Supporting evidence.
296.77 Time and place of filing.
296.78 Action by regional director (compliance).

DESTRUCTION OF TOBACCO PRODUCTS, AND CIGARETTE PAPERS AND TUBES

296.79 Supervision.

PENALTIES

296.80 Penalties.

ADMINISTRATIVE PROVISIONS

296.81 Delegations of the Director.

Subparts D–E [Reserved]

Subpart F—Distribution of Cigarettes

GENERAL

296.141 Scope of subpart.
296.142 Territorial extent.
296.143 Meaning of terms.

RECORDS

296.146 General requirements.
296.147 Required information.
296.150 Retention of records.

OTHER PROVISIONS RELATING TO THE DISTRIBUTION OF CIGARETTES

296.153 Authority of ATF officers to enter business premises.

PENALITIES AND FORFEITURES

296.154 Penalties.
296.155 Forfeitures.

Subpart G—Dealers in Tobacco Products

296.161 Scope of subpart.
296.162 Territorial extent.
296.163 Meaning of terms.
296.164 Authority of ATF officers to enter premises.
296.165 Interference with administration.
296.166 Dealing in tobacco products.
296.167 Liability to tax.
296.168 Liability to penalties and forfeitures.

Subpart H [Reserved]

Subpart I—Floor Stocks Tax on Cigarettes Held for Sale on January 1, 2000 and on January 1, 2002

GENERAL

296.191 Purpose of this subpart.
296.192 Terms used in this subpart.
296.193 Floor stocks tax defined.
296.194 Persons liable for this tax.
296.195 Persons not liable for this tax.
296.196 Floor stocks requirements.

INVENTORIES

296.201 Establish quantities of cigarettes.
296.202 Inventory for cigarettes with export markings.
296.203 How to identify cigarettes with export markings.
296.204 When to take inventory.
296.205 Physical inventory requirements.
296.206 Book or record inventory requirements.
296.207 Cigarettes in transit.
296.208 Guidelines to determine title of cigarettes in transit.
296.209 Cigarettes in a foreign trade zone.
296.210 Cigarettes held in bond.
296.211 Unmerchantable cigarettes.
296.212 Cigarettes in vending machines.
296.213 Cigarettes marked ''not for sale'' or ''complimentary''.

COMPUTE TAX LIABILITY

296.221 Determine amount of tax due.
296.222 Floor stocks tax rates.
296.223 Apply tax credit.

FILING REQUIREMENTS

296.231 How to obtain a tax return.
296.232 Prepare tax return.
296.233 How to pay.
296.234 Tax return due dates.
296.235 Filing requirements for multiple locations.
296.236 Cigarettes in a warehouse.
296.237 Controlled group members.

RECORDS

296.241 Required records.
296.242 Period for maintaining records.
296.243 Cigarettes at multiple locations.
296.244 Where records must be maintained.
296.245 Errors in records.

CLAIMS

296.251 Before filing a claim.
296.252 When to file a claim for errors on return.
296.253 How to file a claim for errors on return.
296.254 Destruction of cigarettes by a Presidentially-declared major disaster.
296.255 Additional reasons for filing a claim.

ALTERNATE METHODS OR PROCEDURES

296.261 Purpose of an alternate method or procedure.
296.262 How to apply for approval.
296.263 Conditions for approval.
296.264 Withdrawal of an alternate method or procedure.

ATF AUTHORITIES

296.270 Delegations of the Director.
296.271 Entry, examination and testimony.
296.272 Issuance of summons.
296.273 Refusing entry or examination.
296.274 Penalties for failure to comply.

AUTHORITY: 18 U.S.C. 2341–2346, 26 U.S.C. 5708, 5751, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805, 44 U.S.C. 3504(h), 49 U.S.C. 782, unless otherwise noted.

CROSS REFERENCE: For exportation of tobacco materials, tobacco products, and cigarette papers and tubes, without payment of tax, or with drawback of tax, see part 290 of this subchapter.

Subpart A—Application of 26 U.S.C. 6423, as Amended, to Refund or Credit of Tax on Tobacco Products, and Cigarette Papers and Tubes

SOURCE: T.D. 6395, 24 FR 599, Jan. 28, 1959, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

GENERAL

§ 296.1 Scope of regulations in this subpart.

The regulations in this subpart relate to the limitations imposed by 26 U.S.C. 6423, on the refund or credit of tax paid or collected in respect to any article of a kind subject to a tax imposed by 26 U.S.C. chapter 52.

[T.D. ATF–48, 44 FR 55857, Sept. 28, 1979]

§ 296.2 Meaning of terms.

When used in this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section.

Article. The commodity in respect to which the amount claimed was paid or collected as a tax.

Claimant. Any person who files a claim for a refund or credit of tax under this subpart.

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

Owner. A person who, by reason of a proprietary interest in the article, furnished the amount claimed to the claimant for the purpose of paying the tax.

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

Regional Director (compliance). The principal ATF regional regulatory official responsible for administering regulations in this subpart.

Tax. Any tax imposed by 26 U.S.C. chapter 52, or by any corresponding provision of prior internal revenue laws, and in the case of any commodity of a kind subject to a tax under such chapter, any tax equal to any such tax, any additional tax, or any floor stocks tax. The term includes an exaction denominated a ''tax'', and any penalty, addition to tax, additional amount, or interest applicable to any such tax.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 296.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 296.3 Applicability to certain credits or refunds.

The provisions of this subpart apply only where the credit or refund is claimed on the grounds that an amount of tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive. This subpart does not apply to:

(a) Any claim for drawback,

(b) Any claim made in accordance with any law expressly providing for credit or refund where an article is withdrawn from the market, returned to bond, lost, or destroyed, and

(c) Any claim based solely on errors in computation of the quantity of an article subject to tax or on mathematical errors in computation of the amount of the tax due, or to any claim in respect of tax collected or paid on an article seized and forfeited, or destroyed, as contraband.

[T.D. 6395, 24 FR 599, Jan. 28, 1959. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–42, 42 FR 8372, Feb. 10, 1977]

§ 296.4 Ultimate burden.

For the purposes of this subpart, the claimant, or owner, shall be treated as having borne the ultimate burden of an amount of tax only if:

(a) He has not, directly or indirectly, been relieved of such burden or shifted such burden to any other person,

(b) No understanding or agreement exists for any such relief or shifting, and

(c) If he has neither sold nor contracted to sell the articles involved in such claim, he agrees that there will be no such relief or shifting, and furnishes bond as provided in § 296.10.

§ 296.5 Conditions to allowance of credit or refund.

No credit or refund to which this subpart is applicable shall be allowed or made, pursuant to a court decision or otherwise, of any amount paid or collected as a tax unless a claim therefor has been filed, as provided in this subpart, by the person who paid the tax and the claimant, in addition to establishing that he is otherwise legally entitled to credit or refund of the amount claimed, establishes:

(a) That he bore the ultimate burden of the amount claimed, or

(b) That he has unconditionally repaid the amount claimed to the person who bore the ultimate burden of such amount, or

(c) That (1) the owner of the article furnished him the amount claimed for payment of the tax, (2) he has filed with the regional director (compliance) the written consent of such owner to the allowance to the claimant of the credit or refund, and (3) such owner satisfies the requirements of paragraph (a) or (b) of this section.

§ 296.6 Requirements for persons intending to file claim.

Any person who, having paid the tax with respect to an article, desires to claim refund or credit of any amount of such tax to which the provisions of this subpart are applicable must:

(a) File a claim, as provided in § 296.7,

(b) Comply with any other provisions of law or regulations which may apply to the claim, and

(c) If, at the time of filing the claim, neither he nor the owner has sold or contracted to sell the articles involved in the claim, file a bond on Form 2490, as provided by § 296.10.

Claim Procedure

§ 296.7 Execution and filing of claim.

Claims to which this subpart is applicable shall be executed on Form 2635 (5620.8) in accordance with instructions on the form and shall be filed with the regional director (compliance) for the region in which the tax was paid. (For provisions relating to hand-carried documents, see § 70.304 of this chapter.) The claim shall set forth each ground upon which the claim is made in sufficient detail to apprise the regional director (compliance) of the exact basis therefor. Allegations pertaining to the bearing of the ultimate burden relate to additional conditions which must be established for a claim to be allowed and are not in themselves legal grounds for allowance of a claim. There shall also be attached to the form and made a part of the claim the supporting data required by § 296.8. All evidence relied upon in support of such

claim shall be clearly set forth and submitted with the claim.

[T.D. 7008, 34 FR 3672, Mar. 1, 1969. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55857, Sept. 28, 1979; T.D. ATF–251, 52 FR 19342, May 22, 1987; T.D. ATF–301, 55 FR 47658, Nov. 14, 1990]

§ 296.8 Data to be shown in claim.

Claims to which this subpart is applicable, in addition to the requirements of § 296.7, must set forth or contain the following:

(a) A statement that the claimant paid the amount claimed as a ''tax'' as defined in this subpart.

(b) Full identification (by specific reference to the form number, the date of filing, the place of filing, and the amount paid on the basis of the particular form or return) of the tax forms or returns covering the payments for which refund or credit is claimed.

(c) The written consent of the owner to allow the refund or credit to the claimant (where the owner of the article on which the tax was paid has furnished the claimant the amount claimed for the purpose of paying the tax).

(d) If the claimant or the owner, as the case may be, has neither sold nor contracted to sell the articles involved in the claim, a statement that the claimant or the owner, as the case may be, agrees not to shift, directly or indirectly in any manner whatsoever, the burden of the tax to any other person.

(e) If the claim is for refund of a floor stocks tax, or of an amount resulting from an increase in rate of tax applicable to an article, a statement as to whether the price of the article was increased on or following the effective date of such floor stocks tax or rate increase, and, if so, the date of the increase, together with full information as to the amount of such price increase.

(f) Specific evidence (such as relevant records, invoices, or other documents, or affidavits of individuals having personal knowledge of pertinent facts) which will satisfactorily establish the conditions of allowance set forth in § 296.5.

The regional director (compliance) may require the claimant to furnish as a part of the claim such additional information as he may deem necessary.

[T.D. ATF–42, 42 FR 8372, Feb. 10, 1977]

§ 296.9 Time for filing claim.

No credit or refund of any amount of tax to which the provisions of this subpart apply shall be made unless the claimant files a claim therefor within the time prescribed by law and in accordance with the provisions of this subpart.

[T.D. ATF–42, 42 FR 8373, Feb. 10, 1977]

BOND

§ 296.10 Bond, Form 2490.

Each claim for a refund or credit of tax on articles which the claimant or the owner, as the case may be, has neither sold nor contracted to sell at the time of filing of the claim must be accompanied by a bond on Form 2490. The bond shall be executed by the claimant or the owner of the articles, as the case may be, in accordance with the provisions of this subpart and the instructions printed on the form. Such bond shall be conditioned that there will be no relief or shifting of the ultimate burden of the tax to any other person. The penal sum shall not be less than the amount of tax claimed on all articles which have not been sold or contracted for sale at the time of filing of the claim. Bonds required by this subpart shall be given with corporate surety or with collateral security. A separate bond must be filed for each claim.

§ 296.11 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 the Treasury Department Circular No. 570 (refer to paragraph (c) of this section). The surety shall have no interest whatever in the business covered by the bond.

(b) Each bond and each extension of coverage of bond shall at the time of filing be accompanied by a power of attorney authorizing the agent or officer

who executed the bond to so act on behalf of the surety. The regional director (compliance) who is authorized to approve the bond may, whenever he deems it necessary, require additional evidence of the authority of the agent or officer to execute the bond or extension of coverage of bond. The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. If the power of attorney submitted is other than a manually signed document, it shall be accompanied by a certificate of its validity.

(c) Treasury Department Circular No. 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies) is published in the FEDERAL REGISTER annually as of the first workday in 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); sec. 202, Pub. L. 85–859, 72 Stat. 1421, as amended (26 U.S.C. 5711))

[T.D. ATF–92, 46 FR 46923, Sept. 23, 1981]

§ 296.12 Deposit of securities in lieu of corporate surety.

In lieu of corporate surety, the principal may pledge and deposit securities which are transferable and are guaranteed as to both interest and principal by the United States, in accordance with the provisions of 31 CFR part 225.

§ 296.13 Authority to approve bonds.

Assistant regional commissioners are authorized to approve all bonds required by this subpart.

§ 296.14 Termination of liability.

Bonds on Form 2490 will be terminated by the regional director (compliance) on receipt of satisfactory evidence that the person giving the bond has disposed of the articles covered by the bond and that he bore the ultimate burden of the amount claimed and that no understanding or agreement exists whereby he will be relieved of such burden or shift such burden to another person.

§ 296.15 Release of pledged securities.

Securities of the United States, pledged and deposited as provided by § 296.12, shall be released only in accordance with the provisions of 31 CFR part 225. 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, for proper cause, extend the date of release for such additional length of time as he deems necessary.

PENALTIES

§ 296.16 Penalties.

It is an offense punishable by fine and imprisonment for anyone to make or cause to be made any false or fraudulent claim upon the United States, or to make any false or fraudulent statements, or representations, in support of any claim, or to falsely or fraudulently execute any documents required by the provisions of the internal revenue laws, or any regulations made in pursuance thereof.

Subpart B [Reserved]

Subpart C—Disaster Loss Claims

§ 296.71 Scope of subpart.

This subpart prescribes the requirements necessary to implement 26 U.S.C. 5708, concerning payments which may be made by the United States in respect to the internal revenue taxes paid or determined and customs duties paid on tobacco products, and cigarette papers and tubes removed, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of a disaster occurring in the United States on or after September 3, 1958.

[T.D. 6871, 31 FR 59, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55857, Sept. 28, 1979; T.D. ATF–232, 51 FR 28090, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

DEFINITIONS

§ 296.72 Meaning of terms.

When used in this subpart, 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.

Act. The Excise Tax Technical Changes Act of 1958 (Pub. L. 85–859, 72 Stat. 1275), enacted September 2, 1958.

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR Parts 270, 275, and 296.

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.

Claimant. The person who held the tobacco products or cigarette papers and tubes for sale at the time of the disaster and who files claim under this subpart.

Commissioner of Customs. The Commissioner of Customs, U.S. Customs Service, The Department of the Treasury, Washington, DC.

Disaster. A flood, fire, hurricane, earthquake, storm, or other catastrophe which has occurred in any part of the United States on and after the day following the date of enactment of the act and which the President of the United States has determined, under the Act of September 30, 1950 (64 Stat. 1109; 42 U.S.C. 1855), was a ''major disaster'' as defined in such Act.

Duly authorized official. Any Federal, State, or local government official in whom has been vested authority to condemn tobacco products and cigarette papers and tubes made the subject of a claim under this subpart.

Duty or duties. Any duty or duties paid under the customs laws of the United States.

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional Director (compliance). The principal ATF 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 of such articles from Customs custody.

Sale price. The price for which large cigars are sold by the manufacturer or importer, determined in accordance with §§ 270.22 or 275.39 and used in computation of the tax.

Tax paid or determined. The internal revenue tax on tobacco products and cigarette papers and tubes which has acutally been paid, or which has been determined pursuant to 26 U.S.C. 5703(b), and regulations thereunder, at the time of their removal subject to tax payable on the basis of a return.

Tobacco Products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

United States. When used in a geographical sense, includes only the States, and the District of Columbia.

[T.D. 6392, 24 FR 5300, June 30, 1959]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 296.72, see the List of CFR Sections Affected in the Finding Aids section of this volume.

PAYMENTS

§ 296.73 Circumstances under which payment may be made.

Regional regulatory administrators shall allow payment (without interest) of an amount equal to the amount of tax paid or determined, and the Commissioner of Customs shall allow payment (without interest) of an amount equal to the amount of 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 disaster occurring in the United States on and after September 3, 1958. Such payments may be

made only if, at the time of the disaster, such tobacco products, or cigarette papers or tubes were being held for sale by the claimant. No payment shall be made under this subpart with respect to any amount of tax or duty claimed or to be claimed under any other provision of law or regulations.

[T.D. 6871, 31 FR 59, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF–232, 51 FR 28090, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

CLAIMS PROCEDURE

§ 296.74 Execution of claims.

Disaster loss claims for tobacco products or cigarette papers or tubes must be executed on ATF Form 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes, in accordance with the instructions on the form. If a claim involves taxes on both domestic and imported products, the quantities of each must be shown separately in the claim. Prepare a separate claim in respect of customs duties.

[T.D. ATF–420, 64 FR 71945, Dec. 22, 1999]

§ 296.75 Required information for claim.

The claim should contain the following information:

(a) That the tax on such tobacco products, or cigarette papers or tubes has been paid or determined and customs duty has been paid;

(b) That such tobacco products, or cigarette papers or tubes were lost, rendered unmarketable, or condemned by a duly authorized official, by reason of a disaster;

(c) The type and date of occurrence of the disaster and the location of the tobacco products, or cigarette papers or tubes at that time;

(d) That the claimant was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the tobacco products, or cigarette papers or tubes covered by the claim;

(e) That no amount of internal revenue tax or customs duty claimed has been or will be otherwise claimed under any other provision of law or regulations,

(f) That the claimant is entitled to payment under this subpart, and

(g) The claim must set forth the quantity and kind of tobacco products and cigarette papers and tubes in sufficient detail to calculate the amount of tax and duty paid on these products, substantially as shown in the examples below:

[Example using 1993–1999 Rates]

Quantity	Article	Rate of tax	Amount
20,000	Small cigars	$1.125 per thousand	$22.50
1,000	Large cigars—sale price $100/thousand.	12.75% of sale price	12.75
500	Large cigars—sale price $236/thousand.	$30 per thousand	15.00
10,000	Small cigarettes	$12 per thousand	120.00
5,000	Large cigarettes	$25.20 per thousand	126.00
2,000 sets	Cigarette papers—50 per set	$0.0075 per set	15.00
1,000 sets	Cigarette papers—100 per set	$0.015 per set	15.00
1,000	Cigarette tubes	$0.015 per 50 tubes	0.30
100 lbs	Chewing tobacco	$0.12 per pound	12.00
200 lbs	Snuff	$0.36 per pound	72.00
100 lbs	Pipe tobacco	$0.675 per pound	67.50
300 lbs	Roll-your-own tobacco	$0 per pound	.....
Total claimed			478.05

[Example using 2000–2001 Rates]

Quantity	Article	Rate of tax	Amount
20,000	Small cigars	$1.594 per thousand	$31.88
1,000	Large cigars—sale price $100/thousand.	18.063% of sale price	18.06
500	Large cigars—sale price $236/thousand.	$42.50 per thousand	21.25
10,000	Small cigarettes	$17.00 per thousand	170.00
5,000	Large cigarettes	$35.70 per thousand	178.50
199,975	Cigarette papers	$0.0106 per 50 papers	42.40
1,000	Cigarette tubes	$0.0213 per 50 tubes	0.43

[Example using 2000–2001 Rates]

Quantity	Article	Rate of tax	Amount
100 lbs	Chewing tobacco	$0.17 per pound	17.00
200 lbs	Snuff	$0.51 per pound	102.00
100 lbs	Pipe tobacco	$0.9567 per pound	95.67
300 lbs	Roll-your-own tobacco	$0.9567 per pound	287.01
Total claimed			964.20

[Example using rates for 2002 and After]

Quantity	Article	Rate of tax	Amount
20,000	Small cigars	$1.828 per thousand	36.56
1,000	Large cigars—sale price $100/thousand.	20.719% of sale price	20.72
500	Large cigars—sale price $236/thousand.	$48.75 per thousand	24.38
10,000	Small cigarettes	$19.50 per thousand	195.00
5,000	Large cigarettes	$40.95 per thousand	204.75
199,975	Cigarette papers	$0.0122 per 50 papers	48.80
1,000	Cigarette tubes	$0.0244 per 50 tubes	0.49
100 lbs	Chewing tobacco	$0.195 per pound	19.50
200 lbs	Snuff	$0.585 per pound	117.00
100 lbs	Pipe tobacco	$1.0969 per pound	109.69
300 lbs	Roll-your-own tobacco	$1.0969 per pound	329.07
Total claimed			1,105.96

[T.D. ATF–420, 64 FR 71945, Dec. 22, 1999]

§ 296.76 Supporting evidence.

The claimant must support the claim with any available evidence (such as inventories, statements, invoices, bills, records, stamps, and labels), relating to the tobacco products or cigarette papers or tubes on hand at the time of the disaster and claimed to have been lost, rendered unmarketable, or condemned as a result thereof. If the claim is for refund of duty, the claimant must furnish, if practicable, the customs entry number, date of entry, and the name of the port of entry.

[T.D. ATF–420, 64 FR 71946, Dec. 22, 1999]

296.77 Time and place of filing.

Disaster loss claims must be filed within 6 months after the date on which the President makes the determination that the disaster has occurred. All forms, including claims for duty on imported products, must be filed with the appropriate ATF officer.

[T.D. ATF–420, 64 FR 71946, Dec. 22, 1999]

§ 296.78 Action by regional director (compliance).

The regional director (compliance) will date stamp and examine each claim filed under this subpart and will determine the validity of the claim. The claim will then be processed by him in accordance with existing procedures. Claims and supporting data involving customs duties will be forwarded to the Commissioner of Customs with a summary statement by the regional director (compliance) concerning his findings. The Commissioner of Customs will notify the regional director (compliance) as to allowance under this subpart of claims for duty in respect of unmarketable or condemned tobacco products, and cigarette papers and tubes.

[T.D. 6871, 31 FR 59, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF–232, 51 FR 28091, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

DESTRUCTION OF TOBACCO PRODUCTS, AND CIGARETTE PAPERS AND TUBES

§ 296.79 Supervision.

Before payment is made under this subpart in respect of the tax, or tax and duty, on tobacco products, or cigarette papers or tubes rendered unmarketable or condemned by a duly authorized official, such tobacco products, or cigarette papers or tubes shall be destroyed by suitable means under the supervision of an ATF officer who will be assigned for that purpose by the regional director (compliance), unless

such tobacco products, or cigarette papers or tubes were previously destroyed under supervision satisfactory to the regional director (compliance).

[T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF–232, 51 FR 28091, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

PENALTIES

§ 296.80 Penalties.

Penalties are provided in 26 U.S.C. 7206 and 7207 for the execution under the penalties of perjury of any false or fraudulent statement in support of any claim and for the filing of any false or fraudulent document under this subpart. All provisions of law, including penalties, applicable in respect of internal revenue taxes on tobacco products, and cigarette papers and tubes shall, insofar as applicable and not inconsistent with this subpart, be applied in respect of the payments provided for in this subpart to the same extent as if such payments constituted refunds of such taxes.

[T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF–48, 44 FR 55857, Sept. 28, 1979; T.D. ATF–232, 51 FR 28092, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

ADMIMISTRATIVE PROVISIONS

§ 296.81 Delegations of the Director.

The Director has general authority to take action on all matters under this subpart. Some of the authorities in this subpart are redelegated to ''appropriate ATF officers''. The title of the appropriate ATF officer for each section is listed in ATF Order 1130.15, Delegation Order—Delegation of Certain of the Director's Authorities in 27 CFR parts 270, 275, and 296. ATF delegation orders, such as ATF Order 1130.15, are available from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5190, or from the ATF web site (http://www.atf.treas.gov).

[T.D. ATF–420, 64 FR 71947, Dec. 22, 1999]

Subparts D–E [Reserved]

Subpart F—Distribution of Cigarettes

SOURCE: 45 FR 48612, July 21, 1980, unless otherwise noted.

GENERAL

§ 296.141 Scope of subpart.

The regulations in this subpart relate to the distribution of cigarettes in excess of 60,000 in a single transaction.

§ 296.142 Territorial extent.

The provisions of the regulations in this subpart apply in the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

§ 296.143 Meaning of terms.

When used in this subpart, terms are defined as follows in this section. Words in the plural shall include the singular, and vice versa. Words indicating the masculine gender shall include the feminine. The terms ''includes'' and ''including'' do not exclude other things not named which are in the same general class or are otherwise within the scope of the term defined.

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

Business premises. When used with respect to a distributor, the property on which the cigarettes are kept or stored. The business premises includes the property where the records of a distributor are kept.

Common or contract carrier. A carrier holding a certificate of convenience and necessity, a permit for contract carrier by motor vehicle, or other valid operating authority under the Interstate Commerce Act, or under equivalent operating authority from a regulatory agency of the United States or of any State.

Contraband cigarettes. Any quantity of cigarettes in excess of 60,000, if—

(a) The cigarettes bear no evidence of the payment of applicable State cigarette taxes in the State where the cigarettes are found;

(b) The State in which the cigarettes are found requires a stamp, impression,

or other indication to be placed on packages or other containers of cigarettes to evidence payment of cigarette taxes; and

(c) The cigarettes are in the possession of any person other than an exempted person.

Disposition. The movement of cigarettes from a person's business premises, wherever situated, by shipment or other means of distribution.

Distribute. To sell, ship, issue, give, transfer, or otherwise dispose of.

Distributor. Any person who distributes more than 60,000 cigarettes in a single transaction.

Exempted person. Any person who is—

(a) Holding a permit issued pursuant to Chapter 52 of the Internal Revenue Code of 1954 as a manufacturer of tobacco products or as an export warehouse proprietor;

(b) Operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311 or 1555);

(c) An agent of a tobacco products manufacturer, an export warehouse proprietor, or an operator of a customs bonded warehouse;

(d) A common or contract carrier transporting the cigarettes involved under a proper bill of lading or freight bill which states the quantity, source, and destination of the cigarettes;

(e) Licensed or otherwise authorized by the State, in which he possesses cigarettes, to account for and pay cigarette taxes imposed by that State; and who has complied with the accounting and payment requirements relating to his license or authorization with respect to the cigarettes involved; or

(f) An agent of the United States, of an individual State, or of a political subdivision of a State and having possession of cigarettes in connection with the performance of official duties.

(g) Operating within a foreign-trade zone established under 19 U.S.C., section 81b, when the cigarettes involved have been entered into the zone under zone-restricted status or, in respect to foreign cigarettes, have been admitted into the zone but have not been entered in the United States.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

Regional Director (compliance). The regional official in charge of regulatory enforcement.

State. A State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands.

RECORDS

§ 296.146 General requirements.

Each distributor of cigarettes shall keep copies of invoices, bills of lading, or other suitable commercial records relating to each disposition of more than 60,000 cigarettes. Dividing a single agreement for the disposition of more than 60,000 cigarettes into the delivery of smaller components of 60,000 cigarettes or less does not exempt the distributor from the recordkeeping requirements of this subpart. The distributor shall include the information prescribed in § 296.147 in his commercial records of disposition.

§ 296.147 Required information.

(a) *Distributors who are exempted persons*. Each distributor who is an exempted person as defined in § 296.143 shall show the following information in his commercial records.

(1) For each disposition of more than 60,000 cigarettes to an exempted person; or for each disposition of more than 60,000 cigarettes to a person who is not an exempted person and which is delivered by the distributor to the recipient's place of business, the distributor shall show on dated records—

(i) The full name of the purchaser (or the recipient if there is no purchaser);

(ii) The street address (including city and state) to which the cigarettes are destined; and

(iii) The quantity of cigarettes disposed of.

(2) For each disposition of more than 60,000 cigarettes, other than the dispositions specified in paragraph (a)(1) of this section, the distributor shall show on dated records—

(i) The full name of the purchaser (if any);

(ii) The name, address (including city and state), and signature of the person receiving the cigarettes;

(iii) The street address (including city and state) to which the cigarettes are destined;

(iv) The quantity of cigarettes disposed of;

(v) The driver's license number of the individual receiving the cigarettes;

(vi) The license number of the vehicle in which the cigarettes are removed from the distributor's business premises;

(vii) A declaration by the individual receiving the cigarettes of the specific purpose of receipt (such as personal use, resale, delivery to another person, etc.); and

(viii) A declaration by the person receiving the cigarettes of the name and address of his principal when he is acting as an agent.

(b) *Distributors who are not exempted persons.* Each distributor who is not an exempted person as defined in § 296.143 shall show on dated commercial records the information specified in paragraphs (a)(2) (i) through (viii) of this section for each disposition of more than 60,000 cigarettes.

(Approved by the Office of Management and Budget under control number 1512–0391)

[45 FR 48612, July 21, 1980, as amended by T.D. ATF–172, 49 FR 14943, Apr. 16, 1984]

§ 296.150 Retention of records.

(a) *General.* Each distributor of cigarettes shall retain the records required by §§ 296.146 and 296.147 for three years following the close of the year in which the records are made. The distributor shall keep the required records on his business premises.

(b) *Shorter retention periods.* The regional director (compliance) may, pursuant to an application submitted by a distributor, approve a shorter retention period where—

(1) The distributor requesting the shorter retention period is an agent of a tobacco products manufacturer;

(2) The tobacco products manufacturer will keep the required record for each disposition of more than 60,000 cigarettes from the agent's premises for the full retention period specified in paragraph (a) of this section; and

(3) The approval of a shorter retention period will not unduly hinder the administration of enforcement of this subpart.

(c) *Application requirements.* Each distributor proposing to employ a shorter retention period shall submit a written application, in duplicate, to the regional director (compliance) of the region in which the distributor is located. A distributor may not employ a shorter retention period until approval is received from the regional director (compliance). Each application should indicate the duration of the proposed retention period and should include the information required by paragraph (b) of this section.

OTHER PROVISIONS RELATING TO THE DISTRIBUTION OF CIGARETTES

§ 296.153 Authority of ATF officers to enter business premises.

Any ATF officer may enter the business premises of any distributor of cigarettes to inspect the records required by §§ 296.146 through 296.147 or to inspect any cigarettes stored on the premises—

(a) Pursuant to duly issued search warrant or an administrative inspection warrant; or

(b) Upon the consent of the distributor to enter his premises.

PENALTIES AND FORFEITURES

§ 296.154 Penalties.

(a) Any person who knowingly ships, transports, receives, possesses, sells, distributes, or purchases contraband cigarettes shall be fined not more than $100,000 or imprisoned not more than five years, or both.

(b) Any person who knowingly violates any regulation contained in this subpart or makes any false statement or misrepresentation with respect to the information required to be recorded by this subpart shall be fined not more than $5,000 or imprisoned not more than three years, or both.

§ 296.155 Forfeitures.

(a) Any contraband cigarettes involved in any violation of the provisions of 18 U.S.C. chapter 114 shall be subject to seizure and forfeiture. All provisions of the Internal Revenue Code of 1954 (title 26 U.S.C.) relating to the seizure, forfeiture, and disposition of firearms, as defined in section

5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures of contraband cigarettes under the provisions of 18 U.S.C. chapter 114.

(b) Any vessel, vehicle or aircraft used to transport, carry, convey, or conceal or possess any contraband cigarettes with respect to which there has been committed any violation of any provision of 18 U.S.C. chapter 114 or the regulations in this subpart shall be subject to seizure and forfeiture under the Customs laws, as provided by the Act of August 9, 1939 (49 U.S.C. 781–788).

(18 U.S.C. 2344; 53 Stat. 1291 (49 U.S.C. 782))

Subpart G—Dealers in Tobacco Products

SOURCE: T.D. 6573, 26 FR 8202, Aug. 31, 1961, unless otherwise noted. Redesignated at 40 FR 16835, Apr. 15, 1975.

§ 296.161 Scope of subpart.

The regulations in this subpart relate to the purchase, receipt, possession, offering for sale, or sale or other disposition of tobacco products by dealers in such products.

[T.D. 6871, 81 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF–232, 51 FR 28092, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 296.162 Territorial extent.

The provisions of the regulations in this subpart shall apply in the several States of the United States and the District of Columbia.

§ 296.163 Meaning of terms.

When used in this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, each of the following terms shall have the meaning ascribed in this section. Words in the plural form shall include the singular, words in the singular form shall include the plural, and words importing the masculine gender shall include the feminine. The terms ''includes'' and ''including'' do not exclude things not enumerated which are in the same general class.

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

Dealer. Any person who sells, or offers for sale, at wholesale or retail levels, any cigars or cigarettes after removal.

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco but does not include:

(1) A person who produces tobacco products solely for that person's own consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

Package. The container in which tobacco products are put up by the manufacturer or the importer and offered for delivery to the consumer.

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

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

Tobacco Products. Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco.

U.S.C. The United States Code.

[T.D. 6573, 26 FR 8202, Aug. 31, 1961, as amended by T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 296.163, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 296.164 Authority of ATF officers to enter premises.

Any ATF officer may enter in the daytime any premises where tobacco products are kept or stored, so far as it may be necessary for the purpose of examining such products. 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 products shall be liable to the penalties prescribed by law for the offense. Operators of vending machines

shall make the tobacco products in their machines available for inspection upon the request of any ATF officer.

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

[T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF–232, 51 FR 28092, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 296.165 Interference with administration.

Whoever, corruptly or by force or threats of force, endeavors to hinder or obstruct the administration of this subpart, 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)

§ 296.166 Dealing in tobacco products.

All tobacco products purchased, received, possessed, offered for sale, sold or otherwise disposed of, by any dealer must be in proper packages which bear the mark and notice as prescribed in parts 270 and 275 of this chapter. Tobacco products may be sold, or offered for sale, at retail from such packages, provided the products remain in the packages until removed by the customer or in the presence of the customer. Where a vending machine is used, tobacco products must similarly be vended in proper packages or directly from such packages.

(72 Stat. 1424; 26 U.S.C. 5751)

[T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF–232, 51 FR 28092, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 296.167 Liability to tax.

Any dealer who, with intent to defraud the United States, possesses tobacco products (a) upon which the tax has not been paid or determined in the manner and at the time prescribed in parts 270 and 275 of this chapter or (b) which, after removal without payment of tax pursuant to section 5704, I.R.C., and regulations issued thereunder, have been diverted from the applicable purpose or use specified in that section or (c) which are not put up in packages prescribed in parts 270 and 275 of this chapter or are put up in packages not bearing the marks and notices prescribed in such regulations shall be liable for a tax equal to the tax on such products.

(72 Stat. 1424; 26 U.S.C. 5751)

[T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF–232, 51 FR 28092, Aug. 5, 1986; T.D. ATF–243, 51 FR 43194, Dec. 1, 1986]

§ 296.168 Liability to penalties and forfeitures.

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

(72 Stat. 1425, 1426; 26 U.S.C. 5761, 5762, and 5763)

Subpart H [Reserved]

Subpart I—Floor Stocks Tax on Cigarettes Held for Sale on January 1, 2000 and on January 1, 2002

AUTHORITY: Section 9302, Pub.L. 105–33, 111 Stat. 251, unless otherwise noted.

SOURCE: T.D. ATF–423, 64 FR 71958, Dec. 22, 1999, unless otherwise noted.

GENERAL

§ 296.191 Purpose of this subpart.

The regulations in this subpart implement the floor stocks tax on cigarettes held for sale the first moment on January 1, 2000 and on January 1, 2002.

§ 296.192 Terms used in this subpart.

(a) *Appropriate ATF officer*. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this subpart by ATF Order 1130.14, Delegation Order—Delegation of the Director's Authorities in Subpart I of 27 CFR Part 296.

(b) *Controlled group*. Pursuant to 26 U.S.C. 5061(e)(3), the term ''controlled group'' means 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 they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Controlled groups of corporations include, but are not limited to:

(1) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563–1 (a)(2).

(2) Brother-sister controlled groups as defined in 26 CFR 1.1563–1(a)(3).

(3) Combined groups as defined in 26 CFR 1.1563–1(a)(4). 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 are members of a controlled group.

(c) *Foreign trade zone.* A foreign trade zone established and operated pursuant to the Act of June 18, 1934, as amended, 19 U.S.C. 81a.

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

(e) *Person.* When the term ''person'' is used in this subpart, it refers to an individual, partnership, association, company, corporation, a trust, or an estate. It also includes any State or political subdivision.

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

(g) *Tax increase dates.* For the purposes of this floor stocks tax, the tax increase dates are January 1, 2000 and January 1, 2002.

§ 296.193 Floor stocks tax defined.

Floor stocks tax is a tax imposed on all Federally taxpaid or tax determined cigarettes held for sale on the first moment a tax increase becomes effective. The tax is the difference between the previous excise tax rate and the new tax rate.

§ 296.194 Persons liable for this tax.

You are liable for this tax if you hold for sale any taxpaid or taxdetermined cigarettes at the moment a tax increase is effective. You are liable for floor stocks tax on cigarettes that you own that may be in transit (refer to §§ 296.207 and 296.208). You may also be liable if you hold cigarettes in a foreign trade zone (refer to § 296.209).

§ 296.195 Persons not liable for this tax.

If you do not hold any taxpaid or taxdetermined cigarettes for sale at the moment a tax increase is effective, you are not liable for this tax.

§ 296.196 Floor stocks requirements.

(a) *Take an inventory.* Establish the quantity of cigarettes subject to the floor stocks tax held for sale at the beginning of the tax increase dates (January 1, 2000 and January 1, 2002). You may take a physical inventory or you may use a book or record inventory, as specified in §§ 296.205 and 296.206.

(b) *Compute tax amount.* Compute the amount of tax for the cigarettes held for sale at the start of each of the tax increase dates. Refer to the table shown in § 296.222. Apply the tax credit as provided by § 296.223.

(c) *File tax return.* After you have computed the floor stocks tax, you must file a return for each tax increase date if tax is due.

(d) *Maintain records.* Maintain all records used to determine the quantity of cigarettes on hand at the start of each tax increase date. You must also maintain all computations used to determine the amount of tax owed. Refer to § 296.241.

(Approved by the Office of Management and Budget under control number 1512–0554)

INVENTORIES

§ 296.201 Establish quantities of cigarettes.

You must take an inventory to establish the quantity of cigarettes subject to the floor stocks tax. You may take a physical inventory or a book or record inventory.

§ 296.202 Inventory for cigarettes with export markings.

Your inventory of cigarettes must count separately cigarettes that have

been labeled for export from the United States.

§ 296.203 How to identify cigarettes with export markings.

Each package (the container in which cigarettes are put up by the manufacturer and delivered to the consumer) of cigarettes will have:

(a) A mark or a label with the words ''Tax-exempt. For use outside U.S.'' or ''U.S. Tax Exempt. For use outside U.S.''; or

(b) A stamp, sticker, or notice, required by a foreign country or possession of the United States, which identifies such country or possession.

§ 296.204 When to take inventory.

You must take your physical inventory or book or record inventory during the periods noted in the table to this section.

Date of floor stocks tax	Not earlier than	No later than
January 1, 2000	December 26, 1999	January 10, 2000.
January 1, 2002	December 26, 2001	January 10, 2002.

§ 296.205 Physical inventory requirements.

Your physical inventory must include a written record of:

(a) *Quantity and Type*. You must record the quantity and type of cigarettes in sufficient detail to determine the tax rate as stated in § 296.222 and whether the cigarettes have export markings as stated in § 296.203. The following chart provides the type of cigarette and method to use to determine quantities:

Type or kind	Inventory method
Small cigarettes (Class A).	Count the: • Number of cigarettes without export markings. • Number of cigarettes with export markings.
Large cigarettes (Class B).	Count the: • Number of large cigarettes 6.5″ or less in length without export markings. • Number of large cigarettes 6.5″ or less in length with export markings. • Number of each size of large cigarettes more than 6.5″ in length without export markings. • Number of each size of large cigarettes more than 6.5″ in length with export markings.

(b) *Date*. Date(s) the inventory was taken.

(c) *Name*. Name of individual(s) conducting the inventory and the name of the person for whom the inventory was taken.

(d) *Location*. Record where the inventory was taken (street address, city and State).

(e) *Time*. The physical inventory must be taken between the dates shown in § 296.204. If you do not take the physical inventory as of the close of business on the last respective business days of 1999 and 2001, the records must be reconciled. The inventory records must be reconciled to reflect the actual quantity of cigarettes held as of the first moment of January 1, 2000 and January 1, 2002, respectively. These records must include all supporting records of receipt and disposition.

§ 296.206 Book or record inventory requirements.

You may use a book or record inventory if you have source records that show:

(a) The quantity of receipts and dispositions of all cigarettes.

(b) The actual type and quantities of cigarettes on hand as if a physical inventory had taken place the moment the tax increase became effective. Refer to § 296.205(a).

(c) The name and address of the consignor and consignee.

(d) The date of receipt or disposition of the cigarettes.

(e) The brand name of each product.

(f) If you do not take the inventory as of the close of business on the last respective business days of 1999 and 2001, the records must be reconciled as described in § 296.205(e).

§ 296.207 Cigarettes in transit.

Cigarettes in transit must be included in your inventory if you hold title to the cigarettes. If you have transferred the title, you must document the title transfer in writing. For example, you may mark the bill of lading with a written statement that indicates the time and place of the title transfer.

§ 296.208 Guidelines to determine title of cigarettes in transit.

You may use the following guidelines to establish who holds title to cigarettes in transit.

(a) If State law mandates the change in title, then no agreement or contract between seller and buyer can alter it.

(b) In the absence of State law governing the change of title between seller and buyer, the Uniform Commercial Code allows the seller and buyer to agree when title passes.

(c) If there is no State law or agreement between the seller and buyer, the Uniform Commercial Code states that title transfer depends on how the seller ships the cigarettes.

(1) *Freight on board (F.O.B.) destination*. The title transfer occurs when the seller completes the performance of the physical delivery of the cigarettes.

(2) *Freight on board (F.O.B.) shipping point*. The title transfer occurs when the seller transfers the title at the time and place of shipment, which is generally by common carrier.

§ 296.209 Cigarettes in a foreign trade zone.

You are liable for the tax and must take an inventory when either of the following conditions apply:

(a) Internal revenue taxes have been determined or Customs duties liquidated, with respect to cigarettes pursuant to the first proviso of section 3(a) of the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a), or

(b) Cigarettes are held by a Customs officer pursuant to the second proviso of section 3(a) of the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a).

§ 296.210 Cigarettes held in bond.

If you are a manufacturer or an export warehouse proprietor and hold cigarettes in ATF bond on the tax increase dates, the floor stocks tax does not apply to those cigarettes. Likewise, if you have cigarettes held in a Customs bonded warehouse, the floor stocks tax does not apply on those cigarettes.

§ 296.211 Unmerchantable cigarettes.

Any cigarettes that you hold for return to a supplier because of some defect are not subject to the floor stocks tax. You must prepare a separate list of these items. You cannot include as unmerchantable any items that may be held because of poor market demand or to reduce your inventory.

§ 296.212 Cigarettes in vending machines.

You do not have to inventory cigarettes held in a vending machine for retail sale, provided:

(a) The vending machine holding the cigarettes is placed at a location where retail sales occur, and

(b) The cigarettes are ready to be dispensed by a consumer.

§ 296.213 Cigarettes marked "not for sale" or "complimentary".

Cigarettes marked ''not for sale'' or ''complimentary'' that are part of a sale (for example, buy two packs and get one pack free) are subject to the floor stocks tax and must be included in the book or record inventory as required by §§ 296.205 and 296.206. Cigarettes that are marked ''not for sale'' or ''complimentary'' and are intended to be given away and not in conjunction with any sale are not subject to the floor stocks tax.

COMPUTE TAX LIABILITY

§ 296.221 Determine amount of tax due.

After you have taken your inventory, apply the applicable tax rate for each type of cigarette using the table in § 296.222. Multiply the amount of each

type of cigarette by the applicable tax rate.

§ 296.222 Floor stocks tax rates.

Type or kind	January 1, 2000	January 1, 2002
Small Cigarettes (3 pounds or less per 1,000)	$5 per 1,000 or 10 cents per 20	$2.50 per 1,000 or 5 cents per 20
Large Cigarettes (more than 3 pounds per 1,000)	$10.50 per 1,000 or 21 cents per 20	$5.25 per 1,000 or 10.5 cents per 20
Special rule: For large cigarettes over 6½ inches long determine the rate for each length. Multiply the rate prescribed for small cigarettes by the whole number that represents the addition of each 2¾ inches and any fraction of the length, as one (1)		

§ 296.223 Apply tax credit.

You are allowed a credit against your floor stocks tax of up to $500. However, controlled groups are eligible for only one credit for the entire group. The credit may be divided equally among the members or apportioned in any other manner agreeable to the members.

FILING REQUIREMENTS

§ 296.231 How to obtain a tax return.

You may obtain ATF Form 5000.28T, Floor Stocks Tax Return for Cigarettes, from any of the following sources:

(a) ATF web site (www.atf.treas.gov);

(b) ATF Distribution Center, PO Box 5950, Springfield, Virginia 22150–5950, telephone (703) 455–7801; or

(c) National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202–3263, telephone (800) 398–2282 or (513) 684–7151.

§ 296.232 Prepare tax return.

If your tax liability is zero, you do not have to complete or file a tax return. Otherwise, complete and file the floor stocks tax return in accordance with the instructions for the form.

§ 296.233 How to pay.

Your payment must be in the form of a check or money order and sent with ATF Form 5000.28T unless you are required to file by electronic fund transfer as described in paragraph (a) of this section.

(a) *Electronic fund transfer*. If you pay any other excise taxes collected by ATF by electronic fund transfer, then you must also send your payment for this floor stocks tax by an electronic fund transfer. ATF P 5000.10, Payment by Electronic Funds Transfer, specifies how to make an electronic fund transfer. You can get ATF P 5000.10 from any of the following sources:

(1) ATF web site (www.atf.treas.gov);

(2) ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, telephone (703) 455–7801; or

(3) National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202–3263, telephone (800) 398–2282 or (513) 684–7151.

(b) [Reserved]

§ 296.234 Tax return due dates.

Tax increase date	File tax return no later than:
January 1, 2000	March 31, 2000[1]
January 1, 2002	April 1, 2002

[1] Section 9302(j) of P.L. 105–33 states that the due date is April 1, 2000. However, section 5703(b)(2)(E) of the Internal Revenue Code requires that when a due date falls on a Saturday, Sunday or a legal holiday, the preceding day that is not a Saturday, Sunday or legal holiday will be the due date. Therefore, the floor stocks tax for this period is due on March 31, 2000 since April 1, 2000, falls on a Saturday.

§ 296.235 Filing requirements for multiple locations.

You may file a consolidated return if all locations or places of business have the same employer identification number. You also have the option of filing a separate return for each place of business or location.

§ 296.236 Cigarettes in a warehouse.

(a) Cigarettes warehoused at one or more locations must be reported on the tax return representing the location where the cigarettes will be offered for sale.

(b) Cigarettes offered for sale at several locations must be reported on a tax return filed by one or more of the

locations. The cigarettes can be reported by a single location or apportioned among several locations.

§ 296.237 Controlled group members.

If you are a member of a controlled group, you must file if the combined liability with other members is more than $500. If you have your own employer identification number, you must file a separate tax return. You may take the tax credit discussed in § 296.223 if it is apportioned to you as a member of the controlled group.

RECORDS

§ 296.241 Required records.

You must maintain:

(a) Inventory records.

(b) Tax computations.

(c) Names, addresses and employer identification number of all controlled group members, if applicable.

(d) Copy of tax return, if you filed one.

(e) List of locations and warehouses covered by the tax return.

(f) Any approved alternate method or procedure under 296.263.

§ 296.242 Period for maintaining records.

An appropriate ATF officer may require, in writing, that you keep records and any tax returns for an additional period of not more than 3 years. Keep your records in accordance with time frames shown in the table to this section.

If you have:	Maintain your records for at least:
Taken an inventory but are not required to file a tax return	3 years from the tax increase date.
Filed a tax return on or before the due date of the return	3 years from the due date of the tax return, as specified in § 296.234.
Filed a tax return after the due date of the tax return	3 years from the date of filing the tax return.

§ 296.243 Cigarettes at multiple locations.

You must maintain a list of each place where you hold cigarettes subject to the floor stocks tax. This list must include:

(a) Address.

(b) Name of the proprietor (if different).

(c) The employer identification number (if different).

(d) Quantity and classification of all cigarettes held at each location.

§ 296.244 Where records must be maintained.

Keep your inventory records at your principal place of business. All records must be made available to an appropriate ATF officer upon demand.

§ 296.245 Errors in records.

If your inventory records or tax computation records contain an error that resulted in an overpayment of tax, you can file a claim for refund. If your inventory or tax computation records contain an error that resulted in an underpayment of tax, you must file an additional tax return on which you show and pay the additional tax, interest and any applicable penalties.

CLAIMS

§ 296.251 Before filing a claim.

Before you can file a claim for refund, you must have paid your floor stocks tax on ATF F 5200.28T and subsequently determined that you overpaid the tax.

§ 296.252 When to file a claim for errors on return.

You must file the claim within 3 years from the due date of filing the tax return or 2 years from the time the tax was paid, whichever is later.

§ 296.253 How to file a claim for errors on return.

Your claim must be filed on ATF Form 2635 (5620.8). The claim must include detailed and sufficient evidence to support why you believe the tax was overpaid. The claim and supporting

documentation must be mailed or delivered to the address shown on the form.

(Approved by the Office of Management and Budget under control number 1512–0554)

§ 296.254 Destruction of cigarettes by a Presidentially-declared major disaster.

After you have paid the floor stocks tax, you may file a claim for refund of tax on cigarettes lost, rendered unmarketable, or condemned because of a Presidentially-declared major disaster. Refer to subpart C of this part for the time, evidence and procedures for filing a claim.

§ 296.255 Additional reasons for filing a claim.

(a) *Manufacturer*. 27 CFR part 270, subparts I and K state the times, reasons and procedures for filing a claim for refund.

(b) *Export warehouse proprietor*. 27 CFR part 290, subpart G, states the time, evidence and procedures for filing a claim for refund.

(c) *Exported taxpaid*. If cigarettes are shipped from the United States, you may file a claim for drawback of taxes under subpart K of 27 CFR part 290.

(d) *Importer*. An importer may follow the procedures for filing a claim as described in 27 CFR part 275, subpart I.

ALTERNATE METHODS OR PROCEDURES

§ 296.261 Purpose of an alternate method or procedure.

An alternate method or procedure is a different way of performing a requirement than is provided in this subpart of regulations. You would only make a request if you wanted to perform a requirement in a different way than is provided in this subpart.

§ 296.262 How to apply for approval.

You must apply in writing to the National Revenue Center, 550 Main Street, Cincinnati, Ohio 45202–3263. You must describe the alternate method or procedure and reasons you wish to use it. You cannot use the alternate method until you receive written approval from ATF.

(Approved by the Office of Management and Budget under control number 1512–0554)

§ 296.263 Conditions for approval.

The alternate method or procedure may be approved if it meets all of the following conditions:

(a) There is good cause for its use.

(b) It is consistent with the purpose and effect intended by the prescribed method or procedure.

(c) It affords equivalent security to the revenue.

(d) It is not contrary to any provision of law.

(e) It will not result in an increase in cost to the Government.

(f) It will not hinder the effective administration of this subpart such as delaying timely payment of taxes.

(g) It is not a method or procedure that relates to the payment or collection of tax.

§ 296.264 Withdrawal of an alternate method or procedure.

The approval will be withdrawn if revenue is jeopardized or administration of this subpart is hindered. ATF will give you a written notice of the withdrawal.

ATF AUTHORITIES

§ 296.270 Delegations of the Director.

The regulatory authorities of the Director contained in this subpart are delegated to appropriate ATF officers. These ATF officers are specified in ATF O 1130.14, Delegation Order—Delegation of the Director's Authorities in Subpart I of 27 CFR part 296. ATF delegation orders, such as ATF O 1130.14, are available to any interested party by mailing a request to the ATF Distribution Center, PO Box 5950, Springfield, VA 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

§ 296.271 Entry, examination and testimony.

Appropriate ATF officers, in performing official duties, may enter any premises to examine cigarettes subject to floor stocks tax. They may enter the premises during the day or may also

enter at night if the premises are open. Appropriate ATF officers may audit and examine all cigarettes, inventory records, books, papers, or other resource data for the purpose of ascertaining, determining or collecting floor stocks tax. They may take testimony (under oath) of any person when inquiring as to proper payment of floor stocks taxes.

§ 296.272 Issuance of summons.

Appropriate ATF officers can issue summonses when there is no Justice Department referral under the authority stated in 27 CFR 70.22. The summons will state a place and time for such items or person to appear. ATF will issue a summons to require:

(a) Any books of account or other data pertaining to liability of floor stocks tax.

(b) Any person liable for the floor stocks tax or having possession of books of account or other data.

(c) Any other appropriate person in connection with the books or tax liability.

§ 296.273 Refusing entry or examination.

If you or another person in charge of the premises refuses to admit any appropriate ATF officer or prevents any appropriate ATF officer from examining the records or cigarettes, you may be liable for the penalties described in 26 U.S.C. 7342 and 7212, respectively.

§ 296.274 Penalties for failure to comply.

If you fail to follow these regulations, ATF may apply applicable civil and criminal penalties under the Internal Revenue Code of 1986. For example, failure to file and failure to pay penalties may be assessed against you if you do not timely file your tax return or timely pay the taxes due. In addition, interest under 26 U.S.C. 6621 accrues for any underpayment of tax and on all assessed penalties until paid.